

Fiscal Note & Local Impact Statement

124th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. H.B. 327** DATE: **March 12, 2002**

STATUS: **As Enacted – Effective July 8, 2002 (Certain provisions effective July 24, 2002, or effective date of the Interstate Compact for Adult Offender Supervision, whichever is later)** SPONSOR: **Rep. Latta**

LOCAL IMPACT STATEMENT REQUIRED: **No — Introduced version had no local costs; Enacted version may create local costs exceeding minimal**

CONTENTS: **Clarifies certain provisions of the Felony Sentencing Law, corrects the penalty provisions for illegal processing of drug documents, clarifies the eligibility criteria for intervention in lieu of conviction, requires applicants for nurse licensure and dialysis technician certification to have a criminal records check, expands the offense of unauthorized use of property to specifically include nonconsensual access to a cable service or cable system, revises certain provisions of the law governing nurses and dialysis technicians as to licensing or certification, duties, and training, specifies that the members of the Ohio Council for Interstate Adult Supervision serve without compensation but are to be reimbursed for expenses, and extends until July 1, 2002, the date by which the State Criminal Sentencing Commission must recommend changes to the state's criminal forfeiture laws**

State Fiscal Highlights

STATE FUND	FY 2002*	FY 2003	FUTURE YEARS
General Revenue Fund (GRF)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Factors increasing incarceration costs potentially in excess of \$100,000	Factors increasing incarceration costs potentially in excess of \$100,000 annually
General Reimbursement Fund (Fund 106)			
Revenues	- 0 -	Gain, unlikely to exceed minimal	Gain, unlikely to exceed minimal annually
Expenditures	- 0 -	Increase, not exceeding revenue gain	Increase, not exceeding annual revenue gain

Note: The state fiscal year is July 1 through June 30. For example, FY 2003 is July 1, 2002 – June 30, 2003.

*This analysis assumes the fiscal effects that the state could experience as a result of the bill will occur no sooner than FY 2003.



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- **Incarceration costs.** From a fiscal perspective, the bill’s most notable state effects will be created for the Department of Rehabilitation and Correction relative to its annual GRF-funded incarceration costs. A few factors in the bill, for example, changes in the prosecution of certain domestic violence offenders, will likely increase the Department’s annual incarceration costs. Although calculating a precise cost associated with these factors is problematic, it would appear that their combined fiscal effect on the Department’s annual incarceration costs could exceed minimal, which means in excess of \$100,000.
- **Ohio Council for Interstate Adult Supervision.** The bill specifies that the members of the proposed Council serve without compensation, but are to be reimbursed for their actual and necessary expenses incurred in the performance of official Council duties. It appears likely that the cost to the state of reimbursing Council members for their actual and necessary expenses will total less than \$10,000 annually, perhaps around \$5,000 or so, and that the burden of paying for those expenses will fall on DRC, which will presumably use funds appropriated to its GRF budget.
- **BCII.** The Office of the Attorney General’s Bureau of Criminal Identification and Investigation (BCII) will collect what is likely to be no more than a minimal amount of background check fee revenue annually to be paid by certain license applicants to the state’s Board of Nursing, and that the cost of the background check work involved for BCII would be covered by the revenue gain. The revenue gains and expenditure increases would be credited against the Office of the Attorney General’s General Reimbursement Fund (Fund 106).

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2002	FY 2003	FUTURE YEARS
Counties			
Revenues	Gain, not likely to exceed minimal	Gain, not likely to exceed minimal	Gain, not likely to exceed minimal annually
Expenditures	Increase, possibly exceeding minimal	Increase, possibly exceeding minimal	Increase, possibly exceeding minimal annually
Municipalities			
Revenues	Loss, not likely to exceed minimal	Loss, not likely to exceed minimal	Loss, not likely to exceed minimal annually
Expenditures	Decrease, not likely to exceed minimal	Decrease, not likely to exceed minimal	Decrease, not likely to exceed minimal annually

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Shifting of domestic violence cases.** It seems reasonable to conclude that, as a result of the bill, a number of domestic violence cases, potentially a relatively large number, will shift from municipal and county courts to common pleas courts where the processing of felony cases is generally considered to be more expensive.
- **County criminal justice systems.** From a fiscal perspective, the provision of the bill that will create noticeable local effects will be changes in the manner in which repeat domestic violence offenders are charged, prosecuted, and sanctioned. It appears the likely effect is that annual county criminal justice expenditures will increase, perhaps more than minimally. Cases shifting out of the misdemeanor system into the felony system also means that counties will gain court cost and fine revenues. Although an estimate of that revenue is difficult to calculate with much precision at this time, it would appear that these revenue gains would be unlikely to exceed minimal annually.

