Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 22 of the 128th G.A.

Date: June 25, 2009

Status: As Reported by Senate Judiciary Criminal Justice

Sponsor: Sen. Seitz

Local Impact Statement Procedure Required: Yes

Contents: Sentencing and correctional reform initiatives

State Fiscal Highlights

STATE FUND	FY 2010 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Up $13.7 million potential annual incarceration cost savings, likely offset to some degree by need to increase funding for parole and community services operations
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	- 0 -
Expenditures	Potential increase up to around $1.4 million annually for GPS monitoring payments, subject to available cash balance

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

- **General Revenue Fund (GRF).** The Department of Rehabilitation and Correction (DRC) estimates that the net effect of the bill's provisions will be to reduce the need for approximately 3,528 inmate beds and result in a total savings of about $13.7 million in annual incarceration costs. The magnitude of this annual savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions.
- **Victims of Crime/Reparations Fund (Fund 4020)**. The bill requires that an inmate, serving a sentence for a first or second degree felony, who is released pursuant to a DRC petition be placed under parole supervision and requires global positioning system (GPS) monitoring in specified cases, to be paid for by the offender or, if the offender is indigent, from the state's Fund 4020, which is used by the Office of the Attorney General. The analysis provided by DRC calculates the annual cost for the mandatory GPS supervision placed on first and second degree felony offenders to be $1,443,600. If Fund 4020 ceases to be a viable financing option, the Department could find itself responsible for covering those monitoring cost payments.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties and Municipalities	
Revenues	Potential gain in state community corrections funding, annual magnitude uncertain
Expenditures	Potential criminal justice system increase to sanction offenders, annual magnitude uncertain

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

- **Threshold amount determining increased penalties.** There will be a shifting of some cases from the felony jurisdiction of the courts of common pleas to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings, of uncertain magnitude, for an affected county, and, in theory, a corresponding cost increase in criminal case processing cases for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around $65 per day, it would take just 77 additional jail days to exceed the minimum local impact threshold of $5,000 per year for any affected county or municipality.
- **Felony "nonsupport" of dependents.** The bill provides, in certain cases of felony "nonsupport of dependants," a preference for one or more community control sanctions. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding, which means that, to some degree, the annual savings in state incarceration costs will be offset by the need to enhance funding for its parole and community services operations.
- **Intervention in lieu of conviction.** The bill provides that intervention in lieu of conviction (ILC) is available to persons charged with specified theft or nonsupport offenses, and authorizes ILC for an offender whose mental illness or retardation contributed to the criminal behavior. There would likely be an increase in local expenditures related to the assessment and treatment of certain additional offenders. The annual magnitude of these potential additional local assessment and treatment costs is uncertain.
- **Community alternative sentencing centers.** The cost that a county might incur to establish and operate a community alternative sentencing center is uncertain. That said, to the extent that these misdemeanant beds replace more expensive full-service jail beds, then a county may realize some long-term savings in correctional expenditures.

Detailed Fiscal Analysis

Overview

The bill contains numerous sentencing and correctional reform provisions that are generally designed to reduce the size of the state's prison population and related institutional operating expenses by: (1) diverting otherwise prison-bound nonviolent offenders into less expensive community-based alternative punishments, or (2) reducing the lengths of stay for certain offenders that are sentenced to a prison term from what those lengths of stay might otherwise have been under current law and practice.

For the purposes of this analysis, we have identified what appear to be the ten (10) most fiscally salient provisions of the bill and discussed each in more detail below. The Department of Rehabilitation and Correction (DRC) estimates that the net effect of these provisions will be to reduce the need for approximately 3,528 inmate beds and result in a total savings of about $13.7 million in annual incarceration costs. With regard to this estimated annual incarceration cost savings, the following caveats should be noted.

- The magnitude of this annual savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions. In that regard, the As Passed by the Senate version of H.B. 1 of 128th General Assembly, contains a temporary law provision requiring, for the purposes of implementing criminal sentencing reforms, the Director of Budget and Management, at the request of the Director of Rehabilitation and Correction, to transfer up to $14,000,000 in appropriations, in each of FYs 2010 and 2011, from GRF appropriation item 501321, Institutional Operations, to certain GRF appropriation items that fund community-based corrections programs.
- Not all of the bill's provisions will have an immediate effect in terms of reducing DRC's institutional operating expenses. Some provisions, such as the earned credit reform, for example, may not begin to reduce inmate population and produce a savings effect until a year or two after the bill becomes effective.

