

- This bill authorizes DRC to impose "bad time" and other sanctions on prisoners who have failed consecutive drug tests. DRC is able to impose these sanctions under current policy; therefore, no fiscal effect is determined to result from this provision.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
Counties			
Revenues	Negligible gain	Negligible gain	Negligible gain
Expenditures	Minimal effect	Minimal effect	Minimal effect
Municipalities			
Revenues	Negligible gain	Negligible gain	Negligible gain
Expenditures	-0-	-0-	-0-

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

- Some counties will experience a minimal decrease in annual expenditures, as a small number offenders are sentenced to prison rather than being sanctioning locally as would have been the case under current law. On the flip side, as the bill's penalty enhancement does make a prison sentence possible in these cases, it presumably raises the stakes for the prosecution and defense, and as a result, may increase the cost to resolve some of these cases. The net fiscal effect of these contrasting fiscal effects on counties, though uncertain, will be minimal.
- Counties may experience negligible gains in fine revenue through enhancing felony penalties for illegal conveyance of drugs.
- LBO believes that the bill's provisions for local entities to collect the costs of drug testing from offenders essentially clarifies authority that these entities most likely already have under the state's existing cost recovery mechanisms. If true, then the amount of additional annual revenue that municipal and county entities collect annually would be negligible, especially in light of the fact that many offenders are indigent, making collection problematic.

Detailed Fiscal Analysis

Drug Testing Provisions

This bill permits the Department of Rehabilitation and Correction (DRC) to contract with private laboratories to randomly drug test prisoners in state correctional institutions. Presumably, DRC would not choose to contract with private laboratories unless they could provide the same services DRC currently provides at lower rates. While this is not likely to happen in the foreseeable future, a potential savings could result if a private vendor could do so and DRC chose to contract with them. Prisoners who test positive for drug use may be required to reimburse DRC for drug testing expenses. DRC

would also be required to adopt rules guiding random drug testing in state correctional institutions, including the imposition of sanctions on prisoners who fail drug tests.

The bill also permits: (1) county and municipal authorities to randomly drug test prisoners in county facilities; and (2) the Adult Parole Authority and local probation departments to require certain offenders to submit to random drug testing and to pay for positive tests. Local authorities may choose to apply the state's existing "pay-to-stay" law, in which case offenders could be required to reimburse the authorities for the cost of drug tests.

DRC Inmate Drug Testing Policies

DRC currently drug tests in four ways:

1. A five percent random sample of the population per month.
2. For cause (reasonable suspicion of drug use exists).
3. As part of treatment programs.
4. As part of statistically valid annual saturation level testing.

In 1996, DRC tested 53,466 specimens using in-house testing at the laboratory at the Corrections Medical Center. Typically, a 6-panel drug test is administered, which tests for the presence of marijuana, cocaine, opiates, benzodiazepines, amphetamines, and alcohol in urine. The cost to DRC for in-house testing for each drug is \$0.51, so a 6-panel drug screen on a specimen costs \$3.56. Around last April or so, LBO believes these testing costs dropped to \$0.38 per drug, with a cost of \$2.28 per 6-panel test.

In FY 1998, DRC subjected around 60,000 specimens to its 6-panel test. Approximately half, or 30,000, of these tests were random. Three percent of the specimens were positive for drug use, and DRC policy required that a confirmation screening be performed. This confirmation was done at a cost of \$1.25 per positive, with a total approximate annual cost of \$1,125 for confirmations (30,000 specimens x .03 testing positive x \$1.25).

The total annual cost to the GRF for DRC to do in-house drug testing randomly, for cause, as part of treatment, and saturation level testing is currently estimated to be \$215,850. With the cost of in-house drug testing down to \$2.28 per 6-panel test, the total annual cost for DRC in-house random testing dropped to approximately \$69,525 with confirmations.

A rough estimate of the costs for similar services if they were to be provided Substance Abuse and Mental Health Services Administration (SAMSA) certified private vendors is displayed in Table 1 below.

