Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. H.B. 130** DATE: **December 17, 2008**

STATUS: **As Enacted – Effective April 7, 2009 (Certain provisions effective December 31, 2011)** SPONSOR: **Rep. White**

LOCAL IMPACT STATEMENT REQUIRED: **No — Permissive**

CONTENTS: **Corrections and post-release control modifications, homestead exemption, joint vocational school district funding**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
Department of Rehabilitation and Correction (DRC)	
Revenues	Potential gain from federal forfeiture proceeds, annual magnitude uncertain and sporadic
Expenditures	Factors increasing and decreasing costs, with potential for $1 million-plus in annual savings
Department of Youth Services (DYS)	
Revenues	No discernible annual effect
Expenditures	Factors increasing and decreasing costs, with likely net minimal effect
General Revenue Fund/GRF (homestead exemption and joint vocational school district funding)	
Revenues	- 0 -
Expenditures	Annual increase of up to $1.0 million or more in FYs 2009 and 2010; Increase of approximately $2.0 million or more annually thereafter

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- ***Department of Rehabilitation and Correction (DRC).*** Relative to the duties and responsibilities of DRC, the bill contains a broad mix of provisions designed to strengthen reentry and community sanctions, reduce state operating costs, and streamline state administrative practices and procedures. The net effect of these provisions creates an opportunity for DRC to reduce its annual operating costs by an estimated $1 million or so annually.

- ***Department of Youth Services (DYS).*** The bill makes a number of procedural and other administrative changes involving the Department of Youth Services that, as a group, are expected to create certain operational efficiencies and possibly some minor expenditure increases. From LSC fiscal staff's perspective, the net effect of this mix of savings and costs is likely to be minimal, meaning that the total change in DYS expenditures is estimated at less than $100,000 per year.

- ***State expenditures - homestead exemption.*** The state GRF could incur additional costs to reimburse local governments for revenues forgone as a result of making cooperative housing in complexes with fewer than 250 units eligible for the homestead exemption and the 2.5% rollback. Costs could range around $1 million per year, but a paucity of data on numbers of cooperative housing units and valuations imply that the cost estimates are approximate.

- ***State expenditures - trusts.*** The state could also incur added costs to reimburse local governments for revenues forgone as a result of expanding the definition of the owner of a homestead to include the settlor of an irrevocable *inter vivos* trust. The cost of this change might range around $1 million per year but is very uncertain.

- ***State expenditures - joint vocational school districts.*** State base cost funding for one joint vocational school district (JVSD) will increase by $0.9 million in FY 2009, and the state share of funding for special education and career-technical education will also increase. Any changes in future years will depend on changes to school district membership of Ohio JVSDs.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties	
Revenues	Expedited collection and use of probation fees
Expenditures	Potential jail and pretrial diversion cost increases, magnitude function of permissive authority exercised by county sheriff and prosecutor, respectively
School Districts	
Revenues	Gain of $0.9 million or more in FY 2009; Possible gain or loss in future years
Expenditures	- 0 -

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

- ***Probation revenues.*** The bill does not generate any additional probation fee revenue, but will permit counties to exercise more local control over its collection and use.

- ***County jail and pretrial diversion program expenditures.*** The bill permits the county sheriff and prosecutor to take certain actions that would most likely increase the operating expenses associated with jails and pretrial diversion programs, respectively. Presumably, either county official could control the annual magnitude of any such costs by choosing the timing and manner in which the permissive authority provided by the bill is utilized.

- ***Butler County.*** The Butler County Technology and Career Development Joint Vocational School District (JVSD) will receive $0.9 million in additional base cost funding, plus additional state share of that JVSD's special education and career-technical educational funding, in FY 2009 only. Effect in future years of the change in law resulting in these payments will depend on any future changes in school district membership in JVSDs.

- ***School districts generally.*** Real property tax revenue to school districts and other units of local government could be reduced by expansion of eligibility for the homestead exemption and the 2.5% rollback under the bill, and by expanding the definition of the owner of a homestead to include the settlor of an irrevocable *inter vivos* trust, but this loss would be offset by increased reimbursements from the state.