(1) Release of inmates who have served at least 85% of their sentences

The bill authorizes the Director of Rehabilitation and Correction to petition the court for the judicial release of an inmate with a stated prison term of one year or more who has served at least 85% of the term. This provision does not apply to any inmate serving a life term or a term for any of a list of specified felonies of violence. The bill further requires that an inmate, serving a sentence for a first or second degree felony, who is released pursuant to a DRC petition be placed under parole supervision and requires global positioning system (GPS) monitoring in specified cases, to be paid for by the offender or, if the offender is indigent, from the state's Victims of Crime/Reparations Fund (Fund 4020), which is used by the Office of the Attorney General.

State fiscal effects

DRC estimates that this provision will eliminate the need for approximately 500 inmate beds, thus creating, in theory, an annual incarceration cost savings of $2,157,150 (500 beds x $4,314.30, the annual marginal cost per inmate). The analysis provided by DRC calculates the annual cost for the mandatory GPS supervision placed on first and second degree felony offenders to be $1,443,600.

Even though the bill requires either the offender or Fund 4020 to pay the cost of monitoring, the Department may face the possibility of having to cover these expenses. It would not be surprising if many of these offenders are deemed indigent, and in recent years, Fund 4020's expenditures have exceeded its revenues, a reality that has generated concerns about its near-term solvency. If Fund 4020 ceases to be a viable financing option, the Department could find itself responsible for covering those monitoring cost payments. Should this occur, based on DRC's estimates, the annual net savings resulting from this provision of the bill will be reduced to $713,550 ($2,157,150 inmate bed savings minus $1,443,600 GPS monitoring costs).

(2) Establishment of community alternative sentencing centers

The bill provides for the establishment and operation, by counties or affiliated groups of counties, of community alternative sentencing centers, the purpose of which would be to confine misdemeanants sentenced directly by the court under a community residential sanction not exceeding 30 days.

State fiscal effects

There is no expectation at this time that the state will provide financial assistance to defray any of the related capital improvements or operating expense costs that a county might incur.

Local fiscal effects

The cost that a county might incur to establish and operate a community alternative sentencing center is uncertain. For example, the requirements that such a center would have to comply with, and any attendant costs, are unclear. Also unclear is whether a county would need to utilize debt financing to undertake the necessary capital improvements. That said, to the extent that these misdemeanant beds replace more expensive full-service jail beds, then a county may realize some long-term savings in correctional expenditures.

(3) Threshold amount determining increased penalties

The bill increases the initial threshold amount that is used in determining increased penalties, generally from a misdemeanor to a felony, for theft-related offenses and certain elements of the offenses of "vandalism" and "engaging in a pattern of corrupt activity." This set of provisions will reduce the number of offenders sentenced to a prison term, and increase the number of offenders charged and sanctioned locally.

State fiscal effects

DRC estimates that this set of provisions will result in the elimination of 440 inmate beds, thus creating, in theory, an annual incarceration cost savings of $1,898,292 (440 beds x $4,314.30, the annual marginal cost per inmate).

Local fiscal effects

There will also be a shifting of some cases from the felony jurisdiction of the courts of common pleas to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings, of uncertain magnitude, for an affected county, and, in theory, a corresponding cost increase in criminal case processing cases for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around $65 per day, it would take just 77 additional inmate jail days to exceed the minimum local impact threshold of $5,000 per year for any affected county or municipality.

(4) Penalties for felony "nonsupport of dependents"

The bill provides, in certain cases of felony "nonsupport of dependants," a preference for one or more community control sanctions, the presumable effect of which would be to reduce the likelihood that certain offenders will be sentenced to a prison term.

State and local fiscal effects

DRC has estimated that this provision will likely eliminate the need for 263 inmate beds, thus creating, in theory, an annual incarceration cost savings of $1,134,661 (263 beds x $4,314.30, the annual marginal cost per inmate). This provision of the bill will not reduce the number of convictions for "nonsupport of dependents," but will change the range of sanctions that are available to the court in certain cases. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding, which means that, to some degree, the annual savings in state incarceration costs will be offset by the need to enhance funding for its parole and community services operations.

(5) Offense of "escape"

Under current law, offenders on parole or post-release-control (PRC) who abscond supervision can be charged with the offense of escape, the penalty for which ranges from a felony of the fifth degree to a felony of the first degree depending on the severity of the offense for which the offender was under supervision. The bill creates a new prohibition within the offense of "escape" that parallels the current prohibition but applies only to a person under "supervised release detention" and only if the person's purposeful breaking, attempting to break, or failure to return is for a period in excess of nine consecutive months.

State fiscal effects

The new prohibition against absconding would allow the Adult Parole Authority (APA) to utilize various sanctions at their disposal, thus avoiding new felony charges. DRC estimates that this provision would eliminate the need for 480 beds, thus creating, in theory, an annual incarceration cost savings of $2,070,864 (480 beds x $4,314.30, the annual marginal cost per inmate).

