

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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STATUS: **As Reported by Senate Judiciary--Criminal Justice** SPONSOR: **Rep. Collier**

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

CONTENTS: **Regulation of Salvia divinorum and salvinorin A**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	(1) Potential gain in federal Medicaid reimbursement; (2) Potential, likely no more than minimal, annual gain in locally collected court costs
Expenditures	(1) Potential increase in Medicaid costs; (2) Potential incarceration cost increase, magnitude uncertain, but could exceed minimal annually
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential, likely no more than minimal, annual gain in locally collected court costs
Expenditures	- 0 -
Occupational Licensing and Regulatory Fund (Fund 4K90)	
Revenues	- 0 -
Expenditures	Minimal one-time expenditure for State Board of Pharmacy to develop rules

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

- **Incarceration expenditures.** If LSC fiscal staff's assumptions relative to the bill's impact on criminal cases is true, then the number of individuals that could be sentenced to prison exclusively for conduct involving Salvia divinorum and/or salvinorin A will be relatively small, especially in the context of a prison population that currently totals in excess of 51,000 inmates. However, while LSC fiscal staff is unable to reliably project either the number of offenders that could be so sentenced annually or the length of the prison terms that a sentencing court might impose, it seems probable that the bill's fiscal effect on the Department of Rehabilitation and Correction's (DRC) annual incarceration costs could exceed minimal on an annual basis. For the purposes of this fiscal analysis, an increase in excess of minimal means an estimated cost of \$100,000 or more per year for the state.
- **Court cost revenues.** If, as expected, the number of Salvia divinorum and/or salvinorin A convictions annually statewide is relatively small, then the amount of court cost revenue that will be deposited in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020) is likely to be minimal at most. For the purposes of this fiscal analysis, minimal means an estimated revenue gain of less than \$100,000 for either state fund per year.
- **Incarceration expenditures.** It is possible that, as a result of the bill's penalty enhancements, additional offenders could end up being sentenced to prison or sentenced to prison for a longer stay than might



otherwise have been the case under current law and sentencing practices. However, LSC fiscal staff is unable to reliably project either the number of offenders that could be so sentenced annually or the length of the prison terms that a sentencing court might impose. This means that whether the bill's fiscal effect on the Department of Rehabilitation and Correction's (DRC) annual incarceration costs will exceed minimal is uncertain. For the purposes of this fiscal analysis, a minimal increase means an estimated cost of less than \$100,000 per year for the state.

- **Court cost revenues.** As certain 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 4020). This is because the state court cost imposed on an offender and deposited to the credit of Fund 4020 is slightly higher for a felony than it is for a misdemeanor: \$30 versus \$9. The amount of money that Fund 4020 may gain annually appears likely to be negligible at most. For the purposes of this fiscal analysis, in the context of state revenues, negligible means an annual gain estimated at less than \$1,000 per year for the state.
- **Reinstatement fee revenues.** As the bill's Salvia divinorum and/or salvinorin A provisions may produce a relatively small number of new arrests and convictions for operating or being under physical control of a vehicle, vessel, or similar device, any increase in ALS reinstatement revenues, stemming from refusals to be tested, would likely be no more than minimal, which, for the purposes of this fiscal analysis, means an estimated gain of more than \$1,000, but less than \$100,000, per year. Any such revenue gain would be distributed among several state agencies and eight specific state funds, as outlined in Table 1. Associated with these revenue gains generally is the potential for an increase in annual expenditures of an equal magnitude.
- **State Board of Pharmacy.** The bill requires the State Board of Pharmacy to adopt rules that specify for purposes of the prohibitions against a person operating or being in physical control of vehicles, vessels, or similar devices. According to staff of the State Board of Pharmacy, the costs to research and establish new rules specifying prohibited concentrations of Salvia divinorum and salvinorin A should be no more than minimal and will be a one-time only expense.
- **Medicaid eligibility for incarcerated persons.** Under the bill, persons released from state and local correctional facilities might receive Medicaid services sooner than under current law. This would likely result in increased state and federal Medicaid service costs. While service costs would likely increase, no longer requiring redetermination of Medicaid eligibility for this population could result in reduced administrative costs. The cost of updating the Medicaid computer systems to include "suspended" eligibility status would be negligible. If receiving Medicaid services sooner reduces the probability that these persons would commit crimes or their mental health might decompensate, the bill could have the indirect effect of reducing state incarceration and mental health costs.
- **Commercial driver's license exemption.** The bill's CDL provision may make it easier for state law enforcement and correctional agencies to utilize existing personnel with greater efficiency when transporting prisoners. Currently, drivers of such vehicles are required to obtain a CDL or endorsement. Affected state agencies may also realize some annual savings if they would otherwise have absorbed all, or a portion of, the costs of certain persons to obtain and retain a CDL.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties and Municipalities	
Revenues	Factors potentially increasing and decreasing court costs and fines, with likely net minimal annual effect
Expenditures	Factors potentially increasing and decreasing criminal justice system operating expenses, with likely net minimal annual effect
Counties Adjoining Another State (those conveying persons to another county jail)	
Revenues	- 0 -
Expenditures	Potential savings, magnitude uncertain, but could be hundreds of thousands of dollars annually for certain jurisdictions
Counties Receiving Jail Inmates (those housing persons from an Ohio county adjoining another state)	
Revenues	Potential loss, magnitude uncertain, but could be hundreds of thousands of dollars annually for certain jurisdictions and may be more or less offset by related expenditure savings
Expenditures	Potential revenue-related savings, magnitude uncertain, but could be hundreds of thousands of dollars annually for certain jurisdictions

