

# Fiscal Note & Local Impact Statement

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

Ohio Legislative Service Commission  
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BILL: **Sub. S.B. 209** (LSC 127 1313-1) DATE: **October 23, 2007**  
STATUS: **In Senate Finance and Financial Institutions** SPONSOR: **Sen. Carey**  
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**  
CONTENTS: **OVI fines for indigent criminal defense**

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## State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
<b>Indigent Defense Support Fund (Fund 5DY)</b>			
Revenues	Gain in the range of \$1.85 million to \$2.75 million*	Gain in the range of \$3.7 million to \$5.5 million	Annual gain in the range of \$3.7 million to \$5.5 million
Expenditures	Increase, up to available revenue	Increase, up to available revenue	Increase, up to available revenue

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

\* Assumes revenue amounts will be at most 50% of estimated annual range as at least one-half or more of fiscal year will be over before revenue starts being collected.

- ***Indigent Defense Support Fund (Fund 5DY)***. Assuming the annual average number of violators for each category of OVI violation holds in the future, and all of those violators pay the mandatory fine amount, then the total amount of money that would potentially be generated per year for deposit in Fund 5DY will be around \$5.5 million. However, it seems very likely that some OVI violators will be either unwilling and/or financially unable to pay the specified fine amount. Staff at the Ohio Public Defender Commission have examined this "collectibility" issue and estimated that the amount of revenue that will be generated annually at around \$3.7 million. The bill appropriates that amount – \$3.7 million in each of FYs 2008 and 2009 – for the purpose of assisting counties in their costs related to maintaining their indigent criminal defense systems.



## ***Local Fiscal Highlights***

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
<b>Clerks of Courts</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal cost to properly receipt and disburse specified OVI fine amount	Potential minimal cost to properly receipt and disburse specified OVI fine amount	Potential minimal cost to properly receipt and disburse specified OVI fine amount
<b>County Indigent Criminal Defense Systems</b>			
Revenues	Gain in the range of \$3.7 million to \$5.5 million	Gain in the range of \$3.7 million to \$5.5 million	Annual gain in the range of \$3.7 million to \$5.5 million
Expenditures	- 0 -	- 0 -	- 0 -

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

- **Clerks of courts.** Clerks of municipal courts, county courts, and mayor's courts and courts of common pleas will be required to collect and then forward the specified OVI fine amount for deposit in the state treasury to the credit of the Indigent Defense Support Fund. Presumably, these clerks of courts will need to modify their accounting systems in order to properly receipt and disburse the specified OVI fine amount to the state treasury. As of this writing, it would not appear that the potential cost to establish and maintain the appropriate controls for any given clerk of court would exceed minimal.
- **County indigent criminal defense systems.** The bill will likely generate in the range of \$3.7 million to \$5.5 million annually for the purpose of providing additional state financial assistance to county indigent criminal defense systems.

## ***Detailed Fiscal Analysis***

### **Overview**

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

- Increases the range of the mandatory OVI fines paid pursuant to section 4511.19 of the Revised Code for a violation of the prohibition against operating a vehicle under the influence (hereinafter referred to as "OVI").
- Directs that a specified amount of the mandatory fine, which varies according to the category of the OVI violation, be added to the special crediting provisions that the court is required to follow in the case of imposing the mandatory fine.
- Requires the specified fine amount be directed for deposit in the state treasury to the credit of the Indigent Defense Support Fund, which the bill creates.
- Appropriates \$3.7 million in each of FYs 2008 and 2009 from the newly created fund, to be used by the State Public Defender for indigent criminal defense.

### **State revenues and expenditures**

The statutorily specified fines imposed for OVI violations each have a particular range, which vary according to the level of the offense, and is generally a function of the offender's number of prior OVI violations and the timeframe in which those violations occurred (sometimes referred to as the "look back period").

The bill increases the mandatory fines for OVI violations at both the top and the bottom of their respective ranges and essentially directs that a specified amount of that increase be deposited in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY), which the bill creates. Table 1 immediately below displays the range of the mandatory OVI fines under current law and under the bill, as well as the specified amount for each category of violation that is to be collected and forwarded for deposit in Fund 5DY.

