



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** [Sub. H.B. 86 of the 129th G.A.](#)  
(LSC 129 0829-1)

**Date:** March 15, 2011

**Status:** In House Criminal Justice

**Sponsor:** Reps. Blessing and Heard

**Local Impact Statement Procedure Required:** Yes

**Contents:** Sentencing and correctional reform initiatives

### State Fiscal Highlights

#### STATE FUND

FY 2012 – FY 2015

#### General Revenue Fund (GRF)

Revenues - 0 -

Expenditures Up to \$77.9 million potential annual incarceration cost savings

#### Victims of Crime/Reparations Fund (Fund 4020)

Revenues - 0 -

Expenditures Annual increase of \$1.4 million for GPS monitoring payments, subject to available cash balance

Note: The state fiscal year is July 1 through June 30. For example, FY 2012 is July 1, 2011 – June 30, 2012.

- **General Revenue Fund (GRF).** The net effect of the bill's provisions through FY 2015 will be to reduce the need for several thousand inmate beds and result in a total savings of about \$77.9 million in expenditures related to incarceration.
- **Victims of Crime/Reparations Fund (Fund 4020).** The bill requires that certain inmates released pursuant to a Department of Rehabilitation and Correction (DRC) petition be placed under parole supervision and requires global positioning system (GPS) monitoring in specified cases, to be paid for by the offender or, if the offender is indigent, from the state's Fund 4020, which is administered by the Office of the Attorney General. Based on the current DRC cost structure for GPS monitoring, the annual cost for the mandatory GPS supervision placed on first and second degree felony offenders would be approximately \$1.4 million. If Fund 4020 ceases to be a viable financing option, the Department could find itself responsible for covering those monitoring cost payments.

# Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2011 – FUTURE YEARS

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Counties and Municipalities

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Revenues

- 0 -

Expenditures

Potential increase to the criminal justice system to sanction offenders and train probation officers, annual magnitude uncertain

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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.

- **Threshold amount determining increased penalties.** There will be a shifting of some cases from the felony jurisdiction of the courts of common pleas in each county to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings for affected counties, and a corresponding cost increase in criminal case processing for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around \$65 per day, it would take just 77 additional jail days to exceed the minimum local impact threshold of \$5,000 per year for any affected county or municipality.
- **Increased diversion of offenders.** The bill provides for, in various specified felony level criminal cases, a preference for one or more community control sanctions. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding. As a result, the annual savings in state incarceration costs will be partially offset by the need to enhance funding for its parole and community services operations.
- **Training probation officers.** The bill requires all probation officers to have training based on standards set by the Adult Parole Authority (APA). Some jurisdictions will incur costs to train their probation personnel in accordance with this requirement. The precise cost of such training is unknown at this time, but depending on the number of personnel to be trained and the cost of the training, some counties and municipalities could incur costs in excess of the minimal threshold of \$5,000.

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## Detailed Fiscal Analysis

### Overview of Sentencing Reforms

The bill contains numerous sentencing and correctional reform provisions that are generally designed to reduce the size of the state's prison population and related institutional operating expenses by: (1) diverting otherwise prison-bound nonviolent offenders into less expensive community-based alternative punishments, or (2) reducing the lengths of stay for certain offenders that are sentenced to a prison term from what those lengths of stay might otherwise have been under current law and practice.

For the purposes of this analysis, we have identified ten (10) of the most fiscally salient provisions of the bill and discussed each in more detail below. The net fiscal effect of these provisions, coupled with other more general provisions from the Justice Reinvestment Framework that have an overlapping fiscal impact, will be to reduce enough inmate beds after three years to create a total savings of about \$77.9 million in the Department of Rehabilitation and Corrections (DRC) annual GRF incarceration costs.

With regard to these estimated annual incarceration cost savings, it should be noted that not all of the bill's provisions will have an immediate effect in terms of reducing DRC's institutional operating expenses. Some provisions, such as the earned credit reform, may not begin to reduce inmate population and produce a savings effect until a year or two after the bill becomes effective. Accordingly, the cost savings estimates below are based on the impact of the provisions after a three-year period.

