



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 29 of the 128th G.A.

**Date:** March 17, 2009

**Status:** As Introduced

**Sponsor:** Reps. Mallory and Combs

**Local Impact Statement Procedure Required:** No — Minimal cost

**Contents:** Abusing a corpse

### State Fiscal Highlights

#### STATE FUND

#### FY 2010 – FUTURE YEARS

##### General Revenue Fund (GRF)

Revenues - 0 -

Expenditures Potential incarceration cost increase, but likely to be no more than minimal annually

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- Incarceration costs.** As a result of the bill's penalty enhancement, it is possible that additional offenders will be sentenced to prison or sentenced to prison for longer terms than would have been the case under current law and sentencing practices. In theory, the fiscal effect of either sentencing outcome would be to increase the Department of Rehabilitation and Correction's GRF-funded annual incarceration costs. The number of those offenders, however, appears to be small enough that any increase in the Department's annual expenditures would be minimal at most. Herein, a minimal state expenditure means a cost increase estimated at less than \$100,000 per year.

### Local Fiscal Highlights

#### LOCAL GOVERNMENT

#### FY 2009 – FUTURE YEARS

##### Counties (criminal justice systems)

Revenues Potential gain in fines, not likely to exceed minimal annually

Expenditures Potential criminal justice system cost increase, not likely to exceed minimal annually

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- County criminal justice system expenditures.** The bill will not create new cases for county criminal justice systems to adjudicate, but, at most, may minimally increase the costs to process certain cases if their resolution, because of the penalty enhancement, requires additional time and effort. A "minimal" local cost herein means an estimated increase in expenditures for any affected jurisdiction of no more than \$5,000 per year.

- **County revenues.** As a result of the bill's penalty enhancement, additional fine revenues may be generated for counties. As it appears that the number of affected cases will be relatively small in any given local jurisdiction, the amount of fine revenues that actually may be collected annually is unlikely to exceed minimal. Herein, a minimal amount of revenue means a gain estimated at no more than \$5,000 per year for any affected county.

## Detailed Fiscal Analysis

### Abusing a corpse

**Current law.** Under current law, such conduct is already prohibited as abuse of a corpse, a misdemeanor of the second degree (M2), or gross abuse of a corpse, a felony of the fifth degree (F5). It appears likely that most, if not all, persons violating these existing prohibitions would be charged with the more serious offense of gross abuse of a corpse. Table 1 below illustrates the sentences and penalties for abuse of corpse under current law.

<b>Table 1. Sentence and Fines for Certain Offenses Generally</b>			
Offense	Degree*	Prison/Jail Term	Maximum Fine
Abuse of corpse (treating a corpse in a way that the person knows would outrage reasonable family sensibilities)	M2	Up to 90 days in jail	Not more than \$750
Gross abuse of a corpse (treating a corpse in a way that would outrage reasonable community sensibilities)	F5	6, 7, 8, 9, 10, 11, or 12 months in prison	Not more than \$2,500

\*For an F5, the sentencing guidelines state a general preference against a prison term.

**Operation of the bill.** The bill prohibits any person from engaging in sexual conduct with a human corpse, a violation of which would be a felony of the third degree (F3). The sentence and fine for a felony of the third degree is illustrated in Table 2 below.

<b>Table 2. Sentence and Fine for Necrophilia</b>			
Offense	Degree*	Prison/Jail Term	Maximum Fine
Necrophilia (engaging in sexual conduct with a human corpse)	F3	1, 2, 3, 4, or 5 years in prison	Not more than \$10,000

\*For an F3, there is no general preference for or against a prison term.

## **Criminal caseloads**

Given the nature of the offense, it seems likely that under current law, persons engaging in sexual conduct with a human corpse would be charged with gross abuse of a corpse, a felony of the fifth degree. As a result of the bill, the penalty for such conduct would be elevated to a felony of the third degree.

Thus, the bill's prohibition would, in all likelihood, affect existing felony criminal cases, and not likely create new or additional felony matters to be investigated, prosecuted, and adjudicated. It is uncertain how many cases could be affected after the bill's effective date (cases that are currently charged under section 2927.01 of the Revised Code, gross abuse of a corpse). However, based on the supposition that this type of behavior is rare, it seems reasonable to assume that the number of criminal cases that could be affected by the bill's penalty enhancement will be relatively small for any given local criminal justice system, if not statewide.

## **State and local expenditures**

**County criminal justice system expenditures.** The degree to which the bill's prohibition will or may affect county criminal justice system expenditures, in terms of the cost a county incurs in prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning certain offenders is uncertain. It is possible that the threat of a prison term, or a longer prison term, may affect individual criminal cases by speeding some through the bargaining process (potentially saving expenditures). Other cases may slow down, by increasing an offender's desire to pursue a criminal trial to avoid having to face the prison term or reducing the potential length of stay (potentially increasing expenditures).

As these potential expenditure savings and increases may offset one another and the number of cases that might be affected in either manner in any given county is likely to be relatively small in the context of the overall criminal caseload, it appears that the net fiscal effect would be, at most, a minimal increase in the annual operating costs of any given county's criminal justice system. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated annual cost of no more than \$5,000 for any affected county criminal justice system.

**State incarceration expenditures.** As a result of the bill, it is also possible that additional offenders will be sentenced to prison or sentenced to prison for longer stays than would have been the case under current law and sentencing practices. In theory, the fiscal effect of either sentencing outcome would be to increase the Department of Rehabilitation and Correction's GRF-funded annual incarceration costs. The number of offenders, however, appears to be small enough that any increase in the Department's annual expenditures would be minimal at most. Herein, a minimal state expenditure means a cost increase estimated at less than \$100,000 per year.

The annual cost associated with housing and providing services to an offender in prison may be calculated using two separate annual inmate cost estimates: (1) total cost per inmate bed (fixed plus marginal) and (2) marginal cost per inmate bed. The

Department has reported that, as of March 2009, its total annual cost per inmate bed was \$24,867 (\$68.13 per day). Marginal cost can be used when a relatively small number of offenders are likely to be added to DRC's total annual inmate population. Marginal costs include things such as food, clothing, medical care, and so on. LSC fiscal staff estimates that DRC's annual marginal cost is currently around \$3,700 per inmate.

### **State and local revenues**

Since no new felony-level criminal cases/convictions are expected to be created by the bill's penalty enhancement, there should be no change to the magnitude of the locally collected state court cost revenues being generated annually and credited to the GRF and the Victims of Crime/Reparations Fund (Fund 4020).<sup>1</sup>

County criminal justice systems may realize some manner of increase in fine revenues collected, though a fine for a felony of the third degree potentially nets more revenue than a felony of the fifth degree: up to \$10,000 for the former and up to \$2,500 for the latter. If the number of offenders convicted of violating the bill's prohibition is relatively small in any given jurisdiction, the potential amount of additional fine revenue that might be generated for that local jurisdiction is likely to be no more than minimal annually. For the purposes of this fiscal analysis, a "minimal" revenue gain means an estimated increase of no more than \$5,000 for any affected county per year. As noted above, the collection of court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unwilling or unable to pay.

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<sup>1</sup> Under current law, in addition to any other fines and court costs assessed, the court is generally required to assess a person convicted of a felony offense \$45 in state court costs. Of this amount, \$15 is deposited to the credit of the state GRF and \$30 is deposited to the credit of the Victims of Crime/Reparations Fund (Fund 4020).