



## ***Local Fiscal Highlights***

LOCAL GOVERNMENT	FY 2004	FY 2005	FUTURE YEARS
<b>Counties</b>			
Revenues	Gain, not likely to exceed minimal	Gain, not likely to exceed minimal	Gain, not likely to exceed minimal annually
Expenditures	Increase, likely to exceed minimal in some jurisdictions	Increase, likely to exceed minimal in some jurisdictions	Increase, likely to exceed minimal annually in some jurisdictions
<b>Municipalities</b>			
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.

- **Domestic violence criminal 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.
- **Counties and domestic violence criminal cases.** From a fiscal perspective, the bill's penalty enhancement provisions will likely create the most noticeable local fiscal effects on county criminal justice systems, as the provisions will change the manner in which domestic violence offenders are charged, prosecuted, and sanctioned. It appears the likely effect is that annual county criminal justice expenditures will increase, probably more than minimally. Shifting cases out of the misdemeanor system into the felony system also means that counties will gain court cost and fine revenues. Although an estimate of how much revenue is difficult to calculate with precision at this time, it would appear that these revenue gains would be unlikely to exceed minimal annually.
- **Municipalities and domestic violence criminal cases.** Conversely, as a result of the bill's penalty enhancement provisions, municipal criminal justice systems will likely 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 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 annually.
- **Domestic violence temporary protection orders.** The bill's expansion of the circumstances under which a domestic violence temporary protection order (TPO) can be requested and issued likely means that additional TPOs will be requested and presumably issued. These possibilities create additional work for various components of local criminal justice systems, including municipal, county, and common pleas courts. The annual magnitude of that additional work and its associated costs to local governments is unclear at this time.
- **Protection order violations.** The bill increases the penalty offenders who violate a protection order would face under certain circumstances. It is unclear as to how many offenders would face this enhanced penalty. It is clear, however, that some number of these protection order violation cases will be elevated out of the misdemeanor jurisdiction of municipal and county courts and into the felony jurisdiction of common pleas courts. As a result, municipalities will likely lose court cost and fine revenues and possibly realize an

expenditure savings and counties will likely gain court cost and fine revenues and experience an expenditure increase. The size of those possible revenue and expenditure shifts between municipalities and counties annually is difficult to estimate at this time.

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## ***Detailed Fiscal Analysis***

### **Operation of the bill**

From a fiscal perspective, the bill most notably:

- Expands the list of prior offenses that enhance the penalty for domestic violence.
- Increases under certain circumstances the penalty for domestic violence from a felony of the fifth degree to a felony of the fourth degree or a felony of third degree.
- Expands the factors a court must consider in setting bail for a person charged with the offense of domestic violence or another specified offense involving a family or household member.
- Modifies the list of offenses for which certain persons may file a motion requesting the issuance of a domestic violence temporary protection order as a pretrial condition of the release of the alleged offender.
- Increases under certain circumstances the penalty for the offense of “violating a protection order” to a felony of the fifth degree or a felony of the third degree.

### **Certain prior offense penalty enhancements**

Under existing law, an offender in a domestic violence case may have any subsequent offense enhanced from a misdemeanor of the first degree to a felony of the fifth degree. Also under current law, a domestic violence violation that involves the threat of harm to the victim is a misdemeanor of the fourth degree, with any such subsequent violation enhanced to a misdemeanor of the third degree.

Currently, if the offender has a previous conviction for victimizing a household or family member by means of any of the ten offenses listed in Table 1 immediately below, that offender would be subject to a penalty enhancement.

<b>Table 1</b> <b>Current Law: Prior Offenses Enhancing the Domestic Violence Penalty When Committed Against a Household or Family Member</b>	
Domestic violence (M1 or M4*)	Aggravated trespassing
Felonious assault	Aggravated menacing
Aggravated assault	Menacing
Assault	Menacing by stalking
Negligent assault	Endangering children

\*“M” denotes a misdemeanor offense, in this table, of the first or fourth degree.

The bill expands this list of prior offenses to any “offense of violence” (as defined in section 2901.01 of the Revised Code) that would trigger a penalty enhancement for knowingly causing or attempting to cause physical harm or recklessly causing serious physical harm to a family or household member.

