



## ***Local Fiscal Highlights***

<b>LOCAL GOVERNMENT</b>	<b>FY 1999</b>	<b>FY 2000</b>	<b>FUTURE YEARS</b>
<b>Counties</b>			
Revenues	Minimal gain	Minimal gain	Minimal gain
Expenditures	At least minimal increase	At least minimal Increase	At least minimal Increase
<b>Municipalities</b>			
Revenues	Negligible loss	Negligible loss	Negligible loss
Expenditures	Minimal decrease	Minimal decrease	Minimal decrease

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

- The net effect of the bill's penalty enhancement provisions with respect to the stalking of individuals and the protection of emergency medical service personnel will be to transform a number of misdemeanor offenses into felony offenses. This will shift possibly as much as a few hundred cases or more annually statewide from municipal and county courts to common pleas courts, the practical effect of which should be to cause a minimal decrease in annual municipal criminal justice expenditures, and cause at least a minimal increase in annual county criminal justice expenditures.
- Certain municipalities will experience a negligible loss in annual revenue, mostly in the form of court costs due to the movement of some cases into common pleas courts. Conversely, counties will gain the court cost revenue lost by some municipalities, plus pick up additional fine revenue as a result of the bill's penalty enhancements. The annual gain to counties in court cost and fine revenue will be minimal.
- By expanding who can request and be covered by a domestic violence or anti-stalking protection, the bill will place additional burdens on certain components of municipal and county criminal justice systems, most specifically courts, law enforcement, and prosecutors. Additional domestic violence protection and anti-stalking orders will be requested, issued, enforced, and violated. The potential cost to local criminal justice systems annually statewide is highly uncertain at this time.

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## ***Detailed Fiscal Analysis***

### **Emergency Medical Service (EMS) Personnel**

#### ***Provisions of the Bill***

The bill expands the scope of certain sections of the Ohio Revised Code to include actions or incidents against emergency medical service (EMS) personnel or against public officials acting in their official capacity and enhances the penalty for existing offenses. Specifically, the bill:

- revises the offense of disrupting public services to include impairing the ability of EMS personnel to respond to an emergency or perform their duties at an emergency (currently only applicable concerning the operations of law enforcement officers, firefighters, or rescue personnel);
- extends the offense of misconduct at an emergency to include hampering any EMS person from the performance of their duties at an emergency (currently only applicable concerning the operations of law enforcement officers, firefighters, or rescue personnel); and,
- expands the definition of “pattern of conduct” used in the offense of menacing by stalking to include actions or incidents that prevent, obstruct, or delay the performance by a public official of their official duties.

In addition, the bill enhances the penalty for certain existing misdemeanors. The changes proposed in the bill are summarized in the following table:

<b>OFFENSE</b>	<b>CURRENT PENALTY</b>	<b>PROPOSED PENALTY</b>
Misconduct at an emergency	M4	M1, if risk of physical harm to persons or property is created
Disorderly conduct	Minor misdemeanor; M4, if the offender persists after warning/order to desist or if committed in vicinity of a school	M4, if committed in presence of certain public officials at an emergency
Obstructing official business	M2	F5, if risk of physical harm to persons is created

The offense of misconduct at an emergency, currently a fourth-degree misdemeanor (M4) is elevated to a first-degree misdemeanor (M1) if the violation creates a risk of physical harm to persons or property. The bill also increases the penalty for disorderly conduct from a minor misdemeanor to an M4 if the offense occurs in the presence of any law enforcement officer, firefighter, rescuer, medical person, EMS person, or other authorized person engaged in the person’s duties at the scene of an emergency. Currently, disorderly conduct becomes an M4 only if the offender persists in the disorderly conduct, or if the offense is committed in the vicinity of a school. The bill also increases the penalty for obstructing official business from a second-degree misdemeanor (M2) to a fifth-degree felony (F5) if the violation creates a risk of physical harm to any person.