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

- **Salvia divinorum and/or salvinorin A cases.** Based on a number of conversations that LSC fiscal staff conducted during research into the bill's potential local fiscal effects, it appears that the number of individuals that could be charged, prosecuted, and sanctioned for miscellaneous drug offenses involving Salvia divinorum and/or salvinorin A will be relatively small in any given local jurisdiction. Assuming that were true, then the annual costs for any affected county or municipal criminal justice system (investigation, prosecution, adjudication, defense if the individual is indigent, and sanctioning) to resolve these cases seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal cost means an estimated annual expenditure of no more than \$5,000 for any affected county or municipality.

- **Salvia divinorum and/or salvinorin A court cost and fine revenues.** In the matter of local revenues, as the likely number of cases that could be created by the bill in any given local jurisdiction appears to be relatively small, any resulting gain in annual court cost and fine revenues for any affected county or municipality would not be likely to exceed minimal. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated increase of no more than \$5,000 for any affected county or municipality.

- **Counties transferring and receiving jail inmates.** From a fiscal perspective, presumably a county sheriff would only enter into an arrangement to convey a person or persons to an adjoining state if the total costs of doing so are equal to or less than the total costs of conveying that person or those persons to a jail in another Ohio county. Such an outcome means that the latter county would no longer incur the cost of housing the former county's persons nor collect any related financial reimbursement. The net fiscal effect on the county that would otherwise be housing another county's persons is uncertain. It seems likely though that such a county would look to expand and/or enter into arrangements with other Ohio counties that need jail beds.

- **Counties of Hamilton and Butler.** In conducting its research, LSC fiscal staff has discerned: (1) it does not appear that there would be immediate and widespread use of this permissive authority, although that does not preclude the possibility of it being so in the future, and (2) there are persons associated with Hamilton County that are actively working on the idea of conveying persons across the Ohio River to Kentucky's Campbell County Jail. The potential fiscal ramifications of implementing such an arrangement

are discussed in the "Detailed Fiscal Analysis" that follows, including the impact on Butler County, which currently houses some persons conveyed from the Hamilton County Sheriff.

