

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **H.B. 130** DATE: **February 21, 2008**
STATUS: **As Introduced** SPONSOR: **Reps. White and Yates**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Corrections and post-release control modifications**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
General Revenue Fund (GRF) and Other State Funds			
Revenues	No discernible effect	No discernible effect	No discernible effect
Expenditures	Factors increasing and decreasing costs, with potential net savings effect in the tens of millions of dollars	Factors increasing and decreasing costs, with potential net savings effect in the tens of millions of dollars	Factors increasing and decreasing costs, with potential net savings effect in the tens of millions of dollars

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

- **State expenditures generally.** 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 the 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.
- **Incarceration expenditures.** One of the bill's potentially most significant provisions, from a fiscal perspective, involves the expansion of the application of intervention in lieu of conviction. The Ohio Department of Alcohol and Drug Addiction Services (ODADAS) recently conducted an analysis of this provision that was based largely on 2005 data obtained from the Department of Rehabilitation and Correction (DRC). This analysis estimated that approximately 1,920 additional low-level drug offenders could be diverted from prison each year due to the expanded eligibility criteria for intervention in lieu of conviction as specified by the bill. The average time served in prison for these fourth and fifth-degree felony level offenders was 301.5 days, at an average cost per day of \$69.40. If the bill does result in 1,900-plus offenders being diverted from prison, this could potentially reduce the Department's annual operating expenditures by up to as much as \$40 million.
- **Treatment expenditures.** Given the estimated number of offenders that could potentially be diverted from incarceration and into treatment programs, ODADAS has projected that the additional alcohol and drug treatment services would likely cost the Department an additional \$3.4 million each year. The Department does not currently have sufficient appropriation authority to absorb an additional treatment caseload of this magnitude. To the extent that funding is not available for appropriate treatment services, then a court may refuse to approve requests for



intervention in lieu of conviction, thereby diminishing the diversion of offenders from prison and any savings effect that would otherwise have resulted.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties and Municipalities			
Revenues	Factors leading to revenue gains and losses, with uncertain, but likely minimal net effect; Uncertainty a function of available state financial assistance	Factors leading to revenue gains and losses, with uncertain, but likely minimal net effect; Uncertainty a function of available state financial assistance	Factors leading to revenue gains and losses, with uncertain, but likely minimal net effect; Uncertainty a function of available state financial assistance
Expenditures	Factors increasing and decreasing costs, with uncertain, but likely minimal net effect; Uncertainty a function of permissive local authority and available state financial assistance	Factors increasing and decreasing costs, with uncertain, but likely minimal net effect; Uncertainty a function of permissive local authority and available state financial assistance	Factors increasing and decreasing costs, with uncertain, but likely minimal net effect; Uncertainty a function of permissive local authority and available state financial assistance

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

- Local government effects generally.*** The bill contains a number of provisions that will likely have the effect of both increasing and decreasing the revenues and expenditures of certain political subdivisions with the net fiscal effect unlikely to exceed minimal in any given jurisdiction. The potential uncertainty regarding the effect on revenues is partially a function, among other things, of the amount of available state financial assistance, particularly as it might apply to intervention in lieu of treatment programs. Additionally, many of these provisions are permissive in their nature further complicating estimations of the net fiscal impact on any given local jurisdiction.

Detailed Fiscal Analysis

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 the provisions in the bill coagulate to create a rather complicated mix of costs and savings for both the state, in particular the departments of Rehabilitation and Correction and Youth Services, as well as various political subdivisions. 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. For purposes of this analysis, the fiscally relevant provisions of the bill can be organized into the following general categories:

- I. Strengthening offender reentry;
- II. Reducing risk factors and containing costs;
- III. Streamlining and improving administrative functions.

I. Strengthening offender reentry

For the purposes of this fiscal analysis, 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 APA, this provision will facilitate future cooperation.

Legal identification

The bill seeks to improve 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 of the bill creating a large additional ongoing expenditure. Departmental personnel indicated that it should be easily absorbed into the everyday cost of doing business.