- **Municipal criminal justice systems.** Conversely, municipal criminal justice systems will realize some expenditure savings as cases are elevated into county criminal justice systems, and will also lose court cost and fine revenues that would otherwise have been collected. Although it is fairly difficult at this time to put a very precise annual price tag on these local fiscal effects for municipalities, the expected decreases in expenditures and losses in revenues appear unlikely to exceed minimal.

Detailed Fiscal Analysis

From a fiscal perspective, the bill's more notable features are discussed below.

Intervention in lieu of conviction

The bill clarifies the eligibility criteria for “intervention in lieu of conviction.” Currently, if drugs or alcohol are suspected of being a contributing factor to the criminal conduct for which an offender is charged, that offender can request, prior to the entry of a guilty plea, intervention in lieu of conviction. The court is required to then determine, in the affirmative, whether there is the absence of nine disqualifying criteria. The presence of any of these nine criteria would make an offender ineligible for intervention in lieu of conviction if the charge at hand involves a first-, second-, or third-degree felony corruption of another with drugs, drug trafficking, or the illegal manufacture of drugs. The bill would make this disqualifying criteria apply regardless of the degree of the offense. As a result, a small number of offenders may end up being denied intervention in lieu of conviction and sentenced to prison, which would result in, at most, a minimal increase in the annual incarceration expenses of the Department of Rehabilitation and Correction (DRC).

Felony Sentencing Law clarification

The bill compels courts to consider, in their sentencing decisions, whether an offender was serving a prison term at the time that the offense at hand was committed. If an inmate committed the offense in question, the bill formally provides judges more options in the sentencing guidelines for that offense. For example, the bill provides that the court is not required to impose the shortest prison term if an inmate committed the offense. The bill also provides greater latitude for judges to impose consecutive sentences for multiple offenses committed by an inmate.

Existing sentencing guidelines already give courts the authority to reject the shortest sentence and also to impose consecutive sentences if such actions are necessary to adequately reflect the seriousness of the crimes committed or to protect society from the future violent behavior of a given offender. Thus, these sentencing changes are largely clarifications of existing law and should not create any noticeable fiscal effects for the state or its political subdivisions.

Post-release control

The bill clarifies how felony violators of post-release control are handled. It does so by moving the section of the Revised Code which specifies that, when an offender on post-release control commits a new felony, the sentencing judge, in addition to imposing a prison term for the new felony, can impose a prison sentence of up to the remaining period of post-release control for the earlier felony or one year, whichever is longer, to the section of the Revised Code governing prison terms. The relocation of this existing sentencing language could alter the balance between DRC's average daily inmate population in prison and its average daily population of offenders under community supervision from what might

otherwise have occurred under the state's Felony Sentencing Law as it is currently constructed. Although some shifts in these two DRC populations could occur, such shifts are not expected to produce a noticeable change in the Department's annual incarceration and post-release control expenditures.

Shock incarceration

The bill eliminates the requirement that courts determine if an offender is eligible for placement in a program of shock incarceration and transfers that function to DRC. Courts would not be prohibited from making specific recommendations if they so chose and courts would retain the authority to veto the placement of an offender into a shock incarceration program. The effect of this provision of the bill should be to lessen some of the administrative burdens on both courts and DRC. The annual savings in a fiscal sense to both courts and DRC would likely be negligible at most.

Domestic violence

The bill clarifies that pleading guilty to a domestic violence offense will be treated identically, in terms of enhancing a future charge of domestic violence, to cases where a defendant enters a no contest plea or is convicted by trial. It appears that courts currently tend to consider a guilty plea as being a different process than a trial conviction, and repeat domestic violence offenses are widely charged as a misdemeanor of the first degree, which is the same as a first-time domestic violence offense. The net effect of this clarification is that all repeat offenders, including those who previously pleaded guilty to domestic violence offenses, will face a felony of the fifth degree and the more serious sanction intended for a repeat domestic violence offense. In determining the existence of a previous domestic violence conviction, the bill would also include cases in which there was a prior conviction for committing an act of domestic violence in another state or in violation of a similar United States law.

