

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: H.B. 202

DATE: April 19, 1999

STATUS: As Introduced

SPONSOR: Rep. Winkler

LOCAL IMPACT STATEMENT REQUIRED: No Minimal cost

CONTENTS: To expand the offense of tampering with records to also prohibit tampering with any package or receptacle containing dangerous drugs or the contents of any such package or receptacle, to prohibit treatment in lieu of conviction for a person charged with violating this new prohibition, and to increase the penalty for tampering with records or drugs when it involves records required to be kept under the drug laws

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Minimal increase	Minimal increase	Minimal increase
Reparations Fund (a.k.a. Victims of Crime Fund)			
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.

- The total annual inmate population in the custody of the Department of Rehabilitation and Correction (DRC) will rise as a result of offenders being sentenced to terms of imprisonment who would not otherwise have been shipped to prison. DRC's annual incarceration costs and post-release control supervision costs will increase as a result, but the amount of those cost increases is likely to be minimal given the likelihood that only a few offenders will be affected.
- A potential negligible annual gain in revenue to the Reparations Fund (a.k.a. Victims of Crime Fund) is expected to result from the elevation of a small number of first-degree misdemeanor (M1) cases to felony status. The locally-collected state court costs for a misdemeanor offense is \$9, while that for a felony is \$30.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
Counties			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Negligible effect	Negligible effect	Negligible effect
Municipalities			
Revenues	Potential negligible loss	Potential negligible loss	Potential negligible loss
Expenditures	Negligible decrease	Negligible decrease	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.

- *Expenditures:* Counties will experience some additional criminal processing costs (adjudication, prosecution, indigent defense as applicable, and offender sanctioning) as certain misdemeanor cases are elevated to felony status. Conversely, some municipalities will be relieved of these criminal processing costs as those misdemeanor cases are shifted to the felony system. The amount of these shifted costs is assumed to be negligible as the number of cases involved is likely to be small. Also, the bill enhances the existing felony penalty for drug tampering, which will affect a few offenders annually and actually may decrease a county’s case processing costs as some offenders will be more likely to bargain with prosecutors. LBO estimates that the net fiscal effect on counties of both of these provisions of the bill will be negligible.
- *Revenues.* Counties will experience a potential gain in revenue from court costs and fines as certain misdemeanors are elevated to felony status. Similarly, some municipalities also will experience a loss in court cost and fine revenues. However, LBO estimates that the amounts involved will be negligible at most.

Detailed Fiscal Analysis

Provisions of the Bill

The bill makes four changes in the Ohio Revised Code concerning tampering with drug packaging or tampering with drug record tampering. Specifically, the bill:

- expands the offense of tampering with records to also prohibit tampering with any package or receptacle containing any dangerous drug, or with the contents of any package or receptacle containing any dangerous drug, with the purpose to defraud or facilitate fraud and without the valid order of a licensed prescriber in the normal course of professional practice;
- enhances the penalty for tampering with records when the records are required to be kept by the Controlled Substances Laws or the Pharmacy and Dangerous Drug Laws;
- renames the offense of tampering with records to be “tampering with records or drugs” and includes this offense within the definition of “drug abuse offense” when the violation involves any records required to be kept by under drug laws or involves any package or receptacle containing any dangerous drug, or the contents of any package or receptacle containing any dangerous drug; and
- removes the option to require treatment in lieu of conviction for offenders charged with the offense of tampering with records or drugs.

Number of Cases Affected

LBO estimates that the number of cases affected annually statewide will be under 50, but the precise number cannot be predicted. Records maintained by the Ohio Pharmacy Board (OPB), a law enforcement agency and professional licensing board, indicate that approximately 12 cases occur statewide each year. During calendar years 1994-1998, OPB investigated 412 cases of theft of dangerous drugs in nursing home, pharmacy, and hospital settings. Sixty-one of the 412 cases documented over five years involved documented tampering with a drug product package or receptacle. Municipal law enforcement agencies also investigate such offenses. These cases currently are prosecuted as fourth-degree felonies (F4) under state drug theft law (O.R.C. section 2913.02) and as such are subject to the drug abuse offense sentencing option of treatment in lieu of conviction.