Table 1: Comparison of Estimated Random Drug Testing Costs*

Drug Testing Costs	Provider				
	DRC	Vendor A	Vendor B	Vendor C	Vendor D
Cost of 6-panel test per specimen	\$3.56	\$15.00 to 20.00	\$10.00 to 12.00	\$12.50**	\$13.00 to 22.00
Cost per confirmation of negatives	\$1.25	\$25.00 to 50.00	\$25.00	**	\$50.00

Estimated yearly random testing cost	\$107,925	\$472,500 to \$645,000	\$322,000 to \$382,500	\$375,000	\$435,000 to \$705,000
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*Assumes that approximately 30,000 specimens will be screened per year, with three percent, or 900 specimens, testing positive for drug use (as reported by DRC)

**Vendor C's panel test cost includes confirmation of negatives.

Under current conditions, if DRC were to give up responsibility for random testing of inmates, contracting with an outside vendor for testing services would result in a net annual additional GRF cost of \$225,000 to \$600,000. LBO assumes that DRC would not elect to contract with outside vendors unless these vendors could provide random drug testing services at a rate lower than DRC can do so. We also assumed that, regardless of whether or not this bill takes effect, DRC could contract with private laboratories to provide these services, much as they would contract to acquire other medical services from private vendors.

This bill also permits DRC to require inmates to pay drug-testing fees in the event that testing indicates drug abuse. However, it is estimated that 75 to 90 percent of inmates are indigent. Collection of such fees will most likely be problematic. In addition, it is LBO's belief that, under the state's existing cost reimbursement mechanisms, DRC could already try to collect such fees if it chose to do so. Thus, we believe that little, if any, additional revenue will be collected annually. The bill credits any fees collected to DRC's Offender Financial Responsibility Fund.

Additionally, the bill requires DRC to establish a policy for sanctioning inmates who fail drug tests. As DRC currently has a policy of graduated sanctions applicable to inmates who fail drug screenings, including treatment, revocation of good time, and imposition of bad time, this provision of the bill carries no fiscal effect.

Adult Parole Authority Drug Testing Policies

This bill codifies existing practice in permitting the Adult Parole Authority (APA) to require random drug testing of prisoners. APA receives funds for drug testing from the GRF and participates in random and nonrandom testing of inmates. APA now tests parolees under its supervision in-house. Currently, a 3-drug panel test is used at a cost of \$2.94 per test (\$0.98 per drug). APA has tested 47,132 specimens in the last half of FY 1997. Therefore, it may be assumed that APA collects and tests approximately 94,000 specimens yearly. Costs to the GRF include \$356,233 for testing equipment and supplies and \$152,000 for lab technicians per year, with a total annual cost of \$508,233.

This bill is not expected to change existing APA practices, so no fiscal impact to the APA is anticipated. The bill permits DRC to compel the offender to reimburse the state for positive drug testing fees, with all moneys collected being deposited into the Offender Financial Responsibility Fund. It is LBO's belief that, under the state's existing cost reimbursement mechanisms, DRC could already try to collect such fees if it chose to do so. In addition, a substantial percentage of these offenders tend to be indigent. Thus, we believe that the annual revenue gain for the Offender Financial Responsibility Fund will be negligible.

Local Drug Testing Policy

On the local level, drug testing occurs most often in probation, rather than in custody settings. As an example, the Franklin County Probation Authority participates in non-random in-house drug

testing at the probation officer's discretion. Last year, the Franklin County Probation Authority performed 46,976 tests, at a cost of \$1.65 per test. This year, they expect to perform 64,000 tests. The annual budget for these services is approximately \$170,000. The existing policies of the Franklin County Probation Authority and similar agencies are not anticipated to be affected by this bill.

This bill is permissive to county and municipal authorities. Offenders could be required to reimburse county and municipal authorities for positive drug tests pursuant to the state's existing "pay-for-stay" law. These local entities would then have the option to deposit this revenue into a sanction cost reimbursement fund or a general fund. As we believe that local authorities could seek such reimbursements under through existing cost recovery mechanisms if they so chose, and many offenders tend to be indigent, the amount of additional annual revenue that might be collected as a result of the bill will be negligible. If anything the bill would clarify the authority of certain local entities to charge for the cost of drug testing.

