

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: H.B. 49 DATE: June 17, 1999
STATUS: As Reported by House Criminal Justice SPONSOR: Rep. Patton
LOCAL IMPACT STATEMENT REQUIRED: Yes
CONTENTS: Eliminates the penalty distinction between crack and powder cocaine for the offenses of trafficking in cocaine, preparation of cocaine for sale, and possession of cocaine, as well as in the definition of "major drug offender"

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Increase, potentially in the millions	Increase of at least \$10 million, probably more	Increase of at least \$10 million, probably more

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.

- An increase in the Department of Rehabilitation and Correction's (DRC) incarceration expenditures of at least \$10 million is expected to occur in future fiscal years, as several hundred offenders currently sentenced to prison for powder cocaine possession, trafficking, and preparation serve sentences that, on average, are almost 17 months longer than they would have been under existing law.
- An additional unknown number of low-level felony offenders who were formerly sanctioned locally will be committed to prison as a result of the bill's penalty enhancements. This will drive DRC's annual intake population higher, thus increasing DRC's annual incarceration and post-release supervision costs, potentially in the millions.
- The total annual inmate population may rise to the point that DRC will need additional bed and programming space. How and when DRC might undertake the capital improvements necessary to add this space would be extremely speculative at this point in time.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	No fiscal effect*	Potential minimal gain	Potential minimal gain
Expenditures	No fiscal effect*	Increase, as it makes the penalty markedly more problematic for several thousand powder cocaine offenders	Increase, as it makes the penalty markedly more problematic for several thousand powder cocaine offenders

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

*This analysis assumes that the fiscal effects on local governments will not be felt until FY 2000.

- Common pleas courts will experience increases in criminal case processing expenditures (prosecution, indigent defense, and adjudication), as penalty enhancements elevate the stakes of a large number of felony trials. These increases will vary, depending upon the prosecutorial and judicial practices of each jurisdiction.
- Counties will also experience increases in expenditures associated with additional jail time imposed on low felony-level powder cocaine offenders who are subject to the penalty enhancements of the bill. These increases may or may not be offset by savings resulting from an unknown number of offenders who will be shifted from local jails to prison under the bill.
- Through the felony penalty enhancements described in the bill, counties may have the opportunity to collect additional minimal amounts of annual fine revenue.

Detailed Fiscal Analysis

Provisions of the Bill

The bill essentially eliminates the penalty distinctions that currently exist between the crack and powder varieties of cocaine in favor of the stiffer set of penalties that apply to crack cocaine. As a result, all of the drug offense penalties associated with cocaine that is not specifically crack cocaine are enhanced. The elimination of this distinction occurs in sections of the criminal code dealing with trafficking in cocaine, preparation of cocaine for sale, possession of cocaine, and removes this distinction in the definition of "major drug offender."

Trafficking in Cocaine

Existing penalties for trafficking in powder cocaine are compared to penalties for trafficking in crack cocaine in Table 1 below, which, for the ease of presentation, excludes penalty enhancements for trafficking near a school or juvenile. Generally, trafficking in the vicinity of a school or juvenile results in a one-step penalty enhancement. Under the bill, an offender who is guilty of trafficking powder cocaine would be subject to the same drug weight thresholds and penalties as if the offender had been trafficking in crack cocaine.

Table 1: Cocaine Trafficking under Existing Law

Powder Cocaine	Penalty	Sentencing Guidance	Crack Cocaine	Penalty	Sentencing Guidance
5 grams or less	F5	Presumption against imprisonment	1 gram or less	F5	Presumption against imprisonment
Exceeds 5 grams but does not exceed 10 grams	F4	Presumption in favor of imprisonment	Exceeds 1 gram but does not exceed 5 grams	F4	Presumption in favor of imprisonment
Exceeds 10 grams but does not exceed 100 grams	F3	Mandatory sentence	Exceeds 5 grams but does not exceed 10 grams	F3	Mandatory sentence
Exceeds 100 grams but does not exceed 500 grams	F2	Mandatory sentence	Exceeds 10 grams but does not exceed 25 grams	F2	Mandatory sentence
Exceeds 500 grams but does not exceed 1,000 grams	F1	Mandatory sentence	Exceeds 25 grams but does not exceed 100 grams	F1	Mandatory sentence
Exceeds 1,000 grams	F1	Major Drug Offender – 10 years mandatory plus optional 1-10 years	Exceeds 100 grams	F1	Major Drug Offender - 10 years mandatory plus optional 1-10 years

Under the bill, most offenders guilty of trafficking in powder cocaine would experience penalty enhancements as shown in Table 2 below. This penalty enhancement of one to two degrees generally will occur for lower-end trafficking offenders.

