Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	**Sub. H.B. 195**	DATE:	**May 29, 2008**
STATUS:	**As Reported by Senate Judiciary--Criminal Justice**	SPONSOR:	**Rep. Core**
LOCAL IMPACT STATEMENT REQUIRED:	**No —**	**Minimal local cost in As Introduced version; Substitute version's fiscal impact on county and municipal criminal justice systems uncertain**	
CONTENTS:	**Prescription drug offenses**		

State Fiscal Highlights

STATE FUND	FY 2009 –FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential increase in incarceration costs of at least $1.0 million annually within two years of bill's effective date
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Potential annual gain in locally collected court cost revenues, minimal at most, if that
Expenditures	- 0 -

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

- ***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, and (2) offenders that would have been prison-bound under current law and sentencing practices may be sentenced to a longer prison term. Assuming all other conditions remain the same, these outcomes would increase the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs by an estimated $1.0 million for the offense of obtaining drugs through deception. The fiscal effect of the bill's "possession of drugs" felony penalty enhancement on DRC's annual incarceration costs is uncertain.

- ***Court cost revenues.*** As certain drug possession offenders that might otherwise have been convicted of, or pled guilty to, a misdemeanor could be convicted of, or plead guilty to, a felony, the state may gain some 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 appears likely to be minimal at most, if that. For the purposes of this fiscal analysis, in the context of state revenues, minimal means an annual gain estimated at less than $100,000 per year for the fund.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 –FUTURE YEARS
Counties	
Revenues	Potential gain in court costs and fines, annual magnitude uncertain
Expenditures	Uncertain effect on annual criminal justice system operating costs
Municipalities	
Revenues	Potential loss in court costs and fines, annual magnitude uncertain
Expenditures	Potential decrease in criminal justice system operating costs, annual magnitude uncertain

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, in particular because LSC fiscal staff has been unable to discern the number of misdemeanor drug possession cases that might be shifted into the felony component of the criminal justice system. In the matter of court costs and fines assessed against offenders, a county may gain revenues from the possibility of additional as well as enhanced felony convictions. As the number of affected cases in any given local jurisdiction is uncertain, the magnitude of the potential revenue gain is uncertain as well.

- ***Municipal criminal justice systems.*** The bill would in all likelihood shift certain drug possession cases from the misdemeanor subject matter jurisdiction of a municipal criminal justice system to the felony jurisdiction of the court of common pleas. Such an outcome carries the potential to: (1) decrease municipal criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders, and (2) decrease revenues in the form of related court costs and fines that would be assessed against such offenders. However, the magnitude of the potential annual effect on municipal revenues and expenditures is uncertain, as LSC fiscal staff has been unable to discern the number of misdemeanor drug possession cases that might be shifted into the felony component of the criminal justice system.

Detailed Fiscal Analysis

Overview

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

- Modifies the prescription-related exemption from the drug possession offenses so that it only applies if the prescription was a "lawful prescription."
- Increases the base penalty for possession of a Schedule III, IV, or V drug (less than the bulk amount) from a misdemeanor of the third degree to a misdemeanor of the first degree for a first offense and from a misdemeanor of the second degree to a felony of the fifth degree if the offender previously has been convicted of a drug abuse offense.
- Increases 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 or in the case of a dangerous drug, if the offender previously has been convicted of, or pled guilty to, a drug abuse offense.
- Provides that possession of an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug is a felony of the fifth degree on a first offense and a felony of the fourth degree if the offender previously has been convicted of, or pled guilty to, a drug abuse offense.

The bill also:

- Contains a provision amending existing laws prohibiting a person who has been convicted of a felony, including the offense of theft in office, from holding public office and denying such person other specified privileges applicable upon the acceptance of the person's guilty plea or the determination of the person's guilt. This provision of the bill will have no direct fiscal effect on the state or any of its political subdivisions.
- Removes the authority of the Bureau of Criminal Identification and Investigation to review sealed criminal conviction records in conducting a criminal records check regarding license applicants for whom the check was required by Am. Sub. H.B. 104 of the 127th General Assembly. As of this writing, the state or local fiscal effects of this provision, if any, are uncertain.