Drug Record Tampering: Fiscal Consequences

The bill elevates to the felony level the offense of tampering with records when the records involved in the violation are records required to be kept by the Controlled Substances Laws or the Pharmacy and Dangerous Drug Laws. Currently, offenders who tamper with records required to be kept by drug laws may be prosecuted under the records tampering statute as a first-degree misdemeanor (M1), which carries a maximum penalty of no more than six months in jail and a maximum fine of \$1,000. The bill specifies that records tampering involving records required to be kept by the Controlled Substances Laws or the Pharmacy and Dangerous Drug Laws is a fifth-degree felony (F5). An F5 carries a determinate prison sentence of between six and 12 months, with guidance against prison, and a maximum fine of \$2,500.

As a result, cases currently handled as misdemeanors may shift to the courts of common pleas as felony cases. LBO estimates that the number of cases and offenders so affected will be very small, at most mirroring the total number of cases affected by the bill (estimated at fewer than 50 annually). The magnitude of the effect should be further diminished by the likelihood that most instances of drug records tampering will occur in violation of the existing drug theft statute or the new offense of drug package/contents tampering created by the bill, which are fourth- and second-degree felonies respectively.

This shifting of a criminal offense from a misdemeanor to a felony carries fiscal consequences, as the latter are typically more expensive for various components of a local criminal justice system (law enforcement, prosecution, indigent defense, adjudication, and sanctioning) to process. Felonies also carry higher maximum fine amounts compared to the maximum fine amounts associated with misdemeanors. The result of the criminal offense shifting that will occur as a result of this provision of the bill, in combination with local charging practices, certain municipalities will shed some of these processing costs and lose court cost and fine revenue. Conversely, the case processing costs for counties increase and opportunities for court cost and fine revenue are created. The amount of these shifted and increased expenditures and revenues, however, is likely to be negligible for counties and municipalities as the number of cases involved is likely to be small.

Tampering with Drug Packaging or Contents: Fiscal Consequences

By expanding the offense of tampering with records to also prohibit tampering with any package or receptacle containing any dangerous drug, or with the contents of same, with the

purpose to defraud or facilitate fraud and without the valid order of a licensed prescriber, the bill provides a different method for prosecuting certain drug thefts.

Currently, most cases involving tampering with a drug package or receptacle or the contents of a drug package or receptacle are prosecuted as theft of drugs, a felony of the fourth degree (F4). An F4 carries a potential determinate prison sentence of between six and 18 months and a maximum fine of \$5,000. However, under current statute, if the offender has a drug dependence that was a factor leading to the commission of the violation, and the court determines that rehabilitation through treatment would substantially reduce the likelihood of additional criminal activity, and the offender enters a plea of guilty or no contest and requests treatment in lieu of conviction, the court will order treatment in lieu of conviction. Offenders are liable for the costs of such treatment. If an offender successfully completes a treatment program, and the treatment facility or program reports that the offender is rehabilitated, the court dismisses the charges pending against the offender.

The bill specifies that tampering with any dangerous drug product package or receptacle or its contents, with the purpose to defraud or facilitate fraud and without the valid order of a licensed prescriber, is a second-degree felony (F2). Sentencing guidelines at the F2 level include a presumption for prison with a determinate sentence ranging from 2 and 8 years and a maximum fine of \$15,000. Moreover, the bill removes the option to require treatment in lieu of conviction for offenders charged with the offense of tampering with records or drugs. Consequently, some number of offenders will be sentenced to prison under the bill who currently are prosecuted at the F4 level and receive treatment in lieu of conviction. State expenditures associated with incarceration and post-release control will increase minimally as only a few additional offenders will be sentenced to prison annually; local sanctioning costs will decrease as a result. However, LBO believes that more offenders are likely bargain with prosecutors when faced with the enhanced penalty proposed in the bill, which should decrease county expenditures associated with the processing of drug package tampering cases.

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