



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 110 of the 131st G.A.

**Date:** May 24, 2016

**Status:** As Enacted

**Sponsor:** Rep. Hill

**Local Impact Statement Procedure Required:** No

**Contents:** Failure to stop after an accident, disclosure of naloxone administration to law enforcement agency, medical assistance for drug overdose

### State Fiscal Highlights

- **Failure to stop.** As a result of the bill's failure to stop penalty enhancement, the Department of Rehabilitation and Correction's GRF-funded incarceration costs may minimally increase. This is because, in any given year, a few additional felony offenders could be sentenced to a term in prison, or sentenced to a longer term than otherwise might have been the case under current law and sentencing practices.
- **Naloxone administration disclosure.** The bill's disclosure requirement may result in additional felony drug offenders being sentenced to prison, with the number and associated incarceration cost uncertain.
- **Medicaid and criminal immunity.** The bill's specified criminal immunity provisions may result in additional individuals receiving treatment for drug-related medical emergencies. If any of these individuals are enrolled in Medicaid, then Medicaid could experience an indirect increase in costs for treatment relating to the actual medical emergency or later substance abuse treatment.

### Local Fiscal Highlights

- **Failure to stop.** The bill's failure to stop penalty enhancement will not result in any readily discernible additional costs for a county criminal justice system to process and adjudicate felony cases. This is because: (1) it will create no new felony cases, and (2) there will be extremely few cases in which the felony enhancement may come into play thereby requiring more time, effort, and resources to resolve.
- **Naloxone administration disclosure.** The bill's disclosure requirement may result in some increase in the number of individuals arrested, successfully prosecuted, and sanctioned for drug offense violations. As the number of circumstances in which this may occur is unknown, the associated cost for the county criminal justice systems that process felony drug violations is uncertain.

- **Criminal immunity.** The bill's specified criminal immunity provisions may produce a slight reduction in the number of persons prosecuted and sanctioned for a minor drug possession offense, creating a potential expenditure savings and related revenue loss for municipalities and counties with jurisdiction over such matters. The net annual fiscal effect will be minimal.
  - **Government-owned hospitals.** It is possible that additional individuals will receive treatment in government-owned hospitals for drug-related medical emergencies as a result of the bill's specified criminal immunity provisions. Thus, these hospitals could realize an indirect increase in treatment costs. It is also possible that some reimbursements or payments could be received for individuals with insurance coverage or those enrolled in the Medicaid Program.
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## Detailed Fiscal Analysis

The bill:

- Increases the penalty if a person is convicted of, or pleads guilty to, a violation of failing to stop after an accident when the violation results in serious physical harm to, or the death of, another person;
- Requires emergency medical service (EMS) personnel and firefighters to disclose the name and address of certain persons treated for drug overdoses upon the request of the appropriate law enforcement agency; and
- Provides generally immunity from arrest and prosecution for a minor drug possession offense to a person who seeks medical assistance for that person or another as a result of ingesting drugs.

### Failure to stop cases

Under current law and practice, if an offender fails to stop after an accident, and serious physical harm to another occurs as a result of the accident, the offense is a felony of the fifth degree. If the accident results in the death of the victim, the offense is a felony of the third degree. Under the bill, failure to stop after an accident, with serious physical harm, remains a felony of the fifth degree. If the offender knew the accident or collision resulted in serious physical harm to a person, it is a felony of the fourth degree. If the offender knew the accident or collision resulted in the death of a person, it is a felony of the second degree.

Ohio hit-skip crash data obtained from the Ohio State Highway Patrol indicates that for each year between 2009 and 2013 there were, on average, about 473 accidents statewide that involved a fatality and/or serious physical injury, and in which the driver failed to stop. Intake data from the Department of Rehabilitation and Correction (DRC) covering the same period of time (2009-2013) reveals that, on average, 11 offenders were

sent to prison each year for failure to stop after an accident. Taken together, this data suggests that these offenders are more likely to have been convicted and sentenced on charges related more directly to the injury inflicted by the accident such as vehicular homicide or vehicular assault rather than the lesser hit-skip charge.

