



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 191 of the 128th G.A. **Date:** December 1, 2009

Status: As Reported by House Criminal Justice **Sponsor:** Rep. Celeste

Local Impact Statement Procedure Required: Yes

Contents: Street racing

State Fiscal Highlights

STATE FUND

FY 2010 – Future Years

General Revenue Fund (GRF)

Revenues - 0 -

Expenditures Potential, likely no more than minimal, annual incarceration cost increase

Certain Department of Public Safety Funds

Revenues Potential gain: (1) license reinstatement fees, (2) immobilization fees, and (3) proceeds from sale of forfeited vehicles

Expenditures Potential, likely no more than minimal, annual increase

Indigent Defense Support Fund (Fund 5DY0)

Revenues Potential negligible annual gain in locally collected state court costs

Expenditures - 0 -

Victims of Crime/Reparations Fund (Fund 4020)

Revenues Potential gain: (1) locally collected state court costs, and (2) proceeds from sale of forfeited vehicles

Expenditures - 0 -

Drug Abuse Resistance Education Fund (Fund 4L60)

Revenues Potential gain in proceeds from sale of forfeited vehicles

Expenditures - 0 -

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

- **Incarceration expenditures.** LSC fiscal staff has not collected any evidence suggesting a significant number of additional adults and juveniles might be sentenced to a period of incarceration or confinement in a state correctional facility as a result of the bill's felony penalty enhancements. Assuming this was true, then the additional costs that the state might incur annually seem unlikely to exceed minimal. Minimal for the state means an estimated cost of less than \$100,000 per year.
- **Department of Public Safety.** Certain funds of the Department of Public Safety may collect additional revenues in the form of immobilization fees, license

reinstatement fees, and proceeds from the sale of criminally forfeited vehicles. The gain in immobilization and license reinstatement fees is likely to be minimal at most annually. The magnitude of the proceeds that may be collected annually from the sale of criminal forfeited vehicles is uncertain.

- **Court cost revenues.** It seems unlikely that more than a negligible amount of additional locally collected state court costs will be generated annually for deposit in the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). Negligible means a revenue gain estimated at less than \$1,000 for either state fund per year.
- **Vehicle forfeitures.** As a result of the bill's criminal forfeiture provisions, additional vehicles may be subject to a court-ordered criminal forfeiture and subsequently sold, with some portion of the proceeds being deposited in certain state law enforcement and forfeiture funds, including, but not limited to, the Victims of Crime/Reparations Fund (Fund 4020) and the Drug Abuse Resistance Education Fund (Fund 4L60). The magnitude of the proceeds that could be deposited in any given state fund annually is uncertain.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2009 – Future Years

Counties (criminal and juvenile justice systems)

Revenues	Potential, likely no more than minimal, gain in court costs and fines
Expenditures	Potential increase to prosecute and sanction additional felony violators, annual magnitude uncertain

Municipalities

Revenues	Potential, likely no more than minimal, loss in court costs and fines
Expenditures	Potential, likely no more than minimal, annual savings as certain cases elevate to felony

Law Enforcement Agencies (counties, municipalities, and townships)

Revenues	Potential gain in proceeds from the immobilization, impoundment, and sale of criminally forfeited vehicles, annual magnitude uncertain
Expenditures	- 0 -

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 and juvenile justice systems.** The bill's penalty enhancements may increase a county's cost to investigate, prosecute, adjudicate, defend (if the person is indigent), and sanction certain individuals whose conduct would be elevated from a misdemeanor to a felony. Whether these increased costs will or could be offset by additional revenues in the form of court costs, fines, fees, and forfeited vehicles is unclear. Therefore, whether the net effect on any given county will be a more than minimal increase in its annual operating costs is uncertain. A more than minimal increase for a county means a cost estimated at more than \$5,000 per year.
- **Municipal criminal justice systems.** As a result of the bill's felony penalty enhancements, certain cases that might otherwise have been processed as a misdemeanor may be elevated to the felony jurisdiction of the court of common pleas. In theory, this creates a potential savings for the municipality that would have processed the case and presumably a loss in court costs and fines that might otherwise have been collected from violators. The potential savings effect and related revenue loss are likely to be minimal at most annually.
- **Law enforcement agencies.** As a result of the bill's immobilization, impoundment and criminal forfeiture provisions, additional vehicles may be subject to a court-ordered criminal forfeiture and subsequently sold, with some portion of the proceeds being deposited in local law enforcement and forfeiture funds. The magnitude of the proceeds that could be deposited in any given local fund annually is uncertain.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Increases, under certain circumstances, the penalty for the offense of street racing from a misdemeanor to a felony;
- Creates the offense of street racing manslaughter, a felony of the second degree;
- Requires the immobilization, impoundment, and possible criminal forfeiture, of the vehicle involved in street racing; and
- Requires the Department of Public Safety make a sign regarding Ohio's prohibition against street racing available to retailers who sell nitrous oxide at no charge.