If subsequent to having committed one of these prior offenses (from the list of prior offenses in either Table 1 or any “offense of violence,” as defined in section 2909.01 of the Revised Code), an offender who knowingly caused or attempted to cause physical harm or recklessly caused serious physical harm to a family or household member would have the penalty of their current offense elevated to a felony of the fourth degree. Offenders who have been convicted of committing two or more prior offenses (from the list of prior offenses in either Table 1 or any “offense of violence” as defined in section 2909.01 of the Revised Code) would be facing a penalty enhancement to a felony of the third degree for knowingly causing or attempting to cause physical harm or recklessly causing serious physical harm to a family or household member.

Provisions of current law related to threats of harm to family or household members are enhanced to a misdemeanor of the second degree. Offenders having two or more prior offenses (from the list of prior offenses in either Table 1 or “offense of violence,” as defined in section 2909.01 of the Revised Code) would be facing a penalty enhancement to a misdemeanor of the first degree. Table 2 shows the penalty enhancements that exist under current law and as proposed under the bill.

<b>Table 2</b> <b>Penalty Enhancements of Domestic Violence: Current Law vs. Senate Bill 50</b>					
<b>Type of Domestic Violence Act</b>	<b>Current Law</b>		<b>S.B. 50</b>		
	1st Offense	2 or more Offenses	1st Offense	2nd Offense	3 or more Offenses
Causing/Attempting to cause physical harm	M1	<u>F5</u>	M1	F4	F3
Recklessly causing serious physical harm	M1	F5	M1	F4	F3
Threats of causing physical harm	M4	M3	M4	M2	M1

Key: M=misdemeanor, F=Felony, number following indicates the degree of felony or misdemeanor.

### **Factors in setting bail**

The bill modifies what a court is required to consider when setting bail for a person charged with the offense of domestic violence or another specified offense involving a family or household member. Those modifications include: (1) specifying that the domestic violence provisions apply to any “offense of violence” (as defined in section 2901.01 of the Revised Code) or certain offenses against a family or household member, and (2) adding the offense of rape to the list of prior offenses that must specifically be considered when examining the offender’s prior criminal record. As a result of these modifications, at least two outcomes are possible. First, certain offenders may be required to post a larger bail amount than might have been the case under current law. Second, certain offenders may not be able to post the bail amount, or presumably, could be denied bail. This second outcome would extend the offender’s pre-trial jail stay and increase the local jurisdiction’s daily incarceration costs.

### **Protection orders**

Relative to protection orders, the bill:

- Expands the list of offenses for which certain persons may file a motion requesting the issuance of a domestic violence temporary protection order to include any “offense of violence” (as defined in section 2901.01 of the Revised Code) committed against a person who was a family or household member at the time of the violation.
- Enhances under certain circumstances the penalty for the offense of “violating a protection order” to a felony of the fifth degree or a felony of the third degree.

### **Domestic violence temporary protection order (TPO)**

The bill clearly expands the number of circumstances under which a TPO can be requested and issued, which in turn would affect the workload of municipal, county, and common pleas courts, prosecutor offices, witness/victim assistance programs or victim advocates, clerks of court, and law enforcement agencies. All of these components of local criminal justice systems are involved in the issuance, filing, serving, and enforcement of TPOs. As a result of this provision, there will likely be more TPOs requested and issued, and local criminal justice system costs to administer TPOs will rise; the annual magnitude of these cost increases is uncertain at this time.

### **Penalty enhancement for protection order violations**

Relative to current law, the bill increases under certain circumstances the penalty for violating a protection order of any type as follows:

- Under current law, a first-time violation of a protection order is a misdemeanor of the first degree, while a subsequent violation is a felony of the fifth degree.
- The bill broadens the circumstances that elevate violating a protection order to a felony of the fifth degree to include previous convictions/guilty pleas to violations of stalking protection orders, previous offenses of menacing by stalking, aggravated menacing, or menacing.

- The bill provides that violating a protection order while committing a felony is a felony of the third degree.

For calendar year 2001, the Franklin County Municipal Court reported that 377 charges of violating a protection order were filed in that court. If one assumes that Franklin County mirrors the rest of the state, then a simple population-based extrapolation would suggest that approximately 4,200 violations of protection orders may have been filed statewide in calendar year 2001.

