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Office

S.B. 25
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsor: Sen. Gavarone

Local Impact Statement Procedure Required: No

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Highlights

- Based on research of the Department of Rehabilitation and Correction (DRC), LBO estimates that, within five years of the bill's effective date, DRC's GRF-funded incarceration costs will have increased by \$1.7 million to \$5.8 million or more annually. The magnitude of that annual cost increase is dependent upon the number of offenders sentenced under the bill's penalty enhancements.
- County criminal justice systems should be able to utilize existing staffing levels and appropriated funds to absorb any additional work created by penalty-enhanced felony drug trafficking cases.
- There may be a minimal at most annual gain in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Detailed Analysis

Drug trafficking at or near an addiction service provider

The bill enhances the penalties for most drug trafficking offenses when (1) committed on the premises of, or within 500 feet of, a substance addiction services provider's facility, if the offender knows or should have known that the offense is being committed within that vicinity, or (2) the offender sells, offers to sell, delivers, or distributes a controlled substance to a person whom the offender knows is receiving treatment from a substance addiction services provider. Offenses with enhanced penalties include trafficking in cocaine, L.S.D., heroin, hashish, schedule I and II controlled substances (excluding marijuana), controlled substance analogs, and fentanyl-related compounds.

Felony drug trafficking offenses

The bill enhances penalties for felony-level offenses of aggravated trafficking and trafficking, each with sentencing variations based on the type and amount of the controlled substances involved. Table 1 below shows the number of offenders committed annually to prison for felony trafficking in drugs, as reported by the Department of Rehabilitation and Correction (DRC) for FY 2016 through FY 2020. On average, 9.8% of the commitments in each year were for drug trafficking with potentially elevated penalties under the bill. The subset of violations committed in the vicinity of a substance addiction service provider or a recovering addict is not information tracked in DRC's inmate databases.

Offense	2016	2017	2018	2019	2020
Trafficking in Drugs	1,948	1,792	1,719	1,831	1,400
Total Commitments	20,109	19,340	18,249	17,126	13,913

The principal fiscal effect of these penalty enhancements is likely to be a steady increase over a period of several years in the GRF funding that DRC expends annually on institutional operations. The magnitude of that annual increase will be dependent upon the number of offenders committing certain drug trafficking offenses in the vicinity of a substance addiction services provider or involving a recovering addict. In effect, by extending prison stays beyond what the amount of time served otherwise would 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 are sentenced to longer prison terms while the number of new offenders entering the prison system does not decrease. This “stacking” process will stabilize when the number of offenders serving longer prison sentences due to the bill’s penalty enhancements is about the same as the number leaving prison after serving similarly penalty-enhanced sentences.

Additionally, some number of offenders may be sentenced to prison under the bill that otherwise may have been sanctioned locally at county expense. 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 minimum prison term of 2, 3, 4, 5, 6, 7, or 8 years. On average, a second degree felony drug offender serves about 1.6 years longer than a third degree felony drug offender does.¹

¹ Average time served data do not reflect the felony sentencing law changes implemented by the Reagan Tokes Act, S.B. 201 of the 132nd General Assembly, which apply to crimes committed on or after March 22, 2019, and include both a minimum term defined in statute and maximum term equal to the minimum term plus 50% of the minimum term for qualifying offenses.

Table 2 below shows the average time served by all drug offenders released from prison in calendar year (CY) 2016, as reported by DRC. The average time served for all felony drug offenders was 1.6 years.

Table 2. Average Time Served, CY 2016	
Drug Offense Level	Average Time Served in Years
Felony 1	5.65
Felony 2	3.49
Felony 3	1.84
Felony 4	1.14
Felony 5	0.69
All drug offenses	1.62

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

- Elevating an offense from a fifth degree felony (0.69 years average time served) to a fourth degree felony (1.14 years average time served) increases the average time served by 5.4 months.
- Elevating an offense from a fourth degree felony (1.14 years average time served) to a third degree felony (1.84 years average time served) increases the average time served by 8.4 months.
- Elevating an offense from a third degree felony (1.84 years average time served) to a second degree felony (3.49 years average time served) increases the average time served by 19.8 months.
- Elevating an offense from a second degree felony (3.49 years average time served) to a first degree felony (5.65 years average time served) increases the average time served by 25.9 months.

Under the bill, the average time served for the lowest level offenders increases by approximately 5.4 months, or 164 days, and the average time served for those moving from a second to a first degree felony increases by 25.9 months, or 788 days. Using the annual daily cost per inmate for FY 2020, the increases in time served potentially cost the state between \$13,730 (\$83.72 average daily cost x 164 days) and \$65,971 (\$83.72 average daily cost x 788 days) per inmate for the increased length of stay based on average time served.

Based on its research into selected inmate files, DRC expected the “As Introduced” version of the bill to create the need for between 109 and 380 additional beds annually overall, with half of that increase realized within the first five years following its effective date. LBO estimated the annual cost of these additional beds five years following enactment at \$1.7 million (55 beds x

\$83.72 average daily cost x 365 days) to \$5.8 million (190 beds x \$83.72 average daily cost x 365 days).

DRC's research and the subsequent LBO cost estimate was based on drug trafficking offenses when committed on the premises of, or within 1,000 feet of the premises, if the offender recklessly disregarded that the offense was being committed within that vicinity. The current version of the bill reduces the vicinity to 500 feet and enhances certain penalties when the offender sells, delivers, or distributes to a recovering addict. The current version of the bill will likely generate higher state incarceration costs, as it expands the potential circumstances in which the enhanced penalties are applicable.

The bill will not generate new felony drug cases, but may require county criminal justice systems to expend additional time and effort on their disposition. This is because the penalty enhancements may prolong the adjudication of certain matters, as the prison sanction and "knows that the person is receiving or received that treatment" conduct standard are more problematic for the defense and prosecution, respectively. County criminal justice systems should be able to absorb any associated costs utilizing existing staffing levels and appropriated funds.

Sexual Assault Prevention Awareness Month

The bill designates the month of April as "Sexual Assault Prevention Awareness Month." As this provision does not require any action on the part of the state or political subdivisions, it will have no direct fiscal effect.