Street racing convictions

LSC fiscal staff has not been able to ascertain the number of persons that have been charged with the offense of street racing in Ohio annually statewide. We also do not know the number of persons who might have engaged in conduct suggestive of street racing, but were charged with a related traffic offense.

That said, the Department of Public Safety has reported, however, that in calendar years 2007 and 2008, respectively, a total of 150 and 122 drivers were convicted statewide of street racing. Around 50% of those convictions occurred in three distinct geographical areas of the state as follows:

- Jurisdictions within the counties of Cuyahoga, Lorain, Stark, and Summit;
- Jurisdictions within the counties of Hamilton, Warren, Clermont, Butler, and Montgomery; and
- Jurisdictions within Franklin County.

In roughly 50% of the state's 88 counties during that same two-year period, there were either no convictions for street racing reported, or, at most, one such conviction in either one or both calendar years.

Prohibited conduct and penalties

Counties and municipalities

Expenditures. The bill's street racing prohibitions and related penalty enhancement provisions will in all likelihood create additional work for county criminal and juvenile justice systems, as it enhances the penalty under certain circumstances from a misdemeanor to a felony and allows for the criminal forfeiture of a vehicle. The practical effect is that certain cases and costs will be shifted from the jurisdiction of a municipal or county court system to the jurisdiction of the court of common pleas. The

magnitude of the potential additional cost for counties to prosecute and sanction street racing violators is uncertain.

Revenues. As a result of the bill, court costs and fines in certain cases that might otherwise have been collected and retained by a municipality will be collected and retained by a county. The potential revenue loss to a municipality and related revenue gain to a county is likely to be no more than minimal annually. Local jurisdictions may also gain revenue from the criminal forfeiture and subsequent sale of a vehicle involved in street racing.

Net effect. Whether the potential increase in costs to any particular county will be offset by any revenue gained from court costs, fines, fees, and forfeited vehicles is unclear. Therefore, whether the net effect on any given county will be a more than minimal increase in costs is uncertain. A more than minimal increase for a county means a cost estimated at more than \$5,000 per year.

State incarceration expenditures

As a result of the bill's penalty enhancements: (1) additional adults may be sentenced to a prison term and (2) additional juveniles may be sentenced to a period of confinement in a state juvenile correctional facility. In theory, the costs for the state's departments of Rehabilitation and Correction and Youth Services increase to secure and provide services to those persons and juveniles. LSC fiscal staff has not collected any evidence suggesting a significant number of additional adults and juveniles might be sentenced to a period of incarceration or confinement in a state correctional facility. Assuming this was true, then the additional costs that the state might incur annually seem unlikely to exceed minimal. Minimal for the state means an estimated cost of less than \$100,000 per year.

State Indigent Defense Support Fund

As a result of the bill's prohibitions and related penalty enhancements, additional persons may be charged, arrested, and convicted of a felony offense as opposed to a misdemeanor offense under current law. In such a case, the court is generally required to impose state court costs to be deposited in the Indigent Defense Support Fund (Fund 5DY0). The state court cost is \$20 for a misdemeanor offense and \$30 for a felony offense. Although the number of such additional convictions is difficult to estimate, it seems unlikely that the amount of additional court cost revenue generated for deposit in Fund 5DY0 annually would be likely to exceed negligible. Negligible means a revenue gain estimated at less than \$1,000 per year.