### *Fiscal Effects of the EMS Provisions*

*Number of Cases Affected.* The bill expands the scope of several existing offenses and enhances penalties for others, but the number of annual cases affected by the bill is likely to be well under 100. The changes proposed in the bill are intended to enhance the response of the law enforcement community and criminal justice system to instances in which an offender interferes with EMS personnel in the performance of the official duties. Although no formal data concerning EMS interference is recorded at the state level or maintained by localities or EMS districts, LBO believes that the number of such cases occurring in Ohio annually is relatively small. The Ohio Criminal Sentencing Commission estimates that the number of such instances of interference to be in the “dozens.”

*Penalty Enhancements within the Misdemeanor Level.* The penalty enhancement provisions of the bill will have negligible fiscal effects. Increasing the penalty for misconduct at an emergency from a fourth-degree misdemeanor (M4) to a first-degree misdemeanor (M1) if the violation creates a risk of physical harm to persons or property may increase the fines assessed by counties and municipalities and extend the terms of local sanctions. Similarly, increasing the penalty for disorderly conduct from a minor misdemeanor to an M4 if the offense occurs in the presence of any law enforcement officer, firefighter, rescuer, medical person, EMS person, or other authorized person engaged in the person’s duties at the scene of an emergency also may increase the fines assessed by counties and municipalities, shift court costs from municipalities to counties, and extend the terms of local sanctions.

In addition, the provision of the bill changing the definition of “pattern of conduct” used in the menacing by stalking offense to include actions or incidents that prevent, obstruct, or delay the performance by a public official of any authorized act within their official capacity, may result in some incidents of interference being prosecuted as menacing by stalking which is a first-degree misdemeanor (M1). If the offender has previously been convicted of stalking involving the same person who is the victim of the current offense, menacing by stalking becomes a fifth-degree felony (F5). LBO has not been able to determine the number of cases affected by these penalty enhancement provisions of the bill, but believes the number is negligible.

*Penalty Enhancements involving Elevation to the Felony Level.* The number of cases of obstructing official business that involve risk of physical harm to any person cannot be determined precisely, but is likely to be negligible also. In these instances, the bill provides for an increase in penalty from M2 (maximum sentence of 90 days and maximum fine of \$750) to an F5 (determinate prison terms for 6 to 12 months although presumption against prison, and a maximum fine of \$2,500). As a result of these provisions of the bill, a very small number of cases will be adjudicated annually as felony cases in county common pleas courts rather than as misdemeanor cases in municipal and county courts. At the F5 level, there is a possibility that some of these cases may result in prison sentences despite the F5 sentencing guideline against prison. The Department of Rehabilitation and Correction may experience a minimal increase in annual incarceration and post-release control costs for cases so affected.

For these few cases that would be transformed from misdemeanors to felony offenses, counties will potentially gain court cost and fine revenue while municipalities will potentially lose court cost revenue. Given the small number of affected cases, that potential change in revenue for counties and municipalities will most likely be negligible. The adjudication, prosecution, indigent defense (if

applicable), and sanctioning costs associated with a felony case are typically higher than those associated with a misdemeanor case. Thus municipalities will experience a decrease in annual criminal justice expenditures while counties will experience an increase in annual criminal justice expenditures. However, the amount of that increase or decrease will be negligible given the small number of cases affected annually.

## **Menacing by Stalking**

*Penalty.* Under existing law, menacing by stalking is generally a first-degree misdemeanor (M1), punishable by up to 6 months in jail and a fine not to exceed \$1,000. When the offender has previously been convicted of menacing by stalking, the offense is a fifth-degree felony (F5), punishable by a possible determinate prison term of between 6 and 12 months and a fine not to exceed \$2,500. With respect to sentencing guidance in the Revised Code, a fifth-degree felony does not carry a presumption for prison, but does include a list of factors that work for or against sending offenders to prison.

