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H.B. 196
(I_135_1722-1)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 196's Bill Analysis](#)

Version: In House Criminal Justice

Primary Sponsor: Reps. Williams and Seitz

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill's modifications of penalties for technical violations of community control will result in a savings effect on the Department of Rehabilitation and Correction (DRC). The magnitude of savings will be a function of the extent to which population is reduced (the number of the offenders who would serve a term of incarceration at a local jail instead of a state prison), and whether the state's incarceration expenditures to house those offenders are "operational" or "marginal." In both scenarios savings are estimated to be in the millions of dollars.
- The bill will increase annual costs for jails by between \$74.34 and \$109.00 per day per offender to incarcerate technical violators of community control who, absent the bill, would have been prison bound. While this number is also variable from jail to jail, costs statewide may potentially increase by around \$9.0 million. Some of these costs may be mitigated to some extent if the violator is sentenced to a more restrictive nonresidential sanction or to a community-based correctional facility, halfway house, or alternative residential facility, rather than jail.
- The bill's changes to the maximum periods of community control sanctions will produce an indeterminate fiscal impact on annual operating costs of locally operated probation departments. The magnitude of savings or increased costs would depend on a variety of factors such as the current average caseload sizes of a given department, daily costs of supervision, the number of offenders who would spend a shorter period of time under supervision than otherwise under current law, and the likelihood that any such offender would commit a new offense or technical violation.

Detailed Analysis

The bill (1) changes the maximum periods of community control sanctions authorized for felonies and misdemeanors, (2) modifies the sanctions authorized for a violation of community control sanction conditions, and (3) creates a procedure for early termination of such sanctions.

These changes will result in a complicated mix of potential outcomes, largely impacting the Department of Rehabilitation and Correction (DRC), local courts, jails, and probation departments. The net impact is indeterminate, but in general, it appears there would be some shift in costs from DRC to local jails to incarcerate technical probation violators and a potential mix in savings and/or increased costs for county probation departments. There is no expected impact on parole services.

Fiscal impact

Department of Rehabilitation and Correction

DRC operates 28 correctional facilities that house a daily population of approximately 44,000 offenders. Based on national survey data conducted by the Council of State Governments Justice Center, nearly half (47% or 8,908) of Ohio's prison admissions in 2017 were due to supervisory violations of parole or probation.¹ Of the 8,908 supervisory admissions, 21% (1,870) stemmed from technical violations of probation.²

Table 1 below provides a hypothetical range of annual savings estimates for DRC as a result of the reduction in admissions of technical violations of probation. These ranges are based on the Council of State Governments Justice Center survey data described in the preceding paragraph. It is important to note that the data does not distinguish the number of prior violations associated with each incoming offender. Under the bill, a prison term remains a possible sanction that a sentencing court may impose upon an offender's fourth or subsequent technical violation. The 100% reduction rate is included to illustrate the maximum savings and not so much as a realistic expectation. After factoring in the unknown number of offenders who may still be sentenced to a prison term under the bill, the savings will likely reflect a lower reduction rate.

¹ The Council of State Governments Justice Center, "[How Supervision Violations Are Filling Prisons and Burdening Budgets](#)," June 18, 2019. Available at [csgjusticecenter.org](#) under "Resources" and then "Publications."

² For the purposes of the survey, technical violations are probation violations that are not the result of a new offense. Please see Footnote 1 of the [report](#) for more details (link provided directly above).

Table 1. Estimated Annual Savings for DRC (Hypothetical Reduction Scenarios)			
Hypothetical Reduction Rate of Technical Probation Violators in State Prison	Offenders Diverted from State Prison*	Operational Savings**	Marginal Savings***
25%	468	\$17,608,032	\$2,046,424
50%	935	\$35,178,627	\$4,088,475
75%	1,403	\$52,786,753	\$6,134,898
100%	1,870	\$70,357,254	\$8,176,949

*Population estimates are based on the Council of State Governments Justice Center's figures.

**\$37,624 annually per offender (or \$103.08 per day)

***\$4,373 annually per offender (or \$11.98 per day)

As shown, LBO used two methodologies for calculating the amount of savings for DRC resulting from offenders who would serve a temporary term of incarceration in a local jail rather than a state prison under the bill. For context, DRC has a budget of \$1.7 billion in FY 2024 and \$1.8 billion in FY 2025 for institutional operations.

