



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 201 of the 132nd G.A.

**Status:** As Reported by House Criminal Justice

**Sponsor:** Sens. Bacon and O'Brien

**Local Impact Statement Procedure Required:** No

**Subject:** Indefinite prison terms, sex offenses involving impaired victims, and the Wayne County Municipal Court

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### State & Local Fiscal Highlights

#### Indefinite prison terms

- The fiscal effect of the bill's Felony Sentencing Law modifications will depend, to a significant degree, on the response of sentencing courts to recommendations submitted by the Director of Rehabilitation and Correction (DRC) for a reduction in an offender's minimum prison term. If the courts approve most of the recommendations, then DRC expects the effect may be a slight increase in the overall size of the prison population, and any concomitant increase in institution-related expenditures would be no more than minimal annually. If the courts disapprove most of the recommendations, the annual increase in institution-related expenditures could reach somewhere between \$20 million and \$40 million over a period of three to six years.
- County criminal justice systems will incur minimal at most one-time costs to ensure that important stakeholders (common pleas courts, prosecutors, public defenders, and so forth) are adequately educated and trained in the bill's Felony Sentencing Law modifications.
- The hearings held by the sentencing courts to decide whether or not to approve of the early releases recommended by DRC will increase operating expenditures for the courts, prosecutors, and possibly public defenders related to increased workload and additional administrative responsibilities.

#### Sex offenses involving impaired victims

- As a result of a relatively small statewide increase in the number of felony convictions for certain sex offenses, there may be: (1) a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs, and (2) a negligible annual revenue gain to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020) in the form of locally collected state court costs.

## **Wayne County Municipal Court**

- The elimination of the requirement that one judge of the Wayne County Municipal Court be seated in Orrville will likely reduce annual operating costs for the court if it chooses to convene less frequently in Orrville.

## **Detailed Fiscal Analysis**

### **Indefinite prison terms**

#### **Prison population**

The bill modifies the Felony Sentencing Law by providing for indefinite prison terms for offenders who are sentenced to prison for a first or second degree felony committed on or after its effective date. The indefinite terms will consist of a minimum term selected by the sentencing judge from a range of terms authorized for the degree of the offense and a maximum term set by statute based on the selected minimum. The bill specifies that each offender serving an indefinite prison term will have a presumptive release date, which is at the end of the offender's minimum term.

The bill further provides for both the possible reduction of the minimum term based on a recommendation by the Department of Rehabilitation and Correction (DRC) under specified circumstances in which the offender exhibits exemplary institutional conduct and the possible rebuttal by DRC of the presumptive release date (the minimum term) and continued confinement of the offender up to the maximum term if the offender has exhibited violent behavior in prison.

The bill will likely create some degree of a stacking effect, in which certain offenders with institutional violations who would otherwise be released sooner under current law will be held for a longer period in accordance with the new maximum term of imprisonment. The institutional population pressures that may be created by the longer sentences under the bill will likely be lessened to some extent by the provisions in the bill establishing a presumed release date at the end of the minimum term. Offenders released at this minimum term may serve less time than they would have under current law involving definite terms.

Additionally, the provision in the bill generally allowing DRC to recommend the reduction of an offender's minimum term for exceptional conduct by 5% to 15% may, under certain circumstances, provide even more flexibility to manage the overall size of the prison population. If DRC recommends such a reduction in the minimum sentence, they are required to notify the sentencing court, which will render a judgment on the recommendation. Under the bill there is a presumption that the court will grant the recommended reduction of the minimum sentence. The court must conduct a hearing to determine whether to grant the proposed reduction or rebut the presumption and deny the DRC recommendation. The county prosecutor may present testimony at the hearing.

As of November 2018, the prison population managed by DRC totaled 49,228. A relatively precise estimate of the net effect of these Felony Sentencing Law modifications on the size of that population is difficult to calculate because of several unknown factors. For example, the stated minimum terms that will be selected by the sentencing judges statewide for offenders convicted of a first or second degree felony is unknown. Additionally, the behavior of these offenders while incarcerated is difficult to predict. Depending upon that behavior, an offender could possibly earn a recommendation for a reduction of their minimum term or be kept in prison up to the maximum allowable term. The likely result is that, relative to current law, time served for some offenders will be lower while for other offenders time served will be higher.

Perhaps the most significant variable is the role of the sentencing court in this process. If the sentencing courts routinely approve most of the recommendations for early release, then DRC expects the net effect may be a slight increase in the overall population, and any concomitant increase in institution-related expenditures would be no more than minimal annually. The early releases will, in effect, help to manage the potential population growth stemming from the stacking effect.

If the trend of the sentencing courts is to disapprove the recommended reductions to the minimum sentences, then the early release of prisoners will slow and the stacking effect will increase the prison population. If very few early releases are approved by the courts, then the overall population will increase over a period of three to six years. The size of that prison population increase is indeterminate. That said, at the current annual cost per inmate of \$28,641, the institutional operating costs could increase by \$20 million to \$40 million per year due to the stacking effect.