State Victims of Crime/Reparations Fund (Fund 4020)

The bill may generate additional revenues for deposit in the state's Victims of Crime/Reparations Fund (Fund 4020) from two sources: (1) locally collected state court costs and (2) proceeds from the sale of criminally forfeited vehicles.

Court costs

As a result of the bill, additional persons who might have been convicted of committing a misdemeanor street racing offense under current law will, subsequent to enactment, be convicted of committing a felony offense. In the matter of a person convicted of a misdemeanor or felony offense, the court is generally required to impose state court costs of \$9 and \$30, respectively, to be deposited in Fund 4020. Although the number of persons that might be convicted of violating one of the bill's prohibitions is difficult to estimate, it seems unlikely that the additional revenues generated for deposit in the fund annually would be likely to exceed negligible. Negligible means a revenue gain estimated at less than \$1,000 per year.

Criminal forfeiture

As a result of the bill's penalty enhancements, vehicles used in street racing may be ordered forfeited and subsequently sold. Under certain circumstances, a portion of the proceeds may be deposited in Fund 4020, however, the amount that might be so deposited annually is uncertain.

Impoundment and Immobilization

The bill requires the impoundment and immobilization of all vehicles involved in street racing offenses. Under current law, when a vehicle is immobilized the owner is charged a \$100 fee collected by the state and credited to the Law Enforcement Reimbursement Fund (Fund 83R0). These funds are used to reimburse law enforcement for costs associated with the immobilization of a vehicle. In addition to this fee, local law enforcement may assess a fee for the towing and storage of the vehicle. These fees are assessed and collected locally. The annual increase in the collection of revenue for the immobilization, towing, and storage of vehicles in any local jurisdiction will vary widely, but for some jurisdictions may exceed \$5,000 annually.

The impoundment of license plates will require the owner of the vehicle to apply for reinstatement at the end of the impoundment period. The fees associated with reinstating the license plates are split between the State Highway Safety Fund (Fund 7036) and the State Bureau of Motor Vehicles Fund (Fund 4W40). Although the number of persons that might have their vehicle immobilized and impounded is difficult to estimate, it seems unlikely that the additional revenues generated for deposit in these state funds annually would be likely to exceed minimal. This means a potential revenue gain estimated at less than \$100,000 per year for any affected state fund.

Criminal forfeiture of a vehicle

The bill specifies when the court shall order the criminal forfeiture of a vehicle involved in street racing. According to current criminal forfeiture law, after establishing whether or not a lien holder exists, and/or has any right to the vehicle, the law enforcement agency that employs the law enforcement officer who seized the vehicle is offered the vehicle. If that agency does not desire the vehicle, it must be sold. The proceeds from the sale must be distributed as follows:

- Payment of the costs incurred in connection with the seizure, storage, and maintenance of, and provision of security for, the vehicle, any proceeding arising out of the forfeiture, and if any, the sale;
- Payment of the value of any lien or ownership interest;
- Remaining proceeds not to exceed a total amount of \$1,000 is deposited in the appropriate local law enforcement trust funds and/or state forfeiture funds; and
- Remaining proceeds are applied so that 50% is deposited in the Victims of Crime/Reparations Fund (Fund 4020), 25% is deposited in the Drug Abuse Resistance Education Fund (Fund 4L60), and 25% is deposited in the appropriate local law enforcement trust funds and/or state forfeiture funds.

Thus, as a result of the bill's criminal forfeiture provisions, additional vehicles may be subject to a court-ordered criminal forfeiture and subsequently sold, with some portion of the proceeds being paid in certain state and local law enforcement and forfeiture funds. The magnitude of the proceeds that could be paid in any given state or local fund annually is uncertain.

Nitrous oxide

The bill requires a retailer who sells at retail nitrous oxide to post a sign containing information regarding street racing in Ohio. The bill also requires the sign to be made available to retail sellers at no charge by the Department of Public Safety. The sign is required to include language to the effect that street racing is illegal in Ohio and punishable by fine, a jail term or prison term, suspension of a person's license, and criminal forfeiture. For the purposes of this fiscal analysis, LSC fiscal staff assumes that the annual cost for the Department to produce and distribute the sign will be minimal.