Table 2: Powder Cocaine Trafficking under H.B. 49

Amount of Powder Cocaine	Existing Penalty	Penalty under the Bill
5 grams or less	F5	F4
Exceeds 5 grams but does not exceed 10 grams	F4	F3
Exceeds 10 grams but does not exceed 100 grams	F3	F2, F1
Exceeds 100 grams but does not exceed 500 grams	F2	F1
Exceeds 500 grams but does not exceed 1,000 grams	F1	F1
Exceeds 1,000 grams	F1	F1

Preparation of Cocaine for Sale

In general, under existing law, preparation of powder cocaine for sale in amounts that do not exceed 5 grams is a fifth-degree felony. Preparation of powder cocaine in amounts that exceed 5 grams is a fourth degree felony. A one-step penalty enhancement applies if the offense occurs in the vicinity of a school or juvenile. Preparation of crack cocaine for sale in an amount that does not exceed 1 gram is generally a fifth degree felony. Preparation of crack cocaine in an amount exceeding 1 gram is a fourth degree felony. Again, a one-step penalty enhancement applies if the offense occurs in the vicinity of a school or juvenile.

Under the bill, offenders who prepare powder cocaine for sale would be subject to the same penalty structure that applies to offenders who prepare crack cocaine. The powder cocaine offenders would also fall under the same quantity thresholds for the purpose of determining the penalty. As a

result, all offenders who are guilty of preparing more than one gram of cocaine for sale will generally be guilty of fourth-degree felonies. Under current law, most of these offenders would be subject to fifth-degree felony penalties. Additionally, fourth-degree preparation of cocaine for sale carries with it a presumption for a prison term, which is not necessarily the case for the fifth-degree felony offense.

Possession of Cocaine

Existing penalties for possession of powder cocaine are compared to penalties for possession of crack cocaine in Table 3 below, which, for the ease of presentation, excludes penalty enhancements for possession near a school or juvenile. Generally, possession in the vicinity of a school or juvenile results in a one-step penalty enhancement. Under the bill, an offender who is guilty of possession of powder cocaine would be subject to the same drug weight thresholds and penalties as if the offender possessed crack cocaine.

Table 3: Cocaine Possession under Existing Law

Powder Cocaine	Penalty	Sentencing Guidance	Crack Cocaine	Penalty	Sentencing Guidance
5 grams or less	F5	Option 1	1 gram or less	F5	Option 1
Exceeds 5 grams but does not exceed 25 grams	F4	Presumption in favor of imprisonment	Exceeds 1 gram but does not exceed 5 grams	F4	Presumption in favor of imprisonment
Exceeds 25 grams but does not exceed 100 grams	F3	Mandatory sentence	Exceeds 5 grams but does not exceed 10 grams	F3	Mandatory sentence
Exceeds 100 grams but does not exceed 500 grams	F2	Mandatory sentence	Exceeds 10 grams but does not exceed 25 grams	F2	Mandatory sentence
Exceeds 500 grams but does not exceed 1,000 grams	F1	Mandatory sentence	Exceeds 25 grams but does not exceed 100 grams	F1	Mandatory sentence
Exceeds 1,000 grams	F1	Major Drug Offender – 10 years mandatory plus optional 1-10 years	Exceeds 100 grams	F1	Major Drug Offender - 10 years mandatory plus optional 1-10 years

Under the bill, most offenders guilty of possessing powder cocaine would experience penalty enhancements as shown in Table 4 below. This penalty enhancement of one to two degrees generally will occur for lower-end possession offenders.

Table 4: Powder Cocaine Possession under H.B. 49

Amount of Powder Cocaine	Existing Penalty	Penalty under the Bill
5 grams or less	F5	F5, F4
Exceeds 5 grams but does not exceed 25 grams	F4	F3, F2
Exceeds 25 grams but does not exceed 100 grams	F3	F1
Exceeds 100 grams but does not exceed 500 grams	F2	F1
Exceeds 500 grams but does not exceed 1,000 grams	F1	F1
Exceeds 1,000 grams	F1	F1

Major drug offenders

Major drug offenders, under existing law, receive a mandatory prison sentence of 10 years, plus an optional additional 1-10 years. By eliminating the distinction between powder cocaine and crack cocaine present in existing law, the bill specifies that a major drug offender is an offender guilty of the possession, sale, or offer to sell any form of cocaine that totals at least 100 grams. Existing law specifies that a major drug offender offense involves at least 100 grams of crack or 1,000 grams of cocaine. LBO expects that this provision will increase the numbers of major drug offenders eligible for extra prison time.

Cocaine Offense Prevalence

The Office of Criminal Justice Services (CJS) provided LBO with information regarding arrests resulting from the actions of Ohio Drug Task Forces. This data includes only those arrests performed by those task forces receiving federal Drug Control Act funds, and it is uncertain if the task force arrests can be considered to be representative of all statewide drug arrests. This data indicates that, for the period of time from July 1, 1997 through June 30, 1998, 96 percent of all opiate arrests made by the task forces were for cocaine and crack.

