Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 529 of the 130th G.A. **Date**: June 3, 2014

Status: As Reported by House Judiciary **Sponsor**: Reps. Retherford and Conditt

Local Impact Statement Procedure Required: No

Contents: Prohibits knowingly selling controlled substances to a pregnant woman

State Fiscal Highlights

- As a result of the bill's criminal prohibition, there could be a small number of additional offenders/juveniles sentenced to a state prison/juvenile correctional facility each year, or sentenced to a longer stay than might otherwise have been the case under current law. Either outcome may result in a no more than minimal annual increase in the institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services.

Local Fiscal Highlights

- The bill's criminal penalty enhancement may result in no more than minimal additional costs for a county criminal justice system to process and adjudicate certain felony cases. This is because: (1) it appears likely to create a relatively small number of new felony cases to be prosecuted and adjudicated, and (2) it may involve circumstances where an individual can already be charged with one or more drug offense violations.

Detailed Fiscal Analysis

Overview of the bill

The bill includes within the offense of "corrupting another with drugs" a prohibition against knowingly furnishing or administering, or inducing or causing a pregnant woman to use, a controlled substance. A violation is a felony of the first, second, or third degree depending upon the type of drug.

Drug use among pregnant women

In November 2013, the Ohio departments of Mental Health and Addiction Services and Health released a study of drug use among pregnant women in Ohio between 2004 and 2011.[1] These numbers suggest that, based on 2011 data, there are 2,000 to 3,000 or more pregnant women in Ohio each year with drug abuse or drug dependence issues. Their findings included the following:

- The number of admissions to inpatient and outpatient settings for Neonatal Abstinence Syndrome (NAS) totaled 1,649 in 2011, with the number of inpatient NAS hospitalizations increasing from 199 in 2004 to 1,182 in 2011.[2]
- The number of mothers identified with drug abuse or drug dependence diagnoses at time of delivery increased from 1,553 in 2004 to 2,707 in 2011.
- The number of pregnant women in substance abuse treatment increased from 401 in 2004 to 732 in 2011.

Drug law violations involving pregnant women

It appears, however, that Ohio's state and local criminal justice systems generally do not track drug law enforcement activity as it relates to specific incidents where a pregnant woman is furnished, administered, or uses a controlled substance. As the above report indicates, it is clearly occurring, but the absence of criminal justice data makes estimating the frequency with which the bill's prohibition will be violated and the violator(s) charged solely with that violation is problematic. It is also likely that some number of prosecutions for drug law violations already involves as an element a pregnant woman being furnished, administered, or using a controlled substance and the bill's prohibition would simply be added to the list of charges for which an offender could be prosecuted. That said, anecdotal information gleaned from LSC conversations with criminal justice practitioners would suggest that the number of new felony drug cases resulting solely from a violation of the bill's prohibition will be relatively small.

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[1] Neonatal Abstinence Syndrome and Drug Use Among Pregnant Women in Ohio 2004-2011.

[2] NAS is a medical condition brought on by the termination of licit or illicit drugs.

Local fiscal effects

The additional costs for any given county criminal justice system to process a few new felony cases are likely to be no more than minimal annually. This includes investigation, prosecution, indigent defense, and adjudication. There should be no additional sanctioning costs, as a violator is highly likely to be sentenced to a stay in a state prison or juvenile correctional facility. There is also likely to be little, if any, additional revenue collected from court costs and fines, as a court rarely imposes the maximum fine, and offenders frequently are unable or unwilling to pay court costs and fines.

State fiscal effects

A few additional offenders sentenced to a stay in a state prison or juvenile correctional facility, or sentenced to a longer stay than might otherwise have been the case under current law, is likely to result in a no more than minimal annual increase in the institutional operating costs of the departments of Rehabilitation and Correction and Youth Services.[3]

Sentences and fines for a prohibition violation

As noted, a violation of the bill's prohibition is, depending upon the type of drug, a felony of the first, second, or third degree. The table below summarizes current law's sanctions for these offense levels, including the maximum possible fine, whether there is a statutory preference generally for or against the imposition of a prison term, and the length of the prison term.[4]

Sentences and Fines for "Corrupting Another with Drugs" When Victim is Pregnant			
Felony Level	**Possible Fine**	**Sentencing Guidelines**	**Length of Prison Term**
1st Degree	Up to $20,000	Mandatory prison term	3, 4, 5, 6, 7, 8, 9, 10, 11 years definite
2nd Degree	Up to $15,000	Mandatory prison term	2, 3, 4, 5, 6, 7, 8 years definite
3rd Degree	Up to $10,000	Presumption for prison term	1, 2, 3, 4, 5 years definite

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[3] The average annual cost of incarcerating an offender in state prison is currently around $22,836 (or $62.57 per day), with the marginal annual cost of adding an offender estimated at between $3,000 and $4,000. The average annual cost of incarcerating a juvenile in a Department of Youth Services facility is currently around $202,502 (or $554.80 per day), with the marginal annual cost of adding a juvenile estimated at $10,000.

[4] According to the most recent Time Served Report, in calendar year 2011, the average time served for a primary drug offense was: 4.64 years for a felony of the first degree, 3.18 years for a felony of the second degree, and 1.80 years for a felony of the third degree.