Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **Sub. H.B. 5** DATE: **March 17, 1998**

STATUS: **As Reported by Senate Judiciary** SPONSOR: **Rep. Taylor**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Expands the offense of murder, repeals certain aggravated murder provisions, and enhances the penalty for improperly discharging a firearm**

State Fiscal Highlights

STATE FUND	FY 1998 – FY 1999	FY 2000 – FY 2007	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Initially $64,000 annually, building upwards to $970,000 annually in the last fiscal year	Initially up to $1.27 million, building to upwards of $3.82 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.

- The penalty enhancement related to improperly discharging a firearm will create a relatively small, 4-year stacking effect, meaning that four years after the bill is effective, 65 offenders who would otherwise have served their time and been released from prison will still be there. This practical affect on DRC will be twofold: increased annual incarceration and post-release control costs. These costs will start to rise some two years after the bill's effective date and top out at an annual increase of around $970,000 seven years after the bill's effective date.

- Overall, the bill's net effect will be to cause DRC's total annual inmate population to start growing some four years after its effective date, with even greater increases ten-to-eighteen years out when the effects of the murder charge begin to be felt. 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 bill will have a negligible effect on the fine revenue counties collect from persons convicted of committing homicides.

- The fiscal effect of repealing certain existing provisions related to proof and inference in an aggravated muder 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.

- As the number of cases potentially affected annually statewide by enhancing the penalty for improperly discharging a firearm appears to be relatively small, we believe the fiscal effect on county adjudication, prosecution, indigent defense, and sanctioning costs will be negligible. It is probably best not to look at this as a revenue generation opportunity; thus, the amount of additional fine money that may be collected by counties will most likely be negligible as well.

Detailed Fiscal Analysis

The bill has two primary features: (1) modification of existing homicide law in relation to murder and aggravated murder cases; and (2) enhancement of the penalty for improperly discharging a firearm for certain offenders. Let us examine then the fiscal effects of each.

I. Homicide

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

Selected Homicides: Sentences & Penalties

Homicide Offense	*Basic Prison Terms*	*Maximum Penalty*
Aggravated Murder	Death	Up to $25,000
	Life without parole	
	Life with parole eligibility after 30 years	
	Life with parole eligibility after 25 years	
	Life with parole eligibility after 20 years	

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 stengthens 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 persective 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. It 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.

II. Improperly Discharging a Firearm

The existing penalty for improperly discharging a firearm at or into a habitation or school is a felony of the third degree when the offender has no prior conviction of the offense. A subsequent conviction of the same offense is a felony of the second degree. The bill eliminates this penalty distinction such that a conviction for improperly discharging a firearm becomes a felony of the second degree irrespective of whether an offender has a prior conviction of the offense or not.

Number of cases. We have eyeballed DRC's intake data that suggests that currently around 40 offenders are sentenced to prison annually as a result of improperly discharging a firearm. A typical sentencing pattern looks something like this: 5 convicted of a felony of the second degree, 30 convicted of a felony of the third degree, and 5 convicted of a felony of the fourth degree. The offenders serving a sentence on a felony of the fourth degree are individuals convicted of an "attempt" to commit the offense of improperly discharging a firearm (Section 2923.02 of the Revised Code), for which the penalty is an offense of the next lower degree than the offense attempted.

Discharging a firearm into a habitation or school is most likely treated as a very serious matter in all local jurisdictions of the state, and although the penalty for a conviction does not carry a mandatory prison term, our best guess is that individuals convicted of the offense are sentenced to at least some amount of time in prison. If that assumption is true, then the number of offenders committed to prison annually – 40 – can be used as a reasonable reflection of the total number of cases that will be affected annually statewide by this provision of the bill eliminating the existing penalty distinction between offenders who have had a previous conviction for improperly discharging a firearm and those having no such prior conviction.

The table below depicts the sentencing and fine differences for a conviction of the felony offense of improperly discharging a firearm. Included within that table is our best estimate of the average prison sentence received by an offender convicted of improperly discharging a firearm.

Improperly Discharging a Firearm

Felony Level	*Basic Prison Term*	*Increments*	*Average Prison Sentence*	*Post Release Control Time*	*Maximum Fine*
Second degree	2-8 years	Year	4 years	4 years	Up to $15,000
Third degree	1-5 years	Year	2 years	1-3 years	Up to $10,000
Fourth degree	6-18 months	Month	1 year	1 year	Up to $5,000

State Fiscal Effects

From DRC's perspective, this penalty enhancement will create a relatively small, 4-year stacking effect, meaning that four years after the bill becomes effective, 65 offenders who would otherwise have served their time and been released from prison will still be there. This practical affect on DRC will be twofold: increased annual incarceration and post-release control costs.

In the second year of the 4-year stacking effect, DRC will incur the marginal costs associated with incarcerating 5 extra offenders, estimated at around $64,000. In the third year, 35 additional offenders will be incarcerated at a marginal cost totaling around $450,000. In the last year of the 4-year stacking effect, the number of additional incarcerated offenders will top out at 65 at a total marginal cost of around $840,000 and continue into future years.

DRC's post-release control costs will be affected somewhere around four years after the bill's effective date. This will mark the point in time when offenders under state-supervised post-release control would have been released from that control under current law. As the reader can see from the above table, the amount of post-release control supervision time that an offender is subject to increases as the seriousness of the felony offense rises. The additional annual cost of

supervising these offenders for a longer period of time will start at around $20,000, will top out seven years after the bill's effective at approximately $130,000, and continue to run at around that amount into future years.

Local Fiscal Effects

The cases that will be affected statewide by this penalty enhancement appear to number around 35 annually if our previous assumptions hold true. It is unclear whether this will make these matters more or less problematic to resolve. Either way, given that the number of potentially affected cases appears relatively small, we believe the fiscal effect on county adjudication, prosecution, indigent defense, and sanctioning costs will be negligible. From the perspective of revenue generation, clearly additional money could be collected as the enhanced penalty carries with it the possibility of higher fines. However, it is probably best not to look at this as a revenue generation opportunity, thus, the amount of additional fine money that may be collected by counties will most likely be negligible as well.

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

h:\fn122\hb0005sr