



## ***Local Fiscal Highlights***

<b>LOCAL GOVERNMENT</b>	<b>FY 2003*</b>	<b>FY 2004</b>	<b>FUTURE YEARS</b>
<b>Counties and Municipalities</b>			
Revenues	- 0 -	Potential gain, possibly exceeding minimal in some jurisdictions	Potential annual gain, possibly exceeding minimal in Some jurisdictions
Expenditures	- 0 -	Factors increasing and decreasing costs, with net fiscal effect uncertain, but not likely to exceed minimal in most local jurisdictions	Factors increasing and decreasing costs, with net annual fiscal effect uncertain, but not likely to exceed minimal in most local jurisdictions

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

\*The bill takes effect January 1, 2004.

- **Financial sanctions.** The bill: (1) increases the maximum fine that a court may impose for a minor misdemeanor from \$100 to \$150, and (2) modifies the restitution procedure. These changes make it possible for local governments to generate additional revenues with what appear to be little in the way of any additional administrative burdens. Available data suggest local jurisdictions statewide could collect up to \$900,000 or more annually by increasing the maximum fine for a minor misdemeanor.
- **Mayor's courts.** There should not be any significant problems or costs for most mayor's courts to keep track of cases and outcomes, and then periodically file the appropriate reports with the Supreme Court of Ohio, BCII, and the Bureau of Motor Vehicles (BMV). This means that the vast majority of mayor's courts should be able to report the necessary caseload data to the Supreme Court of Ohio, BCII, and the BMV in the normal course of doing their day-to-day business, and should not have to hire new administrative personnel in response to the reporting duty imposed by the bill. If this reporting duty does in fact increase the annual operating expenses of mayor's courts, it seems unlikely that those costs would exceed minimal in most jurisdictions.
- **Residential sanctions.** The bill expands the range of residential sanctions available to a court, thus creating at least two possible effects. First, as opposed to sentencing a misdemeanant to a relatively short jail stay as it might under current law, a court could opt under the bill to sentence that misdemeanant to a longer stay in a more costly residential sanction. Second, the expansion of the residential sanction continuum could result in "net-widening." In other words, it may pull offenders who might otherwise be in less restrictive and cheaper forms of probation into more restrictive and expensive sanctions. The practical effect of these two potentialities would be to increase the annual operating expenses of county and municipal criminal justice systems. What that annual cost for those local governments might be is uncertain.
- **Nonresidential sanctions.** The bill generally consolidates and modifies the range of nonresidential sanctions available to a court, thus creating at least three possible effects. First, the annual operating costs of local probation departments may rise, as court personnel could end-up with more offenders and more programs to supervise. Second, if courts opt to use community service in lieu of all or part of a fine for a minor misdemeanor, then some revenues that might otherwise have been collected could be lost. Third, and conversely, courts could try and collect fees from the offenders that participate in some of these nonresidential sanctions. The net fiscal effect of these three

potentialities on the annual revenues and operating expenses of county and municipal criminal justice systems is uncertain.

- **Right to a jury trial.** The right to a jury trial would not extend, under the bill, to those charged with minor misdemeanors (up to \$150 fine in the bill), and it also appears intended to apply to those charged with a violation that carries a fine of \$1,000 or less and no potential term of incarceration. The net effect of this provision will be to further reduce the small number of jury trials that currently occur in cases involving fine-only offenses, which might, at most, produce a minimal annual savings in the adjudication and prosecution costs of some counties and municipalities.
- **Victim notification.** The precise fiscal effect of this victim notification provision on county and municipal criminal justice systems is difficult to estimate because it appears that, to some degree, the notification requirement is permissive, as it requires a prosecutor to perform this duty “to the extent practicable.” This would seem to give a local prosecutor considerable flexibility in how this notification requirement is performed. Thus, the associated administrative burden and cost for any given county or municipality is uncertain. That said, in some local jurisdictions, particularly large urban areas with hundreds of theft and fraud cases, the cost of providing these notices might easily exceed minimal, meaning in excess of \$5,000 annually.
- **Matter harmful to juveniles.** Discussions with various county prosecutors and local law enforcement agencies on prior occasions with regard to similar changes to various definitions in the state’s Sex Offense Laws suggest that the bill’s sex offense-related provisions seem unlikely to create any dramatic direct or immediate fiscal effect for local governments because it will not noticeably affect the number of persons who are arrested and successfully prosecuted for violating the state’s Sex Offense Laws. In fact, one might reasonably argue that the bill provides clarification that will speed the progress of some cases through the criminal justice system. It might accomplish that by minimizing the amount of court time that would otherwise be devoted to arguing whether certain materials and actions meet the definition that would allow a person to be charged with a sex offense.

