



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 429 of the 128th G.A.

Date: April 8, 2010

Status: As Introduced

Sponsor: Reps. Harris and Lehner

Local Impact Statement Procedure Required: Yes

Contents: Domestic violence law changes

State Fiscal Highlights

STATE FUND

FY 2010 – FUTURE YEARS

Attorney General's Office (GRF)

Revenues - 0 -

Expenditures Likely increase in operating expenses exceeding \$100,000 annually

Department of Health (GRF)

Revenues - 0 -

Expenditures Likely more than minimal increase in operating expenses

Department of Rehabilitation and Correction (GRF)

Revenues - 0 -

Expenditures Less than minimal increase in incarceration expenses

Indigent Defense Support Fund (Fund 5DY0)

Revenues Less than minimal gain in locally collected state court costs

Expenditures - 0 -

Victims of Crime/Reparations Fund (Fund 4020)

Revenues Less than minimal gain in locally collected state court costs

Expenditures - 0 -

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

- **Attorney General's Office.** This bill requires the Attorney General's Office (AGO) to track the issuance and violation of civil and criminal protection orders granted for the protection of victims of domestic violence. The complexities involved in the development, implementation, and ongoing collection of this data could require additional expenditures by the AGO in excess of \$100,000 annually.
- **Department of Health.** This bill requires the Department of Health (DOH) to establish procedures and provide training to the domestic violence fatality review boards. Based on LSC's research into the cost of similar programs administered by DOH, the bill could have a more than \$100,000 annual increase in the Department's operating expenditures.

- **Department of Rehabilitation and Correction.** LSC fiscal staff has not collected any evidence suggesting a significant number of additional offenders would be sentenced to a period of incarceration or confinement in a state correctional facility as a result of the bill's new felony provision. Assuming this was true, then the additional costs that the state might incur annually seem unlikely to exceed minimal.
- **Court cost revenues.** It seems unlikely that more than a minimal amount of additional locally collected state court costs will be generated annually for deposit in the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). Minimal means a revenue gain estimated at less than \$5,000 for either state fund per year.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010 – FUTURE YEARS

County Jails

Revenues - 0 -

Expenditures Increase in incarceration costs likely to exceed minimal

Counties and Municipalities (Criminal Justice Systems)

Revenues Less than minimal gain in locally collected state court costs and fines

Expenditures Potential increase of up to several million or more statewide to prosecute and sanction domestic violence offenders

Law Enforcement

Revenues - 0 -

Expenditures An increase in costs associated with arrests, the magnitude of this increase is uncertain

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

- **County jails.** The bill increases the maximum jail term for domestic violence from the standard maximum of six months for an M1 to a maximum term of one year. Given the potential size of this population, the per diem cost associated with county jails, and the lack of adequate space for additional offenders in many counties, this penalty enhancement will lead to a more than minimal increase in county jail expenditures for some counties. For the purpose of this fiscal analysis, in the context of local governmental agencies, a more than minimal fiscal impact is regarded as being \$100,000 or more annually statewide.
- **Criminal justice systems.** As a result of the bill's new felony prohibition, and the potential increase in the number of domestic violence protection orders and their subsequent violation, additional persons may be charged, arrested, and convicted of felony and misdemeanor offenses than under current law. This may increase a county's or municipality's cost to investigate, prosecute, adjudicate, defend (if the person is indigent), and sanction certain individuals. Additional costs may be incurred under the bill as a result of the potential increased number of hearings and required treatment for domestic violence offenders. Some of these increased costs

could be offset by additional revenues in the form of court costs, fines, and fees but the likely net effect on any given county or municipality will be a more than minimal increase in its annual operating costs. A more than minimal increase for a county means a cost estimated at more than \$5,000 per year.

- **Law enforcement.** The bill requires law enforcement to make an arrest and detain the accused until a warrant can be obtained when they have a reasonable ground to believe that a violation of a protection order has occurred. This provision is likely to increase the number of arrests, and the expenditures associated with processing an arrest, for violating a protection order. The costs associated with this provision are uncertain.
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Detailed Fiscal Analysis

Overview

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

- Requires the Attorney General's Office (AGO) to track the issuance and violation of civil and criminal protection orders issued for the protection of victims of domestic violence;
- Creates domestic violence fatality review boards to review deaths associated with domestic violence;
- Instructs the Department of Health (DOH) to develop rules and procedures as well as provide training and instruction to domestic violence fatality review boards;
- Creates a new third degree felony prohibition for acquiring, having, carrying, or using a firearm while under indictment or if convicted of domestic violence;
- Increases the maximum penalty for an M1 violation of domestic violence from the current maximum of six months to one year in jail;
- Mandates that domestic violence offenders participate in a domestic violence treatment program;
- Requires a domestic violence offender to appear before the court at least once and allows the court to require attendance at 30, 60, 90, and 120-day intervals until discharged from the program;
- Allows the court to issue a protection order, in addition to other remedies, for domestic violence violations; and
- Requires that when law enforcement has a reasonable ground to believe that a violation of a protection order has occurred, an arrest shall be made and the accused detained until a warrant can be obtained.

