



Ohio Legislative Service Commission

Matthew L. Stiffler

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 62 of the 129th G.A. (with LSC amendments SC 1B, SC 2B, SC 4A, SC 5, and SC 6)

Date: March 26, 2012

Status: In Senate Judiciary

Sponsor: Rep. Gonzales

Local Impact Statement Procedure Required: No

Contents: Increases the penalty for assaulting a health care professional, health care worker, or security officer of a hospital

State Fiscal Highlights

STATE FUND

FY 2013 – FUTURE YEARS

General Revenue Fund (GRF)

Revenues - 0 -

Expenditures Potential incarceration cost increase, possibly exceeding minimal annually

Indigent Defense Support Fund (Fund 5DY0)

Revenues Potential, at most minimal, annual gain in locally collected state court costs

Expenditures - 0 -

Victims of Crime/Reparations Fund (Fund 4020)

Revenues Potential, at most minimal, annual gain in locally collected state court costs

Expenditures - 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2013 is July 1, 2012 – June 30, 2013.

- **Incarceration expenditures.** As a result of the bill's penalty enhancement, additional offenders/juveniles could be sentenced to a state prison/juvenile correctional facility for a felony assault offense, possibly resulting in a more than minimal annual increase in state incarceration costs. The potential magnitude of that increase would be lessened by an amendment to the bill reducing the penalty enhancement from a felony of the fourth to a felony of the fifth degree and providing a presumption for a community control sanction over the imposition of a prison term.
- **Court cost revenues.** There may be at most a minimal annual increase in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020), as additional offenders/juveniles may be found to have committed a felony, rather than a misdemeanor, assault offense. The total amount of state court costs generally imposed by a court is slightly higher for a felony (\$60) than it is for a misdemeanor (\$29).

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2012 – FUTURE YEARS

Counties

Revenues	Potential minimal annual gain in court costs and fines
Expenditures	Potential increase in criminal and/or juvenile justice system operating costs, possibly exceeding minimal annually

Municipalities

Revenues	Potential minimal annual loss in court costs and fines
Expenditures	Potential decrease in criminal justice system operating costs, possibly exceeding minimal annually

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 bill will: (1) shift certain misdemeanor assault cases from a municipal or county court to a court of common pleas, and (2) raise the possibility of more serious sanctions being imposed. As a result, municipalities may realize a decrease in their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, counties may experience an increase in their annual criminal and juvenile justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.
- **Local court cost and fine revenues generally.** The penalty enhancement may cause municipalities to lose court cost and fine revenue that might otherwise have been collected while counties may gain court cost and fine revenue from cases that might otherwise not have been under their subject matter jurisdiction. The amount of revenue that could be lost or gained will be minimal at most annually.

Detailed Fiscal Analysis

Overview

The bill increases, from a misdemeanor of the first degree to a felony of the fifth degree, the penalty for assault when all of the following conditions are met:

- (1) The victim is a health care professional, health care worker, or security officer of a hospital who is engaged in the performance of the individual's duties;
- (2) The hospital offers de-escalation or crisis intervention training to such individuals; and
- (3) The offender knew or had a reasonable cause to know that the victim was a health care professional, health care worker, or security officer of a hospital.

The assumptions guiding the fiscal analysis of this penalty enhancement are 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.
- Although the number of potential cases affected in any given local criminal or juvenile justice system may be more than minimal, especially in areas with large medical communities, crime reporting data suggests that the number of individuals actually arrested for assault in a hospital setting is relatively small.
- Certain cases will shift from the jurisdiction of a municipal or county court to the jurisdiction of a court of common pleas.
- Certain offenders (adults and juveniles) will receive a more serious sanction, including a possible term of incarceration in a state prison or juvenile correctional facility or a longer term than might otherwise have been imposed.

Workplace violence involving health service workers

In 2007, Oregon passed a law requiring all assaults committed against employees on the premises of a health care employer to be reported to the state's health and safety agency. In 2008, the first year of the program, 1,061 assaults were reported. Further examination of the assault data from Oregon reveals that 99% of the assaults occurred in a hospital setting, and 50% occurred in a behavioral health/psychiatric unit. Using that data as a reference point, and the fact that Oregon's healthcare system is about one-fourth the size of Ohio's and their population is about one-third, we estimate that the number of assaults in Ohio's health care community could total up to 3,000 to 4,000 or more annually.

Additional investigation indicates that, although verbal and physical confrontations in a hospital setting are not all that rare, the number of individuals actually arrested in Ohio for assaulting a hospital worker, in particular a nurse, is relatively small. It is difficult to predict whether the bill's enhancement of the criminal penalty in these situations generally from a misdemeanor to a felony will increase to any significant degree the number of assaults reported to law enforcement and the number of individuals subsequently arrested, prosecuted, and sanctioned.

State expenditures

Departments of Rehabilitation and Correction and Youth Services

As a result of the bill's penalty enhancement: (1) additional adult offenders could be sentenced to prison, which would increase the Department of Rehabilitation and Correction's (DRC) annual incarceration costs, and (2) additional juvenile offenders could be committed to the state, increasing the Department of Youth Services' (DYS) annual care and custody costs. Any resulting increase in DRC's incarceration costs or DYS's care and custody costs may be more than minimal annually. A more precise estimate is problematic, as the number of additional offenders that could be incarcerated and their lengths of stay are uncertain.

Department of Health

The bill as amended requires the Department of Health to post a notice on its Internet web site that a hospital can use to produce a sign warning individuals relative to the criminal or civil consequences of abusing or assaulting their staff. Complying with this requirement will cost the Department a negligible one-time amount of staff time and effort.

Local expenditures

As noted in more detail below, the bill will, in theory, generate a cost savings for certain municipal criminal justice systems and a related expenditure increase in county criminal and juvenile justice operating costs, as certain assault cases shift systems and potential sanctions elevate. A reasonably precise estimate of the annual magnitude of this cost shifting is problematic, as we do not know how many cases could be affected by the bill's penalty enhancement in any given local jurisdiction.

The bill's penalty enhancement will affect local expenditures on certain criminal and juvenile cases in two ways. First, certain criminal cases that would have been handled by a municipal or 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 realize a savings in 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. 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 juveniles may rise.

State and local revenues

As the penalty enhancement could shift certain cases involving adult offenders out of a county or 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. The amount of revenue that could be lost by municipalities and gained by counties is likely to be no more than minimal annually, as many offenders are unwilling, or indigent and unable, to pay court costs and fines.

The state may also gain a minimal annual amount of locally collected court cost revenue that would be divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). This is because the total amount of state court costs imposed on an offender/juvenile and deposited to the credit of Fund 5DY0 and Fund 4020 is slightly higher for a felony (\$60) than it is for a misdemeanor (\$29).

Sentences and fines for certain offenses generally

The table below summarizes current law's sentences and fines generally for a felony of the fifth degree and a misdemeanor of the first degree.

Sentences and Fines for Certain Offenses Generally		
Offense Level	Fine	Possible Term of Incarceration
5th Degree Felony	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 month prison term
1st Degree Misdemeanor	Up to \$1,000	Not more than 6-month jail stay