Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **Sub. H.B. 162** DATE: **May 5, 1999**

STATUS: **As Passed by the Senate** SPONSOR: **Rep. Salerno**

LOCAL IMPACT STATEMENT REQUIRED: **No — However, potential local cost in amended bill**

CONTENTS: **Enhances penalties under the offense of child endangerment when death or serious physical harm occurs to the victim; creates the offense of permitting child abuse**

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Increase, potentially $2 million to $3 million	Increase, potentially $4 million to $6 million	Increase, in the millions due to stacking effects
Crime Victims Reparations Fund (Fund 402)			
Revenues	Potential negligible gain	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.

- DRC's annual operating costs would increase as a result of four factors:

  1. Offenders who cause serious physical harm to children would become subject to a penalty enhancement by elevating existing third-degree felonies to second-degree felonies. As second-degree felony offenses carry a presumption for imprisonment, it is possible that a few hundred offenders who would not otherwise have been sentenced to a DRC facility will be sentenced to prison annually.

  2. Up to 100 felony offenders who currently are committed to DRC annually for child endangerment may receive longer lengths of stay.

  3. The prison term for a relatively small number of offenders who killed children could lengthen, resulting in extended stays and an increase in the Department of Rehabilitation and Correction's (DRC) annual incarceration costs.

  4. Some individuals who would formerly have been charged with misdemeanor child endangerment offenses, or would not have been charged at all, could now face 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 Crime Victims Reparations Fund could potentially occur as a result of court cost revenue collected from a few additional criminal prosecutions and convictions, as well as some number of felony convictions for what would have previously been treated as misdemeanors.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	Increase, dependent upon number of cases subject to enhancement	Increase, dependent upon number of cases subject to enhancement
Municipalities			
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 enhancing child endangerment cases resulting in serious physical harm from a third-degree felony to a second-degree felony, existing criminal cases may become more problematic to resolve. No new cases are expected to result from this penalty enhancement. However, adjudication, prosecution, and indigent defense costs may increase as the stakes of the trial are elevated.

- The bill defines the penalty for causing the death of a child as a result of child abuse as a first-degree felony. These cases are currently charged as involuntary manslaughter, which can be a third- or first-degree felony. 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 first- or third-degree felonies, 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 enhances existing penalties for causing serious physical injury to a child as a proximate result of child abuse. The existing penalty for this offense under the child endangerment statute is a third-degree felony, punishable by a possible determinate prison term of 1 to 5 years and a fine not to exceed $10,000. Under the bill, these offenders would face second-degree felony penalties, punishable by a determinate prison term of 2 to 8 years and a fine not to exceed $15,000.

The bill also creates a penalty for causing the death of a child as a result of committing child endangerment. Under the bill, such offenders would be subject to first-degree felony

penalties, punishable by a determinate prison term of 3 to 10 years and a maximum fine of $20,000.

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 a treated as a very serious matter as evidenced by its status as a first-degree felony when coupled with a felony offense and as a third-degree felony when coupled with a misdemeanor offense. 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 the bill, some offenders would be subject to first-degree felony penalties, which range between 3 and ten years imprisonment. 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.

Offenders Causing Serious Injury. The most substantial fiscal effect of the bill involves the penalty enhancement for child endangerment offenders who cause serious physical harm to their victims. Currently, these offenders face third-degree felony penalties, punishable by a potential determinate prison term 1 to 5 years. Under the bill, these offenders would receive second-degree felony penalties, punishable by a determinate prison term of 2 to 8 years. Additionally, second-degree felony offenders receive a presumption for imprisonment, which is not the case for third-degree felony offenders generally.

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.

However, prosecutorial and law enforcement practices are believed to greatly diminish the number of cases entering the criminal justice system. According to the 1998 Franklin County Municipal Court Summary, there were 371 misdemeanor child endangerment charges and 22 felony child endangerment charges filed in 1998, for a total of 393 child endangerment cases. Assuming that Franklin County is 9 percent of the state population, LBO projects that there are around 4,122 misdemeanor child endangerment and 244 felony child endangerment charges filed annually. This estimate assumes that law enforcement and prosecutorial practices are the same statewide as in Franklin County, and likely as a result over- or under-estimates the actual volume of cases to some degree.

By enhancing child endangerment cases resulting in serious physical harm from a third-degree felony to a second-degree felony, existing criminal cases may become more problematic to resolve. No new cases are expected to result from this penalty enhancement. However, adjudication, prosecution, and indigent defense costs may increase as the stakes of the trial are elevated.

As second-degree felony offenses carry a presumption for imprisonment, it is possible that a few hundred offenders who would not otherwise have been sentenced to a DRC facility will be sentenced to prison annually. Up to 100 felony offenders who currently are committed to DRC annually for child endangerment would receive longer lengths of stay, adding to DRC's incarceration costs as well.

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. As mentioned in previous sections of this analysis, 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 2nd or 3rd degree felonies if serious injury to the child results.

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 felony already dealt with by county courts of common pleas. At this point, it remains unclear whether or not the designation of this offense as a first-degree felony 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.

By enhancing child endangerment cases resulting in serious physical harm from a third-degree felony to a second-degree felony, existing criminal cases may become more problematic to resolve. No new cases are expected to result from this penalty enhancement, but LBO expects that this penalty enhancement will potentially affect a relatively large pool of child endangerment cases. Adjudication, prosecution, and indigent defense costs may increase as the stakes of the trial are elevated.

Since the number of cases affected by the provisions of the bill addressing permitting child abuse may also be relatively large, there may be additional 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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