Under the bill, the offense stays a M1 and the F5 for a prior conviction is repealed. The bill then adds a new provision specifying that, if one or more of the conditions listed below applies, menacing by stalking is elevated to a fourth-degree felony (F4).

- The offender had a prior conviction for menacing by stalking;
- The offender made a threat of physical harm;
- The offender trespassed on the land or premises where the victim lives, is employed, or attends school;
- The victim is a minor;
- The offender has a history of violence toward the victim or any other person;
- The offender had a deadly weapon at the time of the offense;
- The offender was subject to a protection order;
- The offender previously caused serious physical harm to property associated with the victim's residence; or
- The offender previously was found to be a mentally ill person subject to hospitalization by a court order, or the offender was voluntarily admitted and was determined to represent a risk to self or others.

An F4 is punishable by a possible determinate prison term of between 6 and 18 months and a fine not to exceed \$5,000. The sentencing guidance for a fourth-degree felony is identical to that of a fifth-degree felony in that a judge is required to weigh a list of factors in determining whether a particular offender ought to be sent to prison or not.

*Prevalence.* Based on county and national data, LBO believes menacing by stalking to be a relatively frequent offense. In 1998, the Franklin County Municipal Court alone reported 45 charges filed for menacing by stalking. If we assume that this number of charges filed stands in the same relationship to the size of population in the rest of the state as it does in Franklin County, and we know that Franklin County is 9 percent of the state population, we estimate that there are approximately 500 charges filed annually statewide for menacing by stalking annually ( $45/.09 = 500$ ). This statewide

estimate may represent an under- or over-count, due to the likelihood that the occurrence, enforcement, and prosecution of this offense will differ from jurisdiction-to-jurisdiction.

Other data that we have examined suggests the possibility that this estimated number of 500 menacing by stalking cases statewide might in fact be rather low. Specifically, a preliminary review of data available from the National Violence Against Women Survey and the Buckeye State Sheriffs' Association's Jail Linkage System suggests that the number of menacing cases, which most likely includes the offenses of aggravated menacing, menacing by stalking, and menacing, could actually run anywhere from 2,000 to 4,000 or more annually statewide. It is unclear, however, as to how many of this potentially higher number of cases would meet the conditions that bring the bill's penalty enhancement provisions into play.

It is also clear from a look at the Department of Rehabilitation and Correction's institutional population that extremely few offenders are being sentenced to prison for the primary offense of menacing by stalking under current law and that the vast majority of offenders are being sanctioned locally.

*Local Fiscal Impact.* The bill's penalty enhancement provision will shift a number of cases out of the misdemeanor jurisdiction of municipal and county courts and into the felony jurisdiction of county common pleas courts. We've already estimated that there are at least 500 menacing by stalking charges filed annually statewide. We further believe that the vast majority of the offenders charged with this offense would have committed an act or acts in which at least one of the bill's penalty enhancement criteria will apply, particularly the elements of trespassing and threat of physical harm. If that is in fact true, then at least several hundred cases annually will be elevated from misdemeanor to felony status and in effect transferred up into courts of common pleas.

The fiscal effect of this shift or transfer will be that certain municipalities will shed some criminal justice system costs and lose some related revenue. The statewide fiscal effect on municipalities will largely be a function local charging practices and whether a municipal- or county-operated court currently has jurisdiction over these misdemeanor stalking cases. Where there are municipally operated courts and offenders are being charged under local ordinances, municipalities are bearing virtually the entire burden of law enforcement, prosecution, indigent defense, adjudication, and sanctioning. They also pick up all of the court cost and fine revenue collected. In places where a county is operating the court and offenders are being charged under state law, counties are already carrying most of the fiscal burden and are also collecting all of the court cost and fine revenue. As a result of the bill, the annual fiscal effect on municipalities statewide will be twofold: a minimal decrease in criminal justice expenditures and a negligible loss in court cost and fine revenue.

