Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL:	**H.B. 357**	DATE:	**November 9, 1999**
STATUS:	**As Introduced**	SPONSOR:	**Rep. Cates**
LOCAL IMPACT STATEMENT REQUIRED:	**No**	**Minimal cost**	
CONTENTS:	**Enhances penalties for offenders who illegally convey drugs onto the premises of detention, mental health, or MRDD centers**		

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	No fiscal effect*	Up to $200,000 increase	Up to $200,000 increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.
*Assume bill's fiscal effects will not be felt by the state until FY 2001.

- As a result of the bill, it is likely that around 20 offenders who would not otherwise have gone to prison will do so under the bill, and that another 30 offenders sentenced to prison under current law will serve longer sentences. The resulting annual increase in the Department of Rehabilitation and Correction's marginal incarceration costs will be up to $200,000.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
Counties			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Minimal effect	Minimal effect	Minimal effect

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.

Detailed Fiscal Analysis

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 (i.e., a visitor), 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 the penalty for employees and offenders who are not employees of the facility (visitors) to the third-degree felony level, punishable by a prison term of 1 to 5 years and a fine not to exceed $10,000. 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.

State Fiscal Effects

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 one year; and (3) some offenders currently being shipped to prison will serve longer sentences.

Building from DRC's analysis, we've assumed that: (1) around 30 offenders annually that are already being sentenced to prison under current law will stay, on average, anywhere from 5-to-11 additional months as a result of the bill; and (2) around 20 offenders annually who would have otherwise been sanctioned locally will sentenced to prison stays that run anywhere from 12 month to 1.84 months; the latter being the average time served in prison for a felony of the third degree. Based upon our assumptions, DRC will need from 34 to 50 additional beds to house these offenders. If we further assume that the fiscal impact of these additional beds on DRC only affects its marginal incarceration costs (estimated at $4,000), then each of these beds will cost the department in the range of $136,000 (34 beds x $4,000) to $200,000 (50 beds x $4,000) 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.

Case Processing Costs. On the flip side, county criminal justice systems may also 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 trail 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 penalty enhancement. Under current law, the maximum allowable fines for fifth- and fourth-degree felonies, respectively, are $2,500 and $5,000. Under the bill's elevation of illegal conveyance to a third-degree felony, the maximum permissible fine rises to $10,000. 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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