Illegal Conveyance Provisions of the Bill

Under current law, illegal conveyance of a drug of abuse onto the grounds of a mental health facility, Mental Retardation and Developmental Disabilities facility, or a detention facility (which includes local jails, Department of Rehabilitation and Correction institutions, and Department of Youth Services facilities) is a felony offense. If the offender is an officer or an employee of the facility, the offense is a fourth-degree felony, punishable by a prison term of between 6 and 18 months and a fine not to exceed \$5,000. If the offender is not an officer or employee (hereinafter referred to as "visitors"), the offense is a fifth-degree felony, punishable by a prison term of between 6 and 12 months and a fine not to exceed \$2,500.

The bill elevates by the existing penalty for the aforementioned felony offenses by one degree as follows: (1) employees and officers from a fourth to a third-degree felony, punishable by a prison term of 1 to 5 years and a fine not to exceed \$10,000; and (2) visitors from a fifth to a fourth degree felony, punishable by a prison term of 6-to-18 months and a fine not to exceed \$5,000. Under existing law, which is unchanged by the bill, if the offender is a Department of Rehabilitation and Correction (DRC) officer or employee, violation of this prohibition carries a mandatory prison term.

Arrests & Convictions

Arrests. Based on discussions with the State Highway Patrol, who are responsible for investigating such offenses occurring on state grounds, and the Buckeye Sheriffs' Association, a group familiar with operations of county jails, LBO believes that violations of this prohibition are not uncommon occurrences at state and local correctional facilities.

Data produced by the State Highway Patrol suggests that the number of arrests made annually for illegal conveyance of drugs onto the grounds of state institutions is around 80. The vast majority of those arrested are visitors. Approximately 5 percent or so of those arrested are typically employees.

Discussions with the Buckeye State Sheriffs' Association indicate that illegal conveyance offenses in jails are at least as prevalent as in state institutions, with 25 to 30 such incidents occurring in

a medium-sized jail annually. As is the case at DRC institutions, the vast majority of these offenders are visitors rather than employees. With there being well over 250 local jails (a mix of full-service, minimum security, 5-day, and 8-hour facilities) in Ohio, LBO believes it very likely that at least as many total incidents of illegal conveyance occurring in jails annually statewide as there are in state institutions. The number of such offenses varies by size of the jail in question, but LBO believes that these totals at least equal, and may exceed, the annual arrests for state institutions.

For the purposes of this analysis, we assume that the number of illegal conveyance arrests occurring at both state and local institutions number nearly 200 annually, and we believe that most of these offenses involve visitors. As a result of this admittedly very rough estimating process, we believe that the bill could affect as many as 200 cases involving visitors and another handful involving employees caught conveying illegal drugs into state or local facilities.

Convictions. DRC has analyzed its available data on the sanctioning of those convicted of illegal drug conveyance and estimated that, for a recent one-year period, that number was around 50. Of that estimated number of offenders, close to 30 were sentenced to prison and slightly over 20 were sentenced to a community sanction.

We are left then with this gap between our estimated number of annual arrests (around 200) and DRC's estimate of the number of recent convictions (around 50). At least two reasons for this gap in data seem intuitively plausible. First, DRC's database is most likely not picking up all of the offenders who are being sanctioned locally; their data is most likely only catching offenders who are being sanctioned in local programs that receive state funding. Second, and perhaps more significantly, is the very real possibility that some offenders, for whatever reason, are being convicted a less serious possession offense.

Generally, there is a presumption against sending offenders to prison for a felony of the fourth or fifth degree and no presumption for-or-against a prison sentence in the case of a felony of the third degree. By elevating these existing illegal conveyance offenses to a felony of the third-degree, it is likely that three effects will occur: (1) some offenders currently receiving little or no jail time will do some or more time in jail; (2) some offenders currently being sanctioned locally, including stays in jail, will receive prison sentences of at least six months; and (3) some offenders currently being shipped to prison will serve longer sentences.

Table 2, which appears below, summarizes our estimate of the impact of the bill's proposed penalty enhancements on the state's prison population. We've essentially broken down the estimated number of offenders convicted annually of illegal conveyance (50) into three groups: (1) an estimated 20 offenders whose penalty would increase from a fifth- to a fourth-degree felony and who are sanctioned locally under current law; (2) an estimated 27 offenders whose penalty would increase from a fifth- to a fourth-degree felony and who are sentenced to prison under current law and; (3) an estimated 3 offenders whose penalty would increase from a fifth- to a fourth-degree felony and who are sentenced to a mandatory prison term under current law. The table also contains our estimate of the average length of stay in prison under current law for two of the three groups. For the third of the three groups, the 20 offenders annually we've assumed are sanctioned locally, the table shows a "N/A" since they are not sentenced to a term in prison under current law.