The fiscal effect of this shift or transfer on counties will be the reverse of municipalities. Counties will experience annual increases in criminal justice expenditures and gains in revenue. The magnitude or size of those expenditure and revenue changes will again depend on whether an existing misdemeanor menacing by stalking offense is moving out of a county- or municipal-operated court and local charging practices. If a given case is moving from a municipal-operated court where offenders are charged under a local ordinance, then a county could be picking up a whole litany of costs for that case that include law enforcement, prosecution, indigent defense, adjudication, and sanctioning. For that case, the county also

gains any court cost and fine revenue collected. If a given case is moving from a county-operated court where offenders are currently being charged under state law, then a county picks up the higher level of expenses associated with processing a felony and also gains revenue since the maximum fine is larger. As a result of the bill, the annual fiscal effect on counties statewide will be at least a minimal increase in criminal justice expenditures and a minimal gain in revenue from courts costs and fines. It should also be noted that, in some jurisdictions, annual sanctioning costs might be constrained by the fact that some offenders will be sentenced to prison, thus relieving certain counties of that fiscal burden.

The bill also permits prosecutors to seek denial of bail for menacing by stalking offenders, which would increase the time spent by courts, prosecutors, and defense counsel on some of these cases. Additionally, it is undoubtedly the case, that certain offenders will be denied bail that would not otherwise, which will increase jails stays and raise incarceration costs. We are unable to put an annual price tag on the costs to counties associated with this bail denial provision. Suffice it to say that, the use of this provision would subject to the discretion of county prosecutors and any increases in the cost of doing criminal justice business would therefore vary by jurisdiction.

*DRC Expenditures.* As already noted, we believe at least several hundred cases statewide annually will be elevated either from a first-degree misdemeanor or a fifth-degree felony to a fourth-degree felony. The result will be that some number of offenders who were previously sanctioned locally will be sentenced to prison, which in turn will increase the Department of Rehabilitation and Correction's (DRC) annual incarceration and post-release supervision costs. We are unable to estimate what the additional number of prison-bound offenders might be annually, but firmly believe there will be at least a minimal, if not larger, increase in DRC's annual expenditures as a result.

*Reparations Fund.* A minimal gain in annual revenue to the Reparations Fund is expected, as it appears that several hundred cases, which were formerly treated as first-degree misdemeanors, will be elevated to felony status under the bill. Since the locally collected state court cost for a misdemeanor offense is \$9 and for a felony offense is \$30, the potential net revenue gain for the Reparations Fund is \$21 on each case.

*Domestic Violence Caveat.* We would like to close this fiscal analysis with a concern. And that concern has to do with how this bill might interact with existing law and practice as it relates to the issue of domestic violence. It is very possible that, in certain jurisdictions around Ohio, the bill's penalty enhancements could come into play and change the sentencing outcomes, including the possibility of a prison term as opposed to some form of local sanctioning. At this time, we have no idea as to what the interaction with domestic violence issues might be or what any resulting fiscal effects might be on the state or local governments.

### **Anti-Stalking and Domestic Violence Protection Orders.**

Existing law permits victims of stalking and domestic violence to seek protection orders through local courts. The bill expands the persons who may seek, and be protected by, these orders to include household and family members of the victim.

According to the Supreme Court's 1997 Ohio Courts Summary, there were 6,337 domestic violence protection orders issued in that year. Based on discussions with domestic violence experts,

LBO believes the number of anti-stalking protection orders issued on an annual basis to be much smaller. National Institute of Justice survey data indicates that, in stalking cases, a party other than the victim reported the offense to the police 17.7 percent of the time.

This provision of the bill will increase the burdens on certain components of municipal and county criminal justice systems, most specifically courts, law enforcement, and prosecutors. Additional domestic violence protection and anti-stalking orders will be requested, issued, enforced, and violated. The potential cost to local criminal justice systems annually statewide is highly uncertain at this time.

□ *LBO Staff: Eric J. Karolak, Budget/Policy Analyst*  
*Laura Bickle, Budget/Policy Analyst*

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