



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 86 of the 129th G.A.

Date: May 4, 2011

Status: As Reported by House Criminal Justice

Sponsor: Reps. Blessing and Heard

Local Impact Statement Procedure Required: Yes

Contents: Criminal sentencing and juvenile justice reforms

State Fiscal Highlights

STATE AGENCY

FY 2012 – FY 2015

Department of Rehabilitation and Correction (DRC)

Revenues - 0 -

Expenditures Four-year incarceration cost savings totaling up to between \$90 million and \$100 million, likely offset to some degree by need to increase subsidies for local community corrections programs

Department of Youth Services (DYS)

Revenues - 0 -

Expenditures Minimal annual effect

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

- Department of Rehabilitation and Correction.** Over the course of approximately four years subsequent to its enactment, the bill will in all likelihood reduce the number of inmate beds in the Department of Rehabilitation and Correction's prison system by well over 2,000 and generate a total incarceration cost savings of up to between \$90 million to \$100 million. The magnitude of this annual savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions.
- Department of Youth Services.** Changes to the disposition of certain juvenile delinquency cases and the release of juveniles from a state juvenile correctional facility may generate some annual savings in the Department of Youth Services' institutional operating costs. The Department's participation in a new interstate juvenile compact and a mental health task force will generate minimal costs. The net of these savings and costs will be minimal.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2011 – FUTURE YEARS

Counties and Municipalities (criminal justice systems)

Revenues	Potential gain in state community corrections funding, annual magnitude uncertain
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Expenditures	Potential increase to the criminal justice system to sanction offenders and train probation officers, annual magnitude uncertain
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Counties (juvenile justice systems)

Revenues	- 0 -
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Expenditures	Potentially significant annual increase for certain counties to standardize juvenile competency assessment and treatment procedures
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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, in certain felony cases, a preference for one or more community control sanctions rather than the imposition of a prison sentence. 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.
- **Training probation officers.** The bill requires all probation officers to have training based on minimum 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.
- **Subsidy revenues.** The additional cost that counties and municipalities will incur, in particular the costs to sanction offenders diverted from prison and into community control sanctions, will in all likelihood be offset to some degree by additional state community corrections subsidies distributed by DRC. The degree to which that state funding will offset increased local sanctioning costs is uncertain.

- **Juvenile competency procedures.** The requirement that juvenile courts standardize competency procedures may significantly increase the assessment and attainment costs of certain counties.
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Detailed Fiscal Analysis

For the purposes of this fiscal analysis, the bill has been organized into the following two broad categories: (1) criminal justice system changes, and (2) juvenile justice system changes.

Criminal justice system changes

The bill's numerous criminal sentencing changes 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 sanctions, and (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 some of the most fiscally salient provisions of the bill and discussed each in more detail below. The net fiscal effect of these provisions will be to reduce enough inmate beds to create a total savings, over roughly a three to five-year period, of up to between \$90 million and \$100 million in the Department of Rehabilitation and Correction's (DRC) annual GRF incarceration costs.

With regard to these estimated annual incarceration cost savings, the following caveats should be noted:

- The magnitude of this annual savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions. In that regard, the As Reported by House Finance and Appropriations version of H.B. 153 of 129th General Assembly, contains a temporary law provision requiring, for the purposes of implementing criminal sentencing reforms, the Director of Budget and Management, at the request of the Director of Rehabilitation and Correction, to transfer up to \$14,000,000 in appropriations, in each of FYs 2012 and 2013, from GRF appropriation item 501321, Institutional Operations, to certain GRF appropriation items that fund community-based corrections programs.
- Not all of the bill's criminal justice system 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 the inmate population and produce a savings effect until a year or two after the

bill becomes effective. Accordingly, most of the cost savings estimates below are based on the impact of the provisions after a three-year period.

The bill's more fiscally notable criminal justice system changes are discussed in more detail below.

Release of inmates who have served at least 85% of their sentences

The bill authorizes the Director of Rehabilitation and Correction 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, including sexually oriented offenses. 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, requires global positioning system (GPS) monitoring in specified cases, and requires DRC to pay for the costs of monitoring indigent offenders.

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. It is possible that much, if not all, of the savings from this 85% release mechanism will be eliminated by the need to pay for the monitoring of indigent offenders.

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.

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.

Penalties for felony "nonsupport of dependents"

The bill provides, in certain cases of felony "nonsupport of dependents," 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 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.

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 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).

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).

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).

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.

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). To the extent that disqualifying offenses are added to the existing list, any estimated savings would be reduced as fewer offenders would be eligible for the five days of earned credit.

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.

State v. Foster

The bill revises some of the provisions in the state's Felony Sentencing Law that were invalidated and severed by the Ohio Supreme Court's decision in *State v. Foster*, to preserve the policy of the provisions but eliminate the procedures that the Court found to be objectionable. The bill repeals and reenacts without change these provisions, and several other provisions of that Law, that *Foster* invalidated and severed and that are now, regarding some of the provisions, or arguably are, regarding other provisions, subject to reenactment under the U.S. Supreme Court's decision in *Oregon v. Ice* and the Ohio Supreme Court's decision in *State v. Hodge*.

State fiscal effects

The reenactment of these felony sentencing provisions from the *Foster* case is expected to lead to a gradual reduction in the prison population over the next several years. The Department expects this reduction in inmate population could reduce annual incarceration expenditures by \$15.1 million to \$19.4 million over the next five years or more.

Justice Reinvestment provisions

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; and

- 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. Offenders serving a sentence for a sexually oriented offense would be excluded.

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 up to between \$90 million to \$100 million over the course of three to five 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.

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 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.

