Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **Am. Sub. S.B. 179** DATE: *November 15, 2000*

STATUS: **As Enacted – Effective January 1, 2002 (Certain provisions effective April 9, 2001)** SPONSOR: **Sen. Latta**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Makes various changes to the state's juvenile sentencing law**

State Fiscal Highlights

STATE FUND	FY 2001	FY 2002	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	Gain, between $500,000 and $1.5 million
Expenditures	- 0 -	- 0 -	Increase, between approximately $3.4 million and $9.8 million, plus potential increase for debt service payments
Mental Health Facilities Improvement Fund (033)			
Revenues	- 0 -	- 0 -	-0-
Expenditures	- 0 -	- 0 -	Potential need for $4.0 million capital appropriation in FY 2003*

Note: The state fiscal year is July 1 through June 30. For example, FY 2001 is July 1, 2000 - June 30, 2001.

*If renovation of a DMH facility is needed for inpatient juvenile competency restoration

- DMH could incur between $36,000 and $225,000 in additional GRF expenditures annually to cover the costs of conducting juvenile competency determinations.

- DMH could also incur between $1,168,000 and $7.1 million in additional GRF expenditures annually to cover competency restoration costs.

  If it is assumed that an average daily population of 8 juveniles will require inpatient restoration, then the costs associated with competency restoration services in a privately operated secure facility or a DMH facility, would be $1,168,000 (365 days x $400 x ADP of 8 juveniles).

  However, if it is assumed that 25 outpatient and 50 inpatient restorations are needed per year, DMH would incur an estimated $7.1 million in additional costs annually. Of this amount, $5.8 million in costs would be incurred to operate

a 40-bed facility to house at least 50 juveniles, plus a small number of juveniles found to be unrestorable each year, $700,000 would be incurred for outpatient restoration costs, and $550,000 would be incurred for administration costs.

- New capital funding totaling $4.0 million may be needed in the FY 2003-2004 Capital Budget (Fund 033) if DMH must renovate an existing facility in order to provide inpatient juvenile competency restoration for 50 juveniles, plus a small number of juveniles found to be unrestorable per year, in a secured facility. In addition, annual debt service payments related to the $4.0 million capital appropriation would be incurred out of the General Revenue Fund.

- Beginning in FY 2003, DYS would receive between approximately $500,000 and $1.5 million back annually from county GRF RECLAIM allocations, in the form of per diem costs to cover between 12 and 40 DYS institutional beds.

- Beginning in FY 2003, DYS would incur approximately $1.9 million in additional GRF expenditures annually to cover an expansion in the number of annual public safety beds of approximately 38.

- DYS would incur approximately 25 percent of the institutional per diem rate for administration of these additional beds, at an annual cost of between $153,300 and $511,000, beginning in FY 2003.

- DYS may incur additional parole supervision costs, potentially in the hundreds of thousands of dollars annually in future years for post-release supervision of additional juveniles committed to DYS, beginning in FY 2003.

- Beginning in FY 2003, The State Public Defender's Office would incur up to $208,000 in GRF expenditures annually for reimbursement of defense counsel fees to counties.

- DRC may experience a decrease in expenditures, potentially around $100,000 annually, as some offenders are diverted to DYS under blended sentencing, rather than being bound over to criminal court and ultimately landing in DRC. This fiscal effect would be expected to occur in FY 2003.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2001	FY 2002	FUTURE YEARS
Counties			
Revenues	- 0 -	Up to $104,000 gain, plus additional minimal gain	Up to $208,000 gain, plus additional minimal gain
Expenditures	- 0 -	Increase, between approximately $550,000 million and $1 million	Increase, between approximately $1.1 million and $2.1 million

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30. This fiscal analysis assumes an effective date of July 1, 2002.

- Counties would be charged between $500,000 and $1.5 million annually by DYS under the RECLAIM formula for the care and custody of offenders occupying between 12 and 40 new institutional beds.

- County juvenile courts will likely experience increases in expenditures associated with conducting jury trials for serious youthful offenders subject to blended sentencing. LBO estimates that these trials will number around 126

annually, and that the total annual statewide cost will be around $600,000. The State Public Defender would reimburse counties for up to $208,000 of that amount. Additional unquantifiable prosecution and capital improvement costs may be in addition to this number.

- Counties will likely experience some savings, potentially in the thousands of dollars in some jurisdictions, by allowing juvenile traffic offender cases to be processed without court appearances.

- Fine structure refinements may result in minimal increases in fine revenue to counties.

Detailed Fiscal Analysis

LBO would like to emphasize that this fiscal analysis is a work in progress, and that revisions to this document are likely to be made in the future, as we acquire more information. At this time, the conclusions that we have been able to draw have been limited by the nature of the available data and the lack of a consensus among the various stakeholders as to how the bill will operate in practice. As a result, we have had to frequently rely on differing perspectives as to the bill's fiscal effects to establish a potential range of costs, and where possible, we have made our "best" estimate as to what a particular provision of the bill might cost the state and local governments in the time available.

COMPETENCY STATUTE FOR JUVENILES

Current law allows for juveniles who are bound over to adult court to have the right to determination of competency. Under the competency statute proposed in the bill, juveniles facing a serious youthful offender status in juvenile court would have the right to a competency determination. The adult competency law will be used as the standard for determining whether a juvenile is competent to proceed with the trial, which is set up by the U.S. Supreme Court known as the "Dusky Standard."

It was unclear to LBO whether or not the blended sentence provisions of the "As Passed by the Senate" version of the bill would have given serious youthful offenders the right to competency. If so, the competency costs attributed to this "LSC 123 1310-3" version of the bill should have also applied to the fiscal note for the "As Passed by the Senate" version of the bill. However, now the "LSC 123 1310-3" version of the bill explicitly states that the juvenile court shall afford the serious youthful offender all rights afforded to an adult. This includes the right to raise the issue of competency.

Number of Juvenile Offenders Found Incompetent to Stand Trial

Currently, in practice, some courts have recognized the issue of competency on a case-by-case basis. Specifically, appellate courts have upheld cases in which the juvenile could not stand trial due to being incompetent to proceed with the hearing. Some of these youth are committed to the Department of Youth Services. According to DYS, the department's Opportunity Center (a residential treatment facility for delinquent males with mental retardation, developmental disabilities, and/or chronic medical needs) has an average daily resident census of around 75. Of this number, DYS believes approximately 5-10 juveniles function at a level of perceived incompetence, based on either severity of mental retardation or mental health capacity.

