Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL:	**Sub. H.B. 293**	DATE:	**March 9, 1998**
STATUS:	**As Recommended by Conference Committee**	SPONSOR:	**Rep. Gerberry**

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

CONTENTS: **Expands the definition of "detention" to include private facilities, places restrictions on the operation of such facilities, and declares an emergency**

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	Potential negligible gain plus additional potential indeterminate gain	Potential negligible gain plus additional potential indeterminate gain	Potential negligible gain plus additional potential indeterminate gain
Expenditures	Potential minimal increase	Potential minimal savings	Between $370,000 and $1.1 million savings
Attorney General, General Reimbursement Fund 106			
Revenues	Indeterminate gain	Indeterminate gain	Indeterminate gain
Expenditures	Indeterminate increase	Indeterminate increase	Indeterminate increase
Crime Victims Reparations Fund (CVRF)			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	- 0 -	- 0 -

- Since enforcement costs arising from incidents at the facility will be paid entirely by the private entity operating the detention facility, any additional expenditures for these functions should be offset by additional revenues. Furthermore, the state should experience a potential negligible gain in revenues from the collection of state court costs.

- The bill places additional oversight requirements on the Department of Rehabilitation and Correction (DRC) and the Correctional Institution Inspection Committee (CIIC) which could result in a negligible increase in state expenditures.

- The bill mandates DRC to contract for the management and operation of the Grafton facility, which according to research on prison privatization could result in a 5 to 15 percent savings in state expenditures. Based on information provided by DRC, LBO estimates savings of between $370,000 and $1.1 million beginning in fiscal year 2000.

- Since the bill requires those employed at a private detention facility to submit to a criminal records check through the Bureau of Criminal Identification and Investigation (BCII), the Attorney General's General Reimbursement Fund should experience an indeterminate increase in both revenues and expenditures.

- By requiring operators of private detention facilities to reimburse the state for costs incurred in defending against civil actions in which the state is named as a defendant, the bill could generate an indeterminate gain in state revenues.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	Potential minimal gain plus additional potential indeterminate gain	Potential minimal gain plus additional potential indeterminate gain	Potential minimal gain plus additional potential indeterminate gain
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
Townships & Municipalities			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

- The bill could generate a potential negligible gain in revenues to counties resulting from the collection of additional local court costs. Local court costs vary by jurisdiction and are retained entirely by the entity operating the court.

- The bill could also produce a potential minimal increase in county expenditures related to increased enforcement, adjudication, prosecution, and indigent defense costs, as well as a potential negligible increase related to enforcement for municipalities and townships operating a police department. However, these expenditures should be offset by increased revenues in the form of reimbursement from the firm operating the facility. Furthermore, the bill could generate a further negligible increase in expenditures to various local entities related to expanding notification requirements for public hearings concerning the hosting of out-of-state prisoners.

- By requiring operators of private detention facilities to reimburse political subdivisions the costs incurred in defending against civil actions in which the subdivision is named as a defendant, the bill could generate an indeterminate gain in county, township, and municipal revenues.

Detailed Fiscal Analysis

Provisions of the bill

Under existing law the definition of "detention" is relevant to the offense of escape. The offense of escape occurs when the person purposely breaks or attempts to break custody or fails to return to detention following temporary leave or when serving a sentence in intermittent commitment. The bill retains and expands the provisions of the definition of "detention" to

include confinement in a private facility for custody of persons charged with or convicted of crime, or alleged or found to be a delinquent or unruly child, in Ohio, another state or the United States and expands the definition of a "detention facility" to include any place in this state used for the confinement of out-of-state prisoners. Additionally, the bill would expand the definition of detention to specify hospitalization, institutionalization, or confinement in a private facility that is ordered by a court for a defendant in proceedings related to the defendant's competence to stand trial or to the defendant's plea of not guilty by reason of insanity.

In addition to the provisions relating to the offense of escape, the bill establishes guidelines under which a private contractor operating a facility that houses out-of-state prisoners must abide in order to remain in operation. Primary among these guidelines are requirements that the private entity together with the local public entity enter into a joint agreement (approved by DRC) on the intended use, population, and custody level of the facility. Following a public hearing, should the local public entity decide to enter into a contract with the private entity, the contractor must agree to the following: 1) to obtain accreditation from the American Correctional Association within two years; 2) to send copies of annual inspection reports to DRC; 3) to report all criminal offenses committed in or on the grounds to local law enforcement agencies and DRC; 4) to provide a written report of all unusual incidents to the Director of DRC and the local public entity; 5) to submit a written plan to DRC to coordinate law enforcement activities in response to incidents at the facility; 6) to insure cooperation with CIIC in the performance of its duties; 7) to conduct a criminal records check through BCII of any person employed at the facility; 8) to agree to a schedule of fines that the local public entity may impose upon the private contractor if the contractor fails to perform its agreed duties; 9) to reimburse the state or any political subdivision for the costs related to the apprehension of a person who escaped from the facility or to quell a riot or disturbance; and 10) to develop a conversion plan for the transporting of prisoners out of state should the facility cease operations. Furthermore the bill adds the requirement that any private entity operating a detention facility in this state transport each out of state prisoner out of this state before they are released from custody at the end of their sentence and that the home state of any prisoner is responsible for the extension of any sentence resulting from offenses committed at the private detention facility. Although the provisions of the bill do not immediately apply to any facility currently in operation, the firm operating the facility under an agreement with a local government entity prior to the effective date of the bill, is provided six months in which to meet its requirements.