(6) Elimination of penalty distinction between cocaine and crack cocaine

The bill eliminates the distinction between the criminal penalties provided for drug offenses involving crack cocaine and those offenses involving powder cocaine, and provides a penalty for all such drug offenses involving any type of cocaine that generally has a severity that is between the two current penalties or that is similar to the current penalty provided for cocaine that is not crack cocaine.

State fiscal effects

The impact of eliminating certain distinctions will be to generally reduce the total number of years served by inmates in the state's prison system for cocaine-based offenses. DRC estimates this provision would likely eliminate the need for 345 beds thus creating, in theory, an annual incarceration cost savings of $1,488,434 (345 beds x $4,314.30, the annual marginal cost per inmate).

(7) Penalties for certain trafficking offenses

For the offenses of "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish," the bill creates a new category of the amount of the drug involved and provides for a potentially shorter mandatory prison term if the new category applies to the offender. The bill also provides that, in specified circumstances regarding an offender who is guilty of "trafficking in marihuana," "trafficking in hashish," or "possession of cocaine," the current felony sentencing guidelines apply in determining whether to impose a prison term on the offender. Existing guidelines, which are not changed by the bill, in effect, state a presumption against a prison term. Currently, for the two trafficking offenses in the specified circumstances, there is neither a presumption for nor a presumption against a prison term, and for the possession offense in the specified circumstances, there is a presumption for a prison term.

State fiscal effects

This provision will generally reduce the total number of years served by inmates for the above referenced drug offenses. DRC estimates this provision will likely eliminate the need for 190 beds, thus creating, in theory, an annual incarceration cost savings of $819,717 (190 beds x $4,314.30, the annual marginal cost per inmate).

(8) Intervention in lieu of conviction eligibility and procedures

The bill provides that intervention in lieu of conviction (ILC) is available to persons charged with specified theft or nonsupport offenses, and authorizes ILC for an offender whose mental illness or retardation contributed to the criminal behavior. The bill also requires that a request for ILC include a statement as to whether the offender alleges that drug or alcohol use or mental illness or retardation contributed to the offense. Offenders alleging that drug or alcohol use contributed to the offense must be assessed by a certified program or credentialed professional for ILC eligibility, a plan of intervention recommended, and the assessment be given to the court.

State and local fiscal effects

This provision will likely divert certain offenders away from the prison system and into local treatment programs. DRC estimates this provision of the bill will eliminate the need for 40 beds, thus creating, in theory, an annual incarceration cost savings of $172,572 (40 beds x $4,314.30, the annual marginal cost per inmate). While the diversion of these offenders from prison may reduce DRC's annual incarceration costs, there would likely be a corresponding increase in local expenditures for the assessment and treatment of certain additional offenders. The annual magnitude of these potential additional local assessment and treatment costs is uncertain.

(9) Earned credit for DRC inmates

The bill revises the mechanism pursuant to which an eligible prisoner in a state correctional institution currently may earn one day of credit as a monthly deduction from the prisoner's prison term for productive participation in specified prison programs so that: (1) certain prisoners, if eligible for the mechanism under the current criteria as expanded, may earn five days of credit for completion of a specified program, (2) other prisoners, if eligible for the mechanism under the current criteria as expanded, who are imprisoned for any of a list of specified, serious offenses, may earn one day of credit for completion of a specified program, (3) the types of programs that may be available for earning days of credit under the mechanism will be limited to those involving education, vocational training, prison industry employment, and substance abuse treatment (sex offender treatment programs and other "constructive programs" developed by DRC are removed), and (4) prisoners serving a sentence for a sexually oriented offense, as defined in the SORN Law, are not eligible for the mechanism.

State fiscal effects

DRC estimates that this provision will eliminate the need for 1,270 beds, thus creating, in theory, an annual incarceration cost savings of $5,479,161 (1,270 beds x $4,314.30, the annual marginal cost per inmate).

(10) GPS monitoring of certain prisoners after release

The bill requires that a prisoner who is placed on post-release control from the prisoner's stated prison term by reason of earning 60 or more days of credit for participation in certain programs be subject to GPS supervision by the APA for the first 14 days after release from imprisonment.

State fiscal effects

DRC estimates that this provision will apply to 661 offenders annually with third, fourth, or fifth degree felony convictions. The first and second degree felony offenders face GPS requirements through the other earned credit provision of this bill. If these 661 offenders wear GPS monitors for 14 days after release, at $11 per day, the annual cost to the Department would be $101,794.

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