

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: Am. H.B. 5

DATE: July 28, 1997

STATUS: As Passed by the House

SPONSOR: Rep. Taylor

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: Homicide: Expands the offense of murder and repeals certain aggravated murder provisions

State Fiscal Highlights

STATE FUND	FY 1998 – FY 2006	FY 2007 – FY 2014	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Builds initially from up to \$300,000 or more annually to upwards of \$2.55 million or more annually in the last fiscal year	Upwards of \$2.55 million or more annually

- Some number of offenders will be convicted of murder rather than the less serious offense of involuntary manslaughter, which, based on time served data, will increase one's length of stay in prison by approximately eight years, from a prison stay of around nine years to a prison stay of approximately 17 years. As a result, the Department of Rehabilitation and Correction's (DRC) annual incarceration costs will start to rise some ten years after the bill's effective date (FY 2007) and top out around eight years later (FY 2014).
- On the other hand, the bill's effect on the number of persons convicted of aggravated murder is arguably much more uncertain. In this instance, we cannot determine whether DRC's total inmate population might increase as a result, and if so, by how much.
- Overall, the bill's net effect will be to cause DRC's total annual inmate population to start growing some ten years after its effective date and beyond. However, on its own, that population growth does not appear sufficient to trigger a need for the state to build and then operate a new prison.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	- 0 -	Negligible effect	Negligible effect
Expenditures	- 0 -	Indeterminate increase	Indeterminate increase



- In homicide cases, the bill provides more favorable legal terrain from which it be will be easier for county prosecutors to charge and convict additional persons of murder as opposed to the less serious offense of involuntary manslaughter. This clearly poses a more troubling outcome from the perspective of defense counsel, which we believe will generally result in more, as well as lengthier, trials. Prosecutorial, indigent defense, and court expenses will increase as a result. It is not possible to quantify what that annual increase in costs might be.
- The fiscal effect of repealing certain existing provisions related to proof and inference in an aggravated murder case is arguably much more uncertain. Prosecutors might assert it simply eliminates a redundant statutory provision, while defense counsel might counter that it removes important statutory protections that case law and jury instruction practices alone cannot guarantee. We cannot possibly hope to resolve that disagreement. In the end though, it probably creates more matters to be argued at trial, and in any subsequent appeals.
- The bill will have a negligible effect on the fine revenue counties collect from persons convicted of committing homicides.

Detailed Fiscal Analysis

The table below depicts sentencing and fine differences between the criminal offenses of aggravated murder, murder, and involuntary manslaughter.

<i>Selected Homicides: Sentences & Penalties</i>		
<i>Homicide Offense</i>	<i>Basic Prison Terms</i>	<i>Maximum Penalty</i>
Aggravated Murder	Death Life without parole Life with parole eligibility after 30 years Life with parole eligibility after 25 years Life with parole eligibility after 20 years	Up to \$25,000
Murder	Indefinite term of 15 years to Life	Up to \$15,000
Involuntary Manslaughter	Definite term of 3, 4, 5, 6, 7, 8, 9, 10 years	Up to \$20,000

State Fiscal Effects

Murder. More offenders will be convicted of murder as opposed to the lesser offense of involuntary manslaughter. Most, if not all, offenders convicted of the latter probably already do a stretch of time in prison. Thus, the bill will not send more offenders to prison, but will simply extend their length of stay.

Using recent DRC data showing the average time served for all offenders reveals that around 25 persons are released annually from prison after serving approximately nine years for an involuntary manslaughter conviction. The average time served for those serving a prison sentence as a result of a murder conviction checks in at around 17 years. Thus, an offender in prison for a murder conviction typically serves eight more years than an offender serving a prison term for an involuntary manslaughter conviction.

A worst case scenario would say that all 25 of these offenders rather than being convicted of involuntary manslaughter as is the case under current law will be convicted of murder as a result of the bill. Assuming the bill becomes effective in fiscal year 1998, this means that 25 offenders instead of serving nine years for an involuntary manslaughter conviction and getting released in fiscal year 2006, will be convicted of murder, serve 17 year prison sentences, and end up being released in fiscal year 2014.

