Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
77 South High Street, 9th Floor, Columbus, OH 43215-6136 ✧ Phone: (614) 466-3615
✧ *Internet Web Site:* http://www.lsc.state.oh.us/

BILL: **Am. Sub. H.B. 142** DATE: **December 4, 2007**

STATUS: **As Enacted – Effective March 24, 2008** SPONSOR: **Rep. Batchelder**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Inducing panic; school district calamity days**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund (GRF)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential incarceration cost increase, appears likely to be no more than minimal	Potential incarceration cost increase, appears likely to be no more than minimal	Potential incarceration cost increase, appears likely to be no more than minimal
Victims of Crime/Reparations Fund (Fund 402)			
Revenues	Potential negligible gain in locally collected court costs	Potential negligible gain in locally collected court costs	Potential negligible gain in locally collected court costs
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- ***Incarceration expenditures.*** It is possible as a result of the bill that: (1) additional offenders could be sentenced to prison or sentenced to longer prison terms, which may increase the Department of Rehabilitation and Correction's (DRC) annual incarceration costs, and (2) additional juvenile offenders could be committed to the state or committed to the state for longer periods of time, which may increase the Department of Youth Services' (DYS) annual care and custody costs. It appears, however, that the number of adult and juvenile offenders that may be so affected annually as a result of the bill's penalty changes will be relatively small and thus any related potential increase in DRC's annual incarceration costs or DYS's annual care and custody costs would likely be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated cost of less than $100,000 per year for the state.

- ***Victims of Crime/Reparations Fund (Fund 402).*** It is possible that some individuals that might have been arrested, successfully prosecuted, and sanctioned for committing a misdemeanor *inducing panic* offense would, under similar circumstances in the future subsequent to the bill's enactment, be committing a felony offense. Such an outcome creates the possibility that the state may gain additional locally collected court cost revenue for the Victims of Crime/Reparations Fund (Fund 402). The amount of money that Fund 402 may gain annually is likely to be negligible. For the purposes of this fiscal analysis, negligible means an estimated revenue gain of less than $1,000 for Fund 402 per year.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties			
Revenues	Potential gain in court costs and fines, likely to be minimal at most	Potential gain in court costs and fines, likely to be minimal at most	Potential gain in court costs and fines, likely to be minimal at most
Expenditures	Potential increase in criminal and/or juvenile justice system costs, likely to be minimal at most	Potential increase in criminal and/or juvenile justice system costs, likely to be minimal at most	Potential increase in criminal and/or juvenile justice system costs, likely to be minimal at most
Municipalities			
Revenues	Potential loss in court costs and fines, likely to be minimal at most	Potential loss in court costs and fines, likely to be minimal at most	Potential loss in court costs and fines, likely to be minimal at most
Expenditures	Potential decrease in criminal justice system operating expenses, likely to be minimal at most	Potential decrease in criminal justice system operating expenses, likely to be minimal at most	Potential decrease in criminal justice system operating expenses, likely to be minimal at most
School Districts			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential decrease in costs associated with making up excess calamity days for certain districts	Potential decrease in costs associated with making up excess calamity days for certain districts	Potential decrease in costs associated with making up excess calamity days for certain districts

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

- ***County criminal and juvenile justice system expenditures.*** Relative to other such criminal activities in certain local jurisdictions, the criminal conduct that is the subject of the bill more than likely occurs only occasionally during certain times of the year. Assuming that were true, then the number of criminal and juvenile cases that might be affected by the bill annually in any given local jurisdiction appears likely to be relatively small. If so, then any related increase in county criminal and juvenile justice system expenditures generally will likely be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated annual cost of no more than $5,000 for any affected county.

- ***County revenues.*** If, as assumed, the number of criminal and juvenile cases that might be affected by the bill annually in any given local jurisdiction is relatively small, then any related gain in court cost and fine revenues generated by county criminal and juvenile justice systems generally will likely be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated gain in revenues that is no more than $5,000 for any affected county.