#### **1. Release of inmates who have served at least 85% of their sentences**

The bill authorizes the Director of Rehabilitation and Corrections to petition the court for the judicial release of an inmate with a stated prison term of one year or more who has served at least 85% of the term. This provision does not apply to any inmate serving a life term or a term for any of a list of specified felonies of violence. The bill further requires that an inmate, serving a sentence for a first or second degree felony, who is released pursuant to a DRC petition be placed under parole supervision and requires global positioning system (GPS) monitoring in specified cases, to be paid for by the offender or, if the offender is indigent, from the state's Victims of Crime/Reparations Fund (Fund 4020), which is administered by the Office of the Attorney General.

#### **State fiscal effects**

After a period of about three years this provision of the bill will eliminate the need for approximately 360 or so inmate beds, thus creating an incarceration cost savings of \$1,473,120 (360 beds x \$4,092, the estimated FY 2013 marginal cost per inmate). Any such cost reductions or savings would be offset by expenditures for the

mandatory GPS supervision placed on first and second degree felony offenders, which is estimated to be about \$1.4 million.

Even though the bill requires either the offender or Fund 4020 to pay the cost of monitoring, the Department may face the possibility of having to cover these expenses. It would not be surprising if many of these offenders are deemed indigent, and in recent years, Fund 4020's expenditures have exceeded its revenues, a reality that has generated concerns about its near-term solvency. If Fund 4020 ceases to be a viable financing option, the Department could find itself responsible for covering those monitoring cost payments. If this should occur, then the \$1.4 million cost of the GPS monitoring would nearly eliminate the estimated \$1,473,120 in savings created by this provision.

## **2. Establishment of community alternative sentencing centers**

The bill provides for the establishment and operation of community alternative sentencing centers by counties or affiliated groups of counties, the purpose of which would be to confine misdemeanants sentenced directly by the court under a community residential sanction not exceeding 30 days.

### **State fiscal effects**

There is no expectation at this time that the state will provide financial assistance to defray any of the related capital improvements or operating expense costs that a county might incur.

### **Local fiscal effects**

The cost that a county might incur to establish and operate a community alternative sentencing center is uncertain. For example, the requirements that such a center would have to comply with, and any attendant costs, are unclear. Also unclear is whether a county would need to utilize debt financing to undertake the necessary capital improvements. That said, to the extent that these misdemeanor beds replace more expensive full-service jail beds, then a county may realize some long-term savings in correctional expenditures.

## **3. Threshold amount determining increased penalties**

The bill increases the initial threshold amount that is used in determining increased penalties, generally from a misdemeanor to a felony, for theft-related offenses and certain elements of the offenses of "vandalism" and "engaging in a pattern of corrupt activity." This set of provisions will reduce the number of offenders sentenced to a prison term, and increase the number of offenders charged and sanctioned locally.

### **State fiscal effects**

This set of provisions will result in the elimination of another 440 or so inmate beds within a three-year period, thus creating an incarceration cost savings of \$1,800,480 (440 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

### **Local fiscal effects**

There will also be a shifting of some cases from the felony jurisdiction of the courts of common pleas to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings, of uncertain magnitude, for an affected county, and, in theory, a corresponding cost increase in criminal case processing for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around \$65 per day, it would take just 77 additional inmate jail days to exceed the minimum local impact threshold of \$5,000 per year for any affected county or municipality.

### **4. Penalties for felony "nonsupport of dependents"**

The bill provides, in certain cases of felony "nonsupport of dependants," a preference for one or more community control sanctions. This provision of the bill would reduce the likelihood that certain offenders will be sentenced to a prison term.

### **State and local fiscal effects**

After three years, this provision will also eliminate the need for about 100 inmate beds, thus creating additional incarceration cost savings of about \$409,200 (100 beds x \$4,092, the estimated FY 2013 marginal cost per inmate). This provision of the bill will not reduce the number of convictions for "nonsupport of dependents," but will change the range of sanctions that are available to the court in certain cases. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding, which means that the annual savings in state incarceration costs will be partially offset by the need to enhance funding for its parole and community services operations.

