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H.B. 230 (with AM1312 and AM1313-3)

135th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 230's Bill Analysis

Version: In House Homeland Security

Primary Sponsors: Reps. Abrams and Swearingen

Local Impact Statement Procedure Required: No

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Highlights

- The bill may increase incarceration costs for the Ohio Department of Rehabilitation and Correction (ODRC) as some offenders may be subjected to "mandatory" instead of "discretionary" prison terms and others may be sentenced to longer terms than otherwise under current law.
- The bill's impact on individual local criminal justice systems related to prosecuting, defending (if indigent), adjudicating, and sanctioning of offenders is not expected to exceed minimal.
- School districts and other public schools may incur minimal costs to adapt or update existing curricula on substance abuse prevention to comply with the bill's required instruction on fentanyl awareness and abuse prevention. Similarly, state institutions of higher education may incur costs to develop and implement an education program to advise students regarding the dangers of fentanyl.

Detailed Analysis

The bill makes numerous changes to certain drug laws generally pertaining to drug trafficking. In addition to these changes, the bill also modifies certain prohibitions related to fentanyl, organized trafficking in persons, death certificate information, and the collection of evidence in operating a vehicle under the influence (OVI) cases. Finally, the bill requires schools and institutions of higher education to incorporate instruction and policies on fentanyl awareness and abuse prevention and designates the month of August as "Fentanyl Poisoning Awareness Month."

Penalties for drug trafficking

The bill increases penalties and modifies the threshold required for certain trafficking offenses involving cocaine, fentanyl-related compounds, heroin, and methamphetamine. While these changes are not expected to result in any new felony cases for local courts to adjudicate, as this drug trafficking conduct is already classified as a felony, the bill may increase the amount of time and effort that prosecutors, defense attorneys, and the court expend to adjudicate these types of drug trafficking cases. The bill may also increase the length of some prison terms as well as make some prison terms "mandatory" instead of "discretionary" thus limiting early release mechanisms such as earned credit and judicial release, and potentially increasing operating and incarceration costs for the Ohio Department of Rehabilitation and Correction (ODRC).[1]

The table below shows the sentences and fines for felony offenses generally, which include drug trafficking offenses under both existing law and under the bill. The bill's various penalty increases and threshold modifications for cocaine, fentanyl-related compounds, heroin, and methamphetamine are described in detail in the bill analysis. Increasing drug trafficking penalties and making certain prison terms mandatory, may lead to additional offenders being sentenced to prison and longer prison terms for others. As a result, ODRC may experience an increase in related operating and incarceration costs. The average cost to house an offender in CY 2022 was $99.96 per day or $36,485.40 per year. However, when considering the marginal cost increase, the cost to house an individual inmate was $11.31 per day during CY 2022. Marginal costs are based on additional medical and mental health costs as well as food and clothing. It does not include additional security, facility, or administrative costs which have already been factored into the overall operating costs of ODRC. For purposes of this fiscal note, using the marginal cost rate seems reasonable to presume.

The number of offenders who may be affected by the bill's penalty modifications in any given year is indeterminate and will ultimately depend on the number of drug trafficking charges, the type of drug and amount involved, as well as the outcome of the local adjudication process. Based on ODRC commitment data from CY 2018 through CY 2022 (shown in the table below), drug trafficking offenses accounted for an average of 9.8% of total commitments annually. Based on CY 2016 time served data from ODRC, the most recent data available, the average time served by offenders convicted of drug offenses in general (as their more serious offense of conviction), ranged from 8.28 months (fifth degree felony) to 5.65 years (first degree felony).

Table 1. Prison Commitments for Drug Trafficking Offenses, CY 2018-CY 2022[2]

Offense	2018	2019	2020	2021	2022
Trafficking in Drugs	1,850	1,736	1,076	1,275	1,269

[1] In FY 2022, approximately 1% of the Ohio Department of Youth Services (ODYS) 358 admissions were for drug-related offenses however, there was no breakdown specifically for drug trafficking. While ODYS may be impacted by the bill's penalty enhancements, the overall fiscal impact would likely be negligible.

[2] See ODRC Commitment Reports for CY 2018 through CY 2022, which are available on ODRC's website: drc.ohio.gov.

Table 1. Prison Commitments for Drug Trafficking Offenses, CY 2018-CY 2022[2]					
Offense	**2018**	**2019**	**2020**	**2021**	**2022**
Total Commitments	**17,596**	**16,856**	**11,174**	**13,677**	**14,090**

To the extent that additional fine revenue is collected due to the elevation of certain felony convictions, it would be retained by the county in which the offense occurred for a violation of state law, the municipality in which the offense occurred for a violation of a local ordinance, or credited to the state Security, Investigations, and Policing Fund (Fund 8400) if the offender was cited by the Ohio State Highway Patrol. However, it should be noted that those convicted of felonies typically are unable or unwilling to pay these fines.

Table 2. Felony Sentences and Fines for Offenses Generally		
Offense Level	**Fine**	**Term of Incarceration**
Felony 1st degree*	Up to $20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years indefinite prison term
Felony 2nd degree*	Up to $15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term
Felony 3rd degree	Up to $10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Felony 4th degree	Up to $5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony 5th degree	Up to $2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term

*The sentencing court must impose a minimum sentence for first and second degree felony offenses and specify a maximum sentence that is 50% greater than the minimum sentence. The court, after a hearing, may reduce the minimum sentence by 5% to 15% upon recommendation of ODRC.

