Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL:	**Sub. S.B. 193**	DATE:	**December 2, 1998**
STATUS:	**As Reported by House Criminal Justice**	SPONSOR:	**Sen. Suhadolnik**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Applies capital punishment aggravating circumstance to all cases in which a law enforcement officer is a victim of aggravated murder and to cases in which persons under detention cause the death of another; permits the lieutenant governor to be appointed as director of the Office of Criminal Justice Services**

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential increase, plus potential decrease between $19,000 and $45,500	Potential increase, plus potential decrease between $38,000 and $91,000

- Though no new cases will enter the criminal justice system as a result of this bill, a few homicide cases annually may be elevated to aggravated murder cases, with the additional possibility of a capital punishment aggravating circumstance. As a result, the Department of Rehabilitation and Correction may experience a minimal increase in annual incarceration costs, as the affected offender will be serving a longer prison stay. The penalty for aggravated murder is generally life imprisonment or capital punishment, with the possibility of parole in twenty or thirty years in some cases while the penalty for murder is fifteen years-to-life.

- There is a potential additional cost to the GRF for reimbursement to counties for indigent expenses incurred in capital cases. Subject to available appropriations, the Public Defender Commission reimburses counties for up to 50 percent of their costs of defending indigent persons accused of capital crimes. This amount is not to exceed $25,000 at any stage in the trial or appeals process.

- A potential increase in expenditures to the Attorney General's Office may occur as a result of having to represent the state’s interest in the federal appeals process for an additional death penalty case here and there.

- The state may also experience an annual decrease in expenditures of between $38,000 and $91,000 if the lieutenant governor is appointed as director of the Office of Criminal Justice Services.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Potential increase	Potential increase	Potential increase

- An occasional homicide may be elevated to an aggravated murder case as a result of the bill, with the added possibility that it may also carry a capital punishment aggravating circumstance. Even one additional capital case in a small county with few resources or expertise in handling death penalty cases could easily exceed $200,000 or $300,000 for the trial phase alone.

- From the perspective of revenue generation, counties could collect clearly additional money as an aggravated murder conviction carries the possibility of a higher fine. 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 annually will most likely be negligible.

Detailed Fiscal Analysis

Provisions of the Bill

This bill expands the offense of aggravated murder to prohibit purposely causing the death of a law enforcement officer. The offender must have reasonable cause to identify the victim as a law enforcement officer, and one of the following must apply: the victim is engaged in his/her duties, or it is the offender's specific purpose to kill a law enforcement officer. The bill also expands the offense of aggravated murder to include causing the death of any person by prisoners under detention.

Existing law specifies the nine circumstances upon which a death penalty for aggravated murder may be based, which includes the killing of a law enforcement officer. The bill expand the existing capital punishment aggravating circumstances that relate to murder while under detention to include when such an offense is committed while at large after having broken detention. Additionally, the bill specifies that detention does not include hospitalization in a mental health or mental retardation and developmentally disabled facility unless the offender is detained as a result of a conviction or alleged violation of the state's criminal law.

The bill also permits the governor to appoint the lieutenant governor as director of the Office of Criminal Justice Services, and includes an emergency clause to bring these changes into immediate effect.

Killing of a Law Enforcement Officer

Murder of a law enforcement officer is a relatively rare occurrence nationally, and in Ohio, as recent statistics demonstrate. In 1996, there were seven murders of law enforcement officers reported in Ohio, and four were reported in 1997. Offenders in these cases are typically charged with aggravated murder, and the capital punishment specification is generally used when the

officer is murdered while on-duty. The majority of cases of murder of a law enforcement officer occur when the officer is on-duty. National statistics from the federal Bureau of Justice Statistics indicate that in 1995, 6 out of 7 law enforcement deaths occurred when an officer was on duty. Statistics for Ohio are consistent with the national estimates; in 1996, one of the seven deaths of law enforcement officers involved the death of an off-duty officer. Of the police murders for which data was available for 1997, none were off-duty officers.

Killing while under Detention

The bill expands the aggravated murder statute to include prohibitions against a detained offender who causes the death of another. LBO believes that the majority of the cases addressed by these provisions of the bill would arise under the following conditions: (1) when a prisoner detained by the Department of Rehabilitation and Correction (DRC) kills a departmental employee, another inmate, or another person while in prison; and (2) killings by offenders under post-release supervision. Other killings may occur when inmates are being transported by DRC, or killings occurring during escapes. Other cases may emerge when prisoners are detained by local authorities, as would be the case in which a jail prisoners commits murder.

The murder of a DRC employee is an even more rare Ohio occurrence than the killing of a law enforcement officer. Since 1973, eight DRC employees have been killed in the line of duty, four of which were correction officers. By adding a capital punishment aggravating circumstance specific to the killing of a DRC employee, it is possible that an occasional aggravated murder case with a death penalty specification may be created that might not have been possible under the state's current aggravated murder law.