- ***Municipalities.*** As a result of the bill, certain *inducing panic* cases where the location involves an institution of higher education will be elevated out of the misdemeanor subject matter jurisdiction of a municipal court or a county

court and into the felony subject matter jurisdiction of a court of common pleas. From the fiscal perspective of a municipality, elevating cases could decrease criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning certain offenders, and cause the loss of related court cost and fine revenues. If, as it appears, the number of criminal cases that might be affected by the bill in this manner annually in any given local jurisdiction is relatively small, then the fiscal effect on municipal revenues and expenditures will likely be no more than minimal. Minimal in this context means a change in municipal expenditures and/or revenues estimated at no more than $5,000 per year.

- ***Calamity days*.** The bill allows school districts to make up certain excess calamity days by adding additional hours to school days. It would potentially lower the number of school days a district will have to add in order to satisfy the minimum school year requirements, thus lowering the costs associated with making up excess calamity days. School districts that do not meet the minimum school year requirements for a given school year are prohibited from receiving state funds for the following school year. The bill provides an alternative method for affected school districts to make up certain excess calamity days in order to receive state funds in the following school year.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

(I) Eliminates the separate penalties for inducing panic in a school and establishes a single penalty, a felony of the second degree, and extends to institutions of higher education the prohibition against inducing panic at a school.

(II) Permits school districts to make up excess calamity days by adding extra hours to the remaining days in the school year.

I. Inducing panic

Under current law, there are various penalty enhancements associated with inducing panic that results in physical and/or economic harm, involves a school, and/or a weapon of mass destruction. Table 1 below outlines the existing penalty structure for the offense of inducing panic.

Table 1
Inducing Panic Penalties under Current Law

Circumstance	Places Generally	Schools Specifically
Physical or economic harm		
• Results in physical harm to any person	Felony of the 4th degree	Felony of the 3rd degree
• Results in economic harm of $500 or more but less than $5,000 and no physical harm to any person	Felony of the 5th degree	Felony of the 4th degree
• Results in economic harm of $5,000 or more but less than $100,000	Felony of the 4th degree	Felony of the 3rd degree
• Results in economic harm of $100,000 or more	Felony of the 3rd degree	Felony of the 2nd degree
Weapon of mass destruction		
• Instances when there has been no resultant physical or economic harm and a weapon of mass destruction is involved	Felony of the 4th degree	-----
• Results in physical harm to any person	Felony of the 3rd degree	Felony of the 2nd degree
• Results in economic harm of $5,000 or more but less than $100,000	-----	Felony of the 3rd degree
• Results in economic harm of $100,000 or more	Felony of the 3rd degree	Felony of the 2nd degree
Inducing panic generally		

• Instances when there has been no resultant physical or economic harm or when a weapon of mass destruction is not involved	Misdemeanor of the first degree	Felony of the 4th degree

The bill eliminates the existing penalty structure for inducing panic at a school (displayed in the third column of Table 1 above) and replaces it with a single penalty of a felony of the second degree. The bill also applies the penalty to all instances of inducing panic at an institution of higher education. Under current law, the penalty structure displayed in the second column of Table 1 above applies to all instances of inducing panic at an institution of higher education.

According to a representative of the Ohio Prosecuting Attorneys Association, by simplifying the penalty structure, it should become easier to prosecute inducing panic cases where the premises involved is a school or an institution of higher education. Under current law, when the premises involved is a school or an institution of higher education, the prosecutor must meet the burden of proving that the incident resulted in physical or economic harm or that a weapon of mass destruction was involved. Under the bill, prosecutors will no longer need to litigate over matters related to physical and economic harm or whether the conduct involved a purported, threatened, or actual use of a weapon of mass destruction.

Under the bill, if the incident occurs at a school or institution of higher education, the offense will be a felony of the second degree regardless of the harm caused or the weapon used. The sanction for committing a felony of the second degree is a presumed definite prison term of two to eight years and/or a possible conventional fine of up to $15,000.