1. The first methodology uses DRC's average institutional costs (commonly referred to as "operational costs") which runs at about \$37,624 annually for each offender (\$103.08 per day x 365 days).³ These costs are calculated by dividing all of DRC's operating costs by the number of housed offenders, for a certain period of time. Included in these costs are items such as employee salaries, building costs and maintenance, and other items of expense that are incurred regardless of inmate population. Using the institutional cost figure, and assuming 100% of offenders would have fewer than four technical violations of probation, DRC's annual incarceration costs could decrease by as much as \$70.4 million.
2. The second methodology for estimating the savings for DRC is based on what is termed "marginal costs." Traditionally DRC relies on "marginal costs" for forecasting budgetary impacts of population change. The underlying assumption is that the reduction in population will not be large enough to trigger a reduction in operating expenses related to closing existing dormitories, or reducing the number of prison personnel such as correction officers and unit management staff. Marginal costs include such things as food, clothing, and various inmate services such as medical care. Although DRC's average annual institutional cost is around \$37,624 per offender, its marginal annual cost is around \$4,373 per offender per year, (\$11.98 x 365 days). Using the marginal cost figure, and assuming 100% of offenders would have fewer than four technical violations of probation, DRC's annual incarceration costs could decrease by as much as \$8.2 million.

³ See [DRC's 2023 Annual Report \(PDF\)](#), which is available on DRC's website: drc.ohio.gov.

Local jails

Annual costs are expected to increase under the bill due to a shift from state to local incarceration for technical probation offenders under the bill. Under the bill, the cascading temporary incarceration penalties for temporary violations will depend on the number of violations and which offenders may be sanctioned to jail incarceration (up to 15, 30, or 45 days) or a term in a community-based correctional facility (CBCF), halfway house, or alternative residential facility (up to 30, 45, or 60 days).⁴ The length of incarceration depends on the number of technical violations.

DRC reported that the average cost of an inmate in Ohio's jails is \$74.34 per bed per day for full-service jails for calendar year 2019. The number of offenders under the supervision of local jails for that time period was 20,580.⁵ Based on those figures the statewide daily cost of jail incarceration is estimated to be \$1.5 million (20,580 x \$74.34), or \$558.4 million annually. However, according to the Buckeye State Sheriffs' Association, the current average per diem statewide has increased to about \$107.00 statewide. This number is also variable from jail to jail. While the current number of offenders under jail supervision is unknown, the statewide annual cost of supervision is likely higher (44% higher if using the \$107.00 per day rate), assuming the population numbers remained stable.

Table 2 below shows how much incarceration costs may increase for local jails statewide based on the number of offenders estimated to potentially serve a jail term instead of a prison term (see Table 1) and the higher (\$107.00) and lower (\$74.34) per-diem estimates. As mentioned, the bill provides two temporary incarceration options for technical violators: a jail term or a term in a CBCF, halfway house, or alternative residential facility. Some violators may be given a more restrictive nonresidential sanction (e.g., house arrest or day report), the costs of which vary from jurisdiction to jurisdiction. These costs may be mitigated to some extent if the violator is sentenced to a more restrictive nonresidential sanction or other form of temporary incarceration such as a CBCF, rather than jail.

The available data used to estimate the number of offenders shifting from state to local jail confinement does not distinguish the number of violations associated with each offender. Therefore, the following estimates assume that each offender may serve up to 45 days in jail. There is no reliable way to estimate the amount of time offenders otherwise might have spent in prison, so no such assumption was made for the DRC savings estimates.

⁴ The state provides 100% of the financing for the construction, renovation, maintenance, and operation of halfway houses and CBCFs under DRC's budget. The average cost of an offender stay in a CBCF in FY 2021 was \$12,257, with an average stay of approximately 100 days.

⁵ Zeng, Zhen, Minton, Todd D., "[Census of Jails, 2005-2019 Statistical Tables \(PDF\)](#)," Bureau of Justice Statistics, October 2020. Available at bjs.ojp.gov under "Publications" and using a keyword search of "census of jails."

**Table 2. Estimated Annual Increase in Incarceration Costs for Jails Statewide
(Hypothetical Reduction Scenarios)**

Reduction Rate of Technical Probation Violators in State Prison	Maximum Additional Offenders for Local Jails Statewide*	Maximum Number of Incarceration Days	Additional Costs (CY 2019 rate of \$74.34 x 45 days)	Additional Costs (CY 2023 rate of \$107.00 x 45 days)
25%	468	45	\$1,565,600	\$2,253,420
50%	935	45	\$3,127,856	\$4,502,025
75%	1,403	45	\$4,693,456	\$6,755,445
100%	1,870	45	\$6,255,711	\$9,004,050

*Note the maximum possible offenders for local jails does not account for offenders who may, instead of jail, be sentenced to term in a CBCF, halfway house, or alternative residential facility.

