



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 118 of the 129th G.A. **Date:** January 31, 2012
Status: As Reported by House Criminal Justice **Sponsor:** Rep. Fende

Local Impact Statement Procedure Required: No

Contents: Penalties for certain offenses where the victim is a judge, magistrate, or prosecutor

State Fiscal Highlights

STATE FUND	FY 2012 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential minimal annual incarceration cost 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 negligible annual gain in locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2012 is July 1, 2011 – June 30, 2012.

- **Incarceration expenditures.** As a result of a few additional adult and/or juvenile offenders being sentenced to a state correctional facility or sentenced to a longer term of incarceration than might have been the case under current law and sentencing practices, there may be a minimal annual increase in the costs incurred by the departments of Rehabilitation and Correction and Youth Services to incarcerate adults and juveniles, respectively.
- **Court cost revenues.** A few additional adult and/or juvenile offenders may be found to have committed a felony rather than misdemeanor offense, which would result in a negligible annual gain in the amount of locally collected state court costs that are credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2012 – FUTURE YEARS

Counties

Revenues	Potential minimal annual gain in court costs and fines
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Expenditures	Potential minimal annual increase in criminal and/or juvenile justice system operating costs
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Municipalities

Revenues	Potential minimal annual loss in court costs and fines
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Expenditures	Potential minimal annual decrease in criminal justice system operating costs
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Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- As a result of the bill's penalty effects on a relatively small number of criminal and juvenile cases, there may be a minimal annual decrease in municipal criminal justice system revenues and expenditures and a minimal annual increase in county criminal and juvenile justice system revenues and expenditures.

Detailed Fiscal Analysis

Offenses against a judge, magistrate, or prosecutor

With regard to the bill's penalty provisions, this fiscal analysis makes the following assumptions:

- Existing prohibitions are already applicable to the conduct addressed by the bill, which means the likely effect may be to increase the seriousness of the penalty.
- The number of cases that might be affected in any given local criminal or juvenile justice system is likely to be relatively small, especially in the context of the court's overall caseload.
- Certain criminal cases will shift from the misdemeanor jurisdiction of a municipal or county court to the felony jurisdiction of a court of common pleas.
- Certain adults and juveniles will receive a more serious sanction, including a possible term in a state prison or juvenile correctional facility or a longer term than might otherwise have been imposed.

Penalty changes

Table 1 below compares the bill's penalty provisions to current law, including a new prohibition against threatening a judge, magistrate, or prosecutor. With regard to the offense of threatening, LSC fiscal staff's research suggests that the existing prohibitions potentially applicable to "threatening" include menacing by stalking, retaliation, and intimidation. Therefore, though not currently codified, this new prohibition is not likely to create any additional criminal or juvenile cases, so much as possibly shift certain criminal cases from the misdemeanor subject matter jurisdiction of a municipal court or county court to the felony subject matter jurisdiction of a court of common pleas.

Table 1. Penalties When Victim is a Judge, Magistrate, or Prosecutor		
Offense	Degree of Offense	
	Current Law	The Bill
Felonious assault	Felony 2nd degree	Felony 1st degree; mandatory prison term if serious physical harm
Aggravated assault	Felony 4th degree	Felony 3rd degree; mandatory prison term if serious physical harm
Assault	Misdemeanor 1st degree	Felony 4th degree; mandatory prison term if serious physical harm
Aggravated menacing	Misdemeanor 1st degree	Felony of 5th or 4th degree depending upon circumstances present
Threatening	Not specifically defined*	Felony 5th degree
Aggravated murder	No aggravating circumstances; 15 years to life	Death sentence or life imprisonment

*Under current law, potentially analogous offenses appear to include menacing by stalking (misdemeanor 1st degree or felony 4th degree), intimidation (felony 3rd degree), and retaliation (felony 3rd degree).

State and local expenditures

Local expenditures

The bill's penalty provisions could affect local expenditures on certain criminal and juvenile cases in at least two ways.

First, certain criminal cases that would have been handled by a municipal court or a county court as misdemeanors under existing law will shift to a court of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may shed some of their criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders who commit an offense against a judge, magistrate, or prosecutor. Conversely, counties could experience an increase in their criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.

Second, offenders who are young enough to be processed through the juvenile courts would also face the possibility of more serious penalties and sentencing. As a result, the costs to county juvenile justice systems to resolve these cases and appropriately sanction the offending juvenile may rise.

Given the number of criminal and juvenile cases that will be affected by the bill's penalty provisions appear to be relatively small, any potential decrease in municipal criminal justice system expenditures and any potential increase in county criminal and juvenile justice system expenditures would likely be no more than minimal annually.

State expenditures

As a result of the bill's penalty provisions, a few additional adult and/or juvenile offenders could be sentenced to a term of incarceration in a state correctional facility or sentenced to a longer term of incarceration than might have been the case under current law and sentencing practices. In theory, either outcome increases the costs that the departments of Rehabilitation and Correction and Youth Services incur to incarcerate adults and juveniles, respectively. The annual magnitude of any such increase for either department is likely to be no more than minimal annually.

State and local revenues

As the penalty provisions could shift certain cases involving adult offenders out of a county court or a municipal court (which handle misdemeanors) and into a court of common pleas (which handle felonies), this creates a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that juvenile offenders may be fined higher amounts than would otherwise have been the case under current law and sentencing practices. As the number of affected criminal and juvenile cases appears likely to be relatively small, the amount of court cost and fine revenue that municipalities might lose and counties might gain would be no more than minimal annually.

The state may also gain some locally collected court cost revenue for the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). This is because the state court cost imposed on an adult or juvenile offender and deposited to the credit of Fund 5DY0 and Fund 4020 is slightly higher for a felony than it is for a misdemeanor. The amount of money that either state fund may gain annually, however, is likely to be negligible, as the number of affected criminal and juvenile cases appears to be relatively small.

Felony and misdemeanor sentences and fines generally

Table 2 below summarizes the existing sentences and fines, unchanged by the bill, for felony and misdemeanor offenses generally.

Table 2. Existing Sentences and Fines for Offenses Generally		
Offense Level	Fine	Maximum Term
Felony 1st degree	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10 years' definite prison term
Felony 2nd degree	Up to \$15,000	2, 3, 4, 5, 6, 7, 8 years' definite prison term
Felony 3rd degree	Up to \$10,000	1, 2, 3, 4, 5 years' definite prison term
Felony 4th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months' definite prison term
Felony 5th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, 12 months' definite prison term
Misdemeanor 1st degree	Up to \$1,000	6-month jail stay
Misdemeanor 2nd degree	Up to \$750	90-day jail stay
Misdemeanor 3rd degree	Up to \$500	60-day jail stay
Misdemeanor 4th degree	Up to \$250	30-day jail stay
Minor misdemeanor	Up to \$150	Citation issued; No arrest

Public Records Law

The bill also includes a provision excluding specified probation officer residential and familial information from the definition of "public record" and, as a result, from the application of the Public Records Law. There is likely to be no discernible ongoing cost for the state or any of its political subdivisions to comply with this exclusion.