In addition to the above provisions, the bill provides clarifying language that tightening restrictions on providing weight training equipment in local jails and detention facilities, specifying that private facilities housing out-of state prisoners adopt drug testing and treatment programs, and requiring employee background checks be submitted in a format prescribed by BCII. Furthermore, the bill requires DRC to privatize management and operation of the DUI facility located at Grafton in Lorain County. The bill is also declared an emergency measure necessary for the immediate preservation of public peace, health, and safety.

Effects of the Bill

Escape and Enforcement

Considering the narrow scope of the bill as it relates to escape, it is estimated that it should produce only a minimal number of cases. Currently, the one private detention facility operating in Ohio is expected to hold approximately 1,500 out-of-state inmates with the possibility of eventually expanding to 2,000. This being said, if the escape rate for the private

facility is comparable to those operated by government entities, on average less than one escape will occur annually. The offense of "Escape" is either a misdemeanor of the first degree (M-1), or a felony of the second (F-2), third (F-3), fourth (F-4), or fifth (F-5) degree depending on the seriousness of the underlying offense.

Should the minimal number of escapes discussed above occur, the bill could result in a potential increase in both state revenues and expenditures. Since the bill would treat escapees from a private facility the same as those from public facilities, potential negligible revenue could be generated in the form of state court costs. State court costs in felony cases are $41 and are divided between the GRF and the CVRF on the basis of $11 and $30 respectively. Meanwhile, additional state expenditures would be related to increased indigent defense and incarceration costs. Additionally, state revenues to both the GRF and the Attorney General's General Reimbursement Fund should experience additional indeterminate gains related to the requirement that the private entity reimburse the state for the cost of enforcement and that those employed at the facility submit to, and pay for a criminal records check with BCII.

In that the bill is estimated to produce a minimal number of cases over time, it could result in a potential minimal increase in expenditures to counties related to enforcement, prosecution, and the county share for indigent defense. Furthermore, the bill could also result in a potential negligible gain in revenues to counties related to increased collection of local court costs. Local court costs vary by jurisdiction with all revenues retained by the entity operating the court. Lastly, the bill could result in a potential minimal increase in expenditures to municipalities and townships related to enforcement. Under the provisions of the bill however, local governments would also experience an indeterminate gain in revenues related to the requirement that the private entity reimburse local subdivisions for the costs of enforcement.

Public Hearing Requirements

The requirement that the private entity and local subdivision hold a public hearing prior to entering into a contract to house out of state prisoners could generate a negligible increase in local expenditures related to advertising. While the bill is silent as to whether the cost may be covered by the private entity, considering the rarity of such facilities, any cost incurred by local subdivisions should be small.

Responsibility for Extended Sentences

In addition to reimbursing local governments for the cost of enforcement related to offenses or incidents occurring at a private detention facility, the bill also requires the home state of any inmate stand responsible for any prison term that results from such an offense. Since this would reimburse the state for expenditures that would have occurred, this should generate a matching increase in revenues.

State Oversight of Private Detention Facilities

Under the provisions of the bill, in future years the establishment and operation of a private detention facility serving out of state prisoners would be subject to the review and oversight of both DRC and CIIC. According to a representatives of both DRC and CIIC, the impact of additional responsibilities, including review and approval of agreements between local governments and the private entity operating the facility and tracking incidents that may occur at the facility, should be minimal and therefore not require additional staff.

Privatization of DUI Facility

Under the provisions of the bill, DRC is required to contract for operation of the DUI facility located at Grafton in Lorain County. According to a representative of DRC, although the facility is expected to be in partial operation in the final quarter of fiscal year 1999, full operation is not expected to begin until fiscal year 2000. Beginning in 2000, DRC estimates a total annual operating cost of $7.4 million. Based on the minimum required savings of 5 percent, privatization of the facility could generate savings of at least $370,000. However, since savings experienced in other states as a result of privatization have approached 15 percent, it could be argued that savings of up to $1.1 million could occur.

State and Local Government Cost Recovery

Under provisions of the bill agreed to in the conference report, a private contractor entering into a contract with a local public entity shall reimburse the state for its costs in defending itself, its officers, agents, or employees. Furthermore, the private contractor will reimburse any local government entity for costs incurred in defending itself. Since the state and local government entity would incur such defense costs in any event, the primary impact of this provision of the bill should be a potential indeterminate gain in state, county, municipal, and township revenues.

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