- ***County property taxes.*** Under current law, counties, at the option of county commissioners, may forgo investment earnings on deposits to fund below-market loans from depository institutions to elderly or disabled homeowners to pay property taxes on their homesteads. By adding residents of cooperative housing in complexes with fewer than 250 units to those eligible for this assistance, the bill could increase the number of homeowners qualifying for such help. Any fiscal effects of this change are likely to be small.

- ***County auditors.*** Elimination by the bill of a requirement in current law that county auditors issue certificates of reduction for the homestead exemption may result in cost savings for county auditors.

Detailed Fiscal Analysis

I. Corrections and Post-Release Control Modifications

The bill contains a broad mix of provisions designed to strengthen reentry and community sanctions, reduce state operating costs, and streamline state administrative practices and procedures. Most of these provisions combine to create a rather complicated mix of costs and savings for the state, in particular the departments of Rehabilitation and Correction and Youth Services. Additionally, there are provisions that potentially generate significant local costs, in particular for counties, but the language is worded generally in a manner that appears to give local authorities considerable discretion in the timing and magnitude of those costs.

A. Strengthening offender reentry

The bill's more notable provisions designed to enhance the success of offender reentry following a term of incarceration are discussed in more detail below.

Offender supervision

The bill authorizes a court of common pleas to cooperate with the Department of Rehabilitation and Correction (DRC) in the supervision of offenders who return to the court's territorial jurisdiction upon release from the prison system. This provision essentially codifies existing practice as DRC's Adult Parole Authority (APA) already provides post-release supervision services to 50-plus counties. From DRC's perspective, as additional counties seek assistance from the APA, this provision will facilitate future cooperation.

Legal identification

The bill addresses the process of providing inmates with some form of legal identification before their release from incarceration. Much of this involves improvements to, and codification of, existing practices. Under the bill, DRC will pay the costs of obtaining the identification rather than the inmate who must pay under current law. As not every inmate that is released requires a new form of identification, the Department does not anticipate this provision will create a large additional ongoing expenditure. Departmental personnel indicated that it should be easily absorbed into DRC's everyday cost of doing business.

Occupational licensure

The bill eliminates certain employment-related prohibitions that are commonly believed to hinder the successful reentry of inmates. More specifically, the bill addresses professional licensing boards that will either not issue licenses to former inmates, or treat such offenses as grounds for professional discipline. The bill generally eliminates a felony or misdemeanor conviction as grounds for discipline by an occupational licensing board, commission, or agency.

Based on information provided by DRC, it appears that, based on the current composition of the inmate population, around 500 inmates would be directly affected by this provision. Presumably, any additional work and related expenses generated for any occupational licensing or regulatory entity would be offset to some degree by licensing and related fees.

Reentry coalition

The bill creates an ex-offender reentry coalition with 15 members, to be chaired by the Director of DRC, representing a broad spectrum of state government. The state officials are to serve without compensation. The bill requires the coalition to identify and examine social service barriers and other obstacles to successful reentry, and to provide the General Assembly with an annual review of these barriers affecting inmate reentry. The bill does contain a sunset provision under which the coalition would cease to exist after December 31, 2011. DRC has indicated it will provide the office space and support staff for this coalition, and can absorb any expenses into their ongoing daily cost of doing business.

B. Reducing risk factors and containing costs

The bill's more notable provisions designed to reduce risk factors and contain costs are discussed in more detail below.

Short-term prison sentences

Under current law, a county sheriff must deliver a convicted felon, sentenced to a term of imprisonment, within five days after sentencing. In many cases, jail time counts toward the prison sentence. As such, many offenders arrive at a DRC reception center with very little time left on their prison sentences. Under the bill, the sentencing court, the county sheriff, and DRC may agree to electronically process convicted felons with less than 30 days remaining on their prison sentences instead of having the county sheriff physically transporting such individuals for processing into the state prison system.

The Department has indicated that: (1) the average cost of processing a new inmate at a reception center is about $200 and $700 for male and female inmates, respectively, and (2) the number of new inmates processed each month totals around 2,400, about 20 of which are released within 30 days of admission. If these 20 inmates each month can remain in the custody of the county, it will save the Department the associated processing cost, an amount that could be in the range of $4,000 to $14,000 each month depending on the mix of male and female inmates electronically processed.