### **5. Offense of "escape"**

Under current law, offenders on parole or post-release control (PRC) who abscond supervision can be charged with the offense of escape, the penalty for which ranges from a felony of the fifth degree to a felony of the first degree depending on the severity of the offense for which the offender was under supervision. The bill creates a new prohibition within the offense of "escape" that parallels the current prohibition but applies only to a person under "supervised release detention" and only if the person's purposeful breaking, attempting to break, or failure to return is for a period in excess of nine consecutive months.

### **State fiscal effects**

The new prohibition against absconding would allow the Adult Parole Authority (APA) to utilize various sanctions at their disposal, thus avoiding new felony charges. This provision would eliminate the need for about 50 more beds within three years,

thus creating additional incarceration cost savings of \$204,600 (50 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

## **6. Elimination of penalty distinction between cocaine and crack cocaine**

The bill eliminates the distinction between the criminal penalties provided for drug offenses involving crack cocaine and those offenses involving powder cocaine, and provides a penalty for all such drug offenses involving any type of cocaine that generally has a severity that is between the two current penalties.

### **State fiscal effects**

The impact of eliminating certain distinctions will be to generally reduce the total number of years served by inmates in the state's prison system for cocaine-based offenses. After three years, this provision would potentially eliminate the need for an estimated 267 inmate beds thus creating additional reductions in GRF incarceration expenditures of \$1,092,564 (267 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

## **7. Penalties for certain trafficking offenses**

For the offenses of "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish," the bill creates a new category of the amount of the drug involved and provides for a potentially shorter mandatory prison term if the new category applies to the offender. The bill also provides that, in specified circumstances regarding an offender who is guilty of "trafficking in marihuana," "trafficking in hashish," or "possession of cocaine," the current felony sentencing guidelines apply in determining whether to impose a prison term on the offender. Existing guidelines, which are not changed by the bill, state a presumption against a prison term. Currently, for the two trafficking offenses in the specified circumstances, there is neither a presumption for nor a presumption against a prison term and for the possession offense in the specified circumstances, there is a presumption for a prison term.

### **State fiscal effects**

This provision will generally reduce the total number of years served by inmates for the above-referenced drug offenses. After three years, this provision will likely eliminate the need for 140 beds, thus creating additional incarceration cost savings of \$572,880 (140 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

## **8. Intervention in lieu of conviction eligibility and procedures**

The bill provides that intervention in lieu of conviction (ILC) is available to persons charged with specified theft or nonsupport offenses, and authorizes ILC for an offender whose mental illness or retardation contributed to the criminal behavior. The bill also requires that a request for ILC include a statement as to whether the offender alleges that drug or alcohol use or mental illness or retardation contributed to the offense. Offenders alleging that drug or alcohol use contributed to the offense must be

assessed by a certified program or credentialed professional for ILC eligibility, a plan of intervention recommended, and the assessment be given to the court.

### **State and local fiscal effects**

This provision will likely divert certain offenders away from the prison system and into local treatment programs. This provision of the bill will further eliminate the need for around 31 inmate beds, thus contributing to the total reduction in GRF incarceration costs by \$126,852 (31 beds x \$4,092, the estimated FY 2013 marginal cost per inmate). While the diversion of these offenders from prison may reduce DRC's incarceration expenditures, there would likely be a corresponding increase in local expenditures for the assessment and treatment of certain additional offenders. The magnitude of these potential additional local assessment and treatment costs is uncertain.

## **9. Earned credit for DRC inmates**

The bill revises the mechanism pursuant to which an eligible prisoner in a state correctional institution currently may earn one day of credit as a monthly deduction from the prisoner's prison term for productive participation in specified prison programs so that: (1) certain prisoners, if eligible for the mechanism under the current criteria as expanded, may earn five days of credit for completion of a specified program, (2) other prisoners, if eligible for the mechanism under the current criteria as expanded, who are imprisoned for any of a list of specified, serious offenses, may earn one day of credit for completion of a specified program, (3) the types of programs that may be available for earning days of credit under the mechanism will be limited to those involving education, vocational training, prison industry employment, and substance abuse treatment (sex offender treatment programs and other "constructive programs" developed by DRC are removed), and (4) prisoners serving a sentence for a sexually oriented offense, as defined in the SORN Law, are not eligible for the mechanism.