Each year another 25 offenders in prison would be similarly affected, which creates a “stacking effect.” In other words, each year 25 prisoners are added to the total inmate population who would otherwise have been released. This stacking will continue until fiscal year 2014 when the total number of prisoners added to the inmate population will stabilize at 200. This stabilizing will occur because at that point each 25 offenders added annually will be offset by another 25 who will have served 17 years and be released from prison.

A rough approximation of the additional annual incarceration costs associated with this increase in inmate population can be arrived at as follows. Currently, the daily incarceration cost per inmate runs in at around \$45. Upon their release from prison, such offenders will most likely require DRC to provide intensive supervision, the cost of which could easily hit \$10 or more per day. Since these offenders serve longer sentences under the bill, DRC actually then saves these intensive supervision costs. This means the true daily cost of keeping these offenders longer is more like \$35 (\$45 incarceration - \$10 intensive supervision). One can then do simple multiplication of 25 offenders x the \$35 adjusted incarceration cost x 365 days which equals an annual incarceration cost associated with each pool of 25 offenders of \$319,375. By the time the this pool of affected offenders stops growing and stabilizes in fiscal year 2014 at 200, the total annual incarceration cost increase hits \$2,555,000.

Aggravated Murder. It is unclear as to whether the bill’s repeal of an existing statutory provision relative to the use of proof and inference will lead to more aggravated murder convictions. Presumably, the principal effect will not be to send more persons to prison, but rather to increase the length of stay for offenders already being shipped to prison by convicting them of a more serious homicide offense than would have been the case under current law. We are unable to estimate the number of prison-bound offenders that might be so affected. Thus, we cannot estimate the potential fiscal effect on DRC’s annual incarceration costs.

Local Fiscal Effects

Murder. The bill clearly strengthens the hands of county prosecutors and will lead to more murder convictions and, as a result, fewer involuntary manslaughter convictions. That sentencing outcome from a defendant’s perspective is clearly more troubling – 15 years to life versus a definite term of no more than 10 years. We believe it will certainly mean that fewer cases will terminate through plea bargains, more cases will go to trial, and that defense counsel will be compelled to exhaust all possible legal avenues on behalf of his or her client. This will increase the amount of resources, including time, that county prosecutors, defense counsel, and courts will have to expend in order to resolve these cases.

Using DRC intake data as a guide would suggest that the number of cases that could be affected annually statewide could easily be in the range of 150 to 200. What this additional local cost to resolve these criminal matters might be is difficult to determine.

Aggravated Murder. The bill repeals an existing statutory provision relative to the use of proof and inference in an aggravated murder case. This change is best viewed relative to the competing interests of county prosecutors and defense counsel. The former probably would present this repeal as a relatively innocuous act involving the elimination of an unnecessary statutory provision since issues of proof and inference are adequately covered through current case law, as well as Ohio's existing practices governing jury instructions. The latter – defense counsel – undoubtedly see more safety and stability in provisions that are codified in state law. Once the statutory provision is repealed, defense counsel would fear that legal conditions more harmful to their client could be more easily be introduced through changing case law and jury instruction practices.

We cannot even hope to settle this dispute over the practical effect of deleting this statutory provision. However, we would say that, especially with regard to aggravated murder cases, the apparent closing, or narrowing, of legal avenues available to defense counsel invariably seems to create more matters over which to argue at trial, and in subsequent appeals. If that is true, then disposing of an aggravated murder case becomes more problematic, and thus more costly for local criminal justice systems.

Revenue. Interestingly enough, the potential maximum monetary fine for committing a murder (\$15,000) is lower than that for being convicted of involuntary manslaughter (\$20,000). If we are correct, and the principal effect of the bill will be for more persons to be convicted of murder rather than involuntary manslaughter, then counties look like they could actually lose fine revenue as a result. We believe this is highly unlikely, and that the fiscal effect, to the degree that there is any, will be negligible. These kinds of criminal cases are not typically large revenue generators, plus many of the offenders involved are most likely indigent.

□ *LBO staff: Jeffrey E. Golon, Senior Analyst*

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