Occupational licensure

The bill attempts to eliminate certain prohibitions to employment that are commonly believed to hinder the successful reentry of inmates. More specifically, the bill seeks to address 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 contains a provision to create 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. DRC has indicated they will provide the office space and support staff for this coalition, and can absorb any expenses into the ongoing daily cost of doing business.

II. Reducing risk factors and containing costs

For the purposes of this fiscal analysis, 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; so, many offenders arrive at a DRC reception center with very little time left on their sentences. Under the bill, a county sheriff and DRC can 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, of which about 20 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 changes could annually divert approximately 100 additional offenders 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.

Pre-trial diversion programs

County prosecutors can, under current law, establish pre-trial 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 pre-trial diversion program. The net effect of this provision will be to divert drug users 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 pre-trial diversions would be to ultimately reduce expenditures of the state prison system.

Intervention in lieu of conviction

One of the bill's potentially most significant provisions, from a fiscal perspective, involves the expansion of the application of intervention in lieu of conviction. Prior to the entry of a guilty plea, current law permits a qualifying offender to request drug or substance abuse intervention in lieu of

conviction. A number of specific criteria must be met for an offender to qualify and there are numerous disqualifying offenses. If the court grants intervention in lieu of conviction, the offender is placed under the supervision of its probation department and a drug or alcohol treatment plan is created for the offender. The bill makes certain modifications to the intervention in lieu of conviction program, most notably by expanding the list of which offenders qualify. As a result, more offenders could potentially be diverted into intervention programs, rather than being sentenced to serve a term of incarceration in the state prison system.

The Ohio Department of Alcohol and Drug Addiction Services (ODADAS) recently conducted an analysis of this provision that was based largely on 2005 data obtained from DRC. This analysis estimated that approximately 1,920 additional low-level drug offenders could be diverted from prison each year due to the expanded eligibility criteria for intervention in lieu of conviction as specified by the bill. The average time served in prison for these fourth and fifth-degree felony level offenders was 301.5 days, at an average cost per day of \$69.40. If the bill does result in 1,900-plus offenders being diverted from prison, this could potentially reduce the Department's annual operating expenditures by up to as much as \$40 million.

Offenders who are diverted from prison through this intervention in lieu of conviction process are then placed in locally operated alcohol and drug treatment programs. Given the estimated number of offenders that could potentially be diverted from incarceration and into treatment programs, ODADAS has projected that the additional alcohol and drug treatment services would likely cost the Department an additional \$3.4 million each year. The Department does not currently have sufficient appropriation authority to absorb an additional treatment caseload of this magnitude. To the extent that funding is not available for appropriate treatment services, then a court may refuse to approve requests for intervention in lieu of conviction, thereby diminishing the diversion of offenders from prison and any savings effect that would otherwise have resulted.

Transfers of foreign nationals

Current law prohibits the transfer of any convicted offender who is a foreign national to their country of origin if the offense is a felony of the first or second degree. Foreign nationals who are serving prison sentences for lesser felonies are eligible to be transferred to their country of origin to serve their sentences pursuant to certain treaty provisions and obligations. The bill removes these restrictions and allows all foreign nationals, except those under a death sentence, to be transferred to their country of origin to serve their sentences.

The Department currently has more than 700 foreign nationals serving sentences for various crimes. If some or all of these inmates were transported to their country of origin to serve their sentences, the reduction in population would presumably result in a savings effect to DRC. This fiscal effect is, however, complicated by the fact that DRC currently receives federal revenue from the State Criminal Alien Assistance Program (SCAAP) for undocumented foreign national inmates serving time. The Department would lose this revenue for each inmate shipped abroad. Whether the operational savings will offset the potential loss in federal funds is uncertain.

Post-release control

The bill makes numerous adjustments to the system of post-release control administered by 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 get low-level, nonviolent offenders off the APA caseloads so they can concentrate resources on much more dangerous offenders.

III. 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 for 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, should an indictment be handed, the employee is responsible for their own counsel at trial. 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.

Other miscellaneous DRC provisions

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. These "minor changes" are not expected to have any significant fiscal impact.

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.

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