Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **Sub. H.B. 151** DATE: **May 21, 1997**

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

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Expands offense of aggravated robbery to include disarming a law enforcement officer and modifies aggravating circumstances for capital offenses**

State Fiscal Highlights

STATE FUND	FY 1997	FY 1998	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	-0-	Potential minimal increase	Potential increase

- The bill expands the offense of aggravated robbery to include disarming or attempting to disarm a law enforcement officer, increases the penalty for certain resisting arrest offenses, and modifies aggravating circumstances under which the death penalty specification may be applied in the prosecution of aggravated murder.

- While the bill modifies the above offenses, the number of additional cases created should be minimal since the vast majority are currently addressed under existing statutes. As a result, the primary impact of the bill should be related to penalty enhancement and mandated consecutive sentencing for certain offenses.

- Since the bill increases penalties and mandates consecutive sentencing of those charged under the aggravated robbery provisions, offenders may be less likely to plead guilty, thus resulting in a potential minimal increase in state costs associated with adjudication, indigent defense, and incarceration. As a result of mandatory consecutive sentencing, costs for incarceration should increase over time.

- Incarceration costs for felony offenses are sustained entirely by the state, while expenditures for indigent defense are shared by the state and counties.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1997	FY 1998	FUTURE YEARS
Counties			
Revenues	Potential minimal increase	Potential minimal increase	Potential minimal increase
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
Municipalities			
Revenues	-0-	-0-	-0-

Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

- The bill could result in an increase in the seriousness of cases prosecuted, thus producing a potential increase in county fine revenues and expenditures related to prosecution, adjudication, and indigent defense. Adjudication costs are the responsibility of the entity operating the court, while prosecution costs are paid by the county and indigent defense costs are split between the county and state. Additionally, the bill could produce a potential minimal increase in expenditures to municipalities related to adjudication as a result of increasing the seriousness of certain misdemeanor offenses.

- Since persons currently charged with misdemeanors and felonies in resisting or interfering with a lawful arrest would be charged with the next most serious level of offense, the bill could result in a shift in sanctioning costs from counties to the state. Sanctions costs in state misdemeanor offenses and costs of certain alternative local sanctions for low level felonies are paid entirely by the county, while the cost of incarcerating most felony offenders is paid by the state. By increasing the seriousness of certain offenses, low level felons that were previously placed in community sanctions may now face a greater chance of serving their sentence in a state prison.

- Since most of the circumstances and groups targeted in the modification of aggravating circumstances for death penalty specification are addressed in existing statutes, the bill should produce no more than a negligible increase in the number of death penalty cases, resulting in a potential minimal increase in county expenditures related to adjudication, prosecution, indigent defense, and pre-conviction incarceration.

Detailed Fiscal Analysis

Provisions of the Bill

The bill expands the offense of aggravated robbery to include removing, attempting to remove, or depriving a deadly weapon from a law enforcement officer. Additionally, the bill expands the offense of resisting arrest to include acting recklessly or by force to resist or interfere with a lawful arrest, and adds special enhancements should the act of the individual result in physical harm to a law enforcement officer. Under existing law, the offense of resisting arrest is an M-2 or an F-5 if the law enforcement officer suffers physical harm. The bill would increase the severity of each offense by one degree.

The bill also modifies the aggravating circumstance upon which a death penalty specification may be based in the prosecution for aggravated murder to include if the "victim was a law enforcement officer". As defined in the bill "law enforcement officer" includes those currently defined as peace officers, as well as corrections officers; organized state militia or United States military members aiding civil authorities in keeping the peace; special deputies and police called on to aid in keeping the peace; and a mayor acting in his or her capacity as chief conservator of the peace within a municipal corporation.

Additionally, the bill modifies existing law to permit a prosecutor, secret service officer appointed by a prosecutor and acting within the scope of their official duties, to carry a deadly weapon or dangerous ordnance into a courthouse or other building housing a courtroom. However, such possession of the deadly weapon or dangerous ordnance may be prohibited by rules adopted by the Supreme Court of Ohio pursuant to Article IV of the Ohio Constitution.

Fiscal Effects of the Bill

Since most of the offenses addressed in the bill in relation to aggravated robbery and resisting arrest are currently covered under existing statutes, the number of additional cases created should be minimal. As for the provisions of the bill modifying aggravating circumstances for the death penalty specification to include "law enforcement officers", since existing aggravating circumstances already take into account almost any situation in which those defined as law enforcement officers are likely to be involved, it is estimated that it will generate no more than a negligible increase in capital cases in the long term.

Aggravated Robbery

The bill is expected to produce a potential increase in expenditures to the state and counties related to an increase in the number of offenders prosecuted and the length of incarceration. As discussed above, since the majority of offenses addressed in the bill are currently covered under existing statutes, the number of additional aggravated robbery cases expected to be created should be minimal. While reliable data relevant to the issues at hand is not readily available, information collected by the Department of Justice, Bureau of Justice Statistics (BJS) in its Sourcebook of Criminal Justice Statistics, 1995 does provide a picture of the number of annual assaults on law enforcement officers nationally. Although the data does not indicate how many of these assaults involved disarming or attempting to disarm, resisting arrest, or killing of a law enforcement officer as specifically defined in the bill, it does provide an idea of the number of assaults that are committed involving firearms or other deadly weapons included in the definition of attempting to disarm a law enforcement officer.