State fiscal effects

Attorney General's Office

The bill requires the AGO to track the issuance and violation of civil and criminal protection orders issued for the protection of victims of domestic violence. Currently, there is no single, comprehensive statewide source of domestic violence statistics. There are three state agencies that track various components of the data regarding this issue: the AGO, Ohio Criminal Justice Services in the Department of Public Safety, and the Supreme Court of Ohio. Each of these agencies tracks the data in a slightly different fashion and at a slightly different part of the criminal justice process which can result in very different levels of completeness and accuracy in their data.

Tracking the issuance of and violation of civil and criminal protection orders as required under the bill will be a complex, and potentially costly, undertaking for the AGO. The complexity involved in collecting this data is due to the different governmental units who may be involved in this process and developing a system capable of being utilized by all those units. A domestic violence protection order can be issued from a municipal court or a court of common pleas. Within the court of common pleas, a domestic violence protection order can be issued by multiple divisions and often for the same instance of violence by different divisions under a civil and criminal complaint. Enforcement of those protection orders, both civil and criminal, is spread to hundreds of individual law enforcement organizations across the state. The creation and maintenance of a database capable of collecting and organizing this information is estimated to cost more than \$100,000 annually.

Department of Health

The bill requires DOH to adopt rules and establish a procedure for domestic violence fatality review boards to follow when conducting a review of the death of an adult as a result of domestic violence. The Department is also to provide training for members of the review boards concerning the purpose of the review process, the scope of their immunity from civil liability, the nature and confidentiality of the information they collect or review, and the procedure for reporting that data to the Department.

Under current law, the Department is responsible for providing similar services to child fatality review boards across Ohio. LSC fiscal staff contacted DOH to document the costs associated with child fatality review boards. According to the Department the total charges associated with supporting these child fatality review boards as required under current law is approximately \$120,000 annually. Because the domestic violence fatality review boards, under the bill, will be similarly supported by DOH, this represents a good estimate of the potential cost to DOH associated with this legislation.

Department of Rehabilitation and Correction

Firearms offense

Under current state law, persons under indictment or convicted of a felony offense of violence are not be permitted to acquire, have, carry, or use a firearm. Under federal law, persons convicted of domestic violence are prohibited from shipping, transporting, possessing, or purchasing a firearm. The bill would extend the state prohibition to include persons under indictment or convicted of domestic violence mirroring current federal law. The penalty for violating this new provision is a felony of the third degree.

Protection order offense

The bill is likely to increase the number of domestic violence protection orders granted annually and therefore has the potential to increase the number of convictions for violating these protection orders. A second offense for the violation of a protection order is a felony of the fifth degree.

As a result of these felony prohibitions, additional adults may be sentenced to a prison term than under current law. In theory, the costs for the state's Department of Rehabilitation and Correction (DRC) would increase to secure and provide services to those adults. LSC fiscal staff has not collected any evidence suggesting a significant number of additional adults might be sentenced to a period of incarceration or confinement in a state correctional facility. Assuming this was true, then the additional costs that the state might incur annually seem unlikely to exceed minimal.

The annual cost associated with housing and providing services to an offender in prison may be calculated using two separate annual inmate cost estimates: (1) total cost per inmate bed (fixed plus marginal), and (2) marginal cost per inmate bed. The Department has reported that, as of March 2010, its total annual cost per inmate bed was \$25,320.05. Marginal cost can be used when a relatively small number of offenders are likely to be added to DRC's total annual inmate population. Marginal costs include things such as food, clothing, medical care, and so on. LSC fiscal staff estimates that DRC's annual marginal cost is currently around \$4,314 per inmate.

State Indigent Defense Support Fund (5DY0) and State Victims of Crime/Reparations Fund (4020)

As a result of the bill's new felony prohibition, and the potential increase in the number of domestic violence protection orders and their subsequent violation, additional persons may be charged, arrested, and convicted of felony and misdemeanor offenses than under current law. In these cases, the court is generally required to impose state court costs to be deposited in Fund 5DY0 and Fund 4020. The state court cost is \$20 for a misdemeanor offense and \$30 for a felony offense for Fund 5DY0 and of \$9 and \$30, respectively, for Fund 4020. Although the number of such additional convictions is difficult to estimate, it seems unlikely that the amount of additional court cost revenue generated for deposit in Fund 5DY0 or Fund 4020 annually would be

likely to exceed minimal. Minimal means a revenue gain estimated at less than \$5,000 per year.

