



Ohio Legislative Service Commission

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: [S.B. 121 of the 130th G.A.](#)

Date: October 21, 2013

Status: As Introduced

Sponsor: Sens. Hughes and LaRose

Local Impact Statement Procedure Required: No

Contents: Firearms specifications and terms of incarceration

State Fiscal Highlights

- The Department of Rehabilitation and Correction's incarceration costs will increase before peaking at upwards of \$55.9 million annually roughly ten or more years after the effective date of the bill's penalty provisions. The magnitude of any necessary capital improvements costs, which would likely include debt service financing, are uncertain.
- The Department of Youth Services's costs for the care and custody of incarcerated juveniles may increase, but the annual magnitude of that increase is not likely to exceed minimal.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

Overview of the bill

The bill increases the penalties for certain conduct as follows:

- Doubles the mandatory prison term required for a conviction of a firearm specification, if the offender has been previously convicted of a felony and a firearm specification.
- Doubles the period of authorized or mandatory commitment to the Department of Youth Services for a firearm specification when a child who has been adjudicated delinquent for a felony and the specification previously has been adjudicated a delinquent child for committing an act that would constitute a violation of a firearm specification if committed by an adult.
- Requires a mandatory 11-year prison term for a "violent career criminal" convicted of committing a violent felony offense while armed with a firearm.

Mandatory term of incarceration for a firearm specification

Department of Rehabilitation and Correction

Under current law, a firearm specification carries a mandatory 1, 3, 5, 6, or 7-year prison term that is in addition to an offender's prison term for the underlying offense(s) during the commission of which the offender possessed or discharged a firearm. Nearly all of the mandatory prison terms imposed by courts under current law are either one or three years.

The bill doubles this mandatory prison term for an offender convicted of a felony and a firearm specification if the offender has a previous conviction for any of the five firearm specifications in current law. The key factor in estimating the fiscal effect of this penalty increase on state incarceration costs is determining the number of offenders that are sentenced to prison each year with a firearm specification and have a previous conviction for a firearm specification.

Data on offenders sent to prison in 2010 indicates that about 1,400, or 6%, out of a total intake population of 23,191 had a firearm specification as a primary or secondary conviction offense. The data further shows that 112, or 8%, of these 1,400 also had a previous conviction for a firearm specification. This subset of 112 offenders represents an estimate of the annual number of new offenders entering prison that would be subject to the doubled mandatory prison term for a firearm specification as described in the bill.

The principal fiscal effect of doubling the mandatory prison term for a firearm specification will be a steady increase over a period of several years in the amount of GRF funding that DRC expends annually on institutional operations. In effect, by extending prison stays beyond what the amount of time served would otherwise have been under current law, the bill will trigger a "stacking effect," which refers to the increase in the prison population that occurs as certain offenders currently serving time stay in prison longer while the number of new offenders entering the prison system does not decrease. This "stacking" process will stabilize when the number of offenders who begin serving their additional time as part of the doubled firearm specification in the bill is about the same as the number leaving prison after serving their additional time. At this point in which the "stacking" process stabilizes, the annual population of 112 offenders subject to the provisions of the bill, and serving an additional one or three years, will require around 210 additional beds every year. At the current annual institutional operating cost of \$22,836 per bed, these additional beds will cost DRC around \$4.8 million (210 x \$22,836) per year.

Department of Youth Services

The bill similarly doubles, under certain circumstances involving a firearm specification, the amount of time that the court is authorized or required to commit a juvenile to the Department of Youth Services (DYS). The Department's annual incarceration costs may as a result increase, but the annual magnitude of that increase is not likely to exceed minimal. Two factors in particular have led us to this conclusion. First, in 2012 approximately 43.3% of the juveniles in the custody of DHS were committed with a firearm specification. Of those, however, only two had a prior firearm specification and would or could have been subject to the penalty doubling under the bill. Thus, the penalty doubling is likely to affect extremely few juveniles that are committed to DHS. Second, under certain circumstances, the bill permits rather than requires the court to commit a juvenile to DHS, thus giving the court discretion as to whether incarceration in a state juvenile correctional facility is an appropriate sanction for certain juveniles.

