



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** Sub. H.B. 103 of the 128th G.A.

**Date:** June 24, 2009

**Status:** As Reported by House Judiciary

**Sponsor:** Reps. Fende and Harwood

**Local Impact Statement Procedure Required:** No — Minimal cost

**Contents:** Penalties for certain offenses where the victim is a judge or magistrate

### State Fiscal Highlights

STATE FUND	FY 2010 – FUTURE YEARS
<b>General Revenue Fund (GRF)</b>	
Revenues	- 0 -
Expenditures	Potential, likely no more than minimal, annual incarceration cost increase
<b>Victims of Crime/Reparations Fund (Fund 4020)</b>	
Revenues	Potential, likely negligible, annual gain in court cost revenues
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- **Incarceration expenditures.** As a result of violations of the bill's prohibition, there could potentially be a small number of additional offenders/juveniles sentenced to a state prison/juvenile correctional facility, or sentenced to a longer term in a state prison or juvenile correctional facility than might otherwise have been the case under current law and practice. In theory, such outcomes increase the institutional operating expenses of the departments of Rehabilitation and Correction (DRC) and Youth Services (DYS). To the degree that actually occurs, the magnitude is likely to be no more than minimal, meaning a state expenditure increase estimated at less than \$100,000 per year.
- **Court cost revenues.** If, as assumed herein, a few additional offenders/juveniles may be found to have committed a felony rather than misdemeanor offense, the result could be a negligible gain in the amount of the locally collected court cost that is credited to the Victims of Crime/Reparations Fund (Fund 4020). For the purposes of this fiscal analysis, "negligible" means an estimated revenue gain of less than \$1,000 per year.

# Local Fiscal Highlights

## LOCAL GOVERNMENT

FY 2009 – FUTURE YEARS

### Counties

Revenues	Potential gain in court costs and fines, likely to be no more than minimal annually
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Expenditures	Potential increase in criminal and/or juvenile justice system operating costs, likely to be no more than minimal annually
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### Municipalities

Revenues	Potential loss in court costs and fines, likely to be no more than minimal annually
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Expenditures	Potential decrease in criminal justice system operating costs, likely to be no more than minimal annually
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Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Local expenditures generally.** The effect of the bill on local governments will likely be to: (1) shift certain misdemeanor cases from a municipal court or a county court to a court of common pleas, and (2) raise the possibility of more serious sanctions being imposed on juvenile offenders. As a result of the former effect, municipalities may shed some of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, 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. Annual costs to county juvenile justice systems to resolve these cases and appropriately sanction the offending juvenile may rise as well. Given the number of criminal and juvenile cases that will be affected by the bill appear to be relatively small, any potential decrease in annual municipal criminal justice system expenditures and any potential increase in annual county criminal and juvenile justice system expenditures would likely be no more than minimal. For the purposes of this fiscal analysis, "minimal" means a change in expenditures estimated at no more than \$5,000 for any affected municipality or county per year.
- **Local court cost and fine revenues generally.** As the penalty enhancements would shift certain cases involving adult offenders out of a county court or a municipal court (which handle misdemeanors) and into a court of common pleas (which handle felonies), this creates a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that juvenile offenders may be fined higher amounts than would otherwise have been the case under current law and sentencing practices. As the number of affected criminal and juvenile cases appears likely to be relatively small, the amount of annual court cost and fine revenue that municipalities might lose and counties might gain would be no more than minimal. For the purposes of this fiscal analysis, "minimal" means a change in revenue estimated at no more than \$5,000 for any affected municipality or county per year.

## Detailed Fiscal Analysis

### Offenses against a judge or magistrate

The bill generally increases the penalties for certain crimes when the victim is a judge or magistrate. The assumptions guiding this fiscal analysis can generally be described as follows:

- Existing prohibitions are already applicable to the conduct addressed by the bill, which means the likely affect may be to increase the seriousness of the potential penalty.
- The number of cases that might be affected in any given local criminal justice system is likely to be relatively small, especially in the context of the overall criminal caseload.
- Certain cases will shift from the jurisdiction of a municipal or county court to the jurisdiction of a court of common pleas.
- Certain offenders/juveniles will receive a more serious sanction, including a term in a state prison or juvenile correctional facility or a longer term than might otherwise have been imposed.

### Penalty changes

The following Table 1 summarizes the bill's proposed penalty changes to current law, including creating the offense of threatening a judge or magistrate. With regard to the offense of threatening, LSC fiscal staff's research suggests that the existing prohibitions potentially applicable to "threatening" include menacing by stalking, retaliation, and intimidation. Therefore, though this offense is not currently codified under Ohio law, this new prohibition is not likely to create any additional criminal cases, so much as possibly shift certain cases from the misdemeanor subject matter jurisdiction of a municipal court or county court to the felony subject matter jurisdiction of a court of common pleas.