Other juveniles that are found to be incompetent to stand trial are sent to private facilities, such as the Buckeye Boys Ranch or out-of-state facilities. LBO is unable to track the number of juveniles that are found to be incompetent to stand trial and where these juveniles are in the system due to lack of systematic data maintained by the state and local entities and the fact that only a few courts have recognized the issue of competency.

It is difficult to predict the number of juveniles who will be found incompetent to stand trail with an adjudicatory hearing or transfer proceedings as a result of the bill without actually implementing the bill. But, two models will be used to estimate the costs associated with a competency statute for serious youthful offenders. The first model is based on the Ohio Department of Mental Health (DMH) proposal. DMH was requested to lead the development of a plan/proposal for juvenile competency attainment program in Ohio. This proposal, outlined below, was developed between the Departments of Mental Health, Mental Retardation and Developmental Disabilities (DMR), Youth Services (DYS) and Job and Family Services (JFS). The second model is based on an Ohio Criminal Sentencing Commission estimate. This model uses adult competency statistics to predict the number of juveniles who may be found incompetent to stand trial.

STATE FISCAL EFFECTS

Although the bill does not specify what state entity would be responsible for competency restoration, LBO assumes that the Department of Mental Health will be this entity since they are already responsible for adult competency restoration. The following paragraphs discuss the potential state costs associated with the bill.

Department of Mental Health Estimate

Costs of Competency Determinations (Evaluations). According to section 2945.371 (A) of the Revised Code, if the issue of a defendant's competence to stand trial is raised, the court may order one or more evaluations to be conducted by a qualified examiner. All determinations of competency are to be based on an evaluation of the juvenile by an examiner and on specified standards. If the judge finds a reasonable basis to conduct a competency evaluation, the judge shall appoint one or more examiners to conduct an evaluation.

DMH estimates that around 150 juvenile competency evaluations could be expected annually. The estimate of 150 competency evaluations is based on the Department of Youth Services' inpatient population who may be eligible Serious Youthful Offenders, approximately 1,043 juveniles. DMH assumes, based on general mental health statistics, that approximately 10-15% of the 1,043 juveniles, or approximately 100-150 juveniles will be evaluated for competency each year. DMH chose to use 150 juveniles for its estimate in order to avoid an undercount of this potential population. As compared to other states' experiences, Virginia completed 150 competency evaluations on an annual basis, where as Florida completed 510 evaluations.

LBO assumes that DMH will be fiscally responsible for all competency evaluations. According to DMH, the average cost of a juvenile competency determination would be around $1,500 per

examination, similar to adults. If 150 evaluations are conducted annually in Ohio, then the total costs for competency determinations would be approximately $225,000 per year.

DMH also assumes of the 150 juveniles evaluated for competency that 50 percent will be found incompetent and will require restoration services. Other states and researchers reported that the rate of juveniles who are determined to be incompetent to stand trial was around 15 to 50 percent. These examples are described below:

- A study conducted by a South Carolina psychiatric researcher compared the competency to stand trial of juveniles and adults undergoing pretrial, court-ordered forensic psychiatric evaluations. The study revealed that in the juvenile sample approximately 85% were reported by their psychiatric examiners to be competent to stand trial and approximately 15% of the juvenile sample were reported to be incompetent to stand trial. In contrast, 95% of the adult sample was found to be competent and 5% were found to be incompetent to stand trial.

- Florida's juvenile courts, in 1999, ordered 510 juveniles to be evaluated for competency and 255 were served for competency restoration. Thus, approximately 50% were incompetent to stand trial.

- Virginia's juvenile courts, in 1999, ordered 150 juveniles to be evaluated for competency and 41 were served for competency restoration. Thus, approximately 27% were incompetent to stand trial.

DMH's estimate of the number of juveniles to be served for competency restoration services is based on Florida's experience (approximately 50 percent of the juveniles evaluated for competency were referred for restoration).

Outpatient Restoration. DMH expects around 25 youth, of the 150 youth who will be found incompetent, will undergo competency restoration on an outpatient basis. The other 50 youth will undergo competency restoration on an inpatient basis. According to DMH, the costs associated with outpatient restorations would be as follows:

Competency Education/Training 25 Youth	$87,876
Individual Counsel	$117,492
Group Counseling	$50,544
Medication	$39,529
Community Support Services	$100,165
Residential Treatment	$270,081
Residential Support (Wrap-Around)	$41,691
TOTAL	**$707,315**

As a comparison to other states, Florida's juvenile courts referred 220 children for competency restoration in 1998, and 255 children in 1999. Of the average daily population of around 110 (roughly half of the number referred), around 40 percent were placed in a secure facility and the remaining 60 percent were placed at the community level. Moreover, Virginia's juvenile courts referred 41 juveniles

for competency restoration in 1999. Of this number, only a few were placed in a secure facility and the remaining juveniles were placed in the community for competency restoration.

Inpatient Restoration (Secure Placement). Some juveniles who are found to be incompetent to stand trial and are determined to be dangerous to the community may need a secure placement in order to undergo competency restoration. DMH estimates that 50 such youth will require this type of placement each year. Assuming a 6-month length of stay, DMH estimates an average inpatient daily population of 25 juveniles. In addition, some of these youth will be found unrestorable after the maximum time expires for restoration treatment and potentially be committed to the DMH juvenile facility. Under the adult statute, youth could be kept under the jurisdiction of the court for the maximum time that they would have been sentenced for the committed crime, which would be until age 18. DMH estimates approximately 10-15 such youth. Currently, DMH does not have a secure placement for juveniles. In order to serve these youth, DMH believes that a 40-bed facility will be needed.

Capital Considerations. DMH has developed three scenarios for the capital construction associated with building or renovating a facility for 40 beds. Scenario 1, the most likely scenario, discusses the possibility of renovating the Timothy B. Moritz facility. Scenario 2 discusses the conversion of an existing adult civil unit into a juvenile unit. And Scenario 3 discusses building a new facility for juvenile competency restoration.