Uniform Crime Report data for Ohio in 1997 shows that there were 1,920 arrests for sale or manufacture of opium, cocaine and their derivatives (morphine, heroin, cocaine), and 10,209 arrests for possession of these drugs, for a total of 12,129 arrests in 1997. Based on the CJS data noted above and discussions with law enforcement, LBO assumes that the majority of these arrests were cocaine-related. If we assume that 96 percent of these arrests were for cocaine, we can estimate that, in 1997, there were 1,843 arrests for sales/cultivation and 9,800 were arrests for possession of cocaine ($1,920 \times 0.96 = 1,843$; $10,209 \times 0.96 = 9,800$).

The difficulty lies in determining the proportion of crack cocaine arrests to powder cocaine arrests. Based on regional data from drug task forces and drug usage among arrestees in the Cleveland area, LBO estimates that roughly one-half of cocaine arrests statewide are for crack and the remaining one-half are for powder cocaine. Taken into the context of our 1997 arrest data, this means there were about 922 arrests for sales and 4,900 arrests for possession in 1997 involving powder cocaine that would presumably have been subject to the penalty enhancements described in the bill.

Based on discussions with law enforcement, LBO believes that the majority of crack and powder cocaine arrests involve amounts under 1/8 of an ounce, roughly equivalent to 3.5 grams. The majority of offenders, especially the powder cocaine possession offenders, are believed to be in possession of relatively small amounts.

Local Fiscal Effects

Possession, trafficking, and the preparation of cocaine for sale are currently felony offenses handled by common pleas courts, and the bill would not change that. What the bill would change, however, is that the stakes for numerous powder-cocaine offenders are raised, as felony penalties are enhanced to include the possibility of a prison term, and, for those already prison-bound, the reality of sentences that will easily double or triple relative to current lengths of stay. Based solely upon 1997

data, it appears that several thousand powder cocaine offenders arrested annually could be subject to the bill's sentencing enhancements that bump existing felony penalties up one or two degrees.

We believe that these penalty enhancements and stiffer sentences will make the resolution of many of these powder cocaine cases more problematic, and, as a result, annual county prosecution, indigent defense, and adjudication costs will increase. Local bargaining practices between prosecutors and defense counsel will most likely be fundamentally altered as prosecutors gain more power with the more severe sentencing outcomes that become possible under the bill. More cases may go to trial, and some go deeper into the trial phase before reaching a conclusion. We are unable to estimate what that increased annual cost of doing business for counties would be.

The bill will exert two effects on a county's annual offender sanctioning costs. First, some number of offenders, most likely low-level cocaine offenders, will still be sentenced to time in a local jail as is the case under current law, but the length of that stay will increase. As a result, annual county offender sanctioning costs will rise. Second, some number of offenders who are being sentenced to a stay in a local jail under current law will be sentenced to a prison term instead. As a result, annual county offender sanctioning costs will drop. The net fiscal effect of these two factors on annual county offender sanctioning costs is uncertain and is clearly dependent upon the percentage of low-level cocaine powder offenders and local preferences for jail versus prison as the most appropriate form of punishment.

The bill's felony penalty enhancements also create opportunities for counties to collect additional revenue, as a number of powder cocaine offenders could end paying the higher fine amounts. How much additional fine revenue might be collected annually is very difficult to estimate. The safest thing to say is that the bill creates the potential for counties to realize a minimal annual revenue gain by elevating offenders into felony levels that carry higher maximum fines.

State Fiscal Effects

The Department of Rehabilitation and Correction (DRC) conducted research on the bill with the following findings.

- Powder cocaine offenders would serve longer sentences under the bill. For the average powder cocaine offender, the provisions of the bill would result in an additional 16.91 months in prison.
- In a given year, approximately 405 powder cocaine offenders entering the prison system would be subject to these enhancements. This works out to approximately 570.71 additional inmate beds per year.
- Using the average operational cost per inmate for incarceration, at \$17,484 per year, this represents an approximate increase in GRF expenditures of \$9,978,294 annually.

This projected increase in expenditures will be felt in future fiscal years, as offenders would begin serving their additional prison time at some point in FY 2001.

In addition to the increased annual incarceration expenditures stemming from increased lengths of stay, the bill will result in a number of powder cocaine offenders being sentenced to prison system who would otherwise have been subject to local sanctions. The number of what would be newly prison-bound offenders is unknown, but, given the high volume of arrests that occur annually involving powder cocaine, this could easily result in an additional increase in DRC's incarceration and post-release supervision that runs in the millions of dollars annually.

Increased lengths of stay and the addition of an unknown, but potentially large, number of additional offenders to the prison system may also have capital ramifications. At some point, it may be necessary for DRC to construct additional bed space, if sufficient capacity does not exist in their prison system to absorb the larger inmate population that the bill will most certainly create.

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

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