- **Medicaid eligibility for incarcerated persons.** Under the bill, persons released from state and local correctional facilities might receive Medicaid services sooner than under current law. If receiving Medicaid services sooner reduces the probability that these persons would commit crimes or their mental health might decompensate, the bill could have the indirect effect of reducing local incarceration and mental health costs.
- **Vehicular penalty enhancements and county criminal justice systems.** The bill's vehicle-related penalty enhancements could trigger factors that simultaneously increase and decrease any affected county criminal justice system's expenditures. The net annual fiscal effect of these contrasting possibilities on any given county criminal justice system's expenditures appears likely to be no more than minimal, as the number of cases in which these factors may come into play will be relatively small. 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 likely to be relatively small, the magnitude of the potential revenue gain will be minimal annually.
- **Vehicular penalty enhancements and municipal criminal justice systems.** The bill's vehicle-related penalty enhancements may shift certain 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. As the number of affected cases in any given municipal criminal justice system is likely to be relatively small, the magnitude of any expenditure decrease and related revenue loss will be minimal annually.
- **Commercial driver's license exemption.** The bill's CDL provision may make it easier for local law enforcement and correctional agencies to utilize existing personnel with greater efficiency when transporting prisoners. Currently, drivers of such vehicles are required to obtain a CDL or endorsement. Affected local agencies may also realize some annual savings if they would otherwise have absorbed all, or a portion of, the costs of certain persons to obtain and retain a CDL.

Detailed Fiscal Analysis

This fiscal analysis is organized around the bill's following six notable provisions:

- I. Including *Salvia divinorum* and salvinorin A as controlled substances, in Schedule 1 and including concentrations of *Salvia divinorum* and salvinorin A in Ohio's OVI and OWI statutes.
- II. Making clarifying changes regarding court cost add-on for indigent driver alcohol treatment.
- III. Providing for suspension of the eligibility for Medicaid of certain persons confined in a state or local correctional facility.
- IV. Permitting the transfer of county jail inmates to contiguous counties in adjoining states.
- V. Providing that certain penalty enhancements and mandatory prison terms for driving under a license suspension also apply to driving under cancellation and driving without a license.
- VI. Waiving from commercial driver's license requirements under Ohio law the operation of police vehicles used to transport prisoners.

I. Salvia divinorum and salvinorin A

The bill includes *Salvia divinorum* (perennial herb of the mint family) and salvinorin A (an active ingredient of *salvia divinorum*) as Schedule I controlled substances. The bill also provides for prohibited concentrations of *Salvia divinorum* and salvinorin A, to be determined by the State Board of Pharmacy, for the purpose of OVI and OWI enforcement.

According to the U.S. Drug Enforcement Administration's Office of Diversion Control, "the herb and its products are abused for their ability to evoke hallucinogenic effects, which, in general, are similar to those of other scheduled hallucinogenic substances, including LSD, DMT, psilocybin, and ketamine."¹

Based on its research into the use of *Salvia divinorum* and salvinorin A in Ohio, LSC fiscal staff discerned the following:

- To the degree that abuse of the herb is occurring, anecdotal evidence suggests that it does not appear to be a widespread activity.
- City of Columbus law enforcement personnel have not yet seen a widespread emergence of the use of the herb in their jurisdiction, and this appears to be the case for other local jurisdictions in Ohio as well.
- The herb and its components are readily available for purchase via the Internet.

¹ http://www.deadiversion.usdoj.gov/drugs_concern/salvia_d/salvia_d.htm.

- Since purchase of the herb or its components is not regulated, nor is possession or use of the herb a criminal offense, it is difficult to gauge the prevalence of abuse with much certainty or precision.
- Generally, drug offenses related to Schedule I controlled substances are felonies, most of which carry either a presumption for prison or mandate a prison term.

For the purposes of this fiscal analysis, LSC fiscal staff has assumed that these provisions of the bill could affect local criminal justice systems in two ways. First, individuals, who in the future would have been charged and prosecuted for the violation of various drug-related and OVI/OWI-related² offenses under current law, may face additional charges if their conduct also involves salvia divinorum and/or salvinorin A. Second, new criminal cases may be generated, as individuals may be charged and prosecuted solely for the use, possession, trafficking, manufacturing of the herb or its component salvinorin A, or OVI/OWI-related offenses which involve certain concentrations of the prohibited substance. The number of criminal cases that might be affected in either of the above-noted ways appears, based largely on anecdotal evidence, likely to be relatively small in any given local jurisdiction. If, however, demand and related use of the herb and/or its components increases, then the number of criminal cases that could be created or affected in some manner may be significantly larger in certain jurisdictions.

