Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **S.B. 231** DATE: **November 14, 2007**

STATUS: **As Introduced** SPONSOR: **Sens. Cates, Mumper, Coughlin, Buehrer, Schuring, Padgett, Faber, Gardner, Austria, Schaffer**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **To require facilities that perform abortions to display a sign and enhancing the criminal penalty for causing or attempting to cause physical harm to a family or household member who was pregnant at the time of the offense**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase of uncertain magnitude related to incarceration costs; Potential minimal increase for web site modification	Potential increase of uncertain magnitude related to incarceration costs	Potential increase of uncertain magnitude related to incarceration costs
Operating Expenses (Fund 5D6)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase
Victims of Crime/Reparations Fund (Fund 402)			
Revenues	Gain potentially exceeding minimal	Gain potentially exceeding minimal	Gain potentially exceeding minimal
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.

- Additional offenders might be sentenced to prison subsequent to the bill's enactment, and thus, there could be an increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs.
- The bill requires the Department of Health to publish a notice on its Internet web site in a manner that can be copied and produced in poster form. The cost would likely be minimal.

- The State Medical Board of Ohio could realize an increase in administrative and possible investigative and adjudication costs as a result of the bill. It is likely that these costs would be minimal; however, the total costs would be dependent on the number of physicians who violate the provisions in the bill.

- Given the shifting of cases from the misdemeanor to the felony level, the Victims of Crime/Reparations Fund could collect an additional $21 compared to the revenue generated from the misdemeanors under current law. Thus, as a result of perhaps as many as 7,400 offenders being convicted of, or pleading guilty to, the penalty enhanced conduct, the state may gain an additional $21 in locally collected state court costs for each such instance for deposit in Fund 402. The magnitude of this potential gain could exceed the minimal threshold for the state, which is $100,000.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties			
Revenues	Gain of uncertain magnitude	Gain of uncertain magnitude	Gain of uncertain magnitude
Expenditures	Increases possibly exceeding minimal in some jurisdictions	Increases possibly exceeding minimal in some jurisdictions	Increases possibly exceeding minimal in some jurisdictions
Municipalities			
Revenues	Loss of uncertain magnitude	Loss of uncertain magnitude	Loss of uncertain magnitude
Expenditures	Decreases	Decreases	Decreases

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

- Certain domestic abuse cases will be elevated to the status of felonies, thus shifting such cases out of municipal and county courts into the more expensive felony component of county criminal justice systems. This shifting of cases may result in the following fiscal effects: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues.

Detailed Fiscal Analysis

Penalty for domestic violence when the victim is pregnant

Prohibitions

Existing law prohibits a person from doing any of the following:

(1) Knowingly causing or attempting to cause "physical harm" to a "family or household member";

(2) Recklessly causing "serious physical harm" to a family or household member; or

(3) By threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

Current penalties

A violation of any of the prohibitions listed above is the offense of "domestic violence." The existing penalty for the offense of "domestic violence" is as follows:

(1) Except as otherwise described in subsequent paragraphs, a violation of the prohibition described above in clause (3) under "Prohibitions" is a misdemeanor of the fourth degree, and a violation of the prohibition described above in clause (1) or (2) under "Prohibitions" is a misdemeanor of the first degree.

(2) Except as otherwise provided in paragraph (3), below, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to domestic violence, a violation of R.C. 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of the prohibition described above in clause (1) or (2) under "Prohibitions" is a felony of the fourth degree, and a violation of the prohibition described above in clause (3) under "Prohibitions" is a misdemeanor of the second degree.

(3) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in clause (2), above, involving a person who was a family or household member at the time of the violations or offenses, a violation of the prohibition described above in clause (1) or (2)

under "Prohibitions" is a felony of the third degree, and a violation of the prohibition described above in clause (3) under "Prohibitions" is a misdemeanor of the first degree.

Penalties under the bill

The bill provides a new or enhanced penalty for the offense of "domestic violence" that applies in specified circumstances. Under the bill, if the offender knew the victim of the violation was pregnant at the time of the violation, a violation of the prohibition described above in clause (1) or (2) under "Prohibitions" is a felony of the fifth degree and a violation of the prohibition described above in clause (3) under "Prohibitions" is a misdemeanor of the third degree.

Fiscal effect of enhanced penalties

The Pregnancy Risk Assessment Monitoring System Data Summary (PRAMS) is a joint surveillance project between the Ohio Department of Health (ODH) and the U.S. Centers for Disease Control and Prevention. PRAMS is a mail survey with a telephone follow-up of a random sample of recent mothers of live-born infants. According to PRAMS approximately 5% of women have been physically abused during pregnancy by a husband, partner, or anyone else – these women may or may not have reported this abuse to authorities. In 2006, there were approximately 148,000 births in Ohio. If 5% of these women were abused during pregnancy, this means that up to 7,400 pregnant women were abused by a husband, partner, or anyone else. For the purposes of this fiscal note, LSC staff assumes that the majority of these cases were perpetuated by a family or household member and thus could be tried with the enhanced penalties. Therefore, there could be a significant fiscal impact on county governments.