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## ***Detailed Fiscal Analysis***

The bill makes changes relative to the Misdemeanor Sentencing Law, the Felony Sentencing Law, and miscellaneous other criminal law matters, including the right to a jury trial. From among the many parts of the bill, this fiscal analysis focuses on the following: (1) residential sanctions, (2) nonresidential sanctions, (3) financial sanctions, (4) mayor's courts, (5) right to a jury trial, (6) victim notification, and (7) matter harmful to juveniles.

The parts of the bill that are the focus of this fiscal analysis contain provisions that could: (1) increase, as well as decrease, the annual expenditures of county and municipal criminal justice systems, and (2) generate additional revenues for counties and municipalities. These revenue and expenditure possibilities create a bit of an analytic problem, as there is no readily available statewide database that contains information on local charging and sentencing practices. Thus, calculating the net fiscal effect of these various possible revenue and expenditure outcomes on a given local government becomes extremely difficult. That said, it must be noted that there could be local governments where the net fiscal effect of the revenue and expenditure changes produced by the bill will result in an overall increase in their annual criminal justice system operating expenses, but such an increase would not be likely to exceed minimal in most jurisdictions.

### **Residential sanctions**

In the matter of misdemeanor sentencing, the bill provides courts with a continuum of residential sanctions that include jails, minimum-security jails, halfway houses, and alternative facilities. The latter two types of residential sanctions would be new to misdemeanor law. Under current practice, most misdemeanants are fined and perhaps placed on probation; few are sentenced to jail or other nonresidential sanctions.

At least two possible effects could stem from expanding the range of residential sanctions available to a court. First, as opposed to sentencing a misdemeanant to a relatively short jail stay as it might under current law, a court could opt under the bill to sentence that misdemeanant to a longer stay in a more costly residential sanction. Second, the expansion of the residential sanction continuum could result in "net-widening." In other words, it may pull offenders who might otherwise be in less restrictive and cheaper forms of probation into more restrictive and expensive sanctions. The practical effect of these two potentialities would be to increase the annual operating expenses of county and municipal criminal justice systems. What that annual cost for those local governments might be is uncertain.

### **Nonresidential sanctions**

The bill generally gathers all existing nonresidential misdemeanor sanctions into one section of the Revised Code. This list would include, but not be limited to, day reporting, house arrest, community service, intensive probation supervision, basic probation supervision, electronic monitoring, driver's license restrictions, and victim-offender mediation. The bill also: (1) increases the maximum possible term of community service for a misdemeanor of the first degree to 500 hours from 200 hours, and (2)

permits the imposition of a term of community service that may not exceed 30 hours in lieu of all or part of a fine for a minor misdemeanor.

At least three possible effects could stem from consolidating and modifying the range of nonresidential sanctions available to a court. First, the annual operating costs of local probation departments may rise, as court personnel could end-up with more offenders and more programs to supervise. Second, if courts opt to use community service in lieu of all or part of a fine for a minor misdemeanor, then some revenues that might otherwise have been collected may be lost. Third, and conversely, courts could try and collect fees from the offenders that participate in some of these nonresidential sanctions. The net fiscal effect of these three potentialities on the annual revenues and operating expenses of county and municipal criminal justice systems is uncertain.

### **Financial sanctions**

In the matter of financial sanctions, the bill most notably: (1) increases the maximum fine that a court may impose for a minor misdemeanor from \$100 to \$150, (2) makes changes to improve the collection of fines and restitution, and (3) expands the misdemeanor restitution law to cover more losses.

