

# Fiscal Note & Local Impact Statement

122<sup>nd</sup> General Assembly of Ohio

BILL: Sub. H.B. 285 (LSC 122 0744-3) DATE: March 10, 1998

STATUS: As Recommended by House Criminal Justice Subcommittee SPONSOR: Rep. Salerno

LOCAL IMPACT STATEMENT REQUIRED: No — Minimal cost

CONTENTS: Creates the offense of homicide by child abuse

## State Fiscal Highlights

STATE FUND	FY 1998	FY 1999-FY 2007	FUTURE YEARS
<b>General Revenue Fund</b>			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Potential minimal increase	Potential minimal increase	Gradual increase, leveling off at between \$600,000 to \$3.06 million in FY2013
<b>Reparations Fund (a.k.a. Victims of Crime Fund)</b>			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	-0-	-0-	-0-

- The prison term for a relatively small number of offenders will lengthen, resulting in extended stays and an increase in the Department of Rehabilitation and Correction's (DRC) annual incarceration costs. This lengthening of prison terms will slow the turnover rate for the affected prison population, causing what is termed a "stacking" effect that will plateau in FY 2013.
- Some individuals who would formerly have been charged with a child endangerment offense, or would not have been charged at all, could now face a felony conviction carrying a mandatory prison term of between ten and fifteen years for "permitting" homicide by child abuse. However, the number of affected cases is so small that the potential annual increase in DRC's incarceration would be minimal.
- Negligible gains in revenue to the GRF and Reparations Fund could potentially occur as a result of fine revenue from a few new cases and a small number of misdemeanor offenses elevated to the felony status.



## ***Local Fiscal Highlights***

<b>LOCAL GOVERNMENT</b>	<b>FY 1998</b>	<b>FY 1999</b>	<b>FUTURE YEARS</b>
<b>Counties</b>			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Minimal increase	Minimal increase	Minimal increase
<b>Municipalities</b>			
Revenues	Potential negligible loss	Potential negligible loss	Potential negligible loss
Expenditures	Potential negligible decrease	Potential negligible decrease	Potential negligible decrease

- By creating a new felony offense of homicide by child abuse, existing criminal cases may become more problematic to resolve and persons not previously charged with a crime may now be charged as a result. From the perspective of counties, as the number of cases involved is expected to be fairly small statewide, any expenditure increases in the form of adjudication, prosecution, indigent defense, and sanctioning burdens are likely to be minimal, and any revenue gains in the form of court costs and fines will likely be negligible.
- The possibility exists that a number of misdemeanor child endangerment cases will be prosecuted as a felony homicide by child abuse instead, which means that some municipalities may experience a decrease in adjudication, prosecution, indigent defense, and offender sanctioning expenditures as well as a loss in court cost and fine revenue. However, as the number of potentially affected cases statewide is expected to be fairly small, the resulting decrease in expenditures and loss in revenue will be negligible annually.

## ***Detailed Fiscal Analysis***

### **Provisions of the Bill**

The bill creates the offense of homicide by child abuse, a first-degree felony. This addresses the death of a child under age 18 or a mentally or physically handicapped child under age 21 as a proximate result of abuse, torture, administration of corporal punishment or other physical discipline, or prolonged and cruel physical restraint. The bill requires these penalties to be imposed not only on the primary perpetrator of the crime, but also on a parent or guardian who permits their child's death to occur under these conditions (referred to in this fiscal note as permitting offenders).

This new offense would require a mandatory prison term of ten years for both primary and secondary permitting offenders. The court may choose to impose an additional one to five year prison term if the penalty is inadequate to punish the offender and protect the public from future crime, and the penalty is demeaning to the seriousness of the offense.

## State Fiscal Effects: Primary Offenders

Generally, most of the cases that would be affected by this bill are currently charged as involuntary manslaughter, usually coupled with a felony offense for child endangerment. These are the primary offenders who directly participate in the killing of a child as a result of abuse. No statewide data is currently available on such convictions. However, given that involuntary manslaughter is treated as a very serious matter as evidenced by its status as a first-degree felony, it is assumed that most, if not all, convicted offenders are sentenced to serve some amount of time in prison.

