

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

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

BILL: **H.B. 195** DATE: **May 17, 2007**  
 STATUS: **As Introduced** SPONSOR: **Rep. Core**  
 LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**  
 CONTENTS: **Prescription drug offenses**

## State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
<b>General Revenue Fund</b>			
Revenues	Potential negligible gain in locally collected state court costs	Potential negligible gain in locally collected state court costs	Potential negligible gain in locally collected state court costs
Expenditures	Factors potentially increasing and decreasing incarceration costs, with net minimal increase	Factors potentially increasing and decreasing incarceration costs, with net minimal increase	Factors potentially increasing and decreasing incarceration costs, with net minimal increase
<b>Victims of Crime/Reparations Fund (Fund 402)</b>			
Revenues	Negligible effect on locally collected court cost revenues	Negligible effect on locally collected court cost revenues	Negligible effect on locally collected court cost revenues
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.

- GRF-funded incarceration expenditures.** It is possible as a result of the bill that, in the future: (1) offenders that might not otherwise have been prison-bound under current law and sentencing practices may be sentenced to a prison term, (2) offenders that would have been prison-bound under current law and sentencing practices may be sentenced to a longer prison term, and (3) offenders who would have been sentenced to prison under current law and sentencing practices will, under similar circumstances, in the future be sentenced to a local jail term. Assuming all other conditions remain the same, these outcomes theoretically at least both increase and decrease the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs, with the net effect, as of this writing, being somewhat uncertain. As the number of offenders that might be affected annually in either of the three manners noted immediately above appears likely to be relatively small, any related increase in DRC's annual incarceration costs would most likely be minimal at most. 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.** If, as assumed, the number of cases that could be affected as noted in (1) and (2) immediately above is relatively small annually statewide, then the fiscal effect on the revenues deposited to the credit of the GRF and Fund 402 is likely to be negligible. For the purposes of this fiscal analysis, a negligible change in court cost revenues means an annual gain or loss estimated at less than \$1,000 for either state fund.



## ***Local Fiscal Highlights***

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
<b>Counties</b>			
Revenues	Minimal effect on court costs and fines	Minimal effect on court costs and fines	Minimal effect on court costs and fines
Expenditures	Minimal effect on criminal justice system operating costs	Minimal effect on criminal justice system operating costs	Minimal effect on criminal justice system operating costs
<b>Municipalities</b>			
Revenues	Potential minimal gain in court costs and fines	Potential minimal gain in court costs and fines	Potential minimal gain in court costs and fines
Expenditures	Potential minimal increase in criminal justice system operating costs	Potential minimal increase in criminal justice system operating costs	Potential minimal increase in criminal justice system operating costs

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 justice systems.*** The bill's penalty changes could trigger factors that simultaneously increase and decrease any affected county criminal justice system's expenditures. The net fiscal effect of these contrasting possibilities on any given county criminal justice system's expenditures is uncertain and difficult to accurately predict. That said, it seems plausible to assume that the net fiscal effect may be no more than minimal. This means that, although whether the net fiscal effect will be a gain or loss is uncertain, the magnitude of that effect is estimated at no more than \$5,000 per year for any affected county. In the matter of court costs and fines assessed offenders, a county may simultaneously: (1) gain revenues from the possibility of enhanced felony convictions, and (2) lose revenues from cases shifted to the misdemeanor jurisdiction of a municipal criminal justice system. If, as assumed, the number of affected cases in any given jurisdiction is relatively small, then the likely net effect will be similar to that described for county criminal justice system expenditures.
- Municipal criminal justice systems.*** The bill may shift certain drug offense cases to the misdemeanor subject matter jurisdiction of a municipal criminal justice system. Such an outcome carries the potential to: (1) increase system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders, and (2) increase revenues in the form of related court costs and fines that would be assessed against such offenders. If, as assumed, the number of affected cases in any given jurisdiction were relatively small, then the likely effect on any given municipal criminal justice system would be no more than minimal. For any affected municipal criminal justice system, a minimal expenditure increase means an estimated annual cost of no more than \$5,000 and a minimal revenue increase means an estimated annual gain of no more than \$5,000.