### **State fiscal effects**

Within a three-year period, this provision will eliminate the need for another 380 or so beds, thus creating additional incarceration cost savings of \$1,554,960 (380 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

## **10. GPS monitoring of certain prisoners after release**

The bill requires that a prisoner who is placed on post-release control from the prisoner's stated prison term by reason of earning 60 or more days of credit for participation in certain programs be subject to GPS supervision by the APA for the first 14 days after release from imprisonment.

### **State fiscal effects**

DRC estimates that this provision will apply to at least several hundred offenders annually with third, fourth, or fifth degree felony convictions. The first and second degree felony offenders face GPS requirements through the other earned credit

provision of this bill. If these offenders wear GPS monitors for 14 days after release, at \$11 per day, the annual cost to the Department could exceed \$100,000.

## **Justice Reinvestment Reforms**

In addition to the ten sentencing reform provisions outlined thus far, the bill also incorporates several additional sentencing reform initiatives which stem from a study and report of the Council of State Governments' Justice Reinvestment in Ohio. Some of the more fiscally relevant provisions among the sentencing reform recommendations from this study incorporated into the bill include:

- Requiring a community-based sanction for offenders who are convicted of or plead guilty to nonviolent felonies of the fourth or fifth degree, unless the offense involved a firearm. The fiscal effect of this provision would be to eliminate more inmate beds and further reduce prison-related GRF operating expenditures by diverting more low-level nonviolent offenders out of the prisons and into more cost-effective alternative sanctions.
- Establishing a mechanism for "risk reduction sentencing" in which certain felony offenders may qualify and be recommended, by the sentencing judge, for risk reduction sentencing. If these offenders complete the required treatment or programming that is part of the risk reduction sentence, they may be granted release after serving a minimum of 75% of the stated prison term.

These Justice Reinvestment Reform provisions complement or enhance some of the other provisions in the bill to further increase the number of offenders either released early through sentence reduction or diversion away from prison altogether and into community-based sanctions.

The interrelationships between these provisions in the bill can be quite complex. For example, the diversion of nonviolent fourth and fifth degree felony offenders away from prison, as per the Justice Reinvestment Reforms, will complement the impact of the other provisions in the bill that divert offenders away from prison such as increasing the felony thresholds for theft offenses and placing felony nonsupport offenders into community sanctions. The diversion of these offenders away from prison will simultaneously reduce the numbers of offenders subject to the early release or earned credit provisions in the bill. If low-level offenders are diverted away from prison in the first place, there will be fewer offenders that qualify for one of the early release provisions. These complex interrelationships between the provisions of the bill create difficulties in presenting an accurate estimate of the net savings effect. The Department has determined that the bill will ultimately reduce GRF prison-related expenditures by a total of \$77.9 million within three years or so.

With respect to the provisions in the bill that would divert offenders from prisons into alternative community-based sanctions, it is also important to note that there would presumably be some increased demand on local community control

sanction systems. This would in turn increase the local demand for DRC's community corrections grants funding, which means that the annual savings in state incarceration costs will be partially offset by the need to enhance funding for its parole and community services operations.

### **County Probation Recommendations**

An additional area of reform stemming from the study and report of the Council of State Governments' Justice Reinvestment in Ohio involves changes to the operations of county-level probation services. The most fiscally relevant of these provisions in the bill is the requirement that probation officers be trained in accordance with a set of minimum standards established by the Supreme Court of Ohio in consultation with the DRC's Adult Parole Authority (APA).

Under current law, local jurisdictions that receive Community Corrections Act (CCA) grants from DRC to support probation services are required to have probation officers trained in accordance with APA standards. This provision of the bill would have little impact in these jurisdictions. For those local jurisdictions in which the probation departments do not receive any CCA grant funding, specific training is not required. Since the bill requires all probation officers to have APA-approved training, then some jurisdictions will incur costs to train their probation personnel. The precise cost of such training is unknown at this time, but depending on the number of personnel to be trained and the cost of the training, some counties and municipalities could incur costs in excess of the minimal threshold of \$5,000.