Assuming that this is true, the characteristic of such offenders serving prison time provides a useful beginning to analyzing the bill's fiscal effect. Department of Rehabilitation and Correction (DRC) prison intake data for 1992 shows that 900 offenders who victimized children entered prison. Of those 900 offenders, 2 percent committed involuntary manslaughter against a child, for a total of approximately 20 cases in 1992. DRC's Time Served Report covering calendar year 1996 indicates that offenders sentenced to prison for involuntary manslaughter served an average of 8.76 years.

Under this bill, these offenders would be subject to penalties for homicide by child abuse. Homicide by child abuse would require a mandatory ten-year penalty, and the court could choose to add an additional term of one to five years. At a minimum, offenders would serve an additional fifteen months in prison (10 years – 8.76 years = 1.24 years or 15 months). At a maximum, offenders would serve an additional 6.25 years (15 years – 8.76 years = 6.25 years).

Longer sentences would result in an increase in expenditures to the GRF for incarceration. As offenders affected by this bill are assumed to serve prison terms averaging 8.76 years, regardless of whether or not this bill is implemented, it becomes necessary to examine the cost of imprisoning these offenders for an additional 1 to 6 years. The Ohio Sentencing Commission estimated the marginal costs of imprisonment to be approximately \$4,100 per year per inmate. One offender serving an additional fifteen months in prison, the minimum additional time required by this bill, would result in an additional approximate cost of \$5,125 to the state GRF ( $\$4,100 \times 1.25 \text{ years} = \$5,125$ ). One offender serving an additional 6.25 years, the maximum additional time allowed by this bill, would result in an additional approximate cost of \$25,625 to the state ( $\$4,100 \times 6.25 \text{ years} = \$25,625$ ).

This lengthening of prison terms, which slows the turnover rate for the affected group of prisoners, will likely result in a "stacking" effect that will be felt in future fiscal years. The same quantity of prisoners (around 20) is expected to enter prison annually, but as the average time served for these offenders increases by 1 to 6 years, release dates will be postponed from what they would otherwise have been under current law. The result will be an increase in the number of offenders imprisoned in future fiscal years. However, this effect will not be felt until FY 2008, when most offenders who would previously have been released after time served for involuntary manslaughter penalties will remain imprisoned as a result of the longer sentence imposed for the offense of homicide by child abuse.

This "stacking" effect, as well as its fiscal ramifications for DRC's GRF-funded annual incarceration costs, are illustrated in Table 1 below. The last row of the table displays the estimated range of the annual increase in incarceration costs. The low end of the range in each fiscal year represents the minimum cost if all offenders affected by the bill serve the mandatory minimum sentence of 10 years. The high end of the range in each fiscal year represents the maximum cost if all offenders affected by the bill serve the maximum permissible sentence of 15 years.

**Table 1**  
**Illustration of "Stacking" Effects for Primary Offenders**

	Fiscal Year					
	2008	2009	2010	2011	2012	2013
<b>Annual Intake</b>	20	20	20	20	20	20
<i>Additional Offenders Imprisoned as Result of "Stacking"</i>	20	20	20	20	20	20
		20	20	20	20	20
			20	20	20	20
				20	20	20
					20	20
<b>Total Additional Offenders</b>	<b>20</b>	<b>40</b>	<b>60</b>	<b>80</b>	<b>100</b>	<b>120</b>
<b>Estimated annual GRF increase*</b>	\$100,000 - \$510,000	\$200,000 - \$1,020,000	\$300,000 - \$1,530,000	\$400,000 - \$2,040,000	\$500,000 - \$2,550,000	\$600,000 - \$3,060,000

\*In FY1998 dollars.

The number imprisoned for this offense is expected to stabilize in FY 2013 at around 120 inmates. At that time, the annual prison intake of 20 offenders is expected to equal the release of 20 offenders. In future fiscal years, the number of additional offenders imprisoned under child homicide is expected to remain stable at 120 per year.

