Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **Sub. H.B. 2** DATE: **January 15, 1998**

STATUS: **As Reported by House Criminal Justice** SPONSOR: **Rep. Garcia**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Establishes the offense of participating in criminal gang activity and enhances penalties for an offense of violence committed by a juvenile**

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Indeterminate increase	Indeterminate increase	Indeterminate increase
Crime Victims Reparation Fund (CVRF)			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	- 0 -	- 0 -

- The bill could generate a potential minimal gain in state revenues to the GRF and the CVRF related to the collection of state court costs in newly created felony cases.
- Under a worst case scenario, the bill could generate eventual increased annual expenditures to DRC ranging from $3.2 million to $16 million depending on the necessity of constructing a new state prison.
- Under the provisions of the bill addressing the sentencing of juvenile offenders the state could experience an indeterminate increase in expenditures related to additional demand for institutionalization.
- By increasing the seriousness of the offenses addressed, the bill could generate an indeterminate increase or decrease in state expenditures for indigent defense related to the prosecution of more serious offenses and the degree to which offenders become more or less likely to plea bargain.
- By increasing the number of fingerprint records processed, the bill could generate a potential minimal increase in state expenditures for these procedures.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase
Municipalities & Townships			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Minimal increase	Minimal increase	Minimal increase

- The bill could generate a potential minimal gain in revenues to counties, municipalities, and townships as a result of increased proceeds from forfeiture actions.

- The bill could generate a potential increase or decrease in county expenditures related to the adjudication, prosecution, indigent defense, and pre-conviction incarceration in longer and more complex prosecutions. The net effect on these expenditures will depend on the degree to which offenders are more or less likely to plea bargain.

- The bill could generate a potential minimal increase in expenditures to local governments operating booking facilities as a result of processing and submitting additional fingerprint records to the Bureau of Criminal Identification and Investigation (BCII).

Detailed Fiscal Analysis

Provisions of the Bill

The bill makes the following changes in current law: 1) establishes the offense of "participating in a criminal gang"; 2) defines what constitutes a "criminal gang" and a "pattern of criminal gang activity"; 3) specifies penalties for participating in a criminal gang and the commission felonies perpetrated while participating in a criminal gang; 4) provides nonresidential sanction alternatives for a child adjudicated a delinquent child for participating in a criminal gang; 5) prescribes procedures for the forfeiture and disposition of property related to the offense of participating in a criminal gang; and 6) modifies juvenile fingerprinting laws with respect to the collection, filing, and retention of fingerprints, photographs and other materials.

The Offense of Participating in a Criminal Gang

The bill prohibits a person from actively participating in a criminal gang or in a pattern of criminal gang activity and from purposely promoting, furthering, or assisting any act that constitutes criminal conduct and classifies a violation of this provision as a felony of the second degree (F-2). Currently, an F-2 is punishable by a prison term of up to eight years, with a possibility of up to ten additional years if the offender is a Repeat Violent Offender (RVO).

Definition of a Criminal Gang and Pattern of Criminal Gang Activity

As defined in the bill a "criminal gang" is an ongoing formal or informal organization, association, or group of three or more persons to which all of the following apply: 1) has as one of its primary activities the commission of one or more of the offenses listed below; 2) has a common name or one or more common identifying signs, symbols or colors; and 3) members of the organization, association, or group individually or collectively engage in or have engaged in a pattern of criminal gang activity.

The bill defines a "pattern of criminal gang activity" as having committed, attempted to commit, been complicit in committing, or solicited, coerced, or intimidated another to commit, conspire, or be in complicity in the commission of the following offenses: 1) an offense or act committed by a juvenile that would be a felony if committed by an adult; 2) an offense or an act committed by a juvenile that would be an offense of violence if committed by an adult; or 3) commission of soliciting after a positive HIV test, prostitution, disseminating matter harmful to juveniles, displaying matter harmful to juveniles, criminal damaging or endangering, aggravated trespass, failure to disperse, interference with custody, contributing to the unruliness or delinquency of a child, intimidation of an attorney, victim, or witness in a criminal case, using weapons while intoxicated, improperly handling firearms in a motor vehicle, trafficking in marihuana, or ethnic intimidation.

A person is guilty of engaging in a "pattern of criminal gang activity" if: 1) at least one of the two or more above offenses is a felony; 2) at least one of those two or more offenses occurs on or after the bill's effective date; 3) the last of the two or more offenses occurs within five years after the previous offense or offenses; or 4) two or more offenses are committed on separate occasions or by two or more persons.

Felony Committed by a Juvenile Participating in a Criminal Gang

The bill requires that a court commit a child to the custody of the Department of Youth Services (DYS) for committing a category one or two offense and for which the child (if an adult) would be guilty of the specification that the act was committed while participating in a criminal gang. The child would be committed to DYS for institutionalization in a secure facility for a period of not less than one year or more than three years.

Nonresidential Sanctions for a Delinquent Child

The bill authorizes a court that adjudicates a child as delinquent for the offense of "participating in a criminal gang", to commit the child to the custody of an institution or to DYS or to one or more of the following non-residential sanctions: 1) day reporting; 2) electronically monitored house arrest; 3) community service of up to 500 hours; 4) alcohol or drug treatment with an adequate level of security; 5) intensive or basic supervision; 6) drug and alcohol use monitoring; 7) court ordered curfew; 8) participation in an educational program; 9) suspension of the child's driver's license or temporary instruction permit; and 10) reconciliation or mediation including meeting with the victim to discuss the criminal act, restitution, and consideration of other sanctions.