Juvenile justice system changes

The bill makes changes to the juvenile justice system designed generally to reduce the size of the Department of Youth Services (DYS) institutional population and to more effectively utilize the state and local resources available in the treatment of juvenile offenders. Most notably these changes include: (1) amending the manner in which a juvenile court disposes of certain cases, (2) standardizing juvenile competency procedures, (3) clarifying judicial release procedures, (4) adopting the Interstate Compact for Juveniles, (5) creating the Ohio Interagency Task Force on Mental Health and Juvenile Justice, and (6) requiring prioritization of the use of moneys in a county felony delinquent care and custody fund. These provisions of the bill and their fiscal effects are discussed in more detail below.

Juvenile court dispositions

The bill's changes to a juvenile court's dispositional authority: (1) eliminates the mandatory transfer of certain alleged delinquent children to adult court, (2) provides the court discretion on whether or not to commit a child to DYS if the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and the child is guilty of certain specifications, and (3) specifies that a child is eligible for a serious youthful offender disposition only under certain specified circumstances.

State fiscal effects

These provisions will affect the Department by triggering factors that both increase and decrease institutional operating costs, the net effect of which will be an annual decrease in annual institutional operating costs. These factors include:

1. A potential increase in institutional population and corresponding commitment costs, as certain juveniles may be adjudicated and committed to a state juvenile correctional facility instead of being transferred to the criminal justice system and subsequently sentenced to a prison term; and
2. A potential decrease in institutional population and corresponding commitment costs resulting from the elimination of various mandatory dispositions, as certain juveniles may not be committed to a state juvenile

correctional facility or may be committed for a shorter term than might otherwise have been the case under current law and practice.

Local fiscal effects

Juvenile courts may experience a potential increase in cases where jurisdiction of a juvenile offender is retained as a result of fewer transfers to the criminal (adult) justice system, and a corresponding increase in adjudication costs. Likewise, the criminal justice system may experience a potential reduction in the number of juvenile cases transferred to a court of common pleas, and the Department of Rehabilitation and Correction may experience a potential reduction in population resulting in a corresponding savings in county prosecution, investigation and indigent defense costs, and in state prison costs.

Juvenile competency procedures

The bill establishes: (1) procedures for determining the competency to participate in the proceeding of a child who is the subject of a complaint alleging that the child is an unruly or delinquent child or a juvenile traffic offender, and (2) procedures for a child to attain competency if the child is found to be incompetent.

Local fiscal effects

The bill standardizes procedures for determining the competency of a child in juvenile court. The standardized procedures include the possibility of additional hearings and findings, which would increase the amount of time the court spends on a given case, and a competency evaluation that is paid for by the court. Additionally, if a court finds that a child is not competent but has reason to believe that the child could attain competency within a specified time period, the court may order the child to receive competency attainment services at the expense of the county. Current law does not address these issues, and as a result, each county has developed its own procedures for determining competency and dealing with a child determined not to be competent.

The extent to which a county or juvenile court may incur additional costs is uncertain and would largely depend on the number of motions made to determine the competency of a child alleged to be unruly, delinquent, or a juvenile traffic offender. Other factors would include the cost of any competency evaluations performed and the cost of any competency attainment services that may be ordered by the court. Certain counties, such as Hamilton and Cuyahoga, may incur fewer costs to implement the standardized procedures as they are likely to already have procedures in place that largely comport with the amendment's requirements. There are likely, however, to be juvenile courts in other counties that could incur significant costs to comply with the required competency determination and attainment procedures.

Judicial release procedures

The bill clarifies when a delinquent child committed to DYS generally may be granted a judicial release and authorizes judicial release for a delinquent child committed to DYS when the commitment includes a period of commitment imposed for

certain specifications. The bill may result in shorter periods of confinement for certain youth committed to the custody of DYS and residing in one of the state's juvenile correctional facilities, the practical fiscal effect of which could be some reduction in the Department's annual institutional operating costs.

Interstate Compact for Juveniles

The bill repeals the Interstate Compact on Juveniles and enacts the Interstate Compact for Juveniles. The repeal of the Interstate Compact on Juveniles will have no fiscal effect, as Ohio's participation in this interstate agreement generates no discernible costs or savings.

With the enactment of the Interstate Compact for Juveniles, DYS will incur costs to serve as the state agency responsible for administering the Interstate Compact "for" Juveniles in Ohio, most notably annual dues estimated at \$27,000, and may incur minimal annual costs to provide staffing assistance to the six-member State Council for Interstate Supervision. Juvenile courts may realize some savings in their annual operating costs, as a result of being able to more efficiently track, transfer, and supervise adjudicated juvenile delinquents, status offenders, and runaways.

Ohio Interagency Task Force on Mental Health and Juvenile Justice

The bill establishes the Ohio Interagency Task Force on Mental Health and Juvenile Justice to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders. Not later than March 31, 2012, the Task Force is required to issue a report of findings and recommendations, after which it ceases to exist.

Task Force members will not be entitled to either compensation or reimbursement of expenses incurred in the performance of their duties and responsibilities. However, various state agencies involved in providing services to youth, including, but not limited to, the departments of Youth Services, Mental Health, and Education, may incur minimal one-time administrative costs to assist the Task Force by providing office and meeting space, information, and professional or clerical staff assistance. It is likely that these state agencies can fairly easily absorb these costs into their ongoing day-to-day business.

County felony delinquent care and custody funds

The bill requires a county and the juvenile court that serves the county to prioritize the use of moneys in the county's felony delinquent care and custody fund to research-supported, outcome-based programs and services. As a result of this provision, certain programs and services may be more or less likely to be funded in the future.