There is the possibility that certain courts adjudicating such matters may determine that the homicide or assault offense and the failure to stop offense constitute allied offenses of similar import and only allow the penalty for either the homicide/assault offense or the failure to stop offense, but not both. To the extent that courts make such rulings, there may not likely be many cases affected by the bill's penalty increase. It is also possible, however that given this choice between similar offenses, the penalty enhancement would lead to some increase in the number of cases in which the courts impose the penalty for failure to stop after an accident.

In conclusion, our research and related data lead to two observations. First, these penalty changes will not create additional felony cases for county criminal justice systems to process and adjudicate as the circumstances addressed are likely to already rise to the level of felonious conduct. Second, the number of cases in which the penalty enhancement will come into play is extremely small, especially in the context of a county's total criminal caseload.

In any given year, the penalty enhancement could result in a few additional offenders being sentenced to prison or sentenced for a longer term than otherwise might have been the case under current law and sentencing practices. Assuming all other conditions remain the same, either outcome will result in a relatively small increase in the size of the daily institutional population managed by DRC. The magnitude of any resulting increase in DRC's institutional operating costs is likely to be minimal; meaning any increase in the state's incarceration costs is estimated at less than \$100,000 per year.

For the reasons noted above, the bill's penalty enhancement is unlikely to generate any additional operating expenses for county criminal justice systems. This is because: (1) there will be no new felony cases to process and adjudicate, and (2) the number of cases that it will affect that are already felonies under current law is extremely small.

It is highly unlikely that the bill's penalty enhancement will generate any additional fine, fee, or court cost revenue for the state or counties.

### **Disclosure of naloxone administration**

The bill requires EMS personnel and firefighters who administer naloxone as a treatment for persons suffering a drug overdose to disclose the name and address of such persons upon the request of the appropriate law enforcement agency. Available information suggests that the number of naloxone administrations by Ohio EMS personnel statewide totaled well in excess of 10,000 in 2015.

If EMS personnel or firefighters who administer naloxone are requested to disclose information about those persons experiencing an overdose to law enforcement agencies, and if those persons are willing to talk with law enforcement, then we could reasonably expect some increase in the number of individuals arrested, successfully prosecuted, and sanctioned for drug offense violations. As the number of circumstances in which this may occur is unknown, the associated cost for the county criminal justice systems that process felony drug violations is uncertain.

### **Immunity from prosecution for drug possession offenses**

The bill's specified criminal immunity provisions may reduce the number of persons, who as a result of seeking medical assistance, otherwise might have been arrested, charged, prosecuted, and sanctioned for a minor drug possession offense. For counties and municipalities with jurisdiction over such matters, this could mean some decrease in cases requiring adjudication, thus creating a potential expenditure savings and related revenue loss (fines, fees, and court costs generally imposed on an offender by the court).

Anecdotal information suggests the number of instances in which a person is, under current law and practice, prosecuted subsequent to seeking medical assistance is relatively small, especially in the context of the total number of criminal and juvenile cases handled by counties and municipalities annually. Thus, the net annual fiscal effect of any expenditure savings and revenue loss is likely to be minimal. For the state, there may be a related negligible annual loss in court costs that otherwise might have been collected for deposit in the state treasury and divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

### **Possible indirect fiscal effects**

As a result of the bill's specified criminal immunity provisions, it is possible that additional individuals will receive treatment in public hospitals for drug-related medical emergencies. Thus, government-owned hospitals could indirectly realize an increase in treatment costs. The increase would depend on the number of individuals receiving treatment, the services rendered, and the insurance status of the individual. Government-owned hospitals might receive reimbursements or payments for individuals who have insurance coverage or who are enrolled in the Medicaid Program.

Additionally, it is possible that some individuals receiving treatment will be eligible for Medicaid at the time treatment was rendered, but not actually enrolled in the program. In such cases, those individuals could then be enrolled in Medicaid and the program could retroactively pay for treatment rendered in the three months prior to enrollment. Thus, the Medicaid Program could also experience an indirect increase in costs for treatment relating to the medical emergency and possibly for substance abuse treatment if the individual seeks such treatment after release from the hospital. According to the Ohio Department of Medicaid, any increase is expected to be minimal. Typically under the Medicaid Program, the federal government reimburses the state for

approximately 64% of medical service costs. However, the federal government will pay 100% (amount decreases after 2016 and remains at 90% for 2020 and subsequent years) of medical service costs for those individuals found eligible under the Medicaid expansion created pursuant to the federal Patient Protection and Affordable Care Act.

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