Local fiscal effects

County jails

The bill increases the potential penalty for an M1 violation of domestic violence from the standard M1 maximum of 180 days to up to maximum one year in jail. As a result of the misdemeanor penalty enhancement, additional adults may be sentenced to a longer jail term than under current law. In theory, the costs for the county sheriffs increase to secure and provide services to those offenders. It is not possible to estimate a precise impact of this change on the population or costs associated with county jails because it requires attempting to predict the future sentencing choices of judges. However, LSC fiscal staff is able to estimate the size of the fiscal impact in broader terms.

According to information provided to LSC from the Ohio Domestic Violence Network and referencing statistics collected by the AGO, there were 74,551 calls for domestic violence in 2008 resulting in 34,588 arrests. It is worth noting that being arrested does not equate to being charged or much less convicted and sentenced to a domestic violence offense. However, with such a large population of those persons being arrested for domestic violence it does suggest that the subset of those convicted and sentenced to the maximum jail term under current law would be large enough to warrant a more, and potentially significantly more, than minimal impact on the incarceration expenses for county sheriffs. According to the Bureau of Adult Detention Annual Jail Report 2007 published in June 2009, the per diem cost for an inmate at a full-service jail was \$60.08. The costs associated with increasing the stay for 100 offenders statewide from the current maximum of six months to the one year maximum under the bill would then be approximately \$1 million annually. This sum easily eclipses the \$100,000 threshold LSC typically considers as being a minimal impact of local governmental units statewide.

Criminal justice systems

Criminal justice system expenditures

Under current law, and unchanged by the bill, the penalty for domestic violence offenses can range from a fourth degree misdemeanor to a third degree felony depending on the fact pattern of the violation. This range of penalties means domestic violations can be heard in both the court of common pleas (felonies) and in the county and municipal court systems (misdemeanors). The following provisions in the bill will impact both of these criminal justice systems.

As a result of the bill, additional misdemeanor and felony cases, and hearings related to those cases, may be generated for county and municipal criminal justice systems to resolve involving persons whose conduct under current law might not have led to their being arrested, charged, and prosecuted. If this were to happen, local

criminal justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders would increase in any affected county or municipality. The size of this expenditure increase is difficult to estimate but likely to be a significant increase statewide.

Firearms prohibition

The bill creates a new third degree felony prohibition for acquiring, having, carrying, or using a firearm while under indictment or if convicted of domestic violence. This prohibition is similar to a prohibition under current federal law regarding disabilities associated with gun ownership. This provision will increase the number of felony cases in the court of common pleas but is not expected to lead to a large increase in the number of cases because the prohibition is similar to disabilities under current federal law.

Hearings

The bill requires a domestic violence offender to appear before the court at least once and allows the court to require attendance at 30, 60, 90, and 120-day intervals until discharged from the program. This requirement will increase the number of hearings involved in these cases by at least one, but is permissive in allowing the court to decide if additional hearings beyond that are required. The increased costs associated with increasing the number of hearings are uncertain. However, to the degree that the provision is permissive any increase in costs is within the court's control.

Protection orders

The bill also allows the court to issue a protection order, in addition to other remedies, for domestic violence violations. Under current law, temporary protection orders (criminal) expire at sentencing. Under the bill, the court would be able to extend the protection order (criminal) through the end of a violator's sentence instead. This extension is both a strengthening of current practice and a simplification of the process for victims of domestic violence. Under current law, judges can order an offender to stay away from a victim under community control sanctions. Additionally, if a victim wanted a protection order beyond the sentencing phase of a criminal trial, the victim can seek relief using a civil protection order that may extend up to five years. Therefore, the provision's fiscal impact is likely to be rather minimal.

Batterer intervention program treatment

Finally, the bill mandates that domestic violence offenders participate in a domestic violence treatment program. This provision will create the most significant fiscal impact on the local criminal justice system. The bill is silent as to who would be responsible for providing the funding necessary for these programs. In many of these cases, the offender, or the court if they are indigent, is responsible for providing some or all of the necessary funding. LSC fiscal staff research into the fiscal impact of this provision reveals that although it is difficult to estimate, the potential size of this increase could be several million or more annually statewide. In order to estimate the

cost of this provision to municipal courts LSC fiscal staff must estimate three variables: the number of domestic violence convictions annually, the cost for batterer intervention programming, and the percentage of batterers who are indigent.