It should also be noted that under current law, persons may already be charged with an OVI/OWI offense if the arresting officer suspects that the person is under the influence of alcohol, a drug of abuse, or a combination of them. However, by stipulating a threshold amount in the Revised Code, cases would theoretically be easier to adjudicate.

Local fiscal effects

Based largely on anecdotal evidence, it appears that the number of criminal cases that might be created or affected, if these provisions are enacted, is likely to be relatively small in any given local jurisdiction. That said, local governments could be affected as described immediately below.

Criminal justice system expenditures

It appears that, at least initially, the number of individuals that could be arrested, charged, and prosecuted in any given local jurisdiction for violating any number of drug-related (i.e., possession, use, trafficking, and/or manufacturing) or OVI/OWI related offenses, associated with the inclusion of Salvia divinorum and salvinorin A both as controlled substances, as well as prohibited substances under the OVI/OWI statutes, will be relatively small. Assuming that were true, then the annual costs for any affected county or municipal criminal justice system (confinement, investigation, prosecution, adjudication, defense if the individual is indigent, and sanctioning) to resolve these cases seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal cost means an estimated annual expenditure of no more than \$5,000 for any affected county or municipality.

² It should be noted that the bill requires the State Board of Pharmacy to establish, by rule, the amount of Salvia divinorum and salvinorin A that constitutes concentrations that would impair a person from operating or being in physical control of certain vessels and vehicles.

Court cost and fine revenues

In the matter of local revenues, as the likely number of cases that could be created by the bill in any given local jurisdiction appears to be relatively small, any resulting gain in annual court cost and fine revenues for any affected county or municipality would not be likely to exceed minimal. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated increase of no more than \$5,000 for any affected county or municipality.

State fiscal effects

As stated previously, it appears that the number of criminal cases that might be created or affected, if these provisions are enacted, is likely to be relatively small in any given local jurisdiction. That said, state revenues and expenditures could be affected as described immediately below.

State Board of Pharmacy

The bill requires the State Board of Pharmacy to adopt rules that specify prohibited concentrations of Salvia divinorum and salvinorin A for purposes of the prohibitions against a person operating or being in physical control of vehicles, vessels, or similar devices. According to staff of the State Board of Pharmacy, the costs to research and establish the new rules should be no more than minimal and will be a one-time only expense.

Incarceration expenditures

If LSC fiscal staff's assumptions relative to impact of these provisions on criminal cases were true, then the number of individuals that could be sentenced to prison exclusively for conduct involving Salvia divinorum and/or salvinorin A will be relatively small, especially in the context of a prison population that currently totals around 51,000 inmates.

However, LSC fiscal staff is unable to reliably project either the number of offenders that could be so sentenced annually or the length of the prison terms that a sentencing court might impose. This means that whether the bill's fiscal effect on the Department of Rehabilitation and Correction's (DRC) annual incarceration costs will exceed minimal is uncertain. For the purposes of this fiscal analysis, a minimal increase means an estimated cost of less than \$100,000 per year for the state.

To put that \$100,000 cost threshold in perspective, DRC's average annual incarceration cost per inmate (fixed plus marginal expenses) is, as of December 2008, budgeted at \$24,590. LSC fiscal staff estimates DRC's marginal cost of adding an additional individual to the prison system at between \$3,500 and \$4,000 per year. Thus, depending upon whether one works from the full versus marginal cost figure, it could take as few as four additional individuals being sentenced to a prison term of at least one year (\$24,590 average annual incarceration cost per inmate times four prison-bound offenders), or as many as two dozen or so individuals being sentenced to a prison term of at least one year (\$3,500 to \$4,000 marginal annual incarceration cost per inmate times 25 to 29 prison-bound offenders) to increase DRC's incarceration costs by more than \$100,000 per year.