### **County criminal justice systems**

The bill requires that hearings be held by the sentencing courts to decide whether or not to approve the early releases recommended by DRC. The courts are required to notify the prosecutor's office who must then notify the victims in the original criminal case. These hearings will increase operating expenditures for the courts, the prosecutors, and possibly public defenders relative to increased workload and additional administrative responsibilities associated with their consideration of the DRC recommendation and presentation of possible testimony in the hearings.

Subsequent to the bill's enactment, county criminal justice systems will also need to expend time and effort to ensure that important stakeholders (common pleas courts, prosecutors, public defenders, and so forth) are adequately educated and trained in these Felony Sentencing Law modifications. The related one-time cost generally will be minimal.

### **Sex offenses involving impaired victims**

The bill expands three existing sex offenses (pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in nudity-oriented material or performance) to prohibit some or all of the proscribed

acts when they involve an impaired person. As a result of these offense expansions certain conduct that may or may not be illegal, or more difficult to prosecute, under current law will become somewhat easier to prosecute.

### **Local fiscal effects**

The potential local fiscal effect of the bill's impaired victim prohibitions is centered on county criminal justice systems, as additional felony sex offense charges may be filed and more convictions secured. The disposition of these charges will presumably require some time and effort for prosecution, defense if the offender is indigent, and the court of common pleas to adjudicate the cases. The net of the related increase in costs for any given county will be minimal at most annually, as the number of additional felony cases will be relatively small, especially in the context of the criminal justice system's overall caseload.

Additional felony convictions mean that a county may realize a gain in court costs, fees, and fines imposed by the court and collected from offenders. Violators of the bill's proscribed acts are guilty of a felony of the fourth or third degree depending on the circumstances present, the fine for which ranges from up to between \$5,000 and \$10,000, depending on the felony level. The courts, however, rarely impose the maximum permissible fine. It is also the case that collecting court costs, fees, and fines from offenders can be problematic, as many are financially unable or unwilling to pay. This generally suggests that the amount of additional annual revenue collected by any given county will be minimal.

### **State fiscal effects**

The expectation is that the number of additional felony offenders sentenced to prison annually for a violation of one of the bill's expanded prohibitions where the victim is an impaired person will be relatively small. The likely fiscal effect will be no more than minimal annual increase in the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs. This is because a relatively small increase in an existing prison population of close to 50,000 does not generate a significant increase in DRC's annual incarceration expenditures. Although DRC's annual cost per inmate currently averages around \$28,641, the marginal cost of adding a relatively small number of additional offenders to that population is lower, between \$3,000 and \$4,000 per offender per year.

Of the three expanded sex offenses that are the subject of this bill, by far the largest number committed to prison are offenders who have violated the prohibition against pandering obscenity. The total number of offenders committed annually to prison for the offense has averaged around 120 in the last few years. Their average time served, which varies by offense level, has ranged from 1.6 years (fifth degree felony) to 4.8 years (second degree felony).

As a result of a relatively small statewide increase in felony convictions, additional, likely negligible, revenue in the form of state court costs may be collected and forwarded for crediting to the Indigent Defense Support Fund (Fund 5DY0) and the

Victims of Crime/Reparations Fund (Fund 4020). The state court costs for a felony offense total \$60, of which Fund 5DY0 receives \$30 and Fund 4020 receives \$30.

### **Wayne County Municipal Court**

Under current law, one judge of the Wayne County Municipal Court is required to sit in the city of Wooster and one in the city of Orrville. The bill requires both judges to sit in Wooster and retains current law permitting the judges to sit in other incorporated areas of Wayne County. The Wayne County Municipal Court has two judges and one magistrate who are all based in Wooster but travel to Orrville to hold court sessions on a rotating schedule. The elimination of the requirement that one judge be seated in Orrville will likely reduce annual operating costs for the court only if it chooses to convene less frequently in Orrville.

### **Global Position System (GPS) feasibility study**

The bill requires DRC, not later than June 30, 2019, to: (1) conduct a study of the feasibility of contracting with a third-party vendor for a GPS system that would include a crime scene correlation program that could interface by link with a statewide database for GPS monitored offenders, (2) analyze the use of GPS monitoring as a supervision tool, and (3) submit copies of the study to certain specified legislative leaders and the Governor. It is likely that DRC can absorb the work and related costs utilizing existing staff and appropriated funds.

### **Community Programs Fund**

The bill modifies the purposes for which DRC's Community Programs Fund is used to include a priority to fund residential service contracts that reduce the number of homeless offenders by housing offenders released from prison who are required to reside in a community residential center regardless of their criminal history, security level at release, or any other factors that otherwise would have caused the offender to be rejected from placement. This provision does not necessarily increase the overall number of residential service contracts, which are already limited by the amount of available revenue in the fund. Instead the provision introduces a new priority to help guide funding decisions.