



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 362 of the 131st G.A.

Date: May 18, 2016

Status: As Reported by House Judiciary

Sponsor: Reps. Stinziano and Kunze

Local Impact Statement Procedure Required: Yes

Contents: Strangulation

State Fiscal Highlights

- 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 would appear to be quite large.
- There is likely to be a no more than minimal annual gain in locally collected state court costs deposited into the Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).

Local Fiscal Highlights

- The expansion of the domestic violence offense has the potential to shift a significant number of misdemeanor domestic violence cases, and the related processing and sanctioning costs, from municipal and county courts to common pleas courts. The magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.
- Convictions for the felony domestic violence offense could reduce fine fee, and court cost revenues collected for misdemeanors by municipal and county courts and increase those amounts collected by the common pleas courts. However, determining the likely amounts of such a revenue shift, while potentially significant, is difficult because many felony offenders are either indigent or unwilling to pay.

Detailed Fiscal Analysis

Overview

The bill expands the offense of domestic violence to include impeding the normal breathing or blood circulation of another person by applying pressure to the throat or neck. The penalty for such a domestic violence offense, under the bill, generally is a felony of the third degree, and increases to a felony of the second degree 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 within the sentencing range as specified under current law.

The expansion of the offense of domestic violence as specified in the bill is likely to have a significant impact on the criminal justice system. Under current law, it appears that most domestic violence violations are charged as a misdemeanor. Under some circumstances involving previous convictions for domestic violence or other offenses of violence, a violator can be charged with a felony of the fifth, fourth, or third degree.

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In 2014, there were 34,969 incidents of domestic violence in which police responded and charges were filed. In 2013, that statewide number was 33,948. Information obtained from the Domestic Violence Division of the Columbus City Attorney's Office indicates that approximately 30% of their misdemeanor domestic violence cases involve allegations of choking or strangulation, and they may be able to get an indictment for strangulation in about 15% of their domestic violence caseload which totals around 6,000 cases each year. Extrapolating this number across the state suggests that thousands of misdemeanor domestic violence cases involving strangulation could instead be charged as a felony of the third or second degree. In some cases, the additional felony charge provided by the bill may induce offenders to accept a plea bargain, but this does not alter the reality that thousands of cases could shift from municipal and county courts that currently handle domestic violence misdemeanor cases to the common pleas courts which will have jurisdiction over felony strangulation cases.

State fiscal effects

Incarceration expenditures

Under current sentencing practices, around 700 offenders per year enter prison for a felony domestic violence offense of the fifth, fourth, or third degree. The bill will shift some of those fifth and fourth degree felony domestic violence convictions to a felony of the second or third degree as well as a potentially large number of the misdemeanor domestic violence convictions involving strangulation to a felony of the second or third degree. Given the requirement that a prison sentence be imposed, this

will result in a large number of additional offenders entering prison as well as offenders being sentenced to prison for longer terms than they 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. As of April 2016, the average annual cost of incarcerating an offender in prison was \$24,715.

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 domestic violence offense in the bill will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of choking or strangulation can instead be charged as a third or second 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 forwarded for deposit into the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).¹

Local criminal justice system fiscal effects

The expanded domestic violence offense in the bill carries the potential to shift a significant number of domestic violence criminal 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 new felony charge under the subject matter jurisdiction of the 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 violator.

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) felony domestic violence offenders, while decreasing analogous municipal and county court criminal justice system expenditures related to the prosecution of that subset of misdemeanor domestic violence offenses involving allegations of choking or

¹ "State court costs" are statutorily specified amounts collected by local courts and forwarded for deposit in the state treasury. The court is generally required to impose state court costs totaling \$29 for a misdemeanor and \$60 for a felony. The \$29 misdemeanor amount is divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020). The \$60 felony amount is divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.

strangulation. The magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.

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 a fine, fees, and court costs 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 cases in two ways.

1. The elevation of a misdemeanor to a felony means that revenue from local fines, fees, and court costs collected by municipal and county courts will instead be collected by courts of common pleas. The maximum permissible fine for a misdemeanor is \$1,000 (misdemeanor of the first degree). The minimum permissible fine for a felony is up to \$2,500 (felony of the fifth degree).
2. The enhancement of an existing felony offense creates the possibility of increased fine revenue. The maximum permissible fine for a felony of the fifth or fourth degree is \$2,500 and \$5,000, 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 systems and revenue gain for county criminal justice systems, while potentially significant, is difficult to precisely calculate 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.