Scenario 1: Renovation of the Timothy B. Moritz Forensic Unit

The Moritz facility is located on the Twin Valley Psychiatric System Campus in Columbus and has 6 units with a total of 76 beds. A DMH Forensic Facility study reveals that the following building shortcomings need to be considered if this facility is to be used as the juvenile competency facility:

- Small number of beds per unit;
- Multistory building;
- Old mechanical systems;
- Lack of aesthetic amenities;
- Inadequate therapy and recreational space on the units;
- Inadequate staff support space;

If none of the above shortcomings is a concern, then the building could be used nearly as it currently stands, allowing $3.0 million to $4.0 million for upgrades before moving juveniles into the facility.

The current occupants of the Moritz facility are adult forensic mental health patients. In order to utilize this facility for juveniles, the department would transfer the current adult occupants to the Twin Valley Psychiatric System Forensic facility in Dayton. The department has not included any costs associated with this transfer of patients in their juvenile competency proposal.

Scenario 2: Converting Existing Adult Civil Units Across the State to Regionalize Services

A typical existing adult civil unit is approximately 12,000 to 15,000 square feet. To convert an adult unit for at least 12-15 beds in separate facilities across the state, it would require gutting the each existing unit. This would cost approximately $125 per square foot or $1.8 million - $2.5 million. If 40-beds are needed, or 3 units, the cost would be roughly three times these amounts.

Scenario 3: Building a Replacement Facility

If the above two scenarios are determined to be impractical, then another consideration would be to construct a new facility. Total project costs to construct a new facility would be in the range of $220,000 to $260,000 per bed. The total costs of building a new 40-bed facility would be between $8.8 million and $10.4 million.

Operating Costs for Secure Placement. According to DMH, the operational costs for a 40-bed facility for juvenile competency restoration are $5.8 million per year. In addition, the department anticipates an increase in administration costs of approximately $552,719 per year.

Other Alternatives for Secure Placement. An alternative for secure placement would be for the state to contract with private entities. Secure placement for juveniles does exist within the private sector; however, none of the current private sector placements are structured to do competency restoration. Despite this, they may have the capacity to develop service continuums for competency restoration. Some of largest privately operated residential treatment facilities for juvenile treatment are part of the Ohio Association of Child Caring Agencies (OACCA), with approximately 6 agencies that provide secure facilities for juveniles.

According to four of these agencies, the per diem rates for children, referred by local juvenile courts, that require placement in a secure unit is between $200-$400 per day (not including Medicaid reimbursement). The cost of providing competency restoration services in a DMH facility for adult forensic patients is approximately $427 per day. LBO assumes that the cost of secure placement for this type of juvenile in a privately operated facility, including restoration services, would be closer to the $400 per day figure. If it is assumed that 75 children (based on DMH's estimate) will be placed in privately operated facilities, with average length of stay of 6 months, with 10 juveniles being unrestorable, the approximate annual costs would be $6,192,000 ((65 juveniles x $400 x 182 days = $4,732,000) + (10 juveniles x $400 x 365 days = $1,460,000)).

Ohio Criminal Sentencing Commission Estimate

This estimate is based on information from the Ohio Criminal Sentencing Commission and includes the assumptions listed below. This estimate does not take into account that juvenile judges may recognize the condition of immaturity as an element of incompetence for juveniles since it is based on the adult criminal population.

- Assumes 10.75% of the total number of eligible Serious Youthful Offenders, 5,053, will be charged as an SYO. This assumption is based on a study by Montgomery County Prosecutor Juvenile Division.

- Assumes the issue of competency will be raised in cases involving SYOs twice as often as it is raised in cases involving adults (in 4.6% or approximately 24 juvenile cases per year).

It should be noted that in 1999, Florida's juvenile courts referred 510 juvenile felony cases for competency evaluations and Virginia's juvenile courts referred 150 juvenile felony cases for evaluations. Under the bill, the competency statute only applies to serious youthful offenders, a smaller pool of felony cases. However, based on Florida's experience, competency tends to be raised in cases that most often involve higher-level felony offenses (e.g., rape, arson, sexual battery). Thus, LBO believes that the SYO limitations in the bill would not significantly impact the number of competency evaluations when compared to these other states.

- Assumes 73% of the juveniles who raised the issue of competency are found competent to stand trial, based on Virginia's experience. However, in Florida 50% of the juveniles who were evaluated for competency were found to be competent to stand trial.

Because of the experiences in Florida and Virginia, LBO believes that the Sentencing Commission may have under estimated the number of competency evaluations. Thus, their estimates represent the low end of the range of potential costs.

Costs of Competency Determinations. According to DMH, the average cost of a juvenile competency determination would be around $1,500 per examination, similar to adults. If it is assumed that approximately 24 juveniles would be evaluated for competency on an annual basis, then the costs associated with competency determinations would be $36,000.

Cost of Competency Restoration. The Ohio Criminal Sentencing Commission estimates that approximately 8 juveniles would be referred for competency restoration per year. This estimate assumes that 73% will be competent to stand trial and 27% will be referred for restoration, which is based on Virginia's experience. In addition, the calculation takes into account the length of stay and the percent of juveniles who will attain competency through restoration treatment.

If it is assumed that 8 juveniles are referred for competency restoration services, the state would either contract with the private sector for these services or the Department of Mental Health would serve the 8 juveniles in their current system. As stated earlier, secure placement for juveniles does exist within the private sector; however, none of these placements are currently structured to do competency restoration. But, they may have the capacity to develop service continuums for competency restoration. According to four such private agencies, the per diem rates for children, referred by local juvenile courts, that require placement in a secure unit is between $200-$400 per day (not including Medicaid reimbursement). LBO assumes that the cost of secure placement for this type of juvenile in a privately operated facility, including restoration services, would be closer to the $400 per day figure. Similarly, the cost of providing competency restoration services in a DMH facility for adult forensic patients is approximately $427 per day. For purposes of this estimate LBO is assuming an approximate per diem cost for juvenile competency restoration services in a DMH facility of $400.

The Ohio Criminal Sentencing Commission estimates that the average daily population of competency restoration would be 8 juveniles. This estimate assumes that the average length of stay for a juvenile receiving inpatient restoration services is around 8 months. If it is assumed that 8 juveniles will require inpatient restoration, then the costs associated with competency restoration services in a privately operated secure facility or a DMH facility would be $1,168,000 (ADP of 8 juveniles x $400 x 365 days = $1,168,000).