In applying the BJS data to what is taking place in Ohio, the percentage of arrests involving assaults on law enforcement officers nationwide was applied to the number of arrests for assault in Ohio.

Table 1: Estimates of Assaults on Law Enforcement Officers in Ohio	
Type of Weapon	***Assaults***
Firearm	60
Knife or Cutting Instrument	29
Other Dangerous Weapon	137
Personal Weapon	1007

The results of the application leads LBO to estimate that approximately 1,233 officers were assaulted in Ohio in 1995. However, considering the characteristics of the data, the extent to which these assaults involved disarming or attempting to disarm a law enforcement officer, resisting arrest, or interfering with an arrest remains unknown. This being said however, further research conducted by LBO in the form of an informal survey of law enforcement agencies of various size produced an estimate of 125 incidents in which the aggravated robbery provisions of the bill might be applied. While this estimate may be useful in providing a rough idea of the numbers involved, it must be noted that it is the result of anecdotal information based solely on the size of an agency and fails to take into account the demographic characteristics of individual jurisdictions.

Table 2: Estimates of Attempts to Disarm a Law Enforcement Officer			
Officer Population	**Number of Departments with Officer Population**	**Estimated Attempts per Department**	**Total Number of Attempts**
50-60	13	1	13
60-150	26	2	52
150-500	9	4	36

500 and above	4	6*	24
Total	**52**	**NA**	**125**

*Although it was stated by one person that eight was a good estimate of the number of attempts in a department of this size, three persons with departments of this size stated six was a good estimate.

Assuming that the above data is somewhat accurate, and that most of the cases involved are already addressed under existing statutes, this component of the bill could result in a potential increase in state expenditures related to prosecution and incarceration. Specifically, since the bill requires that any prison term imposed for a violation of the aggravated robbery provision be served consecutive to any other term, the net effect will most likely be an increase in the amount of time served for certain offenders. Furthermore, since the imposition of a consecutive prison term results in the offender being granted the right to appeal on the grounds that it exceeds the maximum term for the offense in question, both state and county expenditures related to adjudication, prosecution, and indigent defense are also likely to increase. Recent data provided by the United States Department of Justice, estimates indigent defense as being used in 78 percent of all felony cases at an average cost of $395. Meanwhile, the annual marginal cost of incarceration in a state facility is currently estimated at $4,015 per year and borne entirely by the state. In that the number of additional convictions generated as a result of the bill is expected to be low, it could generate a potential increase in state expenditures related primarily to longer terms of incarceration and an increase in the complexity of prosecutions.

Resisting Arrest

The provisions of the bill expanding the offense of resisting arrest could result in a potential increase in state expenditures related to prosecution and incarceration for more serious offenses. As a result of elevating resisting arrest offenses from M-2 and F-5 to M-1 and F-4 respectively, the complexity of both prosecutions and the length of incarcerations should increase, thereby increasing the state share of the costs in each of these areas.

One possible source of an increase in state expenditures that may be related to the enhanced seriousness of resisting arrest is the potential shift in responsibility for incarceration from the local to the state level. Specifically, as result of increasing the seriousness of certain resisting arrest offenses, the potential exists for shifting a number of low-level felony offenders currently sanctioned at the local level to the state. This being said however, any local savings that might result from a shifting of offenders should for the most part be offset by increased expenditures on prosecutions and incarceration of more serious offenders at the local level.

In addition to the impact on sanctioning costs, the provisions of the bill related to resisting arrest could produce a potential gain in revenue to the counties as a result of increased collection of fine revenue. Specifically, by upgrading the seriousness of certain resisting arrest offenses, the potential exists for an increase in fines levied and collected. For example: the offense of resisting arrest which is currently an M-2 and punishable by a maximum $750 fine and up to 90 days in jail, would be upgraded to an M-1, which is punishable by a maximum $1,000 fine and up to 180 days in jail. As a result, even though the resisting arrest provisions of the bill are not expected to produce much in the way of additional cases, they could generate potential increases in both revenues and expenditures to counties and municipalities tied to increased fine revenue and expenditures for prosecution, indigent defense, and longer periods of incarceration.

Death Penalty Aggravating Circumstances

According to a representative of the Ohio Prosecuting Attorneys Association, since modifying aggravating circumstances to include the killing of a “law enforcement officer” would be redundant in relation to existing provisions for applying aggravating circumstance, only a negligible increase in the number of cases is expected. As a result, the provisions of the bill addressing this issue should produce no more than a potential minimal increase in both state and county expenditures related to the costs of prosecution and adjudication.

❑ *LBO staff: Jeff Newman, Graduate Researcher*

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