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## ***Detailed Fiscal Analysis***

The fiscally notable provisions of the bill include:

- Modifying the prescription-related exemption from the drug possession offenses so that it only applies if the prescription was a "lawful prescription."
- Increasing the penalty for the offense of deception to obtain a dangerous drug if the amount of the drug involved equals or exceeds the bulk amount.
- Decreasing the penalty for the offense of deception to obtain a dangerous drug if the drug involved is a "dangerous drug" and a higher penalty does not otherwise apply.

### **Local fiscal effects**

The bill increases, under certain circumstances, the penalty for the offense of using deception to obtain a dangerous drug, which in and of itself is not likely to create any new criminal cases since using deception to obtain a dangerous drug is currently illegal.

The bill further defines the prescription-related exception such that local prosecutors may be able to obtain a few more convictions for the offense of using deception to obtain dangerous drugs. Under current law, in some cases local prosecutors appear to have had some difficulty securing a conviction because the defendant had what might be termed a lawful prescription even though it appeared likely that deception was involved in securing that prescription.

Additionally, the bill decreases, from a fourth or fifth-degree felony to a first or second-degree misdemeanor, the penalty for the offense of deception to obtain a dangerous drug if the drug involved is a "dangerous drug" and a higher penalty does not otherwise apply. The types of drugs being referenced here require a prescription, hence are considered a "dangerous drug," however, the drug does not contain narcotics or other Schedule I through V controlled substances. Examples of these types of drugs would be antibiotics or muscle relaxants.

From a local government perspective, these drug offense changes will likely affect both county and municipal criminal justice systems, but in contrasting ways, as described in more detail below.

### **County criminal justice systems**

Relative to the felony caseloads processed by county criminal justice systems, the bill may produce a mix of three different future outcomes: (1) convictions resulting in the imposition of a more serious sanction, (2) convictions being secured in cases for which a lesser sanction or no conviction would have been the likely result, and (3) cases that might otherwise have been adjudicated as a felony under the subject matter jurisdiction of the court of common pleas would be shifted to a misdemeanor under the subject matter jurisdiction of a municipal court or a county court.

These outcomes carry different fiscal implications for a county criminal justice system. For example, it is possible that the penalty enhancement may actually accelerate the resolution of some felony drug cases, which potentially reduces county adjudication, prosecution, and defense costs (if the person is indigent). It is equally possible that, as offenders are facing a more serious sanction, the resolution of some felony drug cases may actually slow down, as offenders seek to avoid prison or shorten the length of a potential prison sentence. Such an outcome could increase county adjudication, prosecution, and defense costs (if the person is indigent). Lastly, the penalty decrease may result in some expenditure savings, as a misdemeanor case is typically less expensive to process than a felony case.

In sum, the bill's penalty changes could trigger factors that simultaneously increase and decrease any affected county criminal justice system's expenditures. The net fiscal effect of these contrasting possibilities on any given county criminal justice system's expenditures is uncertain and difficult to accurately predict. That said, as there appear to be a relatively small number of instances statewide in which a person is both arrested and prosecuted for having used deception to obtain dangerous drugs, and charged at the enhanced felony level for having accumulated the required quantities of prescription drugs up to or in excess of five times the bulk amount, it seems plausible to assume that the net fiscal effect may be no more than minimal. This means that, although whether the net fiscal effect will be a gain or loss is uncertain, the magnitude of that effect is estimated at no more than \$5,000 per year for any affected county.

In the matter of court costs and fines assessed offenders, a county may simultaneously: (1) gain revenues from the possibility of enhanced felony convictions, and (2) lose revenues from cases shifted to the misdemeanor jurisdiction of a municipal criminal justice system. If as assumed, the number of affected cases in any given jurisdiction is relatively small, then the likely net effect will be similar to that described for county criminal justice system expenditures. That is, the direction of the net effect is uncertain, but the magnitude may be no more than minimal. A minimal change in revenues means a net annual gain or loss estimated at no more than \$5,000 for any given county.