DYS AND DRC POPULATION INCREASE PROJECTIONS

As a result of the bill, the institutional population in the custody of the Department of Youth Services (DYS) will increase, principally due to sentences served in DYS institutions by juvenile offenders designated as serious youthful offenders (SYOs) and changes made to gun specifications. DYS is also likely to incur some additional, relatively small annual expenditure increases associated with housing a few 10- and 11-year-olds.

Current State of DYS Population and Capital Improvements

DYS' current average daily population is approximately 1,943, which puts it at about 127% of rated bed capacity of 1,531. This represents an improvement relative to the overcrowding DYS experienced prior to the implementation of RECLAIM. DYS representatives have maintained that DYS must continue to reduce the size of its institutional population or increase its rated bed capacity in order to come into compliance with national standards.

DYS has closed the Training Institute of Central Ohio (TICO), and opened a new facility in Marion, Ohio. TICO's original rated capacity was 196 beds, but this capacity had been reduced to 98 beds in recent years. The new facility at Marion will be opened with a rated capacity of 240 beds. With TICO closed and Marion open, DYS' rated capacity will increase to 1,673 beds, and the DYS system would be at 116% of capacity, as shown in the table below.

Table 1: Current State of DYS Population and Capital Improvements

Assumptions	DYS Average Daily Population	Rated Capacity (Beds)	Percent of Capacity
Current Status	1,943	1,531	127%
TICO Closes; Marion Opens	1,943	1,673	116%

Additionally, Am. Sub. H.B. 640 appropriated $7,250,000 in capital funds to DYS to construct a 72-bed housing unit addition to the Ohio River Valley Correctional Center (ORV). In their capital request, DYS anticipated that S.B. 179 would increase its average daily population, and that the most feasible location to house additonal offenders would be to construct additional beds at this site. This facility was determined to have sufficient classroom and programming space to handle increased intake. This project would involve constructing a third housing unit, in adition to the two existing units on this campus. The scenarios that follow will take into account the 72 additional beds made available by this capital appropriation.

At this time, there is some disagreement among the various stakeholders regarding how much DYS' average daily population will increase as a result of the bill. In the discussion that follows, LBO examines several "average daily population" scenarios, based on varying assumptions concerning additional beds needed, overcrowding, and capital improvement costs.

Scenario 1: Assume Average Daily Population Increases by 46 Offenders

Based on how current delinquent adjudications would fit into the dispositional options outlined in the bill, the Ohio Criminal Sentencing Commission (OCSC) staff estimates that DYS' average daily population will increase by 46 offenders. LBO considers this estimate to be the lowest floor estimate when the fiscal effects of the bill are examined.

If the average daily population increases by 46, and if the 72-bed addition funded in Am. Sub. H.B. 640 is constructed, then DYS' average daily capacity would be at 114%. This scenario is less than the current situation of 127% of rated capacity and less than the 116% of rated capacity DYS would experience after TICO closes and Marion opens without the provisions of the bill or the construction of the 72-bed addition. This scenario would not require the appropriation of any additional capital dollars to DYS.

Scenario 2: Assume that Average Daily Population Will "Stack" Over Time by at Least 78 Offenders

By making changes that would result in juvenile offenders serving additional time in its facilities for felony offenses, DYS estimates that it will experience increases in incarceration expenditures in future years. DYS expects that the lengthening of time served in its institutions, which slows the turnover rate for the affected group of juveniles, would result in a "stacking" effect that will be felt in future fiscal years, as the average time served for these offenders will increase. As a result, release dates will be postponed from what they would otherwise have been under current law.

Based on discussions with DYS, LBO assumes that the result will be an increase in the number of offenders imprisoned in future fiscal years. DYS believes that the serious youthful offender provisions of the bill would result in an increase in average daily population of 60 offenders. This would be in addition to an increase in average daily population expected to result from the bill's gun specification provisions.

DYS has provided preliminary data to LBO that suggests that the additional increase in average daily population for gun specifications would be between 18 and 142 offenders in future years. Under current law and practice, approximately 84.9% of the 139 offenders committed annually to DYS who had firearms involved in their offenses did not receive gun specifications. If DYS assumes that judges will apply gun specifications in a generally similar fashion after the implementation of the bill, i.e., that 76.4% of these offenders would not receive gun specifications, then the increase in average daily population would be approximately 18 offenders. When this is added to the increase in average daily population for offenders receiving serious youthful offender status, the total increase in average daily population would be 78.

DYS calculated a worst-case fiscal scenario that assumes that all firearms offenders committed to DYS would receive at least a one-year gun specification, which would result in an average daily population increase of 142 offenders due to gun specifications alone. The bill permits offenders who possess firearms to be sentenced up to one year, requires offenders who use firearms to facilitate the offense to be sentenced between 1 and 3 years, and requires offenders who use silencers or commit drive-by shootings to be sentenced between 1 and five years, all in addition to the incarceration terms for the underlying offense.

LBO finds it extremely unlikely that all offenders would receive one year. By examining data from Department of Rehabilitation and Correction's 1996 Intake Study, and applying gun specifications that are currently used for adults to juveniles, LBO concludes that the increase in average daily population attributable to gun specifications would be much smaller. In DRC's intake sample, 24 percent of offenders who had a firearm involved with the most serious offense of commitment received a gun specification. If we apply this to the DYS population, LBO estimates that an increase in average daily population of around 18 offenders would be likely to occur, which is the same as DYS' low estimate of increase in average daily population for gun specifications. LBO assumes that juveniles would not be as likely to receive gun specifications as frequently as they are currently applied to adults; as a result, the increase in average daily population attributable to making changes in gun specifications would probably be smaller. If DYS' average daily population were to increase by 78 beds, given the closing of TICO, the opening of Marion, and the planned 72-bed addition, DYS would be at 116% of capacity.

LBO's Evaluation. Based on available data, LBO assumes that the increase in DYS average daily population stemming from the SYO and gun specification provisions of the bill would be between 50 and 78 additional offenders annually. As DYS has already received a capital appropriation to construct a 72-bed facility, LBO believes that additional construction will not be necessary to accommodate the increase in average daily population resulting from the provisions of the bill.

DRC Issues. Under the bill, it is likely that fewer juvenile offenders would be bound over to DRC, but that more offenders who violated conditions of their SYO confinement would be sent to DRC. As a result, LBO expects that DRC's average daily population would experience a slight net annual decrease. LBO assumes that, at a marginal cost of imprisonment of $4,100, that DRC might save at least $100,000 in annual incarceration and post-release control expenditures.