It is unclear from the Franklin County Municipal Court's data as to how many of these charges were misdemeanors versus felonies, or as a result of the bill, how many of the charged individuals would face an enhanced penalty. It is clear, however, that some number of these protection order violation cases will be elevated out of the misdemeanor subject matter jurisdiction of municipal and county courts and into the felony subject matter jurisdiction of common pleas courts. As a result, municipalities will likely lose court cost and fine revenues and possibly realize an expenditure savings and counties will likely gain court cost and fine revenues and experience an expenditure increase. The size of those possible revenue and expenditure shifts between municipalities and counties annually is difficult to estimate, but may be significant in some circumstances and jurisdictions.

It is also possible that additional offenders could be sentenced to prison for violating a protection order, but the potential impact such a result might have on the size of DRC's inmate population and associated annual incarceration costs is difficult to estimate at this time.

### **State and local fiscal effects summary**

It appears that, in general, the bill's changes to the manner in which various domestic violence matters are handled will create at least three discernible effects, as discussed immediately below.

#### **(1) Criminal cases**

A number of criminal domestic violence cases will be shifted out of the misdemeanor jurisdiction of municipal and county courts and into the felony jurisdiction of common pleas courts as a result of the bill's penalty enhancement provisions. In a study performed over a six-month period of the charges filed in the Franklin County Municipal Court, the Ohio Domestic Violence Network found that approximately 60% of the offenders charged with a domestic violence offense had at least one prior domestic violence-related offense in their criminal record. The Franklin County Municipal Court's data indicates that the filing of domestic violence charges is fairly common. For example, the Franklin County Municipal Court reported that 5,324 misdemeanor domestic violence charges were filed in that court in calendar year 2001.

Based upon the available data, it would be reasonable to conclude that, as a result of the bill's penalty enhancement provisions, a number of domestic violence cases, potentially a relatively large number statewide, will shift from municipal and county courts to common pleas courts where the annual 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. Sanctioning costs will likely increase as well, with the

magnitude of that increase dependent upon the number of offenders that are sentenced to prison as opposed to being sanctioned locally.

Cases shifting out of the misdemeanor system and into the felony system also mean that counties will gain court cost and fine revenues. Although a precise estimate of that revenue in any given county is difficult to calculate 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 those systems 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 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 annually.

**(2) Protection orders**

The bill expands the circumstances under which a protection order can be requested and issued. This means that additional protection orders will be requested and likely issued, which will create additional work for various components of local criminal justice systems, including municipal, county, and common pleas courts. The magnitude of that additional work and its associated costs to local governments is unclear at this time. If the bill results in an increase in the number of protection orders issued, then there may be additional work and associated cost increases for local law enforcement and the courts in relation to enforcing protection orders and adjudicating violations of those orders.

**(3) Incarceration costs**

As a result of the bill, it is highly likely that some offenders that would have been prison-bound under current law will be sentenced to longer prison terms and some offenders who would have been sanctioned locally under current law will be sentenced to a prison term instead. Table 3 immediately below presents the possible penalties for the various levels of offenses pertinent to this analysis.

<b><u>Table 3</u></b>		
<b>Potential Sentences and Fines under Senate Bill 50</b>		
<b>Offense Level*</b>	<b>Potential Term of Incarceration</b>	<b>Maximum Possible Fine</b>
M1	Up to 6 months (Jail)	Up to \$1,000
F5	6 to 12 months (Prison)	Up to \$2,500
F4	6 to 18 months (Prison)	Up to \$5,000
F3	1 to 5 years (Prison)	Up to \$10,000

Key: M=misdemeanor, F=Felony, number following indicates the degree of felony or misdemeanor.

A preliminary analysis previously performed by the Department of Rehabilitation and Correction indicates that the bill's penalty enhancement provisions could affect the length of stay of as many as 646, or possibly even more, prison-bound offenders annually.<sup>10</sup> This DRC-generated estimate includes 615 offenders that would already be prison-bound under current law plus 31 offenders who would otherwise be sanctioned locally under current law but would be sentenced to prison as a result of the bill. The resulting increase in DRC's average daily inmate population will require it bring an additional 297 beds online.

The Department of Rehabilitation and Correction's annual incarceration cost per inmate was, as of March 2003, \$22,257. Thus, 297 additional inmate beds would increase DRC's annual incarceration costs by \$6.61 million (\$22,257 x 297 beds). That said, it is important to note that, because of time and data limitations, DRC research staff viewed these estimates at the time as somewhat speculative and incomplete.

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<sup>10</sup> These estimates were generated for H.B. 508 of the 124th General Assembly, but as the bills are substantially similar to each other, these figures have been reused for this analysis.