Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **S.B. 9** DATE: **February 3, 1999**

STATUS: **As Introduced** SPONSOR: **Sen. Mumper**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Requires the court to consider as an aggravating factor in determining an offender's sentence that the offender committed domestic violence or assault in the sight or hearing of certain children**

State Fiscal Highlights

STATE FUND	FY 1999	FY 2000	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Increase, depending on rise in prison intake and lengths of stay	Increase, depending on rise in prison intake and lengths of stay	Increase, depending on rise in prison intake and lengths of stay

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

- The bill's felony sentencing guideline will extend existing prison stays and ship additional offenders to prison. As a result, the Department of Rehabilitation and Correction's (DRC) annual incarceration and post-release control costs will increase. However, as we are unable to predict how all of the sentencing courts around the state will respond to this change in law, we cannot estimate how much DRC's annual cost of doing business will increase.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Increase, depending upon number of affected cases	Increase, depending upon number of affected cases	Increase, depending upon number of affected cases
Municipalities			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Increase, depending on number of affected cases	Increase, depending on number of affected cases	Increase, depending on number of affected cases

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

- Counties and municipalities will experience an increase in the annual cost of processing and sanctioning offenders convicted of, or pleading guilty to, domestic violence or assault within the sight or hearing of certain children. As we are unable to predict how all of the state's sentencing courts will respond to the bill's

felony and misdemeanor sentencing guidance in these matters, we are unable to estimate the magnitude of this increase.

Detailed Fiscal Analysis

Provisions of the Bill

This bill creates a new aggravating factor for courts to consider in sentencing offenders who are convicted of, or plead guilty to, domestic violence, felonious assault, aggravated assault, or assault under certain circumstances. In determining the sentence, the court is required to consider whether the offense was committed: (1) against a family or household member; and (2) in the sight or hearing of the offender's or the victim's child. Commission of such a crime under these circumstances would be considered as a factor in favor of imprisonment or to lengthen a term of imprisonment that would otherwise have been imposed. The bill also permits the sentencing court to order such offenders to undergo counseling.

Domestic Violence Law and Practice

The offense of domestic violence in section 2919.25 of the Revised Code contains the following three prohibitions:

1. No person shall knowingly cause or attempt to cause physical harm to a family or household member.
2. No person shall recklessly cause serious physical harm to a family or household member.
3. No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

Offenders violating the third prohibition are guilty of a fourth-degree misdemeanor. Those who violate the first or second prohibition are guilty of a first-degree misdemeanor. If the offender has committed previous domestic violence offenses, he or she would be guilty of a fifth-degree felony for violation of the first or second prohibition and guilty of a third-degree misdemeanor for violation of the third prohibition.

According to 1996 statistics available from the Sheriffs' Jail Linkage System (JLS), there were a total of 29,522 domestic violence charges statewide in 1996. These offenders served an average length of stay in jail of 7.55 days. However, a reliance on the count of offenders included in the JLS data would lead one to underestimate the actual number of domestic violence arrests, due to the fact that the JLS excludes municipal jails, as well as what are termed 5-day and 8-hour jails. Large municipal jails, such as those in Dayton and Cleveland, are not required to report to JLS. Their exclusion would result in a significant underestimation of the number of statewide arrests for domestic violence.

The Office of the Attorney General (AGO) maintains a statewide database on the number of domestic violence cases as reported by arresting agencies. For 1996, the last year for which complete data was available at the time of this writing, the total arrests for domestic violence under state law and similar municipal ordinances were 44,393. When this number is compared to the total extracted from the JLS data (29,522), there is a discrepancy of nearly 15,000 cases. LBO

has determined that the AGO's data is a more statistically valid indicator of the number of domestic violence arrests. LBO believes this to be true because the data provided by the AGO is more complete; the JLS data is incomplete, as some local jails are not part of the data collection process. The AGO's data has also directly measured the number of domestic violence arrests through survey of the arresting agencies.

Discussions with municipal court judges and prosecutors indicate that a substantial percentage of domestic violence cases occur with children in the household. Informal estimates of the number of such instances in which children are present range from fifty to eighty percent. If we then use the AGO's 1996 statistics, which suggest that the number of arrests annually for domestic violence is in the neighborhood of 40,000, one can calculate the number of existing domestic violence arrests that could be affected annually by the bill's sentencing provisions would range between 22,000 (44,000 x .50) and 35,200 (44,000 x .80).

Assault Law and Practice

The provisions of this bill also affect the state's three types of assault. Under the bill, if an offender commits felonious assault, aggravated assault, or simple assault in the sight or hearing of the offender's or victim's child, the offender is subject to an aggravating sentencing factor.