Parole Issues

Generally, under existing supervision procedures, juveniles are supervised until the expiration of their minimum sentence or period of judicial control. LBO estimates that the additional costs generated by parole supervision for additional juvenile offenders could be in the hundreds of thousands of dollars annually; however, more precise data is not available at this time.

Study of DYS Commitments

The bill requires the Governor's Council on Juvenile Justice to conduct, or cause to be conducted, an evaluation of the racial composition of delinquent youth committed to DYS. The evaluation shall consider the institutional population composition from the time that RECLAIM was

established through four years after the effective date of the bill. Reports of the evaluation results shall be submitted to the Governor, the Speaker of the House, the Minority Leader of the House, the President of the Senate, the Minority Leader of the Senate, the Chairperson of the Black Legislative Caucus, and the Director of DYS.

Through discussions with the Office of Criminal Justice Services (CJS), LBO concludes that the study would examine thirteen years of commitment data, some of which may be already collected and some of which may need to be gathered. Assuming that the study was contracted in 2004, and that the required reports were issued in 2006, CJS estimates that the cost of the study would be approximately $150,000 over an 18 to 24 month period. LBO assumes that GRF monies would be utilized to fund this study.

RECLAIM Issues

RECLAIM Summary. The RECLAIM Ohio (Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minor) program, initiated statewide in 1993, provides to juvenile courts funding to develop community-based programs for juvenile offenders. In doing so, the program is intended to reduce the number of commitments to DYS institutions.

Funding is allocated to counties through a formula based on the proportion of statewide felony delinquent adjudications occurring in each county. Each month, counties are debited 75% against a per diem allocation for youth placed in DYS institutions and 50% for youth placed in community corrections facilities. Any funds remaining after debits are made are remitted to the counties and provided to the juvenile court to support the development and operation of rehabilitation programs at the local level. Courts may use the funds to purchase or develop a broad-based spectrum of community-based programs for adjudicated felony delinquent youths who would otherwise have been committed to DYS. Such programs include: day treatment, intensive probation, electronic monitoring, home-based services, residential treatment reintegration, and transitional programs.

A contingency fund in the program, which represents up to five percent of the total annual RECLAIM allocation, allows the courts to commit youth to DYS or community corrections facilities, even if a county has exhausted its allocation.

The law also provides for a category of commitments called *public safety beds*, for which the counties are not debited. Public safety beds are provided for youth that are committed for very serious offenses, such as aggravated murder. Various safeguards are built into the system to ensure that the department will remain fiscally solvent, and counties will not be left out-of-pocket.

Effects of the Bill. The department's funding stream, GRF line item 470-401 RECLAIM, is unusual in that it is used both to fund institutional operations as well as provide what amounts to conditioned subsidy payments to counties under the RECLAIM formula. By estimating the likely costs to counties for transferring offenders to DYS under the bill, we also conversely estimate the revenue gained by DYS institutions for incarcerating these youth.

By creating a class of serious youthful offenders which would necessarily be committed to DYS by counties, instead of being sanctioned locally or being bound over to adult court and sentenced to

prison, counties would incur increases in expenditures associated with paying for these offenders to go to DYS. Under current RECLAIM practices, counties are not charged for youth who are bound over and sanctioned in the adult system or for youth who are sanctioned locally.

This analysis assumes that the current per diem rate to house an offender in a DYS facility is $133, and is the basis for RECLAIM formula calculations. LBO also assumes that many of the serious youthful offenders are currently being bound over to criminal court and sanctioned in DRC and a few are being sanctioned locally, and that counties are not being debited against their RECLAIM allocations for doing so. By placing them in DYS under blended sentences, then counties would be forced to return greater portions of their RECLAIM allocations than would otherwise be the case.

Under existing law, public safety beds are defined as those felony delinquents committed to DYS for commission of an act, other than aggravated robbery or aggravated burglary, that is a Category I or II offense, and who are in the care and custody of an institution, or have been diverted from care and custody in an institution and placed in a community corrections facility.

The bill broadens this definition to include the following: those felony delinquents committed to DYS for the commission of an act that would be aggravated murder, murder, or a first-degree felony if committed by an adult, who are at an age at the time of the commission of the act that would be eligible to be SYOs, and who are in the care and custody of an institution or have been diverted from care and custody in an institution and placed in a community corrections facility. LBO expects that this provision will expand the number of public safety beds, therefore increasing annual expenditures for DYS, as these offenders would automatically be sent to DYS, and DYS would not charge counties for these offenders. This provision would, conversely, mitigate the fiscal burdens placed on counties, who would not be charged under RECLAIM for sanctioning these additional SYOs at DYS facilities.

The bill includes a provision would ensuring that the total number of DYS beds available to counties via public safety beds and county allocations in fiscal years 2002 and 2003 shall not be less than the total beds used by all Ohio counties during FY 2000. Under this provision, absent an appropriation, LBO believes that counties would still be chargeable, under RECLAIM, for offenders who are not public safety beds that exceed the FY 2000 number of allocated beds.

LBO makes several assumptions, detailed below, to create two scenarios that estimate the bill's fiscal effects on the RECLAIM program:

1. The number of public safety beds will increase. LBO believes that this number is currently 389, and uses an OCSC staff estimate that increases the number of public safety beds to 427, an increase of 38 beds. At the time this document was produced, this was the sole estimate available.
2. Counties are not currently being charged for this group of SYOs who would receive blended sentences and sent to DYS under the RECLAIM formula. LBO believes that some number of the offenders who would receive blended sentences under the bill would be bound over to the adult system and sanctioned in DRC, for which counties would not be charged. Additional offenders may be sanctioned locally, for which counties would also not be charged. In reality, LBO believes that many of the offenders who would receive blended sentences would be sent to DYS under current practice,

and that this would continue under the bill. If this is true, then our estimates of the fiscal impact on counties will likely be inflated, but to an unknown degree.

3. All offenders designated as SYOs who would receive blended sentences under the bill and be committed to DYS custody.
4. LBO believes that DYS currently takes 25% of the per diem rate off the top. This makes the maximum per diem amount that counties can keep if an offender is sanctioned locally about $105, assuming the per diem is $140 ($140 x .75 = $105). DYS requires this 25% of the per diem to administer the program.
5. DYS capacity remains at current levels.