It should also be noted that: (1) courts generally do not impose, or if imposed rarely collect, the maximum possible fine for a misdemeanor or felony offense, and (2) some offenders are unable and/or unwilling to pay any financial sanctions imposed by the court.

### **Municipal criminal justice systems**

As noted, the bill may shift certain drug offense case to the misdemeanor subject matter jurisdiction of a municipal criminal justice system. Such an outcome carries the potential to: (1) increase system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders, and (2) increase revenues in the form of related court costs and fines that would be assessed against such offenders. If as assumed, the number of affected cases in any given jurisdiction were relatively small, then the likely effect on any given municipal criminal justice system would be no more than minimal. For any affected municipal criminal justice system, a minimal expenditure increase means an estimated annual cost of no more than \$5,000 and a minimal revenue increase means an estimated annual gain of no more than \$5,000.

## State fiscal effects

### Incarceration expenditures

It is possible as a result of the bill that, in the future: (1) offenders that might not otherwise have been prison-bound under current law and sentencing practices may be sentenced to a prison term, (2) offenders that would have been prison-bound under current law and sentencing practices may be sentenced to a longer prison term, and (3) offenders who would have been sentenced to prison under current law and sentencing practices will under similar circumstances in the future be sentenced to a local jail term.

Assuming all other conditions remain the same, these outcomes, theoretically at least, both increase and decrease the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs, with the net effect, as of this writing, being somewhat uncertain. As the number of offenders that might be affected annually in either of the three manners noted immediately above appears likely to be relatively small, any related increase in DRC's annual incarceration costs would most likely be minimal at most. For the purposes of this fiscal analysis, minimal means an estimated cost of less than \$100,000 per year for the state.

Intake data from DRC indicate that, between FYs 2003 and 2006, an average of 93 inmates were sentenced to prison each year for using deception to obtain a dangerous drug. Under current law, this offense is either a felony of the fourth or fifth degree depending on the type of dangerous drug that was obtained. According to DRC's calendar year 2005 time served data, the average length of sentence for drug offenders with a fourth or fifth degree felony conviction was 0.63 years. Even though this data includes all fourth and fifth degree felony drug offenses, it seems reasonable to conclude that those convicted, under current law, of using deception to obtain dangerous drugs would likely serve less than a full year in prison.

Since the penalty enhancements created by the bill include three new higher level felonies, and the specific felony charge depends on the types and amounts of drugs either obtained through deception or could be obtained through prescriptions, it is difficult to determine how much additional time will be served in prison. In order for an offender to qualify for the enhanced felony penalties in the bill, the offender would have to accumulate, or have the prescriptions to potentially accumulate, a large quantity of a prescription drug, through deception, that is up to or exceeds five times the bulk amount. The first-degree felony offense involves 50 times the bulk amount of the drug in question or more. Even though an average of 93 offenders are annually incarcerated on this drug charge, not every one of these offenders was caught with 50 times the bulk amount of the prescription drug. Most offenders will probably continue to be charged at the fourth or fifth degree felony level, while the more egregious violators would likely face the longer prison terms created by the bill. The precise numbers of each are difficult to estimate because LSC fiscal staff does not have the data necessary to do so readily at hand.

### Court cost revenues

When an offender is convicted of a felony or misdemeanor offense, the court is generally required to impose locally collected court costs that are forwarded for deposit in the state's GRF and

the Victims of Crime/Reparations Fund (Fund 402). The bill may simultaneously: (1) generate additional court cost revenues for both state funds from new felony convictions, and (2) cause Fund 402 to lose court cost revenues as a result of the decrease of certain drug conduct from a felony to a misdemeanor. The latter is the case because the amount of the court cost collected and forwarded to Fund 402 for a misdemeanor and felony are different – \$9 and \$30, respectively.

If, as assumed, the number of cases that could be affected as noted in (1) and (2) immediately above are relatively small annually statewide, then the fiscal effect on the revenues deposited to the credit of the GRF and Fund 402 is likely to be negligible. For the purposes of this fiscal analysis, a negligible change in court cost revenues means an annual gain or loss estimated at less than \$1,000 for either state fund.

*LSC fiscal staff: Joseph Rogers, Senior Budget Analyst*

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