Table 2: Estimated Impact on Prison Population

Penalty Enhancement	Current Sanction	Number of Offenders	Average LOS (in months)	Additional Months Served	Total Additional Months
F5 to F4	Local	20	N/A	11.4	228.0
F5 to F4	Prison	27	8.4	3.0	81.0
F4 to F3	Prison	3	11.4	15.0	45.0
					354.0

*LOS denotes the current estimated average length of stay in prison for F5s and F4s.

From Table 2, the reader can see that we've calculated the additional number of months in prison that an offender in each of the three groups would be serving as a result of the bill's penalty enhancements (column labeled "Additional Months Served"). The table's last column displays the total number of additional months in prison associated with each of the three groups, which is simply the *number of offenders in a group multiplied by the additional months served*.

The sum of the total number of additional months served in prison for each of the three group (354.0) allows us to then estimate the increase in DRC's annual incarceration costs. That number (354.0 additional months) divided by 12 delivers an estimate of the number of additional inmate beds that DRC will need annually. Based upon all of these assumptions, we estimate that DRC will need 30 additional beds annually to house these offenders ($354.0 \text{ months} / 12 = 29.5$ additional inmate beds). We also assume that the fiscal impact of these additional beds on DRC will only affect its marginal incarceration costs (currently estimated at \$4,000), which translates into an increase in DRC's annual incarceration costs of \$120,000 (30 beds x \$4,000).

A caveat is in order. This \$120,000 estimated annual fiscal effect on DRC's incarceration costs should probably be seen as a worst-case scenario. We have assumed for the purposes of this fiscal analysis that all 20 of the estimated felony offenders being sanctioned locally under current law will be sentenced to a prison term as a result of the bill's penalty enhancement provisions. Given the existing statutory guidance for the sentencing of an offender convicted of fourth- and fifth-degree felonies is generally identical, it is highly likely that some of these offenders will continue to be sanctioned locally as a result of the bill and not be sentenced to a prison term simply because the penalty is enhanced by one degree.

Mention also should be made of the fiscal effects on DRC's post release control supervision costs, that is the period of time after release from prison during which an offender is subject to monitoring by the department's Adult Parole Authority (APA). We believe that the resulting additional cost to the APA will be minimal, most likely totaling well under \$100,000 annually.

Local Fiscal Effects

Sanctioning Costs. Counties may experience some minimal savings by sending these offenders to prison, rather than sanctioning them locally. LBO expects that these savings will vary by jurisdiction, dependent upon existing prosecution, bargaining, and sentencing practices. Based upon information that we have gleaned from DRC's community sanctions program, each offender that is sentenced to prison rather than being sanctioned locally probably saves a county close to \$5,000 annually. In some

jurisdictions, annual sanctioning costs may actually rise slightly, as some offenders will continue to be sanctioned locally, but more harshly, including longer stays in jail.

Case Processing Costs. County criminal justice systems may incur increased case-processing costs, in particular prosecutors and indigent defense counsel. By enhancing the penalties for these offenses, the stakes of the trial and subsequent imprisonment possibilities are considerably raised. LBO anticipates that some cases may take more time to resolve, and perhaps go to trial, which would not have happened under current law. A jury trial alone can add another \$1,400 to the cost of disposing of a criminal case.

Fine Revenue. Counties may experience negligible increases in fine revenue associated with the bill's penalty enhancement provisions. Under current law, the maximum allowable fines for fifth- and fourth-degree felonies, respectively, are \$2,500 and \$5,000. As a result of the bill's penalty enhancement provisions, the maximum permissible fines rise to \$5,000 (fourth-degree felony) and \$10,000 (third-degree felony). LBO assumes, however, that the overwhelming majority of these offenders are not very wealthy individuals. Thus, we would anticipate that the increase in annual felony fine revenue being deposited into county treasuries would be negligible.

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