Scenario 1: DYS' Average Daily Population Increases by 50 Offenders; Public Safety Beds Increase by 38; Per Diem Rate is $140

If we assume that 50 offenders would be subject to blended sentencing and sent to DYS under the bill in the initial years of the bill's implementation, and that the number of public safety beds would increase by 38, then the net increase in chargeable beds to counties would be 12. Presumably, counties would not be charged for the offenders qualifying as public safety beds, and would be responsible, under RECLAIM, for sending 12 additional offenders to DYS who may not otherwise have been sent. It is assumed that counties are not charged for these 12 offenders currently. Presumably, under the bill, counties would be charged at 75% against the per diem rate ($105) for these additional offenders to be committed to DYS. A per diem rate of $140 is used, which LBO believes to be the current DYS rate.

This scenario would result in counties being charged $459,900 by DYS to allow DYS to cover operating expenditures associated with confining these additional offenders to DYS ($105 per diem x 12 offenders x 365 days = $459,900). Thus, the net annual loss to counties would be around $459,000 under this scenario, and DYS would gain this amount for operating expenses related to these 12 additional offenders.

DYS would also require 25% of the per diem ($35) to manage these additional offenders, resulting in $153,300 in additional annual GRF expenditures ($35 x 12 offenders x 365 days = $153,300). This represents an additional annual state cost that is not chargeable to counties.

Also of fiscal impact to DYS, however, would be the costs of absorbing additional public safety beds. Absorbing an increase of 38 public safety beds would result in additional GRF expenditures (not including capital costs) of around $1.9 million ($140 per diem x 38 offenders x 365 days = $1,941,800). The total increase in GRF expenditures to DYS would then be $2.1 million annually ($153,300 + $1,941,800 = $2,095,100).

Scenario 2: DYS' Average Daily Population Increases by 78 Offenders; Public Safety Beds Increase by 38; Per Diem Rate is $140

Assumptions. In this scenario, 78 offenders in future fiscal years would be subject to blended sentencing and would be sent to DYS under the provisions of the bill. Given the anticipated increase in 38 public safety beds, then the net chargeable increase in beds to counties would be 40. A per diem rate of $140 is used.

LBO assumes that counties would be responsible for paying DYS 75% of the per diem rate ($105) for the 40 additional offenders who would be sent to DYS. In this case, counties would be responsible for reimbursing DYS for about $1.5 million annually ($105 x 40 offenders x 365 days = $1,533,000).

DYS would also require 25% of the per diem ($35) to manage these additional offenders, resulting in about $511,000 in additional annual GRF expenditures ($35 x 40 offenders x 365 days = $511,000). This represents an additional annual state cost that is not chargeable to counties.

DYS would also incur costs associated with absorbing 38 public safety beds. Absorbing these beds at a per diem rate of $140 would cost approximately $1.9 million in GRF expenditures annually ($140 x 38 offenders x 365 days = $1,941,800). The total increase in GRF expenditures to DYS would then be approximately $2.5 million annually ($511,000 + $1,941,800 = $2,452,800).

Appropriation Increases. LBO's understanding of the DYS RECLAIM methodology is that it does not provide a one-to-one reflection of the per diem per offender (i.e, $140 per diem x 151 offenders added to the average daily population x 365 days does not yield the total RECLAIM dollars spent under DYS' methodology). In prior discussions, DYS has described the difficultly in predicting in what jurisdiction and when SYO's will be committed to DYS. Owing to this, an additional amount added to the RECLAIM pool, an amount which appears to be around 25% of the total, has been included by DYS in prior analyses of the bill to provide a margin that ensures that counties who will have larger numbers of SYOs will be covered under RECLAIM. For example, under DYS' appropriation calculations, RECLAIM budgeting for 40 offenders to be sent to DYS would require an addition of $2,555,000 to the 470-401 line item; counties would keep $511,000 of this amount, and DYS would net $2,044,000. This appropriation estimate, by adding an additional 25%, permits counties to receive $511,000 in revenue that they would not otherwise have received and pays for these 40 offenders to go to DYS.

As this bill does not include appropriations, however, LBO is not speculating at this time regarding the amounts needed to hold counties harmless or the fiscal feasibility of providing counties with additional revenue under RECLAIM. In this analysis, we are concerned with determining the increases in annual expenditures for counties, absent any appropriations, which we believe to be 75% of the per diem.

Summary. Under the RECLAIM portion of this analysis, counties would likely experience annual losses in RECLAIM allocations of between $0.5 million and $1.5 million statewide in future years. DYS would incur additional GRF expenditures of between $2.1 million and $2.5 million annually.

Caveats and Possibilities. This analysis assumes that counties are not currently charged for these offenders. LBO believes that it is likely that some offenders that we have included in this analysis are currently being sent to DYS or sanctioned locally, in which case counties are already incurring expenditures for these youth, which would diminish our estimates.

JURY TRIALS

Existing Law. Current law allows for any adult, 18 years of age or older, arrested under the Juvenile Code to demand a jury trial, or for the juvenile judge to call a jury for the arrested adult. Under existing law, juveniles are not subject to adult sanctions and are not afforded jury trial rights unless they are bound over to adult court to face charges in a common pleas court. In this case, the procedures for requesting a jury trial and for impaneling a jury are the same as the procedures for an adult jury trial in a court of common pleas.

Provisions of the Bill. Under the bill, some juvenile offenders face blended sentences. By facing adult sanctions, these offenders are afforded adult rights, which include jury trials. The types of juvenile offenders eligible for jury trials include the mandatory serious youthful offenders (MSYOs), and the discretionary serious youthful offenders (DSYOs).

Costs of Jury Trials. It is difficult to predict the number of juvenile jury trials that would take place as a result of the bill, without actually implementing the bill. However, LBO has attempted to estimate the number of jury trials and the costs based on information provided by Ohio Criminal Sentencing Commission staff and other states.

LBO has prepared three separate cost scenarios. *Scenario 1* quantifies LBO's low estimate of the bill's impact on jury trials, which likely represents an undercount because it assumes only 10.75 % of the juveniles eligible to receive a SYO disposition will end up receiving SYO status. *Scenario 2* quantifies LBO's high estimate, which likely represents an overestimation of the number of jury trials because it assumes all likely SYOs will receive SYO dispositions, and will then request jury trials. *Scenario 3* represents LBO's "most likely" estimate of the number of jury trials and the associated costs.