Court cost revenues

If individuals are convicted of criminal conduct involving Salvia divinorum and/or salvinorin A, then the state potentially collects state court costs that the court is generally required to impose on that individual. Those locally collected court costs are forwarded for deposit in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs for a felony offense total \$45, of which the GRF receives \$15 and Fund 4020 receives \$30. The state costs for a misdemeanor offense total \$24, of which the GRF receives \$15 and Fund 4020 receives \$9.

If, as expected, the number of additional convictions annually statewide is relatively small, then the amount of revenue that will be collected by the state is likely to be minimal at most. For the purposes of this fiscal analysis, minimal means an estimated revenue gain of less than \$100,000 for either state fund per year.

Reinstatement fees

The reinstatement fee for a suspended driver's license resulting from an under the influence violation is \$475. Under current law, an individual, under arrest for a suspected violation, who refuses to submit to any type of chemical test faces an automatic administrative license suspension (ALS) regardless of whether or not that person is convicted of violating an operating prohibition or being in physical control prohibition. As these provisions of the bill are expected to produce only a small number of new arrests and convictions, any increase in ALS reinstatement revenues, stemming from such refusals to be tested, would likely be no more than minimal, which, for the purposes of this fiscal analysis, means an estimated gain of more than \$1,000, but less than \$100,000, per year. Any such revenue gain would be distributed among several state agencies and eight specific state funds, as outlined in the attached Table 1. Associated with these revenue gains generally is the potential for an increase in annual expenditures of an equal magnitude.

Table 1	
State Fiscal Effects of Gain in ALS Reinstatement Fee Revenues	
STATE FUNDS	FY 2009 – FUTURE YEARS
State Bureau of Motor Vehicles Fund (Fund 4W40)	
Revenues	Potential gain, minimal at most
Expenditures	No discernible effect
Indigent Drivers Alcohol Treatment Fund (Fund 7049)	
Revenues	Potential gain, minimal at most
Expenditures	Potential increase, commensurate with revenue gain
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential gain, minimal at most
Expenditures	No discernible effect
Statewide Treatment and Prevention Fund (Fund 4750)	
Revenues	Potential gain, minimal at most
Expenditures	Potential increase, commensurate with revenue gain
Services for Rehabilitation Fund (Fund 4L10)	
Revenues	Potential gain, minimal at most
Expenditures	- 0 -
Drug Abuse Resistance Education Programs Fund (Fund 4L60)	
Revenues	Potential gain, minimal at most
Expenditures	Potential increase, commensurate with revenue gain
Trauma & Emergency Medical Services Grants Fund (Fund 83P0)	
Revenues	Potential gain, minimal at most
Expenditures	Potential increase, commensurate with revenue gain
Indigent Drivers Interlock and Alcohol Monitoring Fund (New Fund)	
Revenues	Potential gain, minimal at most
Expenditures	Potential increase, commensurate with revenue gain

II. Indigent driver alcohol treatment

The bill makes clarifying, conforming, and technical changes in the court cost add-on for indigent drivers alcohol treatment and in relation to Am. Sub. S.B. 17 of the 127th General Assembly. These changes carry no direct fiscal effects for the state or any of its political subdivisions.

III. Medicaid eligibility for incarcerated persons

Under the bill's Medicaid eligibility provision, if a person who is confined in a state or local correctional facility was a Medicaid recipient immediately prior to being confined in the facility, the person's eligibility for Medicaid will be suspended until the person is released. The person will not be required to reapply for Medicaid when released unless the Ohio Department of Job and Family Services or the appropriate county department of job and family services deems it necessary. The Department of Job and Family Services is to begin implementation of this provision on September 1, 2009.

Under current law, a person who was a Medicaid recipient immediately prior to being confined in a state or local correctional facility is disenrolled from the program when they enter

the facility. The person may reapply for Medicaid following release, but must go through eligibility redetermination. The eligibility process can take several days to several months.

Under the bill's provision, such a person might receive Medicaid services sooner than under current law. This would likely result in increased state and federal Medicaid service costs. However, redetermination costs could decrease. According to a spokesperson for the Department of Job and Family Services, any increase in administrative costs associated with changes to its computer systems would be negligible.