DRC reported that there are relatively few cases in which inmates kill other inmates while in prison. In 1997, there were two inmates killed by other inmates, two in 1996, and one in 1995. An anomaly in this recent history occurred in 1993, when eight inmates were killed in the Lucasville riot. Similarly, it is believed that the number of murders by escaped inmates and inmates under DRC post-release supervision are relatively few. DRC estimates that such cases number under ten per year.

The provisions of the bill would also affect persons under local detention committing murder. Data provided by DRC's Bureau of Adult Detention for 1997 shows that there were no deaths, other than suicides, committed by persons in jail for that year.

Aside from affecting offenders under state and local supervision, the provisions of the bill would presumably apply to private prisons. Since the privately-operated prison at Youngstown opened in May 1997, there have been two killings in that facility.

Effects of the Aggravated Murder Provisions of the Bill on State and County Government

The fiscal effects described herein may apply to an extremely small number of homicides annually. It is important to note that in some fiscal years, there would be absolutely no cases that would be affected by the provisions of this bill, resulting in no fiscal effect on the state and county government. Thus, this fiscal analysis describes what might happen in a worst case fiscal scenario.

Even one additional capital trial per year represents a significant local cost to most county jurisdictions, particularly to small counties with few resources or expertise in handling death penalty cases. These costs would result from prosecution, adjudication, and indigent defense in trials that would generally last considerably longer than non-capital cases. Available data suggests that it takes approximately 3.5 times longer to try a capital murder case than a similar murder case without the capital punishment specification.

Few comprehensive studies of the costs of capital trials are available. The most methodologically sound study of which LBO is aware deals with the costs of the death penalty in North Carolina. This data indicates that the cost of a capital trial through execution may range from over a quarter of a million dollars to over $2 million. Less reliable estimates in other states indicate that the cost of a capital trial through execution may range from $1.8 million to $15 million.

In Ohio, there is some data available on the cost of capital trials at the common pleas level. Recent costs of capital trials involving Lucasville riot inmates who murdered a correction officer ranged between $300,000 to $500,000 per offender. This figure includes defense, prosecution, and adjudication costs for the common pleas trial alone, and does not address the costs of subsequent appeals.

A brief summary of how the trial and appeals process may occur is as follows:

Common Pleas Court Trial. The majority of the costs for this stage are absorbed by counties for prosecution, adjudication, and defense costs for indigent offenders. As it is estimated that over 90 percent of individuals facing capital trials are indigent, the cost of indigent defense becomes particularly salient in discussing capital trials. The Public Defender Commission does provide reimbursement for counties for up to 50 percent of their costs in defending indigent persons accused of capital crimes at the trial and appeals phases. However, this reimbursement is not to exceed $12,500 per attorney assigned to an indigent defendant. Given that two defense attorneys are typically assigned to each defendant, the Public Defender Commission will reimburse counties in amounts not to exceed $25,000 per trial. Counties may also absorb the costs of defense psychiatrists, investigators, and mitigation specialists.

Automatic appeal to Ohio Supreme Court. Offenders convicted of a capital offense are entitled to a mandatory appeal to the Ohio Supreme Court. At this level, counties and the Public Defender Commission fund indigent defense in the same manner as occurs at the trial stage. The county retains the financial responsibility for representing the state.

State post-conviction relief. It is assumed that offenders found guilty of capital offenses will be more likely to participate in exhaustive appeals processes than those found guilty of lesser offenses. Counties retain the financial responsibility for representing the state at this stage, but the Public Defender Commission generally takes over indigent defense.

Federal habeus corpus relief. When state remedies have been exhausted, the Attorney General's office represents the state's interests at the federal level. The Public Defender Commission represents inmates in federal court.

In addition, increased expenditures related to incarceration could possibly be incurred by the Department of Rehabilitation and Correction for maintaining a few inmates on death row who

might otherwise have been kept with the general population. A very small number of cases which might formerly have been murder cases might possibly become aggravated murder cases, resulting in additional incarceration time. The penalty for aggravated murder is life imprisonment (with parole possible in 20 to 30 years in some cases) or capital punishment, while the penalty for murder is fifteen years-to-life.

Fine revenues. The maximum penalty for aggravated murder is $25,000, while the maximum penalty for murder is $15,000. From the perspective of revenue generation, counties could clearly collect additional money as an aggravated murder conviction carries the possibility of a higher fine. 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 annually will most likely be negligible.

Effects of the Provisions Concerning the Lieutenant Governor's Appointment to Director of the Office of Criminal Justice Services

The bill permits the governor to appoint the lieutenant governor as director of the Office of Criminal Justice Services. If the governor makes such an appointment, the lieutenant governor has the option to accept the salary for that office in lieu of the salary for the office of lieutenant governor.

LBO estimates that the state could save tens of thousands of dollars if this appointment takes place. In FY 1999, the lieutenant governor's salary is $62,500. The starting annual salary for an executive director at the state level ranges from $38,334 for an Executive Director 1 position to $90,521 for an Executive Director 4 position. By effectively eliminating one position, the state could save between $38,000 and $91,000 annually.

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