Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 184** DATE: **May 13, 2008**

STATUS: **As Passed by the Senate** SPONSOR: **Sen. Buehrer**

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

CONTENTS: **Self-defense and gun specification sentencing requirements**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Potential negligible annual loss in locally collected state court costs
Expenditures	(1) Potential short-term, minimal at most, incarceration cost decrease resulting from self-defense presumption; (2) Gun specification prison population stacking effect, peaking around ten years after bill's effective date, estimated at up to $18.62 million or more in additional annual incarceration costs
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Potential negligible annual loss in locally collected state court costs
Expenditures	- 0 -

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

- ***Short-term incarceration costs*.** In the short term, there may be some reduction in the number of persons claiming self-defense, and yet convicted of a felony offense of violence in such circumstances, which could yield, all other conditions remaining the same, some marginal decline in the size of the state prison system's inmate population.

- ***Long-term incarceration costs*.** From a more long-term perspective, the changes to the felony sentencing law related to gun specifications means that, in the future, certain offenders, subsequent to the bill's enactment, would receive longer prison terms than is the case under current law and sentencing practices. In effect, by extending prison stays beyond what the amount of time served would have been under current law, the bill will trigger a "stacking effect," which refers to the increase in the inmate population that occurs as certain offenders stay in prison longer and the number of offenders entering the prison system does not decrease. To provide an initial estimate of the impact of the bill's gun specification provision on the future size of the Department of Rehabilitation and Correction's (DRC) inmate population, LSC fiscal staff worked from a "very preliminary analysis" provided by the Department's Bureau of Research. To summarize, the DRC analysis noted that, relative to the size of the inmate population, when the resulting stacking effect stabilizes, the Department would need a "conservatively" estimated 739 additional beds. If DRC's research is a reasonable approximation of the bill's impact on its future inmate population, then the increase in its GRF-funded incarceration costs when the stacking effect peaks could conceivably total up to $18.62 million or more annually. The Department's research also noted that this stacking effect would probably start to occur in the first year following the bill's effective date and peak within ten years.

- ***Court cost revenues.*** If, as assumed for the purposes of this fiscal analysis, the bill will affect a relatively small number of criminal cases annually statewide in which a person has raised a claim of self-defense, then any potential loss in court cost revenues that would otherwise have been collected and forwarded to the state treasury will likely be negligible. For the purposes herein, "negligible" means an estimated revenue loss of less than $1,000 for either the state's GRF or Victims of Crime/Reparations Fund per year.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
Counties and Municipalities	
Revenues	Potential, minimal at most, loss in court costs, fees, and fines
Expenditures	Potential, minimal at most, reduction in criminal and/or civil 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.

- ***Local criminal justice systems generally.*** The most likely effect of the bill's use of force provisions may be to reduce criminal cases involving claims of self-defense, which could create some level of savings in local criminal case processing costs and a related loss in court cost and fine revenues that might otherwise have been collected. These potential changes in the magnitude of revenues and expenditures appear unlikely to exceed minimal, which, for the purposes of this fiscal analysis, means an estimated dollar amount of no more than $5,000 for any affected county or municipality.

- ***Local civil justice systems generally.*** If there is any resulting reduction in the number of civil actions related to instances in which there is some use of force, there could be an overall savings realized in certain county or municipal civil justice systems resulting from a decrease in judicial dockets and a reduction in the related workload of other court personnel. It is quite likely that the resulting savings in the annual operating costs for any given local jurisdiction, to the degree that such savings can be measured, would not exceed minimal. If there is, in fact, some reduction in the number of civil actions filed, the affected courts will likely see a loss in related court cost and filing fee revenues that would otherwise have been collected. However, the savings realized by those courts in terms of their personnel and related operating costs would likely be greater than any possible revenue loss.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably modifies the laws governing: (1) the use of force for purposes of self-defense or defense of another, and (2) the sentencing of a felony offender for multiple gun specifications, as follows:

- Creates a rebuttable presumption that a person acted in self-defense or defense of another and had a reasonable fear of imminent death or serious physical harm to the person's self or another when using defensive force against a person who is in the process of unlawfully entering or has unlawfully entered the residence or vehicle occupied by the person using the defensive force.
- Provides that any recovery in a tort action is barred to any person if that person engaged in the criminal conduct that was a proximate cause of the injury or loss for which relief is claimed in the tort action, or the victim of the criminal conduct was a proximate cause of the injury or loss for which relief is claimed in the tort action.
- Establishes that any person using self-defense under any of the conditions in the previous two bullet points has no duty to retreat before using force in self-defense.
- Requires the court to sentence an offender convicted of multiple felonies, each with a gun related specification, to at least two of the prison terms required for the most serious gun related specifications for which the offender was convicted.

Number of self-defense claims

LSC fiscal staff has not located any readily available and reliable statewide statistics on the number of criminal cases in which a person, clearly acting in self-defense, has been prosecuted and sanctioned for the commission of an offense of violence. That said, largely anecdotal evidence suggests that: (1) the number of criminal cases in other states involving legitimate claims of self-defense are relatively small, and (2) prosecutors generally will not prosecute a person that has clearly acted in self-defense. This would further suggest that, if Ohio's experience mirrors that anecdotally based scenario, then the bill's rebuttable presumption provision will affect an extremely small number of cases involving certain acts of violence that are a portion of a considerably larger criminal caseload.

