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S.B. 146
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Sens. Kunze and Antonio

Local Impact Statement Procedure Required: Yes

Jessica Murphy, Budget Analyst

Highlights

- The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars annually, as the likely number of felony offenders affected by the bill appears to be quite large.
- The expansion of the domestic violence offense has the potential to shift a significant number of misdemeanor domestic violence cases, and the related processing and sanctioning costs, from municipal and county courts to common pleas courts. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.
- Convictions for the felony domestic violence offense could reduce fine, fee, and court cost revenues collected for misdemeanors by municipal and county courts and increase those amounts collected by common pleas courts. However, determining the likely amounts of such a revenue shift, while potentially significant, is difficult because many felony offenders are either indigent or unwilling to pay.
- There is likely to be a no more than minimal annual revenue gain in locally collected state court costs credited to the state's Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).

Detailed Analysis

The bill expands the offense of domestic violence to include knowingly impeding the normal breathing or blood circulation of a family or household member by applying pressure to that person's throat or neck, or by blocking the nose or mouth. The penalty for such a domestic violence offense, under the bill, generally is a third degree felony, and increases to a second degree felony if the offender has a prior conviction for domestic violence or for two or more

offenses of violence. At either charging level, the bill requires a mandatory prison term within the sentencing range as specified under current law.

The expansion of the offense of domestic violence as specified in the bill is likely to have a significant impact on the criminal justice system. Under current law, it appears that most domestic violence violations are charged as a misdemeanor. Under some circumstances (causing or attempting to cause physical harm), if the offender previously had been convicted of domestic violence or certain related offenses, they can be charged with a fourth or third degree felony, or, absent this specification, a fifth degree felony when the victim is a pregnant woman.

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In 2017, there were 37,725 incidents of domestic violence in which police responded and charges were filed. In 2016, that number was 38,740. Information obtained from the Domestic Violence Division of the Columbus City Attorney's Office indicates that, in 2018, approximately 20% of their estimated 3,200 domestic violence cases involved allegations of strangulation or suffocation. Extrapolating this number across the state suggests that thousands of misdemeanor domestic violence cases involving strangulation or suffocation could instead be charged as a third degree felony. In some cases, a felony charge may induce some offenders to accept a plea bargain, but this does not alter the possibility that thousands of cases could shift from municipal and county courts that currently handle domestic violence misdemeanor cases to common pleas courts which have jurisdiction over felonious strangulation or suffocation cases.

State fiscal effects

Incarceration expenditures

Under current law and sentencing practices, around 700 offenders per year enter prison for felony domestic violence offenses of the fifth, fourth, or third degree. The bill will shift some felony domestic violence cases to a felony of the third or second degree as well as a potentially large number of the misdemeanor domestic violence cases involving strangulation or suffocation to a felony of the third degree. Given the requirement that a prison sentence be imposed, this could result in a large number of additional offenders entering prison as well as offenders being sentenced for longer terms than they otherwise would have received under current law. The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars or more annually, as the potential number of offenders affected by the bill each year appears to be quite large. As of May 2019, the average annual cost of incarcerating an offender in prison was \$27,835.

Court cost revenues

When a person is convicted of, or pleads guilty to, a criminal offense, the sentencing court generally is required to impose upon that person state court costs in addition to any other applicable fines, fees, and costs. The domestic violence offense in the bill will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of strangulation or suffocation can instead be charged as a third degree felony. A conviction in this situation creates the possibility of increased state revenues from the \$60 in court costs imposed for a felony conviction, an amount that is \$31 more than the \$29 in court costs imposed for a misdemeanor conviction. The amount collected annually is likely to be

minimal at most because many felony offenders are either financially unable or unwilling to pay. The state court costs are forwarded for deposit into the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).¹

Local criminal justice system fiscal effects

Expenditures

The expanded domestic violence offense in the bill carries the potential to shift a significant number of domestic violence criminal cases that, based on current law, would most likely be adjudicated as misdemeanors under the subject matter jurisdiction of a municipal court or county court to a felony level charge under the subject matter jurisdiction of a common pleas court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter in terms of the costs to process the case and sanction the offender.

From the fiscal perspective of local governments, such an outcome will simultaneously increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) additional felony domestic violence offenders, while decreasing the analogous municipal and county court criminal justice system expenditures related to the prosecution of that subset of misdemeanor domestic violence offenses involving strangulation or suffocation. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.

Fines, fees, and court costs

For persons convicted of, or pleading guilty to, a felony, the sentencing court generally is required and/or permitted to impose a fine, fees, and court costs that are retained locally for various purposes. A waiver of payment is permitted if the person is determined to be indigent. The bill will affect the local revenue collected from strangulation or suffocation cases in two ways.

1. The elevation of a misdemeanor to a felony means that revenue from local fines, fees, and court costs collected by municipal and county courts will instead be collected by courts of common pleas. The maximum fine for a misdemeanor is \$1,000 (first degree misdemeanor). The fines for felonies generally start at up to \$2,500 (fifth degree felony).
2. The enhancement of an existing felony offense creates the possibility of increased fine revenues. The maximum permissible fines for fifth, fourth, or third degree felonies are \$2,500, \$5,000, and \$10,000, respectively. The maximum permissible fine for a felony of the third or second degree is \$10,000 and \$15,000, respectively.

¹ “State court costs” are statutorily specified amounts collected by local courts and forwarded for deposit in the state treasury. The court is generally required to impose state court costs totaling \$29 for a misdemeanor and \$60 for a felony. The \$29 misdemeanor amount is divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020). The \$60 felony amount is divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.

The likely revenue loss for municipal criminal justice systems and revenue gain for county criminal justice systems, while potentially significant, is difficult to precisely calculate because many offenders, especially those convicted of a felony, are either financially unable or unwilling to pay. It is also the case that the court rarely imposes the maximum permissible fine.