#### **State Fiscal Effects: Permitting Offenders**

There will likely be a small number of permitting offenders who would not otherwise have been treated as felony offenders who will be subject to the bill's child homicide penalty. These would be instances in which a parent or guardian, while they may not have had a direct hand in such a homicide, had an indirect role by allowing or permitting the abuse of their child to occur. Under current practice, many of these offenders would mostly likely be charged with child endangerment, a first-degree misdemeanor. However, the circumstances surrounding some child homicides are such that some number of "permitting" offenders may not be charged with a crime at all.

Under the provisions of this bill, permitting offenders could be charged with child homicide, a conviction of which would result in a mandatory prison term of between ten and fifteen years. It is our best guess that under current law many permitting offenders are being charged with child endangerment and that a small number of additional persons will face criminal charges of as a result of the bill. However, it is reasonable to assume that the number of permitting offenders is not likely to exceed the number of primary offenders, that is, that there will be no more than twenty additional felony cases. The likely result is that there may be a minimal increase in DRC's annual incarceration and post release supervision costs as a result of small number of permitting offenders being convicted of homicide by child abuse and sentenced to mandatory prison time.

## **State Fiscal Effects: Revenue Generation**

The GRF and the Reparations Fund may experience a gain in annual revenue collections as a result of enacting a felony offense covering certain circumstances where certain persons in effect permit the death of a child by abuse. A relatively small number of persons who might not otherwise have faced a criminal charge may be in fact be charged of a crime as a result of the bill. If convicted, the court would, unless waived, assess the offender an \$11 court cost that is deposited in the state treasury to the credit of the GRF. Another also relatively small number of persons may find themselves charged with a felony offense rather than a misdemeanor offense as might occur under current law. If convicted, such persons would be assessed, unless waived by the court, a \$30 court cost as opposed to the \$9 court cost for a misdemeanor conviction, which when collected is deposited in the state treasury to the credit of the Reparations Fund, a.k.a. Victims of Crime Fund. As the number of criminal matters affected annually by the bill will be relatively small, the annual gain in revenue that may be experienced by the GRF and the Reparations Fund will be negligible. And given the somewhat problematic nature of felony court cost collections, this revenue might best be viewed as potential rather than as known and actual.

## **Local Fiscal Effects**

*Counties.* As discussed previously, it is assumed that most primary offenders addressed by this bill are currently charged with involuntary manslaughter, a first-degree felony already dealt with by county courts of common pleas. At this point, it remains unclear whether or not charging offenders with homicide by child abuse will expedite or lengthen the amount of time that it takes to resolve such criminal matters. It is obvious though that the increased penalty available to county prosecutors as a result of the bill will raise the stakes of any ensuing trial. However, since the number of cases affected by the bill annually is so small, any increase felt by counties to adjudicate, prosecute, and provide indigent defense on these criminal matters will be minimal.

As previously mentioned some persons may be charged with a felony offense as opposed to a misdemeanor offense and some persons who might not have been charged at all may find themselves facing a felony charge. Each of these instances offers an opportunity for counties to collect additional court cost and fine revenue. However, as the number of cases involved annually is so small the amount of revenue that might be collected annually is probably going to be fairly negligible in the scheme of things.

*Municipalities.* Some number of offenders who would otherwise have been charged with a misdemeanor will face a felony charge instead. In some cases, this means that a municipality will no longer bear the burden of adjudication, prosecution, sanctioning, and perhaps indigent defense. Additionally, such a municipality will forego any court cost and fine revenue that might have been collected. Again, as the number of affected cases is so small, the resulting decrease in expenditures and lose in revenue will be negligible annually.

## ***Synopsis of Changes from Preceding Version***

The differences between the substitute bill and its introduced version are primarily technical in nature. Thus, there are no differences in the fiscal effects of the two versions of the bill.

□ *LBO staff: Laura Bickle, Budget/Policy Analyst*

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