### **Minor misdemeanor fines**

Based on misdemeanor data collected by the Ohio Criminal Sentencing Commission (OCSC) in 1994, an estimated 7,190 criminal and 10,500 traffic cases were at the maximum fine for a minor misdemeanor of \$100. Presumably, as a result of the bill, some local jurisdictions will choose to charge higher fine amounts for minor misdemeanors and thus collect more revenues.

For example, if one assumes that, in the above noted criminal and traffic cases already at the \$100 maximum fine for a minor misdemeanor, the fine for a minor misdemeanor was increased to the \$150 maximum available under the bill, then those local jurisdictions as a group could gain an additional \$884,500 in fine revenues annually.

It is also possible that, in those local jurisdictions that increase the fine for a minor misdemeanor above the existing \$100 maximum, the amount of fine revenue collected in some cases could drop and the cost of processing some cases could increase. The former might happen because some offenders may be unwilling or financially unable to pay the higher fine amount. The latter might happen because some offenders might opt to contest a violation rather than simply pay the higher fine.

### **Restitution**

The bill: (1) broadens the concept of restitution, (2) permits the court to order the offender pay a surcharge of not more than 5% to cover the costs of collecting restitution, and (3) allows a victim, or a prosecuting attorney at the request of the victim, to file a motion for modification of any restitution order. These changes could increase local government costs associated with administering the restitution procedure as well as generate additional revenues gained from the imposition of a collection surcharge.

As this time, however, there is no evidence suggesting that these changes would create any discernible effect on local government revenues and expenditures.

### Mayor's courts

The bill requires mayor's courts to: (1) register annually with the Supreme Court of Ohio, (2) report quarterly to the Supreme Court of Ohio on all cases filed, pending, and terminated in the mayor's court, and (3) report to the Bureau of Criminal Identification and Investigation (BCII) on every conviction in the mayor's court for an offense that is a misdemeanor on a first offense and a felony on a subsequent offense. The bill also permits mayor's courts to order the clerk of the court to send certain information to the Bureau of Motor Vehicles. Analogous permissive authority already exists in current law relative to the operations of municipal and county courts.

Under current law, the Supreme Court, courts of appeals, courts of common pleas, municipal courts, county courts, and the Court of Claims all file reports on cases filed, pending, and terminated. No such caseload data, however, is required to be filed by mayor's courts, and thus, there is no statewide record of the number of cases filed in mayor's court or the manner in which those cases were either disposed of or resolved.

The number of mayor's courts in existence appears to vary from year-to-year. Thus, the number of mayor's courts that are in existence at this time is unclear, but is most likely somewhere around 430.

Conversations with experts familiar with the administration of mayor's courts across the state indicate that most, likely in excess of 95%, of the mayor's courts utilize modern computer systems. Given this reality, there should not be any significant problems or costs for most mayor's courts to keep track of cases and outcomes, and then periodically file the appropriate reports with the Supreme Court of Ohio and BCII. This means that the vast majority of mayor's courts should be able to report the necessary case data to the Supreme Court of Ohio and BCII in the normal course of doing their day-to-day business, and should not have to hire new administrative personnel in response to the reporting duty imposed by the bill. If this reporting duty does in fact increase the annual operating expenses of mayor's courts, it seems unlikely that those costs would exceed minimal in most jurisdictions.

The Supreme Court of Ohio has indicated that, with the additional caseload data to be submitted quarterly by more than 400 mayor's courts, it will need to hire two additional clerks. Each clerk would be paid around \$25,500 plus benefits, estimated at 25% of salary (\$6,375), which means that the annual payroll costs associated with two clerks will total approximately \$63,750. Related maintenance and equipment costs probably bring the total additional annual operating expenses for the Supreme Court of Ohio into the neighborhood of \$100,000, a cost that would presumably be borne by its General Revenue Fund (GRF) budget.