Scenario 1 (Low Estimate of Jury Trials). The Ohio Criminal Sentencing Commission's staff has estimated that jury trials will resolve approximately 3.5 % of the anticipated number of SYO cases, which works out to approximately 19 jury trials. The calculation for the number of SYOs was based on 5,053 juvenile offenders, eligible to receive an SYO status, and assumes (based on Montgomery County's experience) 10.75 % of these juveniles would be facing a Serious Youthful Offender disposition, an estimated 543 SYO's. In common pleas courts, the percentage of jury trials is approximately 3.5 %. Assuming SYO's would receive a jury trial as frequently as adult defendants, there would be 19 jury trials statewide. However, the adult system counts charges filed and the juvenile system counts offenders, so LBO determines that this percentage is likely an undercount.

Table 2: Ohio Criminal Sentencing Commission Jury Trial Estimates

Assumptions	Percent of SYO Dispositions	Percent of Jury Trials	Total Number of Jury Trials
5,053 SYO Eligible Juveniles	10.75% (543)	3.5%	19

Table 3: Costs Based on 16 Jury Trials			
Court System Expenses	Defense Counsel Expenses	Expert Fees (up to 25%)	Total Costs
$1,434 per case (19 trials x $1,434 = $27,246)	*$3,000 per case - $347 current costs per case (19 x $3,000 = $57,000 - $6,593 = $50,407)*	*$50,407x .25 = $12,602*	*$90,255*

Court System Expenses. The average cost of a jury trial in the common pleas court system is $1,434. This does not include the cost of the courtroom advocates, court security, prosecution, counsel, and capital costs of renovation. The total court operating cost statewide would be $27,246, assuming the cost is similar to the juvenile court system.

A provision of the bill requests that the Supreme Court encourage cooperation between divisions of the courts of common pleas to better implement the provisions authorizing jury trials in juvenile courts. LBO assumes this provision would lead some courts to share resources (i.e., jury boxes) and to assist less equipped courts in the operation of jury trials and save renovation costs.

Defense Counsel Expense. Under the bill, juvenile defendants will have the same protection and due process rights as adults. Although the defense counsel expenses are difficult to estimate without actually having juvenile trials, it can be assumed that juvenile defense counsel costs will be roughly the same as the adult felony defense counsel costs. Based on the Ohio Public Defender's planned maximum fee schedule for calendar year 2000 (which includes jury trial fees), a first-degree through third-degree felony proceeding is $3,000 per case; a fourth-degree and fifth-degree felony proceeding is $2,500 per case. LBO assumes the costs will be close to $3,000 per case.

The Ohio Public Defender's 1997 Annual Report indicated that the statewide average appointed counsel fee for juvenile proceedings is $347 per case, which does not include jury trials. Using our estimated 19 juvenile proceedings, under existing law, the statewide average for appointed counsel, would be approximately $6,593 (excluding jury trials). Assuming the costs of a juvenile jury trial would be similar to felony level adult defense counsel fees, the total statewide costs would be around $50,407.

On top of the defense counsel fees, the Ohio Public Defender estimates that expenses for psychologist fees, psychiatrist fees, and other medical expert fees could be up to 25% of the total defense counsel costs. Based on 19 jury trials, the amount for expert fees would be approximately $12,602.

Total Costs. In summary, the aggregate annual court system and defense counsel costs for a juvenile jury trial, based on Scenario 1 assumptions, would be at least $90,255 statewide. It should be noted that we have not tried to estimate prosecution or capital improvement costs. Under the bill, there are no additional appropriations for state reimbursement of counties expenses for the costs of juvenile jury trials.

State Reimbursement. The state reimburses counties for up to 50% for the public defender counsel expenses through the following GRF line items: 019-403, Multi-County Public Defense-State Share; 019-404, Trumbull County-State Share; 019-501, County Reimbursement – Non-Capital Cases; and 019-503, County Reimbursement- Capital Cases. In total, the costs to the state for reimbursement could be up to $31,505 and the costs to counties would be approximately $58,750, depending on the rate of state reimbursement.

Scenario 2 (High Estimate of Jury Trials). This scenario excludes the assumption that 10.75 % of eligible juveniles will end up with a SYO status. Instead, LBO assumes that all of the 5,053 eligible juvenile offenders would receive a SYO disposition (which is a gross overcount). If 3.5% of 5,053 possible SYOs receive a jury trial, the total number of jury trials statewide would be 177. The costs associated with these jury trials are quantified using similar calculations as in Scenario 1.

Table 4: LBO's High Estimate of Juvenile Jury Trials		
Assumptions	Percent of Jury Trials	Total Number of Jury Trials
5,053 SYO Eligible Juveniles receive SYO Disposition	*3.5%*	*177*

Table 5: Costs Based on 144 Jury Trials			
Court System Expenses	Defense Counsel Expenses	Expert Fees (up to 25%)	Total Costs
$1,434 per case (177 trials x $1,434 = $253,818)	*$3,000 per case - $347 current costs per case (177 x $3,000 = $531,000 - $61,419 = $469,581)*	*$469,581 x 25% = $117,395*	*$840,794*

Total Costs. The aggregate annual court system and defense counsel expenses for jury trials would be at least $840,794. If one assumes the state reimburses to counties for up to 50% of defense counsel expenses (including expert fees), then counties could recover up to $293,488 annually. Again, other areas of local cost increases, such as prosecution and capital improvements, are not included.

Scenario 3 "Most Likely" Estimate. A survey of states conducted by the Minnesota Juvenile Justice Task Force found that, in those states with juvenile jury trial rights, the right was seldom exercised. In Wisconsin, for example, less than three percent of juveniles received a jury trial, and in Texas and Oklahoma, the rate was less then one percent. In short, where available, juveniles used the jury less frequently than the adult defendants.