State fiscal effects

Incarceration costs

By broadening the scope of justification for the use of force, the bill may reduce the number of persons that would have, or could have, been convicted under current law on homicide or assault charges when such an individual claimed the use of force was necessary and justified as an act of self-defense, yet the circumstances present lent themselves to prosecution and possible conviction. To the extent that such a reduction in convictions occurs as a function of the bill's self-defense provisions, there could be a corresponding reduction in the number of

individuals sentenced to prison for committing a felony offense of violence. Research performed by LSC fiscal staff concerning similar legislation in a number of other states revealed no specific data or other discussions concerning the magnitude of the impact, if any, that a bill of this type would have on criminal cases where the circumstances present include an offense of violence and a claim of self-defense or defense of another.

The bill also amends the felony sentencing code to require the court to sentence an offender convicted of multiple felonies, each with a gun-related specification, to at least two of the prison terms required for the most serious gun-related specifications for which the offender was convicted. Under current law, if an offender is convicted of multiple felonies, and each of these felonies has a gun specification, the court can only impose additional years for one of the gun specifications. The bill requires the court to impose the additional years to be served based on the sentencing requirements for the two most serious gun specifications. Beyond this, the bill gives the court discretion to impose on the offender the additional prison term for any or all of the remaining gun specifications.

Short-term incarceration cost effect. In the short term, there may be some reduction in the number of persons claiming self-defense, and yet convicted of a felony offense of violence in such circumstances, which could yield, all other conditions remaining the same, some marginal decline in the size of the state prison system's inmate population.

Long-term incarceration cost effect. From a more long-term perspective, the changes to the felony sentencing law related to gun specifications means that, in the future, certain offenders, subsequent to the bill's enactment, would receive longer prison terms than is the case under current law and sentencing practices. In effect, by extending prison stays beyond what the amount of time served would have been under current law, the bill will trigger a "stacking effect," which refers to the increase in the inmate population that occurs as certain offenders stay in prison longer and the number of offenders entering the prison system does not decrease.

To provide an initial estimate of the impact of the bill's gun-specification provision on the future size of the Department of Rehabilitation and Correction's (DRC) inmate population, LSC fiscal staff worked from a "very preliminary estimate" provided by the Department's Bureau of Research. The DRC analysis noted that relative to the size of the inmate population, when the resulting stacking effect stabilizes, the Department will need a "conservatively" estimated 739 additional inmate beds.

According to DRC's web site, the annual incarceration cost per inmate as of April 2008, was budgeted at $25,192. If DRC's research is a reasonable approximation of the bill's impact on its future inmate population, then the increase in its GRF-funded incarceration costs, when the stacking effect peaks, could conceivably total up to $18.62 million or more annually. The Department's research also noted that this stacking effect would probably start to occur in the third year following the bill's effective date and peak within ten years.

Relative to the bill's long-term effect on DRC's annual incarceration costs, three caveats are important to note as follows:

(1) The estimate is based on DRC's current incarceration cost per inmate per year (presumably the cost will continue to rise over time).

(2) The estimate assumes all other conditions that could affect the size and cost of running the state's prison system will remain the same over time, which seems highly unlikely.

(3) At some point, it may be necessary for DRC to construct additional bed space, if sufficient capacity does not exist in their prison system to absorb the larger inmate population that the bill will most certainly create. How and when DRC might undertake the capital improvements necessary to add this space would be extremely speculative at this point in time.

Court cost revenues

As a result of the potential reduction in certain criminal convictions in relation to the bill's self-defense provisions, there could also be a corresponding reduction in state court cost revenues, which are collected locally and forwarded for deposit in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). The state court costs imposed for the commission of a felony offense total $45, of which the GRF receives $15 and Fund 402 receives $30. The state court costs imposed for the commission of a misdemeanor offense total $24, of which the GRF receives $15 and Fund 402 receives $9. If, as assumed for the purposes of this fiscal analysis, the bill will affect a relatively small number of criminal cases annually statewide in which a person has raised a claim of self-defense, then any potential loss in court cost revenues that would otherwise have been collected and forwarded to the state treasury will likely be negligible. For the purposes herein, "negligible" means an estimated revenue loss of less than $1,000 for either state fund per year.

Local fiscal effects

Local criminal justice systems generally

As previously stated, a potential effect of the bill's provisions regarding the use of force is a possible reduction in the number of persons prosecuted and sanctioned for an act of violence used in their own defense or the defense of another. Such an outcome could create some level of savings in local criminal case processing and sanctioning costs and a related loss in court cost and fine revenues that might otherwise have been collected. These potential changes in the magnitude of revenues and expenditures appear unlikely to exceed minimal, which, for the purposes of this fiscal analysis, means an estimated dollar amount of no more than $5,000 per year for any affected county or municipality.

Local civil justice systems generally

The bill provides that a person who properly establishes the affirmative defense of self-defense or defense of another in a specified criminal context has immunity from civil liability for damages in a tort action related to the acts of self-defense or defense of another. If there is any resulting reduction in the number of civil actions related to instances in which there is some use

of force, there could be an overall savings realized in certain county or municipal civil justice systems resulting from a decrease in judicial dockets and a reduction in the related workload of other court personnel. It is quite likely that the resulting savings in the annual operating costs for any given local jurisdiction, to the degree that such savings can be measured, would not exceed minimal. If there is, in fact, some reduction in the number of civil actions filed, courts will likely see a loss in related court cost and filing fee revenues that would otherwise have been collected. However, the savings realized by courts in terms of their personnel and related operating costs would likely be greater than any possible revenue loss.

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