Nuisance Provisions and Procedures for Forfeiture and Disposition of Property

Under these provisions of the bill, a criminal gang that uses or occupies any building, premises, or real estate on more than two occasions within a one-year period to engage in a "pattern of criminal gang activity", is guilty of maintaining a nuisance that is subject to abatement.

If a person is convicted of participating in criminal gang activity, the person loses any right to the possession of property and forfeits that right to the state if either of the following conditions apply: 1) the property constitutes, or is derived directly or indirectly from, any proceeds that the person obtained directly or indirectly from the commission of the violation; or 2) the property was used or intended to be used in any manner to commit, or to facilitate the commission of, the violation. The bill also provides methods for persons unrelated to the offense and with interest in the property to preserve their interest. Distribution of proceeds received by law enforcement in the forfeiture of property used in the engagement of a pattern of criminal gang activity would be similar to those currently in place for drug forfeitures.

Modify Juvenile Fingerprint Laws

The bill alters existing law relative to fingerprinting procedures of juveniles who commit crimes other than traffic and minor misdemeanors. Specifically, the bill would enable state and local law enforcement agencies to fingerprint and photograph juvenile offenders and requires that such fingerprints be forwarded to the Bureau of Criminal Identification and Investigation.

Fiscal Impact of the Bill

Impact on the Department of Rehabilitation and Correction

The bill creates the offense of "participating in criminal gang activity", a violation of which is an F-2 and punishable by up to eight years in prison. A study conducted by the Department of Rehabilitation and Correction (DRC) identified 10.9 percent of inmates entering the adult system as being affiliated with criminal gang activity. Assuming this is correct, and accounting for the plea bargains in 80 percent of the cases, under this provision of the bill, DRC estimates a potential population increase of up to 404 inmates. It must be noted however, that this is based on DRC estimates of a worst case scenario and actual increases may be less.

In addition to the provision creating the offense of "participating in a criminal gang", the bill also contains a specification for felonies committed while participating in a criminal gang. Specifically, the bill requires the sentencing court to impose upon an offender guilty of committing a felony or offense of violence while participating in a criminal gang to an additional prison term of one, two, or three years. As a result of this provision, DRC estimates a potential "stacking effect" in future years, as these offenders begin to serve the time related to the specification. DRC estimates that this provision of the bill could generate a potential permanent increase of up to 369 inmates. Again however, this is based on DRC estimates of a worst case scenario and actual increases may be less.

Based on DRC estimates, the combination of the provisions establishing the offense and the felony specification, could result in a permanent increase of 783 inmates. However, since these estimates are based on worst case scenarios, it is unclear as to whether such an increase would require the construction of an additional correctional facility. As a result, LBO has constructed two scenarios for estimating the potential increase in DRC expenditures. The first of these scenarios assumes that DRC will accommodate the increased inmate population in existing facilities and as a result incur only increased marginal operating costs. The second scenario assumes that the worst case increase of 783 inmates will be fully realized and will necessitate the construction of an additional facility.

Scenario One

Assuming that the state does not find it necessary to construct an additional prison, additional expenditures to house 783 additional inmates would be restricted to marginal operating costs. This would cost the state approximately $4,100 annually per inmate and could generate increased annual expenditures of up to $3.2 million. These increased expenditures, to the extent that they actually occur, would not begin to be realized until at least fiscal year 2000 at which time they would increase steadily before eventually leveling off at $3.2 million.

Scenario Two

Currently, the approximate cost of constructing a medium security correctional facility is $35 million and is financed by general obligation bonds over a period of 20 years at a 7 percent interest rate. Under this scenario, this component of the bill would require a potential increase of up to $ 3.3 million in annual state debt service expenditures. Additionally, as a result of the permanent increase in prison population and the construction of a new facility, the state would experience an additional annual increase of up to $12.7 million in operations expenditures. As a

result, if this worst-case scenario is realized, the state could experience up to a $16 million annual increase in expenditures. Currently, the cost of housing a prisoner in a newly constructed state facility is $16,395, which includes not only marginal costs of operations, but start up costs as well. Increased expenditures to the extent they actually occur would not begin to be realized until at least fiscal year 2000, at which time they would experience a steady increase before leveling off when debt service requirements begin in fiscal year 2006.

Impact on the Department of Youth Services

According to a representative of the Department of Youth Services (DYS), assessing the impact of the bill on population is problematic. This being said however, since the bill increases the sentence for certain offenses, DYS population will likely experience an increase. However, without an accurate estimate of the number of persons affected, any increase must be described as indeterminate. Currently, the per diem cost of incarcerating a youth in a DYS facility is $123 or $44,895 annually.

Forfeiture Provisions of the Bill

The provisions of the bill expanding the ability of law enforcement agencies to confiscate property used in the commission of criminal gang activity could generate a potential minimal increase in forfeiture revenues to both state and local governments. However, since under current law, property used in the commission of criminal activities is often subject to seizure and forfeiture, any increase in state and local revenues should be minimal.

Impact on the Court System

Since it is estimated that the bill will generate a minimal number of additional cases, any impact on the court system should be related to the costs of indigent defense and adjudication of more complex cases. Specifically, as a result of the enhancements of certain felony offenses the length of prosecutions may either increase or decrease depending on the willingness of the offender to enter into a plea bargain on the underlying offense.

Changes in Fingerprint Laws

The provisions of the bill amending juvenile fingerprint laws and requiring law enforcement to forward fingerprints and photographs to BCII could generate a potential minimal increase in both state and local expenditures related to the processing of additional records.

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