Furthermore, if receiving Medicaid services sooner eliminates potential interruptions in availability of key medications reduces the probability that the person would commit a crime or the person's mental health might decompensate, this provision could have the indirect effect of reducing state and local incarceration and mental health costs.

IV. Transfer of county jail inmates

The bill contains a provision specifying the circumstances under which a county sheriff would be permitted to convey a person to a jail in a contiguous county in an adjoining state.

Local fiscal effects

While conducting research, which included conversations with a representative of the Buckeye State Sheriffs' Association, LSC fiscal staff did not find any significant evidence that Ohio's border counties, in particular the sheriff of those counties, are actively exploring the idea of conveying persons to a jail in a contiguous county in an adjoining state. Thus, at the present time, it does not appear that there would be immediate and widespread use of this permissive authority, although that does not preclude the possibility of it being so in the future. The twenty-seven (27) Ohio counties that would be authorized to utilize the bill's permissive authority are summarized in Table 2 immediately below.

Table 2			
Ohio Counties Adjoining Another State			
Adams	Columbiana	Lawrence	Preble
Ashtabula	Darke	Lucas	Scioto
Athens	Defiance	Mahoning	Trumbull
Belmont	Fulton	Meigs	Van Wert
Brown	Gallia	Mercer	Washington
Butler	Hamilton	Monroe	Williams
Clermont	Jefferson	Paulding	

From a fiscal perspective, presumably a county sheriff would only enter into an arrangement to convey a person or persons to an adjoining state if the total costs of doing so are equal to or less than the total costs of conveying that person or those persons to a jail in another Ohio county. Such an outcome means that the latter county would no longer incur the cost of housing the former county's persons nor collect any related financial reimbursement. The net fiscal effect on the county that would otherwise be housing another county's persons is uncertain.

It seems likely though that such a county would look to expand and/or enter into arrangements with other Ohio counties that need jail beds.

The above generalization aside, LSC fiscal staff has learned that there are persons associated with Hamilton County that are actively working on the idea of conveying persons across the Ohio River to Kentucky's Campbell County Jail. The potential fiscal ramifications of implementing such an arrangement are discussed in more detail below, including the impact on Butler County, which currently houses some persons conveyed from the Hamilton County Sheriff.

Hamilton and Butler counties

Based on conversations with staff who work for the Hamilton County Board of County Commissioners Office, LSC fiscal staff has gathered the following:

- The Butler County Sheriff makes up to 400 beds per day available for persons conveyed by the Hamilton County Sheriff, and that the Hamilton County Sheriff uses approximately 300 of those beds each day.
- The average daily cost to house an inmate in the Hamilton County Jail is \$57.
- The average daily cost to the Hamilton County Sheriff to house an inmate in the Butler County Jail is \$55.
- In addition to the expense noted in the immediately preceding dot point, Hamilton County expends approximately \$250,000 per year to transport persons to the Butler County Jail.

As noted, discussions have occurred between persons associated with Hamilton County and the Campbell County Jail relative to conveying persons across the Ohio River to the latter, which is located in Kentucky. Campbell County Jail has offered to provide 100 beds to Hamilton County at a cost of \$44 per person per day. Relative to its existing financial arrangement with Butler County, this represents a savings to Hamilton County of \$11 per person per day (\$55 Butler County cost minus \$44 Campbell County cost). If the beds are fully utilized, the daily savings to Hamilton County works out to \$1,100; annualized, that savings would total around \$400,000. Campbell County Jail has also agreed to pay for all related transportation costs.

It appears as though Hamilton County would, in addition to the 100 beds being offered by Campbell County, potentially seek in the future to reallocate the 200 beds that would still be needed in Butler County to Campbell County or another county in Kentucky (the counties of Boone and/or Kenton), if the reduction in costs is deemed significant enough by Hamilton County.

Clearly, under this scenario, Butler County sheds costs of housing up to 300 Hamilton County persons and loses the related moneys that would otherwise be collected from Hamilton County. The net fiscal effect on Butler County requires is uncertain. That said, presumably, the Butler County Sheriff would seek to fill any excess jail bed capacity by expanding and/or entering into arrangements to house persons for other Ohio jurisdictions.