Involuntary manslaughter

The bill creates a specification for involuntary manslaughter when a lethal amount of fentanyl or a fentanyl-related compound was present in the decedent victim and the results of an autopsy are consistent with an opioid overdose as the cause of death. If both of those conditions are present for an offender who is convicted of, or pleads guilty to, involuntary manslaughter, the bill requires the court to impose a mandatory five-year prison term in addition to any other penalty imposed.

Prosecutors have been able to obtain convictions for involuntary manslaughter in some overdose deaths based on the sale of fentanyl however, those cases tend to be more difficult to prove as decedent victims often have multiple drugs in their system that may have been purchased from multiple dealers or which drug precipitated the death. That said, the bill's specification is not likely to impact a significant number of involuntary manslaughter cases but it will increase the likelihood of a longer prison term for certain offenders.

Organized trafficking in persons

Under current law, trafficking in persons is a first degree felony. The bill creates the offense of "participating in an organization or operation for trafficking in persons" and makes that offense a felony of the first degree. If an offender is convicted of, or pleads guilty to, a violation of participating in an organization or operation for trafficking in persons, the bill requires the court to impose a mandatory term of not less than five years and not more than 11 years.

At least some of the conduct prohibited under the bill's new offense could potentially be prosecuted under current law as "engaging in a pattern of corrupt activity" however, by creating the new offense, the bill makes it easier to prosecute specific conduct related to trafficking in persons. As a result, the bill's new offense is not expected to create new felony cases for courts of common pleas to adjudicate, but will add a serious felony charge to the list of possible offenses that an offender may face for behavior related to trafficking in persons under current law. It may also result in longer prison terms for a small number of offenders.

Death certificates

Current law requires the Director of the Department of Health (DOH), by rule, to prescribe the form of vital statistics records and certificates. The bill requires all death certificates to include a space to indicate whether a person's cause of death was due to fentanyl poisoning based on the results of both a toxicology examination and an autopsy. DOH may experience a negligible cost increase to draft and amend rules in order to update their forms and to communicate these changes and requirements statewide. According to the Ohio State Coroner's Association, this provision should not impact county coroners, as it does not require a toxicology examination or an autopsy be conducted, but rather requires noting information that was already collected.

Oral fluid testing (OVI)

The bill authorizes law enforcement officers to collect an oral fluid sample from a person arrested for operating a vehicle under the influence (OVI). Such samples may then be tested for the presence of a drug of abuse or a metabolite of a drug of abuse in order to be used as evidence related to an OVI charge. Currently, chemical testing in Ohio may include a person's whole blood, blood serum or plasma, breath, or urine. Oral fluids would be in addition to these possible other testing methods.

According to law enforcement representatives, this provision will largely be cost neutral. Testing costs for oral fluid are generally the same as those for blood and urine. Presumably, permitting the inclusion of oral fluids as a testing mechanism could create certain efficiencies for law enforcement agencies in terms of administering the tests (in the case of urine testing, gender considerations may be needed). However, for those agencies that opt to utilize this type of chemical test, there would likely be one-time costs for training, rule and policy updates, and then ongoing costs for the test kits. In CY 2022, the Ohio State Highway Patrol made 15,036 OVI arrests and 3,059 drug-impaired driving arrests. Prior to the COVID-19 pandemic, OVI convictions statewide by all law enforcement agencies averaged around 50,000 per year. According to a study conducted by the National Conference of State Legislators, 24 states as of May 2021 had authorized some form of oral fluid specimen testing in OVI cases.

Fentanyl education

Public schools

Beginning in the 2024-2025 school year, the bill requires traditional school districts, joint vocational school districts (JVSDs), community schools, and science, technology, engineering, and mathematics (STEM) schools to provide age-appropriate, research-based instruction regarding fentanyl abuse prevention and drug poisoning awareness to students in grades K-12. The bill requires the course material and instruction in the topic to include certain information such as the types and uses of fentanyl, side effects and risk factors of its use, detection of fentanyl and saving someone from an overdose, and awareness of how to access school and community resources. Under the bill, the instruction must be provided by a licensed educator, school nurse, school counselor, or public safety officer.

Districts and schools may already be providing some of this instruction under current law, and thus may incur minimal costs to adapt or update existing curricula on substance abuse prevention to comply with the bill's requirements. Current law requires districts and schools to include education on the harmful effects of using drugs of abuse and prescription opioid abuse prevention as part of the health curriculum. The Department of Education and Workforce (DEW) offers resources to this end, including the Health and Opioid Abuse Prevention Education (HOPE) Curriculum to provide age-appropriate instruction in substance abuse prevention to students in grades K-12.

State institutions of higher education

The bill also requires each state institution of higher education to develop and implement an age-appropriate and research-based education program to advise students regarding the dangers of fentanyl. Each program must include information on the same topics required of public school fentanyl course material and instruction as described above, including the types and uses of fentanyl, side effects and risk factors of its use, detection of fentanyl and saving someone from an overdose, and awareness of how to access university and community resources.

The bill may increase costs for state institutions to develop and implement these fentanyl education programs. The costs for each state institution will vary depending on the extent to which each already provides such a program to its students. It appears that at least several state institutions already provide similar programs required by the bill to their students and staff through various means at their campuses. For example, the Ohio State University (OSU) offers Naloxone training to students, staff, and faculty which provides participants with information "on how to recognize the signs of an opioid overdose, administer Naloxone, and educate the importance of harm reduction and its concepts." OSU also offers several in-person and pre-recorded presentations to students on a number of wellness-focused topics including alcohol, tobacco, and other drugs. Cuyahoga Community College requires each of its students to receive a copy of its program "Choose Not to Abuse" each year, which includes information on the health risks associated with the use of illicit drugs. Additionally, current law requires all educator preparation programs to include instruction in opioid and other substance abuse prevention.

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