



OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

Fiscal Note & Local Impact Statement

Bill: S.B. 42 of the 132nd G.A.

Status: As Introduced

Sponsor: Sen. Eklund

Local Impact Statement Procedure Required: No

Subject: Weight and presence of drugs in drug offenses

The bill will have no direct fiscal effect on the state or any of its political subdivisions. It specifies: (1) that where reference is made in drug offense laws to the presence of a drug, that any compound, mixture, preparation, or substance containing a detectable amount of that drug is sufficient, and (2) that, where reference is made in drug offense laws to the weight of a drug, the weight of any compound, mixture, preparation, or substance containing a detectable amount of that drug is sufficient.

The bill is in response to Ohio Supreme Court's December 2016 ruling in *State v. Gonzales*. In that case, the Court held that the current wording of the penalties for cocaine possession means that the state must prove the weight of pure cocaine, absent any filler, to determine the applicable penalty. The common legal interpretation of the wording in the Drug Trafficking and Drug Possession laws prior to the decision was that the amount of cocaine possessed or trafficked by an offender, for sentencing purposes, includes the amount of cocaine plus any compound, mixture, preparation, or substance containing cocaine. The bill declares an emergency to ensure that the method for determining the amount of a drug involved in a drug offense for the purposes of sentencing that applied prior to *State v. Gonzales* will continue to be valid, for all drug offenses, not just cocaine.

Absent enactment of the bill, minimally in the case of cocaine, prosecutors will have to conform to *State v. Gonzales*, which means determining the amount of a drug in a compound, mixture, preparation, or substance containing the drug by having it tested by a certified laboratory. Currently, the only laboratories certified to perform this type of testing are out of state. Prices for testing vary by the amount to be tested, the number of samples to be tested, and the type of testing required. The resulting effect on the charging, prosecution, conviction, and sanctioning of offenders for drug trafficking and possession violations as it relates to cocaine is uncertain.

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