State fiscal effects

This provision of the bill will have no direct fiscal effect on the state.

V. Penalty enhancement for certain vehicle-related offenses involving death of another

The bill specifies that the penalty enhancement for aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter for driving under a license suspension and the requirement for a mandatory prison term in certain cases of aggravated vehicular homicide and vehicular homicide for driving under suspension also apply to driving under cancellation and driving without a license. According to the Department of Public Safety, in 2007, there were 48 convictions involving aggravated vehicular homicide, 42 convictions involving vehicular homicide, and 75 convictions involving vehicular manslaughter. The Department was not able to determine the status of the driver's license at the time of the offense.

State fiscal effects

Incarceration costs

It is possible that, as a result of the bill's changes to existing aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter prohibitions and penalties, additional offenders could end up being sentenced to prison or sentenced to prison for a longer stay than might otherwise have been the case under current law.

However, LSC fiscal staff is unable to reliably project either the number of offenders that could be so sentenced annually or the length of the prison terms that a sentencing court might impose. This means that whether the fiscal effects of these penalty enhancements on the Department of Rehabilitation and Correction's (DRC) annual incarceration costs will exceed minimal is uncertain. For the purposes of this fiscal analysis, a minimal increase means an estimated cost of less than \$100,000 per year for the state.

To put that \$100,000 cost threshold in perspective, DRC's average annual incarceration cost per inmate (fixed plus marginal expenses) is, as of December 2008, budgeted at \$24,590. LSC fiscal staff estimates DRC's marginal cost of adding an additional individual to the prison system at between \$3,500 and \$4,000 per year. Thus, depending upon whether one works from the full versus marginal cost figure, it could take as few as four additional individuals being sentenced to a prison term of at least one year (\$24,590 average annual incarceration cost per inmate times four prison-bound offenders), or as many as two dozen or so individuals being sentenced to a prison term of at least one year (\$3,500 to \$4,000 marginal annual incarceration cost per inmate times 25 to 29 prison-bound offenders) to increase DRC's incarceration costs by more than \$100,000 per year.

Court cost revenues

As certain 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 locally collected court cost revenue for the Victims of Crime/Reparations Fund (Fund 4020). This is

because the state court cost imposed on an offender and deposited to the credit of Fund 4020 is slightly higher for a felony than it is for a misdemeanor: \$30 versus \$9. The amount of money that Fund 4020 may gain annually, however, is likely to be negligible at most. For the purposes of this fiscal analysis, in the context of state revenues, negligible means an annual gain estimated at less than \$1,000 per year for the state.

Local fiscal effects

County criminal justice systems

Relative to the felony caseloads processed by county criminal justice systems, these penalty enhancement 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 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 a penalty enhancement may actually accelerate the resolution of some felony 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 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 misdemeanors 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, these penalty enhancement provisions could trigger factors that simultaneously increase and decrease any affected county criminal justice system's expenditures. The net annual fiscal effect of these contrasting possibilities on any given county criminal justice system's expenditures appears likely to be no more than minimal, as the number of cases in which these factors may come into play will be relatively small.

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 likely to be relatively small, the magnitude of the potential revenue gain will be minimal annually. 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, these penalty enhancement provisions may shift certain 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 municipal revenues in the form of related court costs and fines that would be assessed against such offenders. As the number of affected cases in any given municipal criminal justice system is likely to be relatively small, the magnitude of any expenditure decrease and related revenue loss will be minimal annually.

VI. Commercial driver's license exemption

The bill amends current law related to commercial driver's license (CDL) requirements to allow certain persons to operate a police vehicle to transport prisoners.

State and local fiscal effects

The bill's CDL provision may make it easier for state and local law enforcement and correctional agencies to utilize existing personnel with greater efficiency when transporting prisoners. Currently, drivers of such vehicles are required to obtain a CDL or endorsement. Affected state and local agencies may also realize some annual savings if they would otherwise have absorbed all, or a portion of, the costs of certain persons to obtain and retain a CDL.

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