Felonious Assault. Under existing section 2903.11 of the Revised Code, no person shall knowingly cause serious physical harm to another or to the another's unborn. This section also prohibits causing or attempting to cause physical harm to another or to another's unborn through use of a deadly weapon or dangerous ordinance. This offense is generally a second-degree felony, with a presumption for prison time. For a second-degree felony, a court may sentence an offender to a determinate prison term of 2 to 8 years and impose a maximum fine of up to $15,000. In addition, such offenders are subject to post-release control, which is a period of supervision by the Adult Parole Authority after release from prison.

Aggravated Assault. Existing section 2901.12 of the Revised Code includes the prohibitions stated in the felonious assault provision (section 2903.11 of the Revised Code), specifically prohibiting the offender knowingly causing serious physical harm to another while under provocation by the victim. Aggravated assault is generally a fourth-degree felony. For fourth-degree felonies, the presumption is that if any of the existing eight aggravating factors in section 2929.12 of the Revised Code is met and the offender is not amenable to another sanction, the offender will receive a prison term. If none of the existing eight aggravating factors are met, the presumption is against imprisonment. Fourth-degree felons may receive a determinate prison term of 6 to 18 months, with a maximum possible fine of $5,000. Post-release control is optional.

Assault. Under existing section 2903.13 of the Revised Code, no person shall knowingly or recklessly cause harm to another or to another's unborn. Under most circumstances, this offense is a first-degree misdemeanor, subject to a jail stay of no more than six months imprisonment and a fine not to exceed $1,000.

Assault Arrests. According to the 1996 JLS data, there were 10,558 arrests for assault, serving an average of 15.02 days in jail. As previously discussed herein with regard to the arrests for domestic violence, the JLS data undercounts the total number of arrests made annually statewide. In the case of domestic violence arrests, the AGO data revealed that the JLS data

undercounted the number of annual arrests by approximately 30 percent. If one then assumes that a similar undercount factor exists in the case of assault arrests, we can adjust the JLS data to arrive at what we hope is a closer approximation of the true number of arrests for assault statewide. Since the JLS data undercounts by around 30 percent, we know that the JLS arrest counts generally represent 70 percent of what the true or actual total number of arrests were. Assuming all of that we can calculate that the "more accurate" number, which is actually an estimate, would be around 15,000 assault arrests (10,558 / .70 = 15,083).

The 1996 JLS data report combines the number of aggravated and felonious assault arrests in its presentation of the data. For 1996, JLS reports that there were 6,501 aggravated and felonious assault arrests. Making the same JLS undercount adjustment performed above, the estimate of the actual total number of arrests statewide for aggravated and felonious assault would be around 9,300 (6,501 / .70 = 9,287).

For the period covering 1996, our massaging of available JLS data suggests that the actual number of arrest for assault statewide was around 24,000. This further suggests that the pool of existing assault cases potentially affected by the bill's sentencing provisions could be quite large. However, even though this looks to be a rather large number of criminal cases, it tells us nothing about the frequency with which these are essentially domestic assaults that occur within the sight or sound of children.

Assaults Within the Sight or Sound of Children. It becomes even more difficult to estimate the number of assaults seen or heard by children where the parent is the offender or victim. Based upon data available to us, as well as the intent of the bill, LBO assumes that the vast majority of cases in which the new sentencing criteria will come into play involve domestic assaults of some sort.

National data available from the 1995 Bureau of Justice Statistics (BJS) Sourcebook may provide us some insight on the characteristics of assault offenses. According to the BJS Sourcebook, 25 percent of aggravated assaults and 26 percent of simple assaults occur at or near the victim's home or lodging. An additional 9 percent of aggravated assaults occur at the home of the victim's friend, relative, or neighbor, and an additional 7 percent of simple assaults occur in this context. These figures would suggest that around 25 percent of assaults in general occur at the victim's home, and another 8 percent occur at the home of people close to the victim. Overall, this would mean that approximately 33 percent of all assaults could be taking place in a context where the offender's or victim's children could easily be within sight or sound of the assault.

Previously, we estimated the number of arrests for assault in 1996 at around 24,000. We just examined the BJS data to suggest that around 33 percent of those assaults might take place in what could be termed domestic settings. Thirty-three percent of those 24,000 estimated assaults in 1996 would be 7,920 (24,000 x .33). This would mean, of the estimated number of statewide arrests for assault in 1996, 7,920 were domestic-related. We also know from our previous discussion of domestic violence that the number of instances in which children are present range from 50 to 80 percent. If we apply those two percentages to the 7,920 assaults that could have been domestic-related, then somewhere between 3,960 (7,920 x .50) and 6,336 (7,920 x .80) of those arrests involve domestic disputes with children within sight or sound.