There are currently thousands of cases of domestic violence charges filed annually statewide as misdemeanors in municipal and county courts. The Ohio Criminal Sentencing Commission (OCSC) has data suggesting an estimate of approximately 17,000 annual domestic violence cases. At this time, LSC fiscal staff cannot precisely estimate the number of repeat offenders that previously pled guilty to a domestic violence offense, but have learned that the vast majority of domestic violence convictions, more than 90%, come as a result of a guilty plea, and that first-time offenders spend an average of eight days in a local jail. Additionally, the OCSC data suggests that, out of the 17,000 estimated annual cases, approximately 5.4%, or around 918 offenders, have evidence of a prior similar conviction. This does not include a small number of additional repeat offenders that migrate to Ohio from other states where they have prior domestic violence convictions. Based on a conversation with the Ohio Prosecuting Attorneys Association, such cases have been a problem in Ohio's counties that border other states.

It seems therefore reasonable to conclude that, as a result of the bill, a number of domestic violence cases, potentially a relatively large number, will shift from municipal and county courts to common pleas courts where the processing of felony cases is generally considered to be more expensive. While it is difficult to predict an exact shift in caseload, some county criminal justice system's

adjudication, prosecution, and indigent defense costs will increase in order to process and resolve additional domestic violence cases.

Local jail costs for counties will likely increase as well. If only ten additional offenders are convicted of a repeat domestic violence offense and are given double the eight-day average jail term of a first-time domestic violence offender, or 16 days, then the cost just for local incarceration (at about \$65 per day statewide) would be in excess of the \$5,000 threshold that LSC fiscal staff typically term “minimal local cost.”

Cases shifting out of the misdemeanor system into the felony system also mean that counties will gain court cost and fine revenues. Although an estimate of that revenue is difficult to calculate with much precision at this time, it would appear that these revenue gains are unlikely to exceed minimal annually.

Conversely, municipal criminal justice systems will realize some expenditure savings as cases are elevated into county criminal justice systems, and also lose court cost and fine revenues that would otherwise have been collected. Although it is fairly difficult at this time to put a very precise annual price tag on these local fiscal effects for municipalities, the expected decreases in expenditures and losses in revenues appear unlikely to exceed minimal.

There is no presumption for prison on a felony of the fifth degree. The average time served for offenders actually sentenced to prison for the primary offense of a felony of the fifth degree is 0.69 years. Additional domestic violence offenders are also likely to be sentenced to prison as a result of the bill, thus increasing DRC’s incarceration costs. The annual increase in DRC’s incarceration costs is difficult to precisely predict at this time, but could easily exceed minimal annually, which means in excess of \$100,000, if 20 or more additional offenders are sentenced to prison annually.

Criminal records checks

The bill allows the state’s Board of Nursing to require criminal background checks and deny licensure to certain nursing applicants, based on a criminal record check finding, without requiring a full investigation and hearing. The same provision would also apply to those seeking licensure as dialysis technicians. It appears that, as a result of this provision, the Office of the Attorney General’s Bureau of Criminal Identification and Investigation (BCII) would collect a minimal amount of background check fee revenue annually to be paid by the applicant seeking licensure, and that the cost of the work involved for BCII would presumably be covered by the revenue gain. The revenue gains and expenditure increases would be credited against the Office of the Attorney General’s General Reimbursement Fund (Fund 106).

Ohio Council for Interstate Adult Supervision

Substitute House Bill 269, enacted by 124th General Assembly, withdraws Ohio from its current relationship with the Interstate Compact for the Supervision of Parolees and Probationers and joins the proposed Interstate Compact for Adult Offender Supervision. Thirty-five states must pass the appropriate legislation and thus join the compact before it may take effect. If that does not happen, then Ohio will remain a member of the existing Interstate Compact for the Supervision of Parolees and Probationers, and there would be no Interstate Compact for Adult Offender Supervision to join. As of this writing, around 20 states, including Ohio, have done so.

Each member state of the proposed compact is required to create a state council for interstate adult supervision. Pursuant to Sub. H.B. 269, Ohio's state council will be comprised of seven members, however, that legislation is silent on whether the members can receive compensation or be reimbursed for expenses incurred in the performance of their duties as Council members. This bill, H.B. 327, specifies that the members of the Council serve without compensation, but are to be reimbursed for their actual and necessary expenses incurred in the performance of official Council duties. It appears likely that the cost to the state of reimbursing Council members for their actual and necessary expenses will total less than \$10,000 annually, perhaps around \$5,000 or so, and that the burden of paying for those expenses will fall on DRC, which will presumably use funds appropriated to its GRF budget.

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