It would appear that BCII should be able to incorporate the reports to be filed by mayor's courts into ongoing data management operations with little or no discernible effect on its annual costs of doing business.

### **Right to a jury trial**

Under current law, the accused has the right to a jury trial in any criminal case when the potential penalty exceeds that of a minor misdemeanor, or \$100. This precludes jury trials for minor misdemeanors. The bill limits the right to be tried by a jury to cases in which the offense carries a potential fine of more than \$1,000. Thus, the right to a jury trial would not extend, under the bill, to those charged with minor misdemeanors (up to \$150 fine in the bill), nor apparently to those charged with offenses that carry a fine of \$1,000 or less and no potential term of incarceration.

The net effect of this provision will be to further reduce the small number of jury trials that currently occur in cases involving fine-only offenses, which might, at most, produce a minimal annual savings in the adjudication and prosecution costs of some counties and municipalities. Individuals familiar with the operations of the Franklin County Municipal Court have stated that: (1) very few fine-only offense cases ever go to trial, (2) most persons charged with fine-only offenses do not want to take the time away from work or incur the expense of counsel to represent them before a jury, and (3) many persons simply want to pay the fine and resolve the issue.

### **Victim notification**

Under current law, individuals against whom felony offenses and certain misdemeanor offenses are committed are permitted to request certain notifications from various components of the local criminal justice system. Under the bill, a prosecutor, to the extent practicable, is required to notify an individual against whom any misdemeanor offense is committed, after the prosecution of the case has commenced, of the individual's right to make an oral or written statement to the court if the defendant is convicted or pleads guilty to the offense.

The precise fiscal effect of this victim notification provision on county and municipal criminal justice systems is difficult to estimate because it appears that, to some degree, the notification requirement is permissive, as it requires a prosecutor to perform this duty "to the extent practicable." This would seem to give a local prosecutor considerable flexibility in how this notification requirement is performed. Thus, the associated administrative burden and cost for any given local county or municipality is uncertain. That said, in some local jurisdictions, particularly large urban areas with hundreds of theft and fraud cases, the cost of providing these notices might easily exceed minimal, meaning in excess of \$5,000 annually.

### **Matter harmful to juveniles**

On prior occasions, LSC fiscal staff has discussed similar proposed changes to the state's Sex Offense Laws with various county prosecutors and local law enforcement agencies. Based on those conversations, it seems highly unlikely that these changes will create any dramatic direct or immediate fiscal effect for the state or local governments because it will not noticeably affect the number of persons who are arrested and successfully prosecuted for violating the state's Sex Offense Laws.

These discussions also suggested that some of these changes largely codify current practice in many local jurisdictions relative to the arrest and prosecution of individuals for violating the state's Sex Offense Laws. Thus, the bill is not expected to increase the number of criminal cases that will be filed or prosecuted. In fact, one might argue that the bill provides clarification that will speed the progress of some cases through the criminal justice system. It might accomplish that by minimizing the amount of court time that would otherwise be devoted to arguing whether certain materials meet the definition that would allow a person to be charged with a sex offense.

Prosecutors in Scioto, Hamilton, and Cuyahoga counties have told LSC fiscal staff that they already successfully prosecute cases involving material on a computer device and/or images transmitted through the Internet as sex offenses involving the dissemination of matter harmful to a child or pandering obscenity. In Cuyahoga County, there were between 12 and 18 such cases during calendar year 2000. The City of Xenia Police Department reported 13 arrests in calendar year 2000 involving computer-related sex crimes. Of these 13 arrests in Xenia, eight were convicted of attempted corruption of a minor (i.e. on-line "chat" discussions with the intent to meet and engage in sexual conduct), a felony of the fourth degree, and five were convicted of pandering sexually oriented matter involving a minor, a felony of the second degree. Thus, these local experiences suggest that local law enforcement does arrest, and prosecutors do convict, individuals under current law for disseminating and pandering sexually oriented matter using personal computers and the Internet.

Thus, it appears that the expansions and clarifications will largely clarify any ambiguities in the law that may have been previously debated in court, and by doing so potentially expedite the processing of some sex offense cases.

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