Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 10 of the 129th G.A.

Date: February 22, 2011

Status: As Introduced

Sponsor: Sen. Seitz

Local Impact Statement Procedure Required: Yes

Contents: Sentencing and correctional reform initiatives

State Fiscal Highlights

STATE FUND	FY 2012 – FY 2015
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Up $24.9 million potential annual incarceration cost savings
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	- 0 -
Expenditures	Annual increase for GPS monitoring payments, subject to available cash balance

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

- **General Revenue Fund (GRF).** The net effect of the bill's provisions through FY 2015 will be to reduce the need for approximately 3,528 inmate beds and result in a total savings of about $24.9 million in annual incarceration costs.
- **Victims of Crime/Reparations Fund (Fund 4020)**. The bill requires that certain inmates released pursuant to a Department of Rehabilitation and Correction (DRC) petition be placed under parole supervision and requires global positioning system (GPS) monitoring in specified cases. Some of these costs will be paid from the state's Fund 4020, which is used by the Office of the Attorney General. If Fund 4020 ceases to be a viable financing option, DRC could find itself responsible for covering those monitoring cost payments.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2011 – FUTURE YEARS
Counties and Municipalities	
Revenues	- 0 -
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 in each county to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings for affected counties, and a corresponding cost increase in criminal case processing 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.
- **Increased diversion of offenders.** The bill provides for, in various specified felony level criminal cases, 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. As a result, the annual savings in state incarceration costs will be partially offset by the need to enhance funding for its parole and community services operations.

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 net effect of these provisions will be to reduce enough inmate beds to create a total savings of about $24.9 million in the Department of Rehabilitation and Corrections (DRC) annual GRF incarceration costs. With regard to this estimated annual incarceration cost savings, it should be noted that 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, 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

This provision will eliminate the need for several hundred or more inmate beds, thus creating annual incarceration cost savings. Any such cost reductions or savings would be offset by expenditures for the mandatory GPS supervision placed on first and second degree felony offenders.

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.

2. Establishment of community alternative sentencing centers

The bill provides for the establishment and operation of community alternative sentencing centers by counties or affiliated groups of counties, 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

This set of provisions will result in the elimination of another several hundred or more inmate beds, thus contributing to the total annual incarceration cost savings created by the bill.

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 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. This provision of the bill would reduce the likelihood that certain offenders will be sentenced to a prison term.

State and local fiscal effects

This provision will also eliminate the need for additional inmate beds, thus creating more annual incarceration costs. 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 the annual savings in state incarceration costs will be partially 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. This provision would eliminate the need for more beds, thus creating additional incarceration cost savings.

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.

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. This provision would potentially eliminate the need for several hundred more beds thus creating additional reductions in GRF incarceration expenditures.

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, 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. This provision will likely eliminate the need for more beds, thus creating additional annual incarceration cost savings.

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. This provision of the bill will further eliminate the need for some inmate beds, thus contributing to the total reduction in annual GRF incarceration costs. 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

This provision will eliminate the need for another several hundred or more beds, thus creating additional annual incarceration cost savings.

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 at least several hundred 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 offenders wear GPS monitors for 14 days after release, at $11 per day, the annual cost to the Department could exceed $100,000.

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