Mandatory term of incarceration for violent career criminals

The bill also contains a provision to increase the term of incarceration imposed for a firearm specification if the offender has a total of two or more previous convictions for certain specified violent felony offenses. This provision does not require that these previous convictions involve the use of a firearm. Two specific scenarios may occur in which this provision would apply, and each of these would result in the imposition of a mandatory 11-year prison term for the firearm specification in addition to the prison term imposed for the underlying criminal offense.

Scenario 1

The first scenario in which the violent career criminal firearm specification would apply involves offenders with two or more previous convictions for specified violent felonies that use a firearm during the commission of another violent felony. Intake data from DRC indicates that a population of approximately 2,250 offenders enters prison each year with two or more prior convictions for violent felonies. If we utilize the fact that around 6% of DRC's annual prison intake has a firearm specification as part of their current sentence, then we can estimate that somewhere around 135 ($2,250 \times .06$) offenders entering prison for a specified violent felony will qualify as a violent career criminal.

These 135 offenders entering prison each year will be subject to the 11-year firearm specification, and trigger what we previously noted as a "stacking effect." At the point in which this "stacking" process stabilizes, the annual population of 135 offenders subject to the provisions of the bill, and serving an additional 11 years, will require around 1,485 additional beds every year. At the current annual institutional operating cost of \$22,836 per bed, these additional beds will cost DRC up to \$33.9 million ($1,485 \times \$22,836$) per year.

Scenario 2

The second scenario in which the violent career criminal firearm specification may apply involves a subset of offenders with two or more previous convictions for specified violent felonies, who are subsequently arrested and convicted of possessing a firearm, which is illegal under current law. These offenders would be guilty of possessing a weapon under disability, and subject to the same additional mandatory 11-year prison term under the violent career criminal provision of the bill.

DRC's intake data shows that about 9.8% of all the offenders entering prison each year have two or more prior convictions for violent felonies. There are also approximately 700 offenders entering prison annually for whom weapons under disability is their most serious offense. If we assume that 9.8% of these weapons under disability offenders also have two or more prior convictions for violent offenses, then we can estimate that a population of around 69 offenders each year would qualify for the additional mandatory prison term.

As these offenders stack over the period of the 11 year term, when the population increase stabilizes, or when the number of offenders beginning to serve the 11-year term equals the number completing the term, DRC would have to pay for an additional 759 beds ($69 \text{ offenders} \times 11 \text{ years}$). At the current annual institutional operating cost of \$22,836 per bed, the estimated cost for all 759 beds at that future point when the stacking effect stabilizes would be around \$17.3 million ($759 \times \$22,836$) per year.

Combined fiscal effect on DRC's annual incarceration costs

The combination of the bill's penalty increases will result in an increase in DRC's annual prison population totaling around 2,450 offenders after the respective stacking effects have stabilized. For the purposes of estimating the additional incarceration costs,

it is more appropriate to use the current annual institutional operating cost (fixed plus marginal) of \$22,836 per bed than the lower marginal cost typically associated with a relatively small increase to a prison population of 50,350. That fixed plus marginal cost of \$22,836 indicates that, all other conditions remaining the same, DRC's cost for these additional 2,450 beds will likely reach up to \$55.9 million per year in future years. This of course is based on DRC's current cost of doing business and not what its cost of doing business might be 5, 10, or 15 or more years from now when these varying stacking effects all stabilize.

It is important to reiterate that the fiscal effects described herein would not be realized immediately upon the bill's effective date. The actual additional incarceration costs would begin to accrue when offenders subject to the proposed firearm specification increases have served their underlying sentences and have reached the point at which, under current law, they would be released, but under the provisions of the bill would remain in prison. Since most of these offenders are in prison for violent felonies to begin with, the fiscal effect created by the bill would not begin to occur for a number of years following its effective date.

Additionally, there is also a possibility that the presence of the longer firearm specifications created in the bill would be used in the bargaining process to induce the accused to accept plea agreements that would reduce potential years served in exchange for a guilty plea. To the extent this occurs, the total number of additional beds stemming from the bill would be reduced.

Capital improvements

DRC may not have adequate and appropriate space in which to house this likely increase in its prison population. It is also uncertain as to whether, when, or at what cost DRC might need to purchase, lease, build, or renovate a facility or facilities to house these additional offenders. Typically, DRC's facility improvements are financed through proceeds from special obligation debt issuances; the obligations incurred as a result of issuing bonds are then covered by DRC's GRF line item 501406, Lease Rental Payments. The potential cost of the required capital improvements is uncertain.