Presumably, if certain inmates are held locally rather than transported to the state prison system to finish their term of incarceration, the local facility continues to incur the costs of incarcerating said individuals until their release. Since these inmates would not have to be physically transported to a DRC reception facility, a county sheriff may realize some transportation-related cost savings. In addition, the agreement between DRC and a county sheriff to electronically process certain inmates is permissive. If local correctional facilities are essentially filled to capacity, and beds need to be made available, then a county sheriff could still transport convicted inmates that might otherwise be covered by an agreement to DRC reception facilities as directed under current law.

Medical release

The bill streamlines the process for obtaining the medical release of an inmate facing serious illnesses. There is a procedure under current law for the release of inmates in imminent danger of death within six months. This process, however, tends to be procedurally time consuming and the inmate often dies before the release is granted. DRC estimates that such a streamlined program would affect between 20 and 50 inmates annually and could save over $1 million in operational expenditures. Depending on the medical condition of the inmate and the specific treatment regimen required, streamlined release procedures could save the Department even more in medical expenditures.

Judicial release

Under current law, certain eligible offenders may apply to the sentencing court for release from prison ahead of schedule. The bill streamlines the procedures and changes the eligibility requirements to generally improve the efficiency of the judicial release program. The Department estimates that these clarifications and changes could divert approximately 100 additional offenders annually from prison into community sanctions. As more offenders are diverted into community sanctions, prison beds turn over much more quickly and fewer inmates remain in prison. The Department estimates this provision could produce approximately $200,000 in annual savings.

Pretrial diversion programs

County prosecutors can, under current law, establish pretrial diversion programs for offenders charged with minor offenses and who are unlikely to re-offend. The law authorizing such a program contains many groups of offenders that are not eligible due to the severity of the offense and the likelihood of re-offending. The bill eliminates drug-dependent individuals from the list of persons that are exempt from the pretrial diversion program. The net effect of this provision will be to divert certain drug use offenders from the state prison system presumably making them available for various drug intervention programs as a sentencing alternative. The cumulative fiscal effect of these county pretrial diversions would be to ultimately reduce expenditures of the state prison system.

Post-release control

The bill makes numerous adjustments to the system of post-release control administered by the APA. One of these changes allows APA to recommend reductions in the period of post-release control for any offender. Current law prohibits any such recommendation for first-degree felony offenders and felony sex offenders. The Department does not expect these changes to produce any reduction in their supervision caseloads, but it will allow for the more efficient management of resources. APA will be able to make post-release control recommendations based on the particular offender and not the felony level. This will help remove low-level, nonviolent offenders from the APA caseloads so they can concentrate resources on much more dangerous offenders.

C. Administrative duties and responsibilities

The bill contains numerous administrative and other clean-up provisions, the purpose of which is to enhance and generally improve the efficiency of state agency operations. For the purposes of this fiscal analysis, the more notable provisions are discussed in more detail below.

Legal representation

The bill provides for legal representation of a DRC employee in a criminal proceeding when the employee used deadly force in the line of duty and there is the possibility of criminal charges being filed as a result of that action. In such cases, the bill requires the Ohio Attorney General to assist DRC and the employee in finding a qualified criminal defense attorney. The Department only provides such legal assistance to the employee through the grand jury process, after which, if indicted, the employee is responsible for their own counsel at trial. The bill would also allow the Ohio Attorney General or DRC to recover these attorney costs if the employee is convicted of the offense as charged. The Department does not expect this provision to increase their operating expenditures in any significant manner, as the number of employees likely to be affected by this provision will be very small. In recent experience, DRC has had only one case in the last 15 years in which this provision would have been applicable.

Federal Equitable Sharing Fund

DRC is eligible to share in the monetary proceeds of criminal assets seized by federal law enforcement officials and subsequently forfeited, in accordance with federal law, if the Department has provided assistance or information to federal law enforcement. In order to receive these federal funds, the Department must establish an interest-bearing fund in which such forfeiture revenues would be deposited. The bill establishes in the state treasury the Federal Equitable Sharing Fund, and requires these federal forfeiture proceeds be used only for law enforcement purposes. The annual revenue stream that could be generated for the fund is highly uncertain. The Department would also be required to implement certain accounting and reporting procedures that would likely be absorbed into its daily cost of doing business.