<b>Table 1</b>			
<b>Range of Mandatory OVI Fines</b>			
<b>Category of OVI Violation</b>	<b>Range of Fines (Current Law)</b>	<b>Range of Fines (The Bill)</b>	<b>Amount Deposited into Fund 5DY</b>
1st offense in 6 years	\$250-\$1,000	\$325-\$1,075	\$75
2nd offense in 6 years	\$350-\$1,500	\$475-\$1,625	\$125
3rd offense in 6 years	\$550-\$2,500	\$800-\$2,750	\$250
4th or 5th offense in 6 years or 6th in 20 years	\$800-\$10,000	\$1,300-\$10,500	\$500
2nd or more OVI felonies in	\$800-\$10,000	\$1,300-\$10,500	\$500

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The data in Table 2 immediately below, which was provided by the Department of Public Safety, displays the number of individuals who were convicted of, or pleaded guilty to, an OVI violation in each of calendar years (CY) 2000 through 2006, as well as the number of prior OVI violations that those individuals had been convicted of, or pleaded guilty to, if any.

<b>Table 2</b>							
<b>Number of OVI Offenders, Calendar Years 2000 – 2006</b>							
<b>Number of OVI Violations</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
1st	41,791	40,467	42,148	41,570	42,615	43,400	45,074
2nd	12,311	11,399	11,599	11,247	10,832	10,629	10,726
3rd	3,270	2,971	2,870	2,753	2,508	2,294	2,200
4th or more	715	595	541	460	446	373	346
<b>Total</b>	<b>58,087</b>	<b>55,432</b>	<b>57,158</b>	<b>56,030</b>	<b>56,401</b>	<b>56,696</b>	<b>58,346</b>

Based on the data in Table 2 above, LSC fiscal staff calculated that, between CYs 2000 and 2006, the average number of OVI violators annually were as follows: 42,438 first-time offenders (those with no prior convictions), 11,249 second-time offenders (those with one prior conviction), 2,695 third-time offenders (those with two prior convictions), and 497 offenders with three or more prior convictions.

Using the above-noted averages and the amount of the specified fee for each category of OVI violation, LSC fiscal staff assembled Table 3, immediately below, which displays the amount of revenue that could potentially be generated each year for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY).

<b>Table 3</b>			
<b>Potential Annual Revenue Generation for Indigent Defense Support Fund</b>			
<b>Category of OVI Violation</b>	<b>Annual Average Number of Violators</b>	<b>Indigent Defense Support Fund Fee Amount</b>	<b>Amount of Revenue Generated</b>
1st offense in 6 years	42,438	\$75	\$3,182,850
2nd offense in 6 years	11,249	\$125	\$1,406,125
3rd offense in 6 years	2,695	\$250	\$673,750
4th or more	497	\$500	\$248,500
<b>Potential Total Amount Generated Annually</b>			<b>\$5,511,225</b>

Assuming the annual average number of violators for each category of OVI violation holds in the future, and all of those violators pay the mandatory fine amount, then the total amount of money that would potentially be generated per year for deposit in Fund 5DY will be around \$5.5 million. However, it seems very likely that some OVI violators will be either unwilling and/or financially unable

to pay the specified fine amount. Staff at the Ohio Public Defender Commission have examined this "collectibility" issue and estimated that the amount of revenue that will be generated annually at around \$3.7 million. The bill appropriates that amount – \$3.7 million in each of FYs 2008 and 2009 – for the purpose of assisting counties in their costs related to maintaining their indigent criminal defense systems.

### **Local revenues and expenditures**

The bill, as discussed below, will have direct fiscal effects on at least two local government components: (1) clerks of courts and (2) county indigent criminal defense systems.

#### **Clerks of courts**

Clerks of municipal courts, county courts, and mayor's courts and courts of common pleas will be required to collect and then forward the specified OVI fine amount for deposit in the state treasury to the credit of the Indigent Defense Support Fund. Presumably, these clerks of courts will need to modify their accounting systems in order to properly receipt and disburse the specified OVI fine amount to the state treasury. As of this writing, it would not appear that the potential cost to establish and maintain the appropriate controls for any given clerk of court would exceed minimal.

#### **County indigent criminal defense systems**

The bill will likely generate in the range of \$3.7 million to \$5.5 million annually for the purpose of providing additional state financial assistance to county indigent criminal defense systems.

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