

justice systems. In some cases, the possibility of longer sentences may make a defendant with prior convictions more willing to negotiate a plea with the county prosecutor (potentially reducing trial-related expenditures) while in other cases a defendant may fight to avoid a longer sentence and be more willing to have their case heard before a judge or jury (potentially increasing expenditures). Although uncertain as to whether these potential expenditure increases and decreases will offset one another, it appears that any net fiscal effect would, in the worst-case scenario, be minimal at most with respect to the annual operating costs of any affected county criminal justice system.

Detailed Fiscal Analysis

The bill has two fiscally notable provisions that would affect the sentencing and incarceration of certain convicted felons as follows.

- Doubles the ranges of prison terms from which a sentencing court may impose a prison term on an offender who is convicted of a felony and also is convicted of a specification charging that the offender previously was convicted of two or more felonies.
- Establishes a presumption in favor of a sentencing court imposing the longest prison term authorized for the felony offense upon an offender convicted of a felony if: (1) the offender is not subject to a sentence of death or life imprisonment or a mandatory prison term, and (2) the offender previously has been convicted of or pleaded guilty to that felony or an offense under an existing or former law of Ohio, another state, or the United States.

Felony sentencing changes and the state's prison population

The bill does not eliminate or replace the felony sentencing options that exist under current law. It instead provides additional options and presumptions that judges may choose to utilize when sentencing convicted felony-level offenders with one or more prior convictions. Table 1 immediately below shows the specific sentencing options proposed by the bill compared to the options available under current law.

Table 1 Prison Term Sentencing Ranges		
Offense Level	Current Law	Proposed by the Bill
First degree felony	3,4,5,6,7,8,9, or 10 years	6,8,10,12,14,16,18, or 20 years
Second degree felony	2,3,4,5,6,7, or 8 years	4,6,8,10,12,14, or 16 years
Third degree felony	1,2,3,4, or 5 years	2,4,6,8, or 10 years
Fourth degree felony	6 to 18 months	12 to 36 months
Fifth degree Felony	6 to 12 months	12 to 24 months

Data provided by the Department of Rehabilitation and Correction (DRC) describing the intake of approximately 28,700 new felony commitments for calendar year (CY) 2006 suggests that about 38%, or roughly 10,900, of those new inmates had no prior felony convictions, and thus would not have been affected in any direct way by the bill's sentencing provisions had they been in effect at that time. The bill would, however, have potentially affected the remaining 62%, or about 17,800, of these new inmates in that each had at least one prior felony conviction. More specifically, 23.2%, or 6,658 of those new inmates, had one prior felony conviction, and would thus have been potentially subject to the bill's maximum prison sentences. The remaining 38.8%, or about 11,142 of those inmates, had two or more prior felony convictions. This group of felons under the bill would not only have faced the longest sentences in the range, but their prison sentences could have been doubled in length from current law.

The Department also provided a breakdown of their CY 2006 intake population that would likely be affected by the bill in terms of each felony level and the expected increase in time served under the bill. As the overall inmate population grows in subsequent years, these estimates would likely shift accordingly.

Table 2		
Estimated Additional Time Served by CY 2006 Intake Under S.B. 208		
Prior Offenses and Felony Level	Additional Months Served	Additional Years Served*
One prior fifth degree felony	8,520	710
One prior fourth degree felony	11,408	951
One prior third degree felony	51,520	4,293
One prior second degree felony	40,104	3,342
One prior first degree felony	25,824	2,152
Two or more prior fifth degree felonies	53,888	4,491
Two or more prior fourth degree felonies	65,328	5,444
Two or more prior third degree felonies	251,544	20,962
Two or more prior second degree felonies	131,712	10,976
Two or more prior first degree felonies	92,832	7,736
TOTALS	732,680 Months	61,057 Years

*Rounded to nearest year

Source: Department of Rehabilitation and Correction

State fiscal effect

The bill does not create any new criminal cases nor does it create any increase in the number of people sentenced to prison. The bill will, however, have a potentially significant impact on the length of time served by more than half of the offenders sentenced to a prison annually subsequent to its effective date. As, under the bill, these offenders could stay longer than under current law, a "stacking effect" will begin to occur very quickly as new inmates are committed the next year. As these inmates "stack up," the population grows. Since the bill affects all felony levels, this "stacking effect" will begin to occur in the first three years, primarily due to longer prison sentences imposed on repeat low-level offenders, those convicted of a felony of the fifth or fourth degree. According to calculations by the research staff

at DRC, the bill would likely produce an increase of at least 11,000 inmates within three years of enactment, over 40,000 additional inmates within 10 years, before peaking at a total estimated increase of 61,057 within 20 years or so.

It is difficult to estimate an exact incarceration cost increase for any given year under the bill. The Department estimates that, over the course of the next 20 or so years, the bill will produce approximately 61,057 additional inmate years. At the current annual cost of incarceration, which is \$25,331 per inmate, the bill could potentially produce additional annual incarceration costs in the area of up to around \$1.5 billion distributed over the course of the next 20 years. This estimate does not consider future inflationary factors, the future growth of the inmate population that would occur over the next 20 years without the enactment of the bill, or the possible debt service payments that might be incurred to finance any necessary capital improvements costs.

Judicial discretion. In light of this significant cost estimate, it is important to point out that judges are not required to fully utilize the additional sentencing options provided by the bill. To the extent that a judge is satisfied with the sentencing parameters available under current law, the judge can ignore the provisions of the bill, thus mitigating the ultimate fiscal impact to the state. LSC fiscal analyses are typically conducted from the perspective that the bill would be fully implemented, if enacted. This analysis therefore reflects the full impact of the bill. DRC appears to have pursued a similar intellectual perspective in their analysis of the bill. As of this writing, neither DRC nor LSC fiscal staff has the information readily at hand to discern how the judges of courts of common pleas in the state's 88 counties will incorporate the bill's sentencing mechanisms into their existing sentencing practices.

Local fiscal effects

The changes to the sentencing law proposed by the bill will not produce any new criminal cases, but may alter the way in which some individual cases make their way through county criminal justice systems. In some cases, the possibility of longer sentences may make a defendant with prior convictions more willing to negotiate a plea with the county prosecutor (potentially reducing trial-related expenditures), while in other cases a defendant may fight to avoid a longer sentence and be more willing to have their case heard before a judge or jury (potentially increasing expenditures). Although uncertain as to whether these potential expenditure increases and decreases will offset one another, it appears that any net fiscal effect would, in the worst-case scenario, be minimal at most with respect to the annual operating costs of any affected county criminal justice system.

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