



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 296 of the 132nd G.A.

Status: As Introduced

Sponsor: Rep. Gavarone

Local Impact Statement Procedure Required: No

Subject: Penalty enhancement for drug offenses committed in the vicinity of a community addiction services provider

State Fiscal Highlights

- The Department of Rehabilitation and Correction's (DRC) annual GRF-funded incarceration costs may increase as a result of (1) the possibility of additional offenders being sentenced to prison who would not otherwise have been, and (2) the "stacking effect" of longer prison terms for certain drug offenders. The magnitude of any increase is dependent upon the number of offenders sentenced under the bill's penalty enhancements, which is indeterminate.

Local Fiscal Highlights

- The bill's penalty enhancements will affect a relatively small number of misdemeanor cases, with minimal changes in the annual revenues and expenditures of county and municipal criminal justice systems.

Detailed Fiscal Analysis

The bill enhances the penalties for certain drug crime violations when committed on the premises of, or within 1,000 feet of, a community addiction services provider¹ regardless of whether or not the offender knew that the offense was being committed at or near the provider. According to the Ohio Department of Mental Health and Addiction Services, there are approximately 2,200 community addiction service providers in the state. Offenses with enhanced penalties include corrupting another with drugs; drug trafficking; illegal manufacture, assembly, and cultivation of drugs; promoting or encouraging drug abuse; and fraudulent drug advertising.

¹ R.C. 5119.01 defines a community addiction services provider as an agency, association, corporation, individual, or program that provides one or more of the following: (1) alcohol and drug addiction services that are certified by the Department of Mental Health and Addiction Services, and (2) gambling addiction services.

Felony drug offenses

The bill enhances penalties for felony-level offenses including corrupting another with drugs; aggravated trafficking; trafficking; illegal manufacture, assembly, and cultivation of drugs; illegal dispensing of drug samples; promoting and encouraging drug abuse; and fraudulent drug advertising – each with sentencing variations based on type and amount of the controlled substances involved. Table 1 shows the commitment numbers for those offenses in broad categories as reported by the Department of Rehabilitation and Correction (DRC) for FYs 2012-2016. On average, 13% of the commitments in each year were for drug offenses with potentially elevated penalties under the bill. The subset of violations committed within the specified distance from a community addiction services provider is unknown.

Table 1. Number of Commitments to the Department of Rehabilitation and Correction for Specified Felony Drug Offenses by Fiscal Year, 2012-2016					
Offense	2012	2013	2014	2015	2016
Corruption of another with drugs	20	28	21	32	39
Illegal manufacturing of drugs	443	718	796	804	730
Sale of counterfeit drugs	17	16	12	19	19
Trafficking in drugs	2,027	1,845	1,971	1,824	1,948
DRUG OFFENSE TOTAL	2,507	2,607	2,800	2,679	2,736
TOTAL COMMITMENTS	19,957	20,533	20,120	19,755	20,109

Depending on the number of violators, increased penalties for these offenses could create significant increases in expenses for DRC. The principal fiscal effects of these penalty enhancements may be a steady increase over a period of several years in the amount of GRF funding that DRC expends annually on institutional operations. In effect, by extending prison stays beyond what the amount of time served would otherwise have been under current law, the bill will trigger a "stacking effect." This term refers to the increase in the prison population that occurs as certain offenders currently serving time stay in prison longer while the number of new offenders entering the prison system does not decrease. This "stacking" process will stabilize when the number of offenders who begin serving their additional time as part of the penalty enhancements in the bill is about the same as the number leaving prison after serving their additional time.

Additionally, some number of offenders may be sentenced to prison under the bill who may have otherwise been alternatively sentenced. As an example, trafficking in cocaine in an amount greater than or equal to 10 grams but less than 20 grams is a third degree felony under current law and according to sentencing guidelines there is a presumption of prison time. Under the bill this offense elevates to a second degree felony with a mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years. On average, a second degree felony drug offender will serve about 1.5 years longer than a third degree felony offender.

Table 2 shows the average time served by all drug offenders released from prison in calendar year (CY) 2014, the most recently published data from DRC. The average time served for all felony drug offenders was 1.67 years.

Table 2. Average Time Served Among Ohio Prison Releases, CY 2014	
Drug Offense Level	Average Time in Years
Felony 1	5.82
Felony 2	3.50
Felony 3	2.03
Felony 4	1.15
Felony 5	0.65
All drug offenses	1.67

Generally, the bill elevates specified drug offenses by one degree, which using the most recent time-served data, suggests the following potential outcomes:

- Elevating an offense from a fifth degree felony (0.65 years average time served) to a fourth degree felony (1.15 years average time served) increases the average time served by six months.
- Elevating an offense from a fourth degree felony (1.15 years average time served) to a third degree felony (2.03 years average time served) increases the average time served by 11 months.
- Elevating an offense from a third degree felony (2.03 years average time served) to a second degree felony (3.50 years average time served) increases the average time served by 18 months.
- Elevating an offense from a second degree felony (3.50 years average time served) to a first degree felony (5.82 years average time served) increases the average time served by 28 months.

Under the bill, the average time served for the lowest level offenders increases by approximately six months, or 180 days, and the average time served for those moving from a second to a first degree felony increases by 28 months, or 846 days. Using the FY 2017 annual daily cost per inmate, the increases in time served could potentially cost the state between \$13,001 (\$72.23 average daily cost x 180 days) and \$61,107 (\$72.23 average daily cost x 846 days) per inmate for the increased length of stay based on average time served.

Misdemeanor drug offenses

The bill enhances the penalties for four misdemeanor-level drug offenses: trafficking marijuana for amounts under 20 grams classified as a gift, illegal cultivation of marijuana for amounts under 100 grams, illegal cultivation of marijuana for amounts of 100 grams or more but less than 200 grams, and illegal dispensing of drug samples for drugs classified as Schedule III, IV, or V and marijuana. Table 3 below shows that

from CY 2012 to CY 2016 between 313 and 519 of these offenses were reported per year to the Ohio Incident-Based Reporting System (OIBRS), a voluntary reporting program in which Ohio law enforcement agencies can submit crime statistics directly to the state and federal government. While OIBRS does not include reporting from every law enforcement agency in the state, and does not reflect final charging data or eventual sentencing, it shows that the overall number of violations for these types of offenses in the state is relatively low and the subset of violations committed within the distance from a community addiction services provider as specified under the bill can be expected to be even lower.

Table 3. Number of Incidents Reported to OIBRS by Calendar Year, 2012-2016					
Offense	2012	2013	2014	2015	2016
Trafficking marijuana, ≤20g	445	386	367	282	365
Illegal cultivation of marijuana, <200g	72	53	47	31	48
Illegal dispensing of drug samples (Schedule III, IV, or V and marijuana)	2	1	0	0	0
TOTAL	519	440	414	313	413

For the above offenses, maximum jail terms are increased by between 30 and 90 days and maximum fine amounts are increased by between \$100 and \$350 depending on the offense. The overall increase in fine revenue to and operating expenditures for county and municipal criminal justice systems can be expected to be minimal at most given the relative size of the potential pool of offenses affected, and the fact that the collection rate for fine revenues is below 100%.