



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 38 of the 132nd G.A.
(L_132_0286-6)

Status: In House Criminal Justice

Sponsor: Rep. Greenspan

Local Impact Statement Procedure Required: No

Subject: Increase penalty for murder or assault of certain persons

State and Local Fiscal Highlights

- The Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration expenditures will increase to some degree given the likely longer prison terms for certain felonious assault offenders. The result is that DRC's incarceration costs may increase by as much as several hundred thousand dollars or so annually starting roughly six years after the bill's effective date.
- The bill's penalty enhancements may extend the amount of time and effort that a county criminal justice system might otherwise have spent in resolving certain felonious assault cases. Any additional costs will be minimal at most annually.

Detailed Fiscal Analysis

The bill most notably increases the penalty for felonious assault from a second degree felony to a first degree felony when the victim is a first responder or military member, including a person that previously served as a first responder or military member, and specifically targeted because of their profession. For the purposes of the penalty increase, the bill also expands the definitions of "law enforcement officer" and "peace officer" to include any federal law enforcement officer or anyone who has previously served as a federal or state law enforcement officer.

This class of victims (first responders, military members, law enforcement officers, and peace officers) account for approximately one million, or 9%, of Ohio's total population (11.5 million). Assuming that the frequency at which these offenses are committed is uniform across the entire population, then, of the offenders sentenced to prison for felonious assault, about 9% would have involved one of the above-noted victims. However, under the restricted circumstance in which the offender specifically targeted a victim in this class because of their profession, a considerably smaller percentage will likely be elevated from a second degree felony to a first degree felony.

Incarceration costs

Felonious assault

The bill will not create additional felony cases for county criminal justice systems to prosecute and adjudicate, but is more likely to cause some offenders that are already prison-bound to be sentenced for a longer term than otherwise might have been the case under current law and sentencing practices.

Under current law, felonious assault generally is a felony of the second degree and carries a 2, 3, 4, 5, 6, 7, or 8-year prison term. The average prison time served for second degree felonious assault is about four years, whereas the average prison time served for felonious assault of the first degree is about six years. This means that the average prison time served by these offenders will likely increase by approximately two years. It should be acknowledged that how a judge may actually sentence such an offender is uncertain. The range for a felony of the first degree is a definite prison term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years.

The frequency and likelihood that an offender will knowingly target a victim in the protected class specified by the bill specifically because of the victim's profession is uncertain. Presumably, the circumstance of the offender targeting one of these protected victims will apply to a relatively small number of felonious assault cases annually. Additionally, proving that an offender specifically targeted a particular victim based on their occupation may be difficult for prosecutors. It is reasonable to assume that some successful convictions will be secured with the outcome being that some number of felonious assault offenders each year will be sentenced for a longer prison term than might otherwise have been the case under current law and sentencing practices. The available data, however, does not permit a precise estimate of that number. That said, it appears that the number of offenders convicted of the enhanced penalty will be well under 100 each year, and that the number of additional beds required to house those offenders for an additional two years more or less will be relatively small.

The fiscal effect of the felony enhancement on the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs is likely to be, at most, an increase of several hundred thousand dollars or so annually starting roughly six years after the bill's effective date. This is because a relatively small increase in an existing prison population of 50,000-plus does not generate a significant increase in DRC's annual incarceration expenditures. Although DRC's annual cost per inmate currently averaged around \$24,763, 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.

Mandatory term of incarceration for felonious assault

The bill requires a mandatory prison term of three to 11 years if the victim of the offense is a first responder or military member specifically targeted because of their profession, and suffers serious physical harm as result of the offense. As there is a

general presumption of a prison term for a first degree felony, it is unclear whether this provision will result in a longer sentence being imposed by the court.

Aggravated murder

The bill expands: (1) the offense of aggravated murder to include purposely causing the death of a first responder or military member when the offender knew or had reasonable cause to know the victim's profession when it was the offender's specific purpose to kill a first responder or military member, and (2) the definitions of "law enforcement officer" and "peace officer" to include any federal law enforcement officer or anyone who has previously served as a federal or state law enforcement officer.

Existing law relative to the offense of aggravated murder already includes when the victim is a law enforcement officer. The bill also requires a mandatory prison term of three to 11 years if a person is convicted or found guilty of an attempt of aggravated murder against a member of this special class under certain conditions.

DRC's most recent time-served data indicates that the average time served for aggravated murder and murder are just over 30 years and 21 years, respectively. As a result of the bill, there may be an extremely small increase in the number of offenders convicted of aggravated murder rather than murder, and serving an additional nine years in prison. The resulting fiscal effect on DRC's annual incarceration costs will not be discernible until 21 years or more after the bill's effective date, if at all.

County criminal justice systems

The bill's penalty enhancements will affect the processing of cases that are processed as felonies under the subject matter jurisdiction of county criminal justice systems. It may extend the time and effort required to prosecute, defend, and adjudicate certain cases, with any additional associated annual cost being minimal at most.

Synopsis of Fiscal Effect Changes

Under the previous version (As Introduced) of the bill, LSC indicated that: (1) DRC's GRF-funded incarceration expenditures will increase given the likely longer prison terms for certain felonious assault offenders produces a "stacking effect," and (2) the result is that DRC's incarceration costs will increase by an estimated \$4 million or more annually starting roughly six years after the bill's effective date.

Under the latest substitute version of the bill (L_132_0286-6), DRC's incarceration expenditures will increase to some degree given the likely longer prison terms for certain felonious assault offenders by as much as several hundred thousand dollars or so annually starting roughly six years after the bill's effective date. Thus, under the latest substitute version of the bill, the likely increase in DRC's annual incarceration costs will be much less significant. This reduction in likely incarceration costs largely is a function of the following three provisions.

- The As Introduced version of the bill increases the penalty for felonious assault against a first responder or military member from a second degree felony to a first degree felony, regardless of whether the offender knew the victim's profession. The substitute version requires the victim to be "specifically targeted" for being a first responder or military member.
- The As Introduced version of the bill requires a mandatory prison term of three to 11 years for felonious assault if the victim was a first responder, or military member and the offender knew or had reasonable cause to know the victim's profession. The substitute version requires the victim to have been specifically targeted and suffer serious physical harm.
- The As Introduced version of the bill requires the mandatory prison term described above to be served consecutively to any prison term imposed for offenses committed at the same time, as part of a common scheme or plan, or as part of a course of conduct connected to the assault. The substitute version does not include this provision.