It is important to note that the actual cost increase will vary from jail to jail based on the number of incoming offenders sanctioned under the bill and that jail's average daily cost. According to the Buckeye State Sheriffs' Association, the bill is not expected to necessitate the hiring of additional correctional staff, but rather a sheriff would instead have to find another jail to house these violators if there is insufficient staff or space and shoulder the confinement costs.

Locally operated probation departments

Subject to certain exceptions, the bill specifies that the duration of all community control sanctions, including any period of supervised community service work, imposed on a felony offender must not exceed five years for any first or second degree felony or three years for any third, fourth, or fifth degree felony. The bill also provides that the duration of all community control sanctions, including any period of supervised community service work, imposed on a misdemeanor offender and in effect for an offender at any time must not exceed two years. The duration of community control sanctions may be extended under certain circumstances. In general, under current law, the duration of all community control sanctions imposed on an offender and in effect for an offender at any time must not exceed five years.

The magnitude of any resulting fiscal impact on locally operated probation departments is uncertain and would be a function of the number of offenders whose probation lengths would be impacted under the bill. While the potential for a savings effect exists, it is also possible that the maximum periods of sanctions established by the bill largely align with current practice. For example, anecdotal evidence provided by field practitioners suggests that probation officers and judges already use their discretion to terminate probation supervision early upon the probationer's successful completion of their terms and conditions of supervision. Research from the Ohio Judicial Conference indicates that the average term on community control in Ohio was 20 months, or

around two years for third, fourth, and fifth degree felonies. According to a 2021 Annual Probation Survey from the Bureau of Justice Statistics, 195,128 adults were on probation in Ohio.⁶

Sentencing courts

The bill requires a court to terminate the community control sanction of a third, fourth, or fifth degree offender if the court determines that (1) the offender has not violated the conditions of their community control in the six months prior to the court's early termination determination, (2) that the offender has completed all required programs, or if applicable, has earned a qualifying diploma, degree, or license, and (3) that termination will not present a risk of serious physical harm. The court must make a determination within 60 days after an offender completes two years of their community control sanction. The bill requires a hearing when the court does not terminate community control. Courts should be able to absorb any work and costs created by the additional hearings. As previously noted, research from the Ohio Judicial Conference indicates that the average term on community control is already around two years.

Synopsis of Fiscal Effect Changes

The bulleted list below highlights the substantive fiscal differences between the As Introduced version of the bill and the substitute bill (I_135_1722-1).

- **Duration.** The substitute bill increases, from two years to three years, the maximum length of time that a community control sanction may be imposed on any fourth or fifth degree offender. This change is expected to have a minimal fiscal impact given the bill's new procedure for early termination after two years of community control.
- **Extensions for violations.** The substitute bill allows a community control sanction to be extended for violations by felony and misdemeanor offenders for certain reasons, such as the offender is not compliant with their mental or behavior health treatment obligations, or has unresolved restitution. Generally, these extensions may be in increments of no more than one year. The court is not limited in the number of times it may order an extension as long as the total time under community control does not exceed five years for a felony or two years for a misdemeanor. The bill specifies that other terms of the sanction do not apply during the extension and as such, should not significantly increase supervision costs.
- **Incarceration.** The substitute bill modifies the penalties for technical violations of a community control sanction imposed on a felony offender. The As Introduced bill allows the court to impose a more restrictive nonresidential sanction or a temporary incarceration sanction of jail. The substitute bill adds a term in a community-based correctional facility (CBCF), halfway house, or alternative residential facility as a possible temporary incarceration sanction. This change reduces the magnitude of offenders likely to face a jail term under the bill and the related state to local cost shifting.

⁶ Kaeble, Danielle, "[Probation and Parole in the United States, 2021 \(PDF\)](#)," U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics, February 2023. Available at bjs.ojp.gov under "Publications" and using a keyword search of "probation and parole."

- **Early termination.** The substitute bill creates a mandatory judicial review after a third, fourth, and fifth degree felony offender has completed two years of their community control sanction, with a strong presumption of early termination unless the court finds clear and convincing evidence that termination and discharge pose a risk or danger to the victim or the community. As a result, there may be some decrease in the number of probationers under supervision and fewer technical violators sentenced to jail or a community control residential facility. Because the average duration of community control is around two years, it is uncertain how dramatic any decrease will be. To the extent that early terminations are denied, courts of common pleas will experience some increase in administrative workload related to additional hearings.