

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	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 and as cases currently prosecuted as fourth-degree felonies under the theft of drug law are elevated to second- or third-degree felonies under the new drug tampering offense. 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 Revised Code concerning tampering with drug records and adulterating or altering drug product packaging:

1. **New Offense:** The bill creates the felony offense of tampering with drugs, with an exemption for manufacturers, practitioners, pharmacists, nurses and other persons in the lawful conduct of their business, and with an affirmative defense that the drug in question was legally prescribed for the defendant's use.
2. **Penalty Enhancement:** The bill 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 (O.R.C. Chapters 3719. and 4729., respectively).

3. Expanded Definition of Drug Abuse Offense: The bill includes within the definition of “drug abuse offense” the offense of tampering with records that are required to be kept under drug laws.
4. Limitation on “treatment in lieu of conviction”: The bill removes the option to require treatment in lieu of conviction for drug abuse offenders charged with the offense of tampering with drugs in cases in which the violation resulted in physical harm to any person.

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 (ORC 2913.02) and as such are subject to the drug abuse offense sentencing option of treatment in lieu of conviction.

Penalty Enhancement: Drug Record Tampering

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, an offender who tampers with records required to be kept by drug laws may be prosecuted under the records tampering statute, ORC 2913.42, 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 drug record tampering 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 record tampering will occur in violation of the existing drug theft statute or the new offense of drug tampering created by the bill, which are fourth- and third-degree felonies, respectively.

This shifting of a criminal offense from a misdemeanor to a felony carries fiscal consequences, as felony cases typically involve greater expense for various components of a local criminal justice system (law enforcement, prosecution, indigent defense, adjudication, and sanctioning). Felonies also carry higher maximum fine amounts compared to the maximum fine amounts associated with misdemeanors. As a result of the criminal offense shifting that will occur under 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 will 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.

New Offense: Drug Tampering

The new offense of drug tampering prohibits adulterating or altering any dangerous drug or dangerous drug package or receptacle, as well as prohibits substituting any dangerous drug with another substance or substituting any dangerous drug package or receptacle containing any dangerous drug with another package or receptacle.

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 drugs is a third-degree felony (F3) unless the violation results in physical harm to a person. All of the cases of drug tampering investigated by OPB have involved narcotics and were discovered when patients complained of unabated pain; OPB estimates that in half of the cases prosecutors will be able to demonstrate physical harm resulted from the violation. Sentencing guidelines at the F3 level include a determinate sentence ranging from 1 to 5 years and a maximum fine of \$10,000. If the violation involves physical harm to a person, tampering with drugs becomes a second-degree felony (F2) under the bill. Sentencing guidelines at the F2 level include a presumption for prison with a determinate sentence ranging from 2 to 8 years and a maximum fine of \$15,000. In addition, the bill removes the option to require treatment in lieu of conviction for offenders charged with tampering with drugs in cases in which the violation caused physical harm to a person.

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 to bargain with prosecutors when faced with the enhanced penalty proposed in the bill, which should decrease county expenditures associated with the processing offenders who tamper with a drug product or packaging.

Menacing and Stalking

The bill also amends section 2919.271 and section 2903.211 of the ORC, contingent on Am. Sub. H.B. 137 of the 123rd General Assembly becoming law, as concurred in on June 24, 1999, relative to the offense of menacing by stalking and to declare an emergency. Am. Sub. H.B. 137 changed the penalty for menacing by stalking in cases involving a prior conviction for menacing by

stalking from an F5 to an F4, in certain conditions. The bill removes one condition that merited an F4 on prior conviction, namely in cases where the offender was previously found to be a mentally ill person subject to hospitalization by a court order, or the offender was voluntarily admitted. It adds the condition, merited an F4, that prior to committing the offense the offender had been determined to represent a substantial risk of physical harm to self or others as manifested by certain evidence. The bill also provides permissive authority for the court to order a mental examination of the defendant. The court shall order the mental examination of the defendant before it sets bail. These changes will have a negligible fiscal effect in that it is likely that relatively few cases will be affected.

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