Local Impact

The bill will not create new cases for the criminal justice system, but its felony and misdemeanor sentencing guidelines will most certainly affect the outcomes in certain domestic violence and assault cases. Certain offenders, whether facing a misdemeanor or felony charge, will get a longer ride in jail or prison and some number of offenders who might not have been prison-bound under current law will be sentenced to a stay in prison as a result of the bill. That said, we have no way at this time of estimating how many of these existing criminal matters will be affected by the bill nor how the sentencing outcomes will differ from what would have occurred under current law.

Case Processing Costs. We have previously estimated that the bill's felony and misdemeanor sentencing provisions, with respect to domestic violence and assaults that occur within the sight or hearing of certain children, could affect the sentencing outcomes in approximately 22,000 to 35,200 domestic violence cases and potentially 3,960 to 6,336 assault cases annually. The sentencing outcomes will differ from current law in that certain offenders will face longer periods of incarceration (jail and prison) as well as the possibility of a prison sentence where a local sanction would have otherwise been imposed. We believe that the possibility of longer periods of incarceration, combined with the need to produce evidence that a particular instance of domestic violence or an assault occurred within the sight or hearing of certain children, will make the resolution of some criminal matters more problematic. Such a result will increase the adjudication, prosecution, and, if applicable, indigent defense, costs incurred by counties and municipalities. We are unable to calculate what those additional case processing costs might amount to annually.

Sanctioning Costs. The annual cost of sanctioning certain offenders locally will rise for counties and municipalities. First, some number of offenders will be incarcerated in a local jail that might not have otherwise under current law and jail stays for others may lengthen as well. On average, offenders served the following time in jail for domestic violence and assaults in 1996:

- Domestic violence: 7.55 days in jail for first offense (first-degree misdemeanor)
- Simple assault: 15 days in jail. FY 1997 prison intake data indicates that 227 such offenders entered prison in that year.

The increased annual incarceration costs incurred by counties will be partially offset by the very real likelihood that some number of offenders will be sentenced to prison that would have otherwise been sanctioned locally. In such an instance, this means that the fiscal burden associated with sanctioning a particular offender will fall on the state rather than the county.

The second fiscal effect lies in the area of non-residential sanctions. The bill provides explicit language empowering a sentencing court to require counseling for offenders convicted of, or pleading guilty to, domestic violence or assault who are sanctioned locally. Although not explicitly referenced as an applicable non-residential sanction under current law, we firmly believe that counseling is most likely already used in many sentencing courts around the state. However, by making its applicability explicit in certain criminal cases, counseling will probably be used even more frequently as a sanctioning tool. The cost of this counseling would be dependent upon its type and duration, which are unspecified in the bill.

As we are uncertain as to how many existing criminal matters will be affected by the bill, and in what way, we are unable to calculate what the additional annual sanctioning costs for counties and municipalities will be.

State Impact

Incarceration and Post-Release Control Costs. The felony sentencing guideline added by the bill will have two likely fiscal effects on the correctional system managed by the Department of Rehabilitation and Correction (DRC). First, it will cause the size of the prison population to rise by: (1) increasing the number of offenders sentenced to prison annually; and (2) extending the length of stay for offenders already being sentenced to prison under current law. The bill will accomplish this by providing more specific felony sentencing guidance to courts suggesting that certain kinds of domestic assaults merit more serious punishment.

On average, offenders sentenced to prison for assaults served the following time in 1996:

- Aggravated assault: According to FY 1997 prison intake data, 274 aggravated assault offenders entered prison.
- Felonious assault: FY 1997 prison intake data shows that 3,667 felonious assault offenders entered prison in that year. This intake data indicates that the average prison term for all felony assault offenders is 6 years.

The second fiscal effect on DRC will be to increase post-release control costs. Post-release control is the period of time following release from the state's prison system that an offender is subject to supervision by the Adult Parole Authority. As a result of the bill, some number of offenders involved in domestic assaults will be sent to prison that might not otherwise have been under current law. Following their release from incarceration, the APA will be responsible for their supervision and control for some period of time.

We do not know how many offenders will be prison-bound as a result of the bill's felony sentencing guideline, nor how lengths of stay in prison will be extended either. As a result, we cannot estimate what the annual increase in DRC's incarceration and post-release control costs will be.

❑ *LBO staff: Laura Bickle, Budget/Policy Analyst*
Clarence Campbell, Senior Analyst

H:\Fn123\Senate\SB0009IN.DOC