Local government fiscal effects

The bill's penalty enhancement carries the potential to elevate certain domestic abuse cases that, based on current law, would most likely be adjudicated as a misdemeanor under the subject matter jurisdiction of a municipal court or a county court to a felony under the subject matter jurisdiction of a court of common pleas. Relative to a misdemeanor, a felony is generally a more expensive criminal matter to resolve.

Certain domestic abuse cases that would have been misdemeanors under current law will be elevated to the status of felonies, thus shifting such cases out of municipal and county courts into the more expensive felony component of county criminal justice systems. From the fiscal perspective of local governments, this elevation of certain domestic violence cases may simultaneously: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues.

State government fiscal effects

By enhancing certain domestic abuse cases under the above-noted circumstances from a misdemeanor to a felony, the bill creates the possibility that a person who could not otherwise have been sentenced to a prison term under current law can theoretically, at least, be sentenced to a prison term in the future. As a result, additional offenders might be sentenced to prison subsequent to the bill's enactment, and there could be an increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs.

In addition to any local fines and court costs, offenders can be ordered to pay locally collected state court costs. State court costs for a felony conviction total $45, with $30 of that amount being credited to the Victims of Crime/Reparations Fund (Fund 402) and the remainder, or $15, being credited to the GRF. State court costs for a misdemeanor conviction total $24, with $9 of that amount being credited to the Victims of Crime/Reparations Fund and the remainder, or $15, being credited to the GRF. Thus, the GRF gains $15 irrespective of whether an offender is convicted of or pleads guilty to a misdemeanor or a felony. In the case of a felony, the Victims of Crime/Reparations Fund could collect an additional $21 compared to its potential take from a misdemeanor. Thus, as a result of a person being convicted of, or pleading guilty to, the penalty enhanced conduct, the state may gain an additional $21 in locally collected state court costs for each such instance for deposit in Fund 402.

Factors in determination

Please note that there are several factors that could have an impact on this estimate. One, it is likely that not all of these women would report the abuse to authorities. Thus, fewer court cases would be prosecuted and the enhanced penalty costs would be reduced. Second, the offender would need to know the victim of the violation was pregnant at the time of the violation. This may be hard for prosecutors to prove. Third, the cases that move from a misdemeanor offense to a felony offense in the bill will likely see a partial offset in court costs and possible incarceration expenses for certain governmental entities.

Display of notice by offices or facilities where abortions are performed or induced

The bill requires the Department of Health to publish a notice on its Internet web site in a manner that can be copied and produced in poster form. The notice must state: (1) that no one can force another person to have an abortion, (2) that an abortion cannot be legally performed on anyone, regardless of her age, unless she voluntarily consents to having the abortion, (3) that before an abortion can legally be performed, the pregnant female must sign a form indicating that she consents to having the abortion voluntarily and without coercion by any person, and (4) that if someone is trying to force another person to have an abortion against the other person's will, the other person should not sign a consent form, and, if the other person is at an abortion facility, should tell an employee of the facility that someone is trying to force the other person to have an abortion.

The bill requires each office or facility at which abortions are performed or induced to post the notice in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors. The notice specifies the poster dimensions and the minimum typeface required. The bill specifies that the notice-posting requirement does not apply to an office or facility at which abortions are performed or induced due only to a "medical emergency." As used in this provision,

"medical emergency" means a condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion.

The bill explicitly requires an "ambulatory surgical facility" that performs or induces abortions to comply with that requirement.

Fiscal effect of notice display

The Department of Health will realize an increase in costs related to creating the notice and posting it on their web site. The cost is expected to be minimal as long as they only have to post the form.

There are currently 22 government-owned hospitals in Ohio. These hospitals are owned by counties or the state. According to the Ohio Hospital Association, it is believed that abortions are performed in hospitals only in the case of medical emergencies. If this is indeed the case, then hospitals would not be required to post the notice and there would be no cost associated with this provision on government-owned hospitals.

Under the bill, ambulatory surgical facilities that perform or induce abortions must comply with the notice-posting requirement. An ambulatory surgical facility may be either hospital-operated or independent. If an ambulatory surgical facility is affiliated with one of the 22 government-owned hospitals, then that facility and hence the government-owned hospital itself, may experience an increase in administrative costs related to the notice-posting requirement. This increase in costs should be minimal. LSC staff randomly checked ambulatory surgical facility web sites. It appears from the facilities' web sites that most facilities are owned by physicians or health care groups and are not affiliated with government-owned hospitals.

Disciplinary actions

Under the bill, the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, must limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under the bill.

Fiscal effect of disciplinary actions

The State Medical Board of Ohio could realize an increase in administrative and possible investigative and adjudication costs as a result of the bill. It is likely that this cost would be minimal; however, the total costs would be dependent on the number of physicians who violate the provisions in the bill.

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