**Table 1. Penalties When Victim is a Judge or Magistrate**

Offense	Degree of Offense	
	Current Law	The Bill
Felonious assault	Felony 2nd degree	Felony 1st degree; mandatory prison term if serious physical harm
Aggravated assault	Felony 4th degree	Felony 3rd degree; mandatory prison term if serious physical harm
Assault	Misdemeanor 1st degree	Felony 4th degree; mandatory prison term if serious physical harm
Aggravated menacing	Misdemeanor 1st degree	Felony of 5th or 4th degree depending upon circumstances present
Threatening	Not specifically defined*	Felony 5th degree
Aggravated murder	No aggravating circumstances; 15 years to life	Death sentence or life imprisonment

\*Under current law, potentially analogous offenses appear to include menacing by stalking (misdemeanor 1st degree or felony 4th degree), intimidation (felony 3rd degree), and retaliation (felony 3rd degree).

## **State and local expenditures**

### **Local expenditures**

The bill's penalty enhancement provisions could affect local expenditures on certain criminal and juvenile cases in at least two ways.

First, certain criminal cases that would have been handled by a municipal court or a county court as misdemeanors under existing law will shift to a court of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may shed some of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders who commit an offense against a judge or magistrate. Conversely, 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.

Second, offenders who are young enough to be processed through the juvenile courts would also face the possibility of more serious penalties and sentencing. As a result, the annual costs to county juvenile justice systems to resolve these cases and appropriately sanction the offending juvenile may rise.

Given the number of criminal and juvenile cases that will be affected by the bill's penalty enhancements appear to be relatively small, any potential decrease in annual municipal criminal justice system expenditures and any potential increase in annual county criminal and juvenile justice system expenditures would likely be no more than minimal. For the purposes of this fiscal analysis, minimal means a change in expenditures estimated at no more than \$5,000 per year for any affected local jurisdiction.

### **State expenditures**

It is also possible as a result of the bill that: (1) additional adult offenders could be sentenced to prison, which in theory increases the Department of Rehabilitation and Correction's (DRC) annual incarceration costs, and (2) additional juvenile offenders could be committed to the state, which in theory increases the Department of Youth Services' (DYS) annual care and custody costs. It would appear, however, that very few additional adult and juvenile offenders will be sentenced to prison or committed to the state annually as a result of the bill's penalty enhancements and thus any related potential increase in DRC's annual incarceration costs or DYS's annual care and custody costs would be no more than minimal. For the purposes of this fiscal analysis, in the context of state expenditures, minimal means an annual cost increase estimated at less than \$100,000.

## State and local revenues

As the penalty enhancements could shift certain cases involving adult offenders out of a county court or a municipal court (which handle misdemeanors) and into a court of common pleas (which handle felonies), this creates a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that juvenile offenders may be fined higher amounts than would otherwise have been the case under current law and sentencing practices. As the number of affected criminal and juvenile cases appears likely to be relatively small, the amount of annual court cost and fine revenue that municipalities might lose and counties might gain would be no more than minimal. For the purposes of this fiscal analysis, "minimal" means a change in revenues estimated at no more than \$5,000 per year for any affected local jurisdiction.

The state may also 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/juvenile 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, as the number of affected criminal and juvenile cases appears to be relatively small. For the purposes of this fiscal analysis, in the context of state revenues, negligible means an annual gain estimated at less than \$1,000.

## Felony and misdemeanor sentences and fines generally

Table 2 below summarizes the existing sentences and fines, unchanged by the bill, for felony and misdemeanor offenses generally.

**Table 2. Existing Sentences and Fines for Offenses Generally**

Offense Level	Fine	Maximum Term
Felony 1st degree	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10 years' definite prison term
Felony 2nd degree	Up to \$15,000	2, 3, 4, 5, 6, 7, 8 years' definite prison term
Felony 3rd degree	Up to \$10,000	1, 2, 3, 4, 5 years' definite prison term
Felony 4th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months' definite prison term
Felony 5th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, 12 months' definite prison term
Misdemeanor 1st degree	Up to \$1,000	6-month jail stay
Misdemeanor 2nd degree	Up to \$750	90-day jail stay
Misdemeanor 3rd degree	Up to \$500	60-day jail stay
Misdemeanor 4th degree	Up to \$250	30-day jail stay
Minor misdemeanor	Up to \$150	Citation issued; No arrest

## **Public Records**

The bill provides that the residential and familial information of a probation officer is not a public record. Although as of this writing LSC fiscal staff has not completed its research into the fiscal implications, if any, of this provision, it appears that the costs for the state and its political subdivisions to comply will be negligible.

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