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S.B. 90
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Sens. Kunze and Antonio

Local Impact Statement Procedure Required: Yes

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Highlights

- Expanding the offense of domestic violence to prohibit strangulation and suffocation has the potential to shift a significant number of misdemeanor cases, and the related processing and sanctioning costs, from municipal and county courts to common pleas courts. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is not readily quantifiable. Neither is the amount of related annual revenue (fines, and court costs and fees) that will shift.
- The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars annually, as the likely number of felony offenders affected by the bill appears to be quite large.
- There is likely to be a no more than minimal annual revenue gain in locally collected state court costs credited to the state's Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).

Detailed Analysis

The bill expands the offense of domestic violence to prohibit knowingly impeding the normal breathing or blood circulation of a family or household member by applying pressure to that person's throat or neck, or by blocking the nose or mouth. The penalty for such a domestic violence offense, under the bill, generally is a third degree felony, and increases to a second degree felony if the offender has a prior conviction for domestic violence or for two or more offenses of violence. At either charging level, the bill requires a mandatory prison term generally within the sentencing range as specified under current law.

Existing offenses

According to the Ohio Prosecuting Attorneys Association, prosecutors typically have two choices under current law in strangulation and suffocation cases; prosecute the case as: (1) felonious assault (second degree felony), or (2) domestic violence (first degree misdemeanor). However, prosecuting the case as felonious assault can be difficult, particularly in cases without proof of external trauma, as the offense imposes a standard of “serious physical harm.” For cases without external trauma, such a charge often depends on the strength of the available evidence of internal harm. The bill specifies that in a prosecution of the bill’s new domestic violence prohibition, an allegation or proof that victim suffered physical harm, serious physical harm, or visible injury as result of strangulation or suffocation is not required. This specification provides a clear avenue to prosecute the prohibited behavior as a felony offense.

Because of the serious harm standard for felonious assault, absent the bill, strangulation and suffocation in many cases would otherwise be charged and prosecuted as domestic violence. The bill can arguably be seen as enhancing the penalty of domestic violence involving this conduct from a first degree misdemeanor to a third degree felony, absent any specification.¹

Domestic violence incidents

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In CY 2019, law enforcement responded to 37,607 incidents of domestic violence in which domestic violence charges were filed; in CY 2018, that number was 38,475.² Information obtained from the Domestic Violence Division of the Columbus City Attorney’s Office indicates that, in CY 2018, approximately 20% of their estimated 3,200 domestic violence cases involved allegations of strangulation or suffocation. Extrapolating this number across the state (20% of 38,000 or so charges) suggests that thousands of misdemeanor domestic violence cases involving strangulation or suffocation could instead be charged as a third degree felony. In some cases, a felony charge may induce some offenders to accept a plea bargain, but this does not alter the possibility that thousands of cases could shift from municipal and county courts that currently handle domestic violence misdemeanor cases to common pleas courts that have jurisdiction over felonious strangulation or suffocation cases.

State fiscal effects

Incarceration expenditures

Under current law and sentencing practices, around 700 offenders per year enter prison for felony domestic violence offenses of the fifth, fourth, or third degree. The bill will shift some felony domestic violence cases to a felony of the third or second degree as well as a potentially

¹ With regard to violations of existing domestic violence prohibitions against knowingly causing or attempting to cause physical harm, if the offender previously had been convicted of domestic violence or certain related offenses, they can be charged with a fourth or third degree felony. Absent this specification, they can be charged with a fifth degree felony when the victim is a pregnant woman and subject to a mandatory prison term of six or 12 months depending on the degree of harm.

² The Attorney General’s report does not distinguish between misdemeanor and felony domestic violence charges. Based on anecdotal evidence, it appears that the majority of charges were for misdemeanor offenses.

large number of the misdemeanor domestic violence cases involving strangulation or suffocation to a felony of the third degree. Given the requirement that a prison sentence be imposed, this could result in a large number of additional offenders entering prison as well as offenders being sentenced for longer terms than they otherwise would have received under current law. The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars or more annually, as the potential number of offenders affected by the bill each year appears to be quite large. For FY 2020, the average annual cost of incarcerating an offender in prison was \$30,558.

Court cost revenues

When a person is convicted of, or pleads guilty to, a criminal offense, the sentencing court generally is required to impose upon that person state court costs in addition to any other applicable fines, fees, and costs. The bill's domestic violence offense will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of strangulation or suffocation can instead be charged as a third degree felony. A conviction in this situation creates the possibility of increased state revenues from the \$60 in court costs imposed for a felony conviction, an amount that is \$31 more than the \$29 in court costs imposed for a misdemeanor conviction. The amount collected annually is likely to be minimal at most because many felony offenders are either financially unable or unwilling to pay. The state court costs are apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local criminal justice system fiscal effects

Expenditures

As previously mentioned, the bill's expanded domestic violence offense carries the potential to shift a significant number of cases that, based on current law, would most likely be adjudicated as misdemeanors under the subject matter jurisdiction of a municipal court or county court to a felony-level charge under the subject matter jurisdiction of a common pleas court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter in terms of the costs to process the case and sanction the offender.

From the fiscal perspective of local governments, such an outcome will simultaneously:

- Increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) additional felony domestic violence offenders; and
- Decrease the analogous municipal and county court criminal justice system expenditures related to the prosecution of that subset of misdemeanor domestic violence offenses involving strangulation or suffocation.

The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is not readily quantifiable.

Fines, fees, and court costs

For persons convicted of, or pleading guilty to, a felony, the sentencing court generally is required and/or permitted to impose fines, and court costs and fees that are retained locally for various purposes. A waiver of payment is permitted if the person is determined to be indigent.

The bill will affect the local revenue collected from strangulation or suffocation cases as follows:

- The elevation of a misdemeanor to a felony means that revenue from fines, and court costs and fees collected by municipal and county courts will instead be collected by courts of common pleas. The maximum fine for a misdemeanor is \$1,000 (first degree misdemeanor). The fines for felonies generally start at up to \$2,500 (fifth degree felony); and
- The enhancement of an existing felony offense creates the possibility of increased fine revenues. The maximum permissible fines for fifth, fourth, or third degree felonies are \$2,500, \$5,000, and \$10,000, respectively. The maximum permissible fine for a felony of the third or second degree is \$10,000 and \$15,000, respectively.

The likely revenue loss for municipal criminal justice systems and revenue gain for county criminal justice systems, while potentially significant, is difficult to calculate precisely because many offenders, especially those convicted of a felony, are either financially unable or unwilling to pay. It is also the case that the court rarely imposes the maximum permissible fine.