



Ohio Legislative Service Commission

Matthew L. Stiffler

Fiscal Note & Local Impact Statement

Bill: H.B. 182 of the 128th G.A.

Date: December 8, 2009

Status: As Introduced

Sponsor: Rep. Hackett

Local Impact Statement Procedure Required: No — Minimal cost

Contents: Mandatory prison terms for certain offenses when the victim is less than 5 years old

State Fiscal Highlights

STATE FUND	FYs 2010 – 2011	FUTURE YEARS
General Revenue Fund (GRF)		
Revenues	- 0 -	- 0 -
Expenditures	- 0 -	Prison population stacking effect peaking around twelve years after bill's effective date, resulting in additional annual incarceration costs at up to \$5.0 million to \$7.5 million or more annually

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

- Stacking effect.** Requiring a mandatory definite prison term of five to ten years instead of the sentences currently specified in felony sentencing law 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.
- Incarceration expenditures.** The Department of Rehabilitation and Correction estimates that, when this stacking effect peaks roughly 12 years after the bill's effective date, it will need approximately 200 to 300 additional inmate 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 \$5.0 million to \$7.5 million or more annually. This estimate does not consider future inflationary factors, the future growth of the inmate population that would occur over that period of time without the enactment of the bill, the possible debt service payments that might be incurred to finance any necessary capital improvements costs, or the uncertainty introduced by judicial discretion permitted under the state's felony sentencing framework.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010–FUTURE YEARS

Counties (criminal justice systems)

Revenues

- 0 -

Expenditures

Factors potentially increasing and decreasing criminal justice system expenditures,
with likely minimal net effect

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

- **County criminal justice system.** 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.

Detailed Fiscal Analysis

Overview

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

- Requires the imposition of a mandatory prison term of five, seven, eight, nine, or ten years for certain felony offenses (voluntary manslaughter, involuntary manslaughter, reckless homicide, felonious assault, and endangering children) when the victim dies or suffers substantial permanent injury and is less than five years old.

Mandatory prison terms for certain felony offenses

Table 1 below compares the presumed or possible prison term for the felony offenses of voluntary manslaughter, involuntary manslaughter, reckless homicide, felonious assault, and endangering children under current law with the bill's mandatory definite term of imprisonment when the victim dies or suffers substantial permanent injury and is less than five years old

Table 1. Comparison of Prison Terms for Certain Felony Offenses		
Felony Offense	Degree of Offense	
	Current Law	The Bill
Voluntary manslaughter	Felony 1st degree (presumption for a definite prison term of 3 to 10 years)	For any of these five felony offenses, mandatory definite prison term of 5 to 10 years if offender caused death or substantial permanent injury and victim less than 5 years of age
Involuntary manslaughter	Felony 3rd degree (possible definite prison term of 1 to 5 years) Felony 1st degree (presumption for a definite prison term of 3 to 10 years)	
Reckless homicide	Felony 3rd degree (possible definite prison term of 1 to 5 years)	
Felonious assault	Felony 2nd degree (presumption for a definite prison term of 2 to 8 years)	
Endangering children	Felony 5th degree (possible definite prison term of 6 to 12 months) Felony 4th degree (possible definite prison term of 6 to 18 months) Felony 3rd degree (possible definite prison term of 1 to 5 years) Felony 2nd degree (presumption for a definite prison term of 2 to 8 years)	

State fiscal effects

Incarceration expenditures

The changes to the felony sentencing law related to voluntary manslaughter, involuntary homicide, reckless homicide, felonious assault, and endangering children when the victim is less than five years old and dies or experiences substantial permanent injury mean 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 estimate the impact of the bill's provisions requiring mandatory prison terms on the future size of the DRC inmate population, LSC fiscal staff worked from an analysis 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 would need an estimated 200 to 300 additional inmate beds.

According to DRC's web site, the annual incarceration cost per inmate as of November 2009 is budgeted at \$25,240. 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 \$5.0 million to \$7.5 million or more annually. The Department's research also noted that, subsequent to the bill's effective date, this stacking effect would probably begin to occur within two years, and be realized about twelve years thereafter.

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.

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.

HB0182IN.docx / th