

# Fiscal Note & Local Impact Statement

123<sup>rd</sup> General Assembly of Ohio

BILL: **H.B. 162** DATE: **March 3, 1999**

STATUS: **As Reported by House Criminal Justice** SPONSOR: **Rep. Salerno**

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

CONTENTS: **Expands the offense of murder to prohibit causing the death of another as a proximate result of child abuse; creates the offense of permitting child abuse; includes permitting child abuse and child endangerment as offenses of violence**

## State Fiscal Highlights

STATE FUND	FY 1999	FY 2000	FUTURE YEARS
<b>General Revenue Fund</b>			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	Potential increase	Gradual increase, potentially in the millions of dollars
<b>Reparations Fund (a.k.a. Victims of Crime Fund)</b>			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	-0-	-0-	-0-

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

- The prison term for a relatively small number of offenders who killed children will lengthen, resulting in extended stays and an increase in the Department of Rehabilitation and Correction's (DRC) annual incarceration costs.
- Some individuals who would formerly have been charged with misdemeanor child endangerment offenses, or would not have been charged at all, could now face first- and third-degree felony convictions for "permitting" child abuse, and, as a result, be sentenced to prison.
- Negligible annual gains in revenue to the GRF and Reparations Fund could potentially occur as a result of court cost revenue collected from a few new criminal cases being created, as well as some number of what would have been misdemeanor cases being treated as felonies.



## *Local Fiscal Highlights*

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
<b>Counties</b>			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	Minimal increase	Minimal increase
<b>Municipalities</b>			
Revenues	- 0 -	Potential negligible loss	Potential negligible loss
Expenditures	- 0 -	Potential negligible decrease	Potential negligible decrease

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

- 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 revenues will be negligible annually.

## *Detailed Fiscal Analysis*

### **Provisions of the Bill**

The bill includes under the murder statute the killing of a child as a proximate result of the offender's committing child endangerment. 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 also creates a new offense, permitting child abuse, which addresses a secondary offender who permits serious physical harm to occur to a child under these conditions (referred to in this fiscal note as "permitting offenders"). This new offense is a third-degree felony, punishable by one to five years' imprisonment and a maximum fine of \$10,000. If the death of the child results as a proximate cause of abuse, the offense becomes a first-degree felony, punishable by three to ten years' imprisonment and a maximum fine of \$20,000.

## **State Fiscal Effects: Primary Offenders**

***Offenders Causing Death.*** Generally, most of the homicide 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. We assume that most, if not all, offenders convicted of involuntary manslaughter 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, about 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 1997 indicates that offenders sentenced to prison for involuntary manslaughter served an average of 6.88 years.

Under this bill, these offenders would be subject to penalties for murder. Murder would require imprisonment of between fifteen years to life, unless a sexual motivation specification or sexually violent predator specification is added, which would result in life imprisonment without parole. At a minimum, offenders would serve an additional 8.12 years in prison (15 years – 6.88 years = 8.12 years). If we take the average time served for murder from DRC's 1997 Time Served Report, 16.28 years, this indicates that offenders who would otherwise serve time for involuntary manslaughter would serve, on average, an additional 9.4 years for murder (16.28 years - 6.88 years = 9.4 years).

Longer sentences will result in an increase in DRC's GRF-funded annual incarceration costs. As offenders affected by this bill are assumed to serve prison terms averaging 6.88 years, regardless of whether or not this bill is implemented, it becomes necessary to examine the cost of imprisoning these offenders for an additional 8 to 9 years. The Ohio Criminal Sentencing Commission estimated the marginal costs of imprisonment to be approximately \$4,100 per year per inmate. One offender serving an additional 9 years in prison would result in an additional approximate cost of \$36,900 to the state GRF ( $\$4,100 \times 9 \text{ years} = \$36,900$ ).

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 approximately nine 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.

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

***Offenders Permitting Death.*** 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 penalty for permitting child abuse resulting in the death of a child, a first-degree felony. This offense is punishable by three to ten years' imprisonment and a fine not to exceed \$20,000. 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 first-degree misdemeanor child endangerment. However, the circumstances surrounding some child homicides are such that some number of “permitting” offenders may not be charged with a crime at all.

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 as a result of the bill. However, it is reasonable to assume that the number of offenders permitting death is not likely to exceed the number of primary offenders, that is, there will be no more than twenty additional felony cases annually statewide. 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 a small number of permitting offenders being convicted of homicide by child abuse and sentenced to mandatory prison time.

***Offenders Permitting Serious Injury.*** Additional increases in expenditures would result from incarceration of individuals who permitted their children to experience serious physical harm at the hands of another. According to the Child Welfare League, there were 14,370 cases of substantiated physical abuse of children in 1995. The U.S. Department of Health and Human Services reports that there were 6,940 substantiated cases of physical abuse and 7,430 cases where physical abuse was indicated in that same period of time. These numbers show that there are potentially large numbers of cases in which children are inflicted with serious injury.

Under current practice, permitting offenders are generally not charged with a crime. It is possible that the bill could result in an additional number of permitting offenders to be sent to prison as third-degree felons, dependent upon the enforcement and prosecutorial practices of local government. However, existing statute allows prosecutors to charge permitting offenders with the following:

- First-degree misdemeanor child endangerment by creating a substantial risk to the health or safety of a child by violating a duty of care, protection, or support; and
- Third-degree felony child endangerment for creating substantial risk resulting in serious physical harm to a child.

Under the current child endangerment statute, “primary offenders” are charged with 2<sup>nd</sup> or 3<sup>rd</sup> degree felonies if serious injury to the child results. Annually, approximately 100 “primary offenders” can be expected to go to prison (based on DRC intake data for 1997). If LBO assumes that an equal number of permitting offenders would go to prison for third-degree felonies who might not otherwise, then DRC could see up to an additional 100 offenders imprisoned annually under the bill.

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

The GRF and the Reparations Fund, a.k.a. Victims of Crime 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 with 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. 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 who cause the death of a child addressed by this bill are currently being 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 murder 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 provisions of the bill addressing permitting child abuse may be relatively large, there may be increases in expenditures to counties. These would result from adjudication, prosecution, indigent defense, and offender sanctioning costs of new cases in which a parent or guardian permits serious harm to befall a child.

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.

For example, in 1997, Franklin County Municipal Court reported that there were 26 charges filed for felony child endangerment. At the extreme, one could assume that there might be 26 additional charges filed under the bill for permitting offenders. However, this number is likely to be mitigated by the following factors:

- The bill provides an affirmative defense to permitting child abuse, when the permitting party does not have readily available a means to prevent the harm to the child and that the permitting offender took reasonable and timely steps to summon aid;
- Under existing law, parents or guardians who create a substantial risk to the health or safety of a child by violating a duty of care, protection, or support may be already be charged with third-degree felonies if serious injury occurs;
- Prosecutorial practices in varying jurisdictions may inhibit the charging of a permitting offender, particularly in cases where the permitting offender may have suffered abuse;

- Some of the charges filed may represent cases in which there is only one custodial parent in the household, and that parent was the perpetrator of the abuse. In a few of these cases, no permitting offender, as such, might exist.

*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, and perhaps indigent defense. Additionally, such a municipality will forego any court cost revenue that might have been collected.

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