Probation Services Fund

The APA currently provides probation supervision services to 50-plus Ohio counties. Any probation fee revenue collected from offenders by the APA is initially deposited into the GRF to be eventually returned to the counties from which the revenue was originally collected. The bill allows counties to exercise more local control over the collection and use of probation fees. The bill would not generate any additional revenue, but will likely create more flexibility and administrative efficiency in the use of this revenue.

Other miscellaneous DRC provisions

The bill permits DRC to implement certain clarifications and administrative improvements to the manner in which it provides notification of pardons, commutations, paroles, and impending inmate releases. More specifically, the bill addresses certain timing issues and allows for greater reliance on electronic methods of notification. Additionally, the bill makes other minor changes to the manner in which DRC does business, including disposal of unclaimed bodies and contracting with political subdivisions to provide sewage treatment services. The primary fiscal impact of these provisions generally involves the improvement of efficiency and some corresponding level of time and administrative savings. Individually, the fiscal impact of

any of these specific provisions would likely be negligible; however, as part of the fabric of all the bill's provisions, the cumulative fiscal effect would certainly be magnified to some extent. Because these savings and efficiencies involve largely time and workload issues, the magnitude of the savings in traditional dollars is very difficult to accurately estimate.

Department of Youth Services

The bill makes a number of procedural and other administrative changes involving the Department of Youth Services (DYS). These provisions involve the conveyance of weapons, drugs, and alcohol into DYS facilities, improvements to the supervision of children released from DYS custody, adjustments to the manner in which in-service training is provided, and administrative changes to a community corrections facility governing board. These provisions, as a group, are expected to create certain operational efficiencies and possibly some minor expenditure increases. From LSC fiscal staff's perspective, the net effect of this mix of savings and costs is likely to be minimal, meaning that the total change in DYS expenditures is estimated at less than $100,000 per year.

II. Homestead Exemption and Other Trust Modifications

A. Change in definition of a homestead

The bill changes the definition of a homestead, for purposes of the homestead exemption, the 2.5% real property tax rollback, and the county property tax payment linked deposit program, to include a housing cooperative with two or more units. Currently a unit in a housing cooperative may be included in these tax reduction programs only if the cooperative has 250 or more units. In addition, the bill adds as an owner of a homestead, for purposes of the homestead exemption, 2.5% rollback, the linked deposit program, and the manufactured home tax, a settlor of an irrevocable *inter vivos* trust holding title to the homestead occupied by the settlor. Under current law, a settlor of a revocable, but not an irrevocable, *inter vivos* trust is included as an owner of a homestead for these purposes if that trust holds title to the homestead occupied by the settlor. The bill eliminates a requirement in current law to report changes in or revocation of a revocable *inter vivos* trust. Under current law, unaltered by the bill, the state reimburses local governments for real property taxes forgone as a result of the homestead exemption and the 2.5% rollback.

Linked deposit programs are at the discretion of county commissioners, and have no direct fiscal effect on the state or on units of local government other than counties. Counties may elect to forgo a portion of investment earnings on deposits to fund below-market loans from depository institutions to elderly or disabled homeowners to pay property taxes on their homesteads.

B. Numbers of cooperative housing units and of homes held by trusts

Data are scanty on which to base an analysis of the cost of expanding the homestead exemption by reducing the number of units in a housing cooperative needed to qualify from 250 or more to two or more. Department of Taxation data do not break out this information. Census Bureau data, from infrequent surveys of housing characteristics in metropolitan areas, show that the Cleveland metropolitan area, for 2004, had 1,000 housing units in housing cooperatives. The metropolitan area data are rounded to the nearest 100 units. The Columbus metropolitan area

had 2,000 cooperative housing units in 2002. The Cincinnati metropolitan area had 300 cooperative housing units in 1998. No data are published in this series for the entire state of Ohio or for other metropolitan areas in the state.

An Internet search identified three housing cooperatives in Ohio, two in Cincinnati with a total of 514 units, and one in Dayton with 100 units. There is, in addition, a housing cooperative in Cleveland and one in Columbus. Other housing cooperatives may operate in the state but not appear on the Internet or as members of trade groups.