Local fiscal effects

The bill increases, under certain circumstances, the existing felony penalties 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 generally a felony of the fourth or fifth degree under current law depending upon the drug involved.

The bill further defines the prescription-related exception such that local prosecutors may be able to obtain a few more convictions for the felony 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.

The bill increases the base penalty for possession of a Schedule III, IV, or V drug if the amount of the drug involved is less than the bulk amount, and by so doing, will shift some cases that might otherwise have been under the subject matter jurisdiction of a municipal court or a county court as a misdemeanor to the subject matter jurisdiction of a court of common pleas as a felony. The number of criminal cases that might be affected by this provision in any given local jurisdiction is uncertain.

County criminal justice systems

Relative to the felony caseloads processed by county criminal justice systems, the bill's penalty provisions may produce a mix of two different future outcomes: (1) convictions resulting in the imposition of a more serious felony sanction than would have been authorized under current felony sentencing law, and (2) convictions being secured in certain felony drug possession cases that might otherwise have been adjudicated as 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 drug deception 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 deception 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). Similarly, as a result of the shifting of certain criminal cases that would have been handled by a municipal court or a county court as misdemeanor drug possession cases under existing law to courts of common pleas, counties could experience an increase in their annual criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.

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, in particular because LSC fiscal staff has been unable to discern the number of misdemeanor drug possession cases that might be shifted into the felony component of the criminal justice system.

In the matter of court costs and fines assessed against offenders, a county may gain revenues from the possibility of additional as well as enhanced felony convictions. As the number of affected cases in any given jurisdiction is uncertain, the magnitude of the potential revenue gain is uncertain as well. It should also be noted that: (1) courts generally do not impose, or if imposed rarely collect, the maximum possible fine for a 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 would in all likelihood shift certain drug possession cases from the misdemeanor subject matter jurisdiction of a municipal criminal justice system to the felony jurisdiction of the court of common pleas. Such an outcome carries the potential to: (1) decrease municipal criminal system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders, and (2) decrease municipal revenues in the form of related court costs and fines that would be assessed against such offenders. However, the magnitude of the potential annual effect on municipal revenues and expenditures is uncertain, as LSC fiscal staff has been unable to discern the number of misdemeanor drug possession cases that might be shifted into the felony component of the criminal justice system.

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, and (2) offenders that would have been prison-bound under current law and sentencing practices may be sentenced to a longer prison term. Assuming all other conditions remain the same, these outcomes, theoretically at least, would increase the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs.

Deception. 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.

Under the bill, the penalty enhancement level will depend on the types and amounts of drugs either obtained through deception or could be obtained through prescriptions. In order for an offender to qualify for the enhanced felony deception 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, though it seems highly unlikely that a large number of offenders currently being sentenced to prison for deception have been apprehended 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.

An analysis of this provision by DRC's Bureau of Research suggests that the penalty enhancement for obtaining dangerous drugs through deception may require the addition of around 40 or so new inmate beds over the next year or two. At the current budgeted annual cost of incarceration, which is $25,174 per inmate, the deception penalty enhancement could potentially produce additional annual incarceration costs of around $1.0 million.

Possession. Under the current law, the base penalty for possession of a Schedule III, IV, or V drug in less than the bulk amount is either a misdemeanor of the third or second degree. The bill elevates the base penalty to either a misdemeanor of the first degree or a felony of the fifth degree, respectively. As a result, an offender that could have been sentenced to local incarceration might, under similar circumstances in the future subsequent to the bill's enactment, be sentenced to a prison term. As LSC fiscal staff has been unable to gather any data suggesting the number of drug possession offenders that might be so sentenced annually, the magnitude of the potential increase in DRC's annual incarceration costs is uncertain.

Court cost revenues

As certain drug possession offenders that might otherwise have been convicted of, or pled guilty to, a misdemeanor could be convicted of, or plead guilty to, a felony, the state may gain some 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, however, is likely to be minimal at most. For the purposes of this fiscal analysis, in the context of state revenues, minimal means an annual gain estimated at less than $100,000 per year for the fund.

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