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OHIO LEGISLATIVE SERVICE COMMISSION

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Legislative Budget
Office

H.B. 230
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 230's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Abrams and Swearingen

Local Impact Statement Procedure Required: No

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Highlights

- The bill may increase incarceration costs for the Ohio Department of Rehabilitation and Correction (ODRC) as some offenders may be subjected to “mandatory” instead of “discretionary” prison terms and others may be sentenced to longer terms than otherwise under current law.
- The bill’s impact on individual local criminal justice systems related to prosecuting, defending (if indigent), adjudicating, and sanctioning of offenders is not expected to exceed minimal.

Detailed Analysis

The bill: (1) increases penalties for drug trafficking above certain amounts (cocaine, fentanyl-related compounds, heroin, methamphetamine), (2) creates a specification for involuntary manslaughter when a lethal amount of fentanyl was present in the decedent victim and requires the imposition of a mandatory five-year prison term in addition to any other penalty imposed by the court, (3) prohibits organized trafficking in persons, a violation of which is a first degree felony, and (4) requires all death certificates to include certain specified information related to fentanyl poisoning, if known.

Penalties for drug trafficking

The bill increases penalties and modifies the threshold required for certain trafficking offenses involving cocaine, fentanyl-related compounds, heroin, and methamphetamine. While these changes are not expected to result in any new felony cases for local courts to adjudicate, as this drug trafficking conduct is already classified as a felony, the bill may increase the amount of time and effort that prosecutors, defense attorneys, and the court expend to adjudicate these types of drug trafficking cases. The bill may also increase the length of some prison terms as well

as make some prison terms “mandatory” instead of “discretionary” thus limiting early release mechanisms such as earned credit and judicial release, and potentially increasing operating and incarceration costs for the Ohio Department of Rehabilitation and Correction (ODRC).¹

The table below shows the sentences and fines for felony offenses generally, which include drug trafficking offenses under both existing law and under the bill. The bill’s various penalty increases and threshold modifications for cocaine, fentanyl-related compounds, heroin, and methamphetamine are described in detail in the bill analysis. Increasing drug trafficking penalties and making certain prison terms mandatory, may lead to additional offenders being sentenced to prison and longer prison terms for others. As a result, ODRC may experience an increase in related operating and incarceration costs. The average cost to house an offender in CY 2022 was \$99.96 per day or \$36,485.40 per year. However, when considering the marginal cost increase, the cost to house an individual inmate was \$11.31 per day during CY 2022. Marginal costs are based on additional medical and mental health costs as well as food and clothing. It does not include additional security, facility, or administrative costs which have already been factored into the overall operating costs of ODRC. For purposes of this fiscal note, using the marginal cost rate seems reasonable to presume.

The number of offenders who may be affected by the bill’s penalty modifications in any given year is indeterminate and will ultimately depend on the number of drug trafficking charges, the type of drug and amount involved, as well as the outcome of the local adjudication process. Based on ODRC commitment data from CY 2018 through CY 2022 (shown in the table below), drug trafficking offenses accounted for an average of 9.8% of total commitments annually. Based on CY 2016 time served data from ODRC, the most recent data available, the average time served by offenders convicted of drug offenses in general (as their more serious offense of conviction), ranged from 8.28 months (fifth degree felony) to 5.65 years (first degree felony).

Offense	2018	2019	2020	2021	2022
Trafficking in Drugs	1,850	1,736	1,076	1,275	1,269
Total Commitments	17,596	16,856	11,174	13,677	14,090

To the extent that additional fine revenue is collected due to the elevation of certain felony convictions, it would be retained by the county in which the offense occurred for a violation of state law, the municipality in which the offense occurred for a violation of a local ordinance, or credited to the state Security, Investigations, and Policing Fund (Fund 8400) if the

¹ In FY 2022, approximately 1% of the Ohio Department of Youth Services (ODYS) 358 admissions were for drug-related offenses however, there was no breakdown specifically for drug trafficking. While ODYS may be impacted by the bill’s penalty enhancements, the overall fiscal impact would likely be negligible.

² See [ODRC Commitment Reports](https://www.odrc.ohio.gov/commitment-reports) for CY 2018 through CY 2022, which are available on ODRC’s website: [drc.ohio.gov](https://www.odrc.ohio.gov).

offender was cited by the Ohio State Highway Patrol. However, it should be noted that those convicted of felonies typically are unable or unwilling to pay these fines.

Offense Level	Fine	Term of Incarceration
Felony 1 st degree*	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years indefinite prison term
Felony 2 nd degree*	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term
Felony 3 rd degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Felony 4 th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony 5 th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term

*The sentencing court must impose a minimum sentence for first and second degree felony offenses and specify a maximum sentence that is 50% greater than the minimum sentence. The court, after a hearing, may reduce the minimum sentence by 5% to 15% upon recommendation of ODRC.

Involuntary manslaughter

The bill creates a specification for involuntary manslaughter when a lethal amount of fentanyl or a fentanyl-related compound was present in the decedent victim and the results of an autopsy are consistent with an opioid overdose as the cause of death. If both of those conditions are present for an offender who is convicted of, or pleads guilty to, involuntary manslaughter, the bill requires the court to impose a mandatory five-year prison term in addition to any other penalty imposed.

Prosecutors have been able to obtain convictions for involuntary manslaughter in some overdose deaths based on the sale of fentanyl however, those cases tend to be more difficult to prove as decedent victims often have multiple drugs in their system that may have been purchased from multiple dealers or which drug precipitated the death. That said, the bill's specification is not likely to impact a significant number of involuntary manslaughter cases but it will increase the likelihood of a longer prison term for certain offenders.

Organized trafficking in persons

Under current law, trafficking in persons is a first degree felony. The bill creates the offense of "participating in an organization or operation for trafficking in persons" and makes that offense a felony of the first degree. If an offender is convicted of, or pleads guilty to, a violation of participating in an organization or operation for trafficking in persons, the bill requires the court to impose a mandatory term of not less than five years and not more than 11 years.

At least some of the conduct prohibited under the bill's new offense could potentially be prosecuted under current law as "engaging in a pattern of corrupt activity" however, by creating the new offense, the bill makes it easier to prosecute specific conduct related to trafficking in persons. As a result, the bill's new offense is not expected to create new felony cases for courts of common pleas to adjudicate, but will add a serious felony charge to the list of possible offenses

that an offender may face for behavior related to trafficking in persons under current law. It may also result in longer prison terms for a small number of offenders.

Death certificates

Current law requires the Director of the Department of Health (DOH), by rule, to prescribe the form of vital statistics records and certificates. The bill requires all death certificates to include a space to indicate whether a person's cause of death was due to fentanyl poisoning based on the results of both a toxicology examination and an autopsy. DOH may experience a negligible cost increase to draft and amend rules in order to update their forms and to communicate these changes and requirements statewide. According to the Ohio State Coroner's Association, this provision should not impact county coroners, as it does not require a toxicology examination or an autopsy be conducted, but rather requires noting information that was already collected.