

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **H.B. 142** DATE: **May 16, 2007**
STATUS: **As Introduced** SPONSOR: **Rep. Batchelder**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Inducing panic in a school**

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
State Highway Safety Fund (Fund 036)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	No readily discernible fiscal effect	No readily discernible fiscal effect	No readily discernible fiscal effect

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 theoretically at least, 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 theoretically at least, 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.
- **State Highway Patrol.** The bill's provision relative to permitting the State Highway Patrol to provide emergency assistance to a school district under certain circumstances appears to codify current practice. If true, then there would be no readily discernible fiscal effect on the Patrol's annual operating expenses or its primary source of funding, the State Highway Safety Fund (Fund 036).



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	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

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 the frequency of its occurrence, the criminal conduct that is the subject of the bill more than likely occurs occasionally in certain local jurisdictions 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 on an ongoing basis 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 on an ongoing basis, 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.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably: (1) eliminates the separate penalties for inducing panic in a school and establishes a single penalty, a felony of the second degree, and (2) authorizes the State Highway Patrol to provide emergency assistance to school districts under certain circumstances.

Inducing panic at a school

Under current law, there are several penalty enhancements associated with inducing panic, most notably when the offense is committed at a school. The table below outlines these current enhancements. The bill will effectively remove these specific enhancements and establish a single penalty for inducing panic at a school.

Sentences and Fines for Inducing Panic at a School under Current Law

Circumstance	Offense Level	Fine	Sentence
Physical or economic harm			
<ul style="list-style-type: none"> • Results in physical harm to a person and economic harm is not \$100,000 or more, or • Results in economic harm of \$5,000 to under \$100,000 	Felony of the 3rd degree	Not more than \$10,000	1, 2, 3, 4, or 5-year prison term ¹
<ul style="list-style-type: none"> • Results in economic harm of \$100,000 or more 	Felony of the 2nd degree	Not more than \$15,000	2, 3, 4, 5, 6, 7, or 8-year prison term ²
Weapons of mass destruction			
<ul style="list-style-type: none"> • Results in economic harm of \$5,000 or more but less than \$100,000 and no physical harm is caused 	Felony of the 3rd degree	Not more than \$10,000	1, 2, 3, 4, or 5-year prison term ¹
<ul style="list-style-type: none"> • Results in physical harm to any person • Results in economic harm of \$100,000 or more 	Felony of the 2nd degree	Not more than \$15,000	2, 3, 4, 5, 6, 7, or 8-year prison term ²
General enhanced penalty			
<ul style="list-style-type: none"> • Instances when there has been no resultant physical or economic harm or when a weapon of mass destruction is not involved 	Felony of the 4th degree	Not more than \$5,000	6 to 18 month definite prison term ³

¹ Sentencing guidelines for a felony of the third degree generally state no preference for or against a prison term.

² Sentencing guidelines for a felony of the second degree state a presumption for a prison term.

³ Sentencing guidelines for a felony of the fourth degree generally state a presumption against a prison term.

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. Under current law, prosecutors 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. If the incident occurs at a school, as defined by current law, 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.

From the perspective of counties, it seems unlikely that the bill's felony penalty changes will create new cases to be prosecuted and adjudicated in the general or juvenile divisions of the courts of common pleas. However, cases in which an individual would have been charged with and prosecuted for committing a felony of the third or fourth degree will in all likelihood be charged with and prosecuted for committing a felony of the second degree. As there are currently no statewide caseload data sources available, 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.

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. As of this writing, whether this Franklin County experience 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. However, LSC fiscal staff does not know 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

County criminal and/or juvenile justice system expenditures

As noted, it seems unlikely that the bill will create any 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 three ways.

First, felony inducing panic cases would continue to be handled by a court of common pleas, but those persons committing such acts would 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, theoretically at least, 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.

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.

County revenues

As the bill effectively enhances the penalty that could apply to certain future cases involving inducing panic at a school, 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 on an ongoing basis, then the fiscal effect on the 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. 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 theoretically at least, 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 theoretically at least, 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.

State Highway Patrol

The bill permits the State Highway Patrol to provide emergency assistance to a school district under certain circumstances. Based on conversations with representatives of the State Highway Patrol, it appears that this provision of the bill may, in fact, codify current practice. Also of note is that section 5503.02 of the Revised Code currently permits a State Highway Patrol trooper, pursuant to the policy established by the Superintendent of the State Highway Patrol, to render emergency assistance to any other peace officer who has arrest authority, if both of the following apply: (1) there is a threat of imminent physical danger to the peace officer, a threat of physical harm to another person, or any other serious emergency situation, and (2) either the peace officer requests emergency assistance or it appears that the peace officer is unable to request emergency assistance and the circumstances observed by the State Highway Patrol trooper reasonably indicate that emergency assistance is appropriate.

Thus, this provision of the bill relative to the provision of emergency assistance may not fundamentally alter what permissive actions the State Highway Patrol might have otherwise taken absent its enactment. If true, then there would be no readily discernible fiscal effect on the Patrol's annual operating expenses or its primary source of funding, the State Highway Safety Fund (Fund 036).

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