The bill's penalty changes would have two effects on local criminal justice systems. First, an individual who would have been charged with and prosecuted for committing a felony of the third or fourth degree for inducing panic at a school will be charged with and prosecuted for committing a felony of the second degree. Second, an individual who would have been charged with and prosecuted for inducing panic at an institution of higher education, which currently falls under the general penalty as a misdemeanor of the first degree, will also be charged and prosecuted for committing a felony of the second degree. As there are currently no statewide caseload data sources available depicting the frequency of this specific type of offense, it is problematic to calculate with any degree of certainty the number of these cases that could be elevated from a felony of the third or fourth degree to a felony of the second degree or from a misdemeanor of the first degree to a felony of the second degree.

For informational purposes, LSC fiscal staff reviewed charge data available from the Franklin County Municipal Court. For calendar year 2006, there were a total of 43 charges filed with the court under the category of "inducing panic/violence/riot." Of this number, only one case was filed as a felony level offense, with the alleged violator being bound over for trial in the court of common pleas. However, this single felony case was not as a result of inducing panic in a school or an institution of higher education. As of this writing, whether this charging trend in Franklin County closely mirrors that of other counties is uncertain.

Legislative Service Commission fiscal staff is also aware of data drawn from the state's Educational Management Information System (EMIS) indicating there were 410 incidents that resulted

in discipline for making a false alarm or bomb threat during the 2005-2006 school year.[1] However, LSC fiscal staff is unable to determine at this time how many of these disciplinary incidents resulted in the filing of criminal or delinquency charges. Of those reported incidents, approximately 60 occurred within Franklin County during a timeframe that the Franklin County Municipal Court's data suggests not a single felony inducing panic at a school charge was filed.

Based on conversations with a representative of the Franklin County Clerk of Courts, the filing of an inducing panic charge appears to be a relatively infrequent event. In most situations, a charge of *inducing panic* results when a charge of *disorderly conduct* is no longer appropriate due to an escalation of the circumstances surrounding an incident.

Local fiscal effects

Criminal and/or juvenile justice system expenditures. As noted, it seems unlikely that the bill will create many additional criminal or juvenile delinquency cases to be processed locally, but could possibly alter the manner in which certain cases are resolved. The bill's penalty changes could affect local expenditures in affected criminal and juvenile cases in four ways.

First, felony inducing panic cases would continue to be handled by a court of common pleas, but those persons committing such acts are likely to be subjected to more serious financial and residential sanctions. In such instances, a case may slow down, by increasing a person's desire to pursue a criminal trial to avoid having to face the additional prison term (potentially increasing expenditures). As a result, such a local jurisdiction could experience an increase in their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders who commit these offenses.

Second, it is also possible that the threat of prison time or an additional prison term may affect individual criminal cases by speeding some through the bargaining process (potentially saving expenditures).

Third, an offender who is young enough to be processed through the juvenile court would also face the possibility of a more serious penalty and sentence. As a result, the annual costs to county juvenile justice systems to resolve these cases and appropriately sanction juveniles may rise.

Fourth, certain inducing panic cases where the location involves an institution of higher education will be elevated out of the misdemeanor subject matter jurisdiction of a municipal court or a county court and into the felony subject matter jurisdiction of a court of common pleas. From the fiscal perspective of local governments, elevating cases could simultaneously: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues.

[1] These figures relate only to schools and not to institutions of higher education.

As these potential expenditure savings and increases may offset one another and the number of cases that might be affected in either manner in any given county is likely to be relatively small in the context of the overall criminal and/or juvenile delinquency caseload, it appears that the net fiscal effect would be, in the worst case scenario, at most a minimal increase in the annual operating costs of any given county's criminal or juvenile justice system. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated annual cost of no more than $5,000 for any affected county criminal or juvenile justice system. Similarly, if as it appears, the number of cases in which inducing panic will elevate from a misdemeanor to a felony annually is relatively small, then the potential savings for any affected municipal criminal justice system would likely be no more than minimal. A minimal savings means an estimated expenditure decrease of no more than $5,000 per year.

