

# Fiscal Note & Local Impact Statement

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

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BILL: H.B. 351 DATE: November 11, 1999  
STATUS: As Introduced SPONSOR: Rep. Luebbers  
LOCAL IMPACT STATEMENT REQUIRED: No — Minimal cost  
CONTENTS: Creates the offense of partial birth infanticide

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## State Fiscal Highlights

STATE FUND	FY 2000*	FY 2001	FUTURE YEARS
<b>General Revenue Fund</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase

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

\*Assumes no fiscal effects will be felt until start of FY 2001

- LBO believes the bill's provisions would discourage persons from performing or attempting to perform this type of abortion and alternative methods would be likely to be used in place of this specific procedure. Therefore, any state fiscal effects are estimated to be minimal and are likely to occur intermittently.
- The bill results in a potential minimal increase in the Department of Rehabilitation and Correction's (DRC) incarceration costs for the offenders sentenced to prison for violating the prohibition of partial birth infanticide, a felony of the second degree.

## Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000*	FY 2001	FUTURE YEARS
<b>Counties</b>			
Revenues	- 0 -	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase
<b>Other Local Governments</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase

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

\*Assumes no fiscal effects will be felt until start of FY 2001



- The potential fiscal effects to counties include prosecution and adjudication costs for the felony level offense created by the bill. In addition, counties could potentially incur incarceration costs for offenders held at the county level.
- Civil cases potentially would fall to the county level, either county-run municipal courts or common pleas courts depending on the amount of the case, which would result in a minimal increase in expenditures.
- Counties may experience minimal gains in fine revenue through the creation of this offense.
- LBO believes the bill's provisions would discourage persons from performing or attempting to perform this type of abortion and alternative methods would be used in place of this specific procedure. Therefore, any fiscal effects are estimated to be minimal and are likely to occur intermittently.

## ***Detailed Fiscal Analysis***

### **Provisions of the bill**

The bill prohibits a person from doing both of the following, except when necessary to save the life of the mother when the mother's life is endangered by a physical disorder, illness, or injury or when the mother's life is endangered by a problem occurring during an abortion or delivery:

- (1) Purposely causing the partial birth of a living child for the purpose of killing the child when the child is partially born;
- (2) After the partial birth of the child, purposely killing the child by a second overt act that is performed when the child is known to be a living child and is known to be partially born.

A person who violates this prohibition is guilty of partial birth infanticide, a felony of the second degree (sec. 2929.151 (B) and (C)).

### **Civil Action**

Under the bill, the father of a child who is killed by partial birth infanticide or the parent of the woman (if the woman is not 18 years of age or older at the time of the commission of the offense) may commence a civil action for compensatory, punitive, or exemplary damages (including court costs and attorney fees) against the person who committed the offense of partial birth infanticide. There are potential fiscal effects associated with the costs of court hearings for civil cases, which are estimated to minimally impact counties and municipalities.

### **Exception**

A pregnant woman whose child is killed as a result of a violation of the prohibition is not guilty of committing, attempting to commit, complicity in the commission of, or conspiracy in the commission of a violation of the prohibition.

## **Performing Partial Birth Infanticide**

The procedure which would constitute partial birth infanticide is most commonly performed between 20 and 27 weeks gestation. According to the Department of Health, there were around 950 reported abortions in 1998 performed in the state after 20 weeks gestation, which includes other methods of abortion. The partial birth abortion technique is not the only procedure that doctors can use at this stage of pregnancy, alternatives do exist.

The Ohio State Medical Board has no regulation regarding this procedure, but if it becomes an illegal method for abortion, disciplinary action will be taken against any physician in violation of the law. This action will most likely be a low cost case for the board. However, the board believes if the offense of partial birth abortion becomes law it will have a great deterrent effect on the physicians who currently use this procedure, thus limiting the costs of potential disciplinary action.

Currently, the state of Wisconsin has a partial birth abortion law similar to the proposed bill. The Wisconsin Department of Justice indicated since the effective date of the law (May 1998), no physician has been convicted of a violation of this new crime.

A violation of section 2919.15(B) of the Revised Code (which is the offense of partial birth infanticide) is a felony of the second degree. An offender found guilty of this offense could potentially be sentenced to a term of imprisonment of between two and eight years, in addition to a fine of up to \$15,000. Any fine revenue collected would flow to the county treasurer.

There is a presumption for prison for a felony of the second-degree offense. As the bill would likely only result in a very small incremental addition to the prison population, each additional inmate would only add to the marginal costs of operating the prison system. The marginal cost of adding one additional inmate to the prison system is approximately \$4000 per year. Thus, the total annual cost of incarceration would be this amount multiplied by the number of offenders serving time for the offense of partial birth infanticide.

LBO believes that the bill's provisions would discourage persons from performing or attempting to perform this type of abortion and alternative methods would be used in place of this specific procedure. Also, given that the offense may not be commonly reported due to patient confidentiality and the small number of medical persons present during the procedure, it is unlikely that a significant number of violators will be prosecuted for the offense. Therefore, any fiscal effects are estimated to be minimal and are likely to occur intermittently.

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