Table 6: LBO's Best Estimate of Juvenile Jury Trials		
Assumptions	% of Jury Trials	Total Number of Jury Trials
5,053 SYO Eligible Juveniles receive SYO Disposition	2.5%	126

Table 7: Costs Based on 102 Jury Trials			
Court System Expenses	Defense Counsel Expenses	Expert Fees (up to 25%)	Total Costs
$1,434 per case (126 trials x $1,434 = $180,684)	*$3,000 per case - $347 current costs per case (126 x $3,000 = $378,000 - $43,722 = $334,278)*	*$334,278 x 25% = $83,570*	*$598,532*

LBO's best estimate attempts to take into account the most likely percentage of juveniles that would receive jury trial. It seems, based on other states' experiences, juveniles do not receive jury trials as frequently as adults. Scenarios 1 and 2 assumed 3.5% of the eligible juveniles will receive a jury trial, based on the adult proceeding statistics. LBO assumes around 2.5% of eligible juveniles will most likely receive a jury trial, which more accurately represents other states jury trial numbers. Assuming that is true, then the number of juvenile jury trials would be around 126. It is important to note that this estimate is based on the assumption that 5,053 juveniles would receive an SYO disposition, which most likely represents a gross over-count.

Total Costs. The aggregate annual court system and defense counsel costs for jury trials would be at least $598,532. If one assumes state reimbursement to counties for up to 50% of defense counsel expenses, then counties could recover up to $208,924 annually. Other areas of potential costs to counties, such as prosecution and capital improvements, are not included.

MISCELLANEOUS PROVISIONS

Juvenile Traffic Offenders. The bill makes several changes to law pertaining to juvenile traffic offenders (JTOs), which would likely result in minimal fiscal impact to state and local governments. From a fiscal standpoint, the most important facet of the proposed juvenile traffic changes that will be discussed in this analysis is a change made to how traffic violations are processed. The bill also clarifies that most juvenile traffic offenses are minor misdemeanors and that violators are not subject to right to counsel.

The bill requests the Supreme Court to authorize the creation of a traffic violations bureau within juvenile courts to allow some minor misdemeanor juvenile traffic offenders to pay tickets without making court appearances, which are required under current law. According to the Supreme Court's *Ohio Courts Summary*, there were 131,934 juvenile traffic cases processed in calendar year 1998. By allowing many of these cases to be processed without court appearances, savings would likely result to juvenile courts that choose to do so, dependent upon the volume of their existing caseload. LBO expects that these savings could be in the thousands of dollars in more populous jurisdictions.

Fine Structure and Victim Restitution. The bill makes several changes to the juvenile law governing fines, costs, and restitution. Generally, LBO believes that fines are not commonly levied against juvenile delinquency offenders, but the fine increases and other changes made by the bill may result in minimal increases in fine revenue collection in some jurisdictions, especially as applied against minor misdemeanor offenders. Changes are made to juvenile fine schedule as follows:

Table 8: Fine Schedule Changes		
Offense	***Maximum Fine under Current Law***	***Maximum Fine under S.B. 179***
Murder	$1,800	$2,000
First-degree felony	$1,450	$1,500
Second-degree felony	$1,000	$1,000
Third-degree felony	$750	$750
Fourth-degree felony	$400	$400
Fifth-degree felony	$300	$300
First-degree misdemeanor	$225	$250
Second-degree misdemeanor	$175	$200
Third-degree misdemeanor	$125	$150
Fourth-degree misdemeanor	$75	$100
Minor misdemeanor	$50	$50

The language concerning victim restitution is broadened to include amounts based on the victim's economic loss caused by or related to the offense. Restitution may include: reimbursement to eligible third parties, cash payment, performance of labor or services by the offender to the victim or survivor, the performance of community service, or any other restitution devised by the court. Offenders may also be required to pay costs of implementing community control, confinement in a residential facility or DYS institution, and any associated medical and supervision costs. These reimbursements for confinement may not exceed the offender's ability to pay, as determined at a hearing.

Existing law and practice suggests that community service be ordered against indigent offenders. The bill would permit a court to order a child who is not indigent to serve community service instead of, or in addition to, a financial sanction. The bill also authorizes community service as punishment for minor misdemeanors, for which fines are the only available sanction under current law. Upon an offender's failure to pay a financial sanction, community service may be ordered.

Collection of financial sanctions are facilitated by the bill. The bill grants courts the ability to enter into collection contracts with private or public entities, permits payment by installment, and permits the charging of processing fees to offenders. LBO believes that financial sanctions are not frequently imposed upon felons, but are more frequently imposed upon misdemeanor offenders, especially minor misdemeanor traffic offenders. The provisions of the bill will likely result in minimal increases in fine revenue for most counties affected by the bill.

Community Dispositions. The term "probation" is changed to "community control" in the juvenile code. The bill allows minor misdemeanant juveniles to serve up to 30 days' community service, where no such provision exists under current law. The bill limits the duration of community service for second-, third-, and fourth-degree misdemeanants to 200 hours, and retains the existing community service cap for first-degree misdemeanants at 500 hours. These provisions are determined to have little substantive fiscal effect.

Definition of Unruly Juveniles. The bill redefines offenses by which a juvenile can be classified as "unruly." Existing law allows, and the bill retains, the following juveniles to be defined as unruly:

- Habitually disobedient juveniles;
- Truant juveniles;
- Juveniles engaging in endangering conduct; and
- Status offenders.

The bill removes three types of conduct that constitute unruliness in existing law:

- Attempting to marry;
- Being in a disreputable place or with disreputable people; and
- Engaging in an illegal occupation or immoral situation.

Violations of these latter three prohibitions are reasonably rare under current law, and these actions are believed to be covered under existing offenses (i.e., prostitution, falsification, etc.). Repeal of these prohibitions would likely result in, at most, negligible annual savings to juvenile courts.

Definition of Delinquent Juveniles. Existing law states that a delinquent juvenile includes:

- One who violates Ohio or U.S. law, or any ordinance or regulation of a political subdivision of the state, that would be a crime if committed by an adult, except as provided in the definition of "juvenile traffic offender";
- One who violates any lawful order of the court made under the juvenile code;
- One under age 18 who violates prohibitions against purchasing or attempting to purchase a firearm found in O.R.C 2923.211 (A); and
- One under age 18 who violates O.R.C. 3730.07(A)(1) or (2) by obtaining a tattooing service, body piercing service, ear piercing service, or giving false information in order to gain these services.

The bill repeals the last part of the definition concerning tattooing and body piercing. By repealing this portion of existing law, it is likely that counties would experience negligible decreases in annual expenditures for enforcement, prosecution, adjudication, and sanctioning.

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