Unfortunately, there is no central repository for conviction data in Ohio. LSC fiscal staff estimates the size of the domestic violence offender population to be at least 10,000 convictions annually. This calculation was based on call and domestic violence arrest data provided by interested parties, conversations with municipal courts regarding domestic violence convictions, and the number of civil protection orders filed in domestic relations divisions of courts of common pleas annually. LSC will continue to refine and update this estimate as new information is uncovered but this number represents a reasonable starting point for our analysis.

Estimating the cost of batterer intervention programs (BIP) required under the bill for domestic violence offenders is also complicated. LSC fiscal staff contacted interested parties, municipal courts, the Supreme Court, and current providers in order to estimate costs associated with BIPs. Generally, BIPs cost \$20 to \$40 per session, are composed of one or two sessions a week, and last for a period of 12 to 52 weeks. An example of one such program contacted by LSC costs \$25 per session and meets once a week for a period of 40 weeks. The total cost of this program per participant is \$1,000. This program is open to domestic violence offenders who are deemed capable of paying. At this time the county utilizing this BIP lost its funding for providing this service to indigent offenders but is currently in the process of obtaining a grant to provide this treatment to those individuals at a cost of \$700 per participant. Each of the counties contacted by LSC mentioned that currently the offenders pay for their BIP treatment and that the programs are voluntary. It is unclear how indigent offenders are handled in some of these counties. The bill is silent as to what requirements will be in place regarding BIP. Determining an average cost for these BIPs is complicated by the lack of standardization across counties including varying lengths in treatment utilized by counties, varying methods of treatment, and the availability of a capable provider for these services in some areas. Many counties are leveraging all available resources to pay for as many offenders to enter BIPs as possible. All of these counties contacted by LSC fiscal staff expressed a high degree of concern that mandating BIP treatment for those offenders they currently cannot fund (mostly indigent offenders) without providing a funding source for that mandated treatment would be extremely difficult.

Determining an accurate and reliable number of indigent offenders convicted of domestic violence is very difficult. Any estimate produced by LSC on this subject would be anecdotal and therefore would likely vary widely depending on the economic condition of the area where the municipal court was located. LSC fiscal staff's conversations with experts and interested parties indicated that this population is quite likely to be indigent but could not provide more detail.

Given the potential size of the population convicted of domestic violence annually, the high cost of batterer intervention program treatment, and the high rate of indigency for these offenders, LSC estimates that this treatment requirement could potentially cost municipal courts up to several millions of dollars annually statewide.

County and municipal revenues

Subsequent to a conviction, the court generally imposes court costs and a fine to be paid by the offender, and if collected, deposits it in the county or municipal treasury as appropriate. The potential amount of court cost and fine revenues that might be generated for that local jurisdiction under this bill is not likely to exceed minimal annually. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated increase of more than \$5,000 for any affected county or municipality per year. It is worth noting that the collection of court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unwilling or unable to pay.

Domestic violence fatality review boards

The bill creates domestic violence fatality review boards that will be organized along county or regional lines as decided by county commissioners. These review boards will be organized in a very similar fashion to child fatality review boards under current law. In order to estimate the fiscal impact of the creation of domestic violence fatality review boards on local governments, LSC fiscal staff contacted the agencies involved to discuss the current impact of child fatality review boards on their operations.

The creation of these new boards will further stretch the operating dollars of the local governmental units involved. The actual dollar impact of these changes is difficult to precisely quantify. Each board member is responsible for completing the necessary work without additional funding provided from an external source. In that sense the fiscal impact of this provision is likely to be minimal. However, the representatives of these future board members stressed that these uncompensated positions, mandated by law but providing no funding, require them to shift focus from other tasks. The degree to which this shift in focus and its impact on the local governmental unit's ability to perform its primary function varies according to the size of the organization and its ability to leverage current resources to provide these additional services. To the degree that many local governmental units have seen budget cuts this biennium due to the poor overall performance of the U.S. and Ohio economies, these additional responsibilities are becoming increasingly difficult to provide without an additional funding source.

Law enforcement

The bill requires that when law enforcement has a reasonable ground to believe that a violation of a protection order has occurred, an arrest shall be made and the accused detained until a warrant can be obtained. This provision is likely to lead to an increase in the number of arrests for violating a protection order. However, stating the

provision's impact beyond that broad generalization is difficult to determine. If an officer has a reasonable belief an individual has violated a protection order under current law, he is likely to place that individual under arrest under current law. Determining the size of this population, where an officer had a reasonable belief a violation occurred but did not make an arrest, is not possible due to a lack of data regarding actions not taken by an officer that were within his discretion under current law. This provision will likely increase law enforcement's expenditures related to arresting an individual. The magnitude of this increase is uncertain.

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