Court cost and fine revenues. As the bill effectively enhances the penalty that could apply to certain future cases involving inducing panic at a school or an institution of higher education, counties could collect additional court cost and fine revenues. If, as assumed, the number of criminal and juvenile cases that might be affected by the bill annually in any given local jurisdiction is relatively small, then the fiscal effect on the revenues generated by county criminal and juvenile justice systems and municipal criminal justice systems generally will likely be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated gain in revenues that is no more than $5,000 for any affected county or an estimated loss in revenues that is no more than $5,000 for any affected municipality. It should also be noted that: (1) courts rarely impose and collect the maximum fine, and (2) collecting court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unwilling or unable to pay.

State fiscal effects

Incarceration expenditures. It is possible as a result of the bill that: (1) additional offenders could be sentenced to prison or sentenced to longer prison terms, which may increase the Department of Rehabilitation and Correction's (DRC) annual incarceration costs, and (2) additional juvenile offenders could be committed to the state or committed to the state for longer periods of time, which may increase the Department of Youth Services' (DYS) annual care and custody costs.

It appears, however, that the number of adult and juvenile offenders that may be so affected annually as a result of the bill's penalty changes is likely to be relatively small and, thus, any related potential increase in DRC's annual incarceration costs or DYS's annual care and custody costs would be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated cost of less than $100,000 per year for the state.

Court cost revenues. As noted, it is possible that some individuals that might have been arrested, successfully prosecuted, and sanctioned for inducing panic at an institution of higher education (a misdemeanor of the first degree under current law) would, under similar circumstances in the future subsequent to the bill's enactment, be committing a felony offense. Such an outcome creates the possibility that the state may gain additional locally collected court cost revenue for the Victims of Crime/Reparations Fund (Fund 402). This is because the state court cost imposed on an offender and deposited to the credit of Fund 402 is slightly higher for a felony than it is for a misdemeanor: $30 versus $9. The amount of money that Fund 402 may gain annually is likely to be negligible, as the

number of cases in which inducing panic will elevate from a misdemeanor to a felony annually appears likely to be relatively small. For the purposes of this fiscal analysis, negligible means an estimated revenue gain of less than $1,000 for Fund 402 per year. It is also important to note that collecting court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unwilling or unable to pay.

II. School calamity days

Continuing law requires a minimum school year of 182 days, except that schools may be closed for up to five days due to public calamities such as hazardous weather without making up the lost instructional time. Each school district must adopt an annual contingency plan that includes adding at least five additional days to the school year if needed to make up any days the schools are closed due to public calamities in excess of the five excused calamity days. However, if a school district closes schools due to a bomb threat and for this reason exceeds the five excused calamity days, current law permits the district to make up the missed time by adding hours to school days, instead of by adding days to the school year.

Similar to the current law's authorization in the case of bomb threats, the bill allows school districts to make up certain calamity days due to reasons other than bomb threats by adding hours to school days, instead of by adding days to the school year. However, in the latter case, school districts are required to implement their contingency plans first. The option of adding hours to school days is only for calamity days above the number of the days specified in a district's contingency plan. Adding days to the school year may require additional costs related to busing, food services, and some other support services, as well as additional pay for teachers and some other school employees. These costs may be lower if, instead, hours are added to the school day as permitted by the bill.

School districts that do not meet the minimum school year requirements for a given school year are prohibited from receiving state funds for the following school year. The bill provides a permanent alternative method for affected school districts to make up excess calamity days in order to meet the minimum school year requirements, which will allow districts to receive state funds in the following school year.

LSC fiscal staff: Jamie L. Doskocil, Senior Budget Analyst
Jenna Scheurman, Fiscal Intern

HB0142EN.doc/rh