If the units in housing cooperatives identified in the Census Bureau surveys are assumed still to be in use as co-op housing units, then the number of co-op housing units in the state would be at least 3,614, consisting of 1,000 in Cleveland and 2,000 in Columbus, plus the 514 units identified on the Internet in Cincinnati and 100 in Dayton. This number is rough as it is based on outdated information. The Census Bureau surveys covered areas with about 44% of the state's population, and if they are indicative of the number of co-op housing units elsewhere in the state, proportional to population, then the total number of such units statewide could be roughly double the above figure. Alternatively, co-op housing could be mainly concentrated in large urban areas, and the smaller figure may be closer to the actual total. Some residents of co-op units in at least one of the buildings in the state providing co-op housing are thought currently to be eligible for the homestead exemption, because the number of units in the cooperative, at 600, exceeds the 250-unit requirement of current law and the residents are otherwise qualified.

Data on numbers of homes held by irrevocable *inter vivos* trusts are also very limited. In an informal survey, county auditors were asked how many applications for the homestead exemption were denied because the homes in which the applicants resided were owned by an irrevocable *inter vivos* trust. The survey identified 423 such applications in 26 counties, including both large and small counties. Other auditors did not keep track of this, and the comment was made that homes owned under such arrangements were well known not to qualify for the homestead exemption, so otherwise qualified residents did not apply. Based on these results for 26 counties, not necessarily representative of the state, the number of homes held by irrevocable *inter vivos* trusts in all 88 counties statewide, and occupied by persons otherwise qualified for the homestead exemption, is plausibly in excess of 1,000, perhaps well in excess of this number. This compares with approximately 788,000 applications for the homestead exemption in 2007, including homeowners already receiving the exemption.

C. Cost of the change in definition of a homestead

If all 3,614 co-op units identified above were occupied by the elderly and disabled, less the 600 units thought already to meet the 250-unit minimum for the benefit under current law, the cost of the expansion of the homestead exemption, at perhaps $400 or more per unit on average statewide, could be in excess of $1 million. If there are substantially more co-op housing units statewide, the cost could be higher. More plausibly, only some of the units are occupied by persons eligible for the expanded homestead exemption. Statewide, about 25% of owner-occupied housing units, of all types, belong to persons age 65 and older.

However, the redefinition in the bill of a homestead, adding cooperative housing in a housing complex with two to 249 units, applies to R.C. 323.151 to 323.159, which covers not only the homestead exemption for those age 65 and older and the disabled, but also the 2.5% rollback for all owner-occupied homes. Most or all of the additional units included in the broadened definition of homestead are likely occupied by persons qualifying for the 2.5% rollback, the cost of which would depend on the values and gross taxes levied on the cooperative housing complexes. This annual cost would equal 35% of market value, times the effective tax rate, times 2.5%. The annual cost of this change might be $200,000 to $600,000. Adding these cost ranges together, the total cost of this change might be around $1 million, more or less, but the numbers are very rough.

The cost of extending eligibility for the homestead exemption, 2.5% rollback, and linked deposit programs to a settlor of an irrevocable *inter vivos* trust holding title to the homestead occupied by the settlor is uncertain. Based on the limited data cited above, the cost might range around $1 million per year, but this is also a very rough number, and the cost could be considerably higher.

The bill does not specify when these changes would go into effect. Assuming that the changes would be implemented for tax year 2009, payable in 2010, the costs to the state GRF to reimburse local governments for revenues forgone would begin in the second half of FY 2010, with the full annual cost paid from the GRF in FY 2011.

D. Elimination of certificates of reduction for the homestead exemption

Elimination by the bill of a requirement in current law that county auditors issue certificates of reduction for the homestead exemption may result in cost savings for county auditors. These cost savings appear unlikely to be large.

III. Joint Vocational School District Funding

The bill specifies that a school district must have been subject to tax levies of a joint vocational school district (JVSD) for both the current and preceding tax years for the school district's recognized valuation to be included in the JVSD's recognized valuation. This prevents the JVSD's local share of state foundation program funding from being increased before it begins to collect tax revenue from the residents of the school district. In FY 2009, this provision will have an effect on Butler County Technology and Career Development JVSD by decreasing its recognized valuation by about $1,717.2 million. The local share of base cost funding for JVSDs is 0.5 mills (0.05%), so Butler County's base cost local share will decrease by about $0.9 million in FY 2009. Butler County's local share for special education and career-technical education

weighted funding will also decrease. These decreases in local share will be offset by increases in state share. This provision's effect in FY 2010 and future years will depend on any changes to school district membership of Ohio's JVSDs.

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