OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

S.B. 28
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 28's Bill Analysis

Version: As Passed by the Senate

Primary Sponsor: Sen. Hottinger

Local Impact Statement Procedure Required: No

Robert Meeker, Budget Analyst

Highlights

- The Department of Rehabilitation and Correction will likely incur additional GRF incarceration-related expenditures of up to an estimated $2.2 million or more each year for offenders sentenced to prison for menacing or aggravated menacing where the offender knew the victim was a "protected person."
- The bill will likely elevate certain misdemeanors to felonies, which could generate a minimal at most amount of additional annual state court cost revenue that is apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- The bill will trigger a potential annual savings effect on municipal criminal justice system operating costs and a potential annual expenditure increase in county criminal justice system operating costs. In such circumstances, revenues in the form of court costs, fees, and fines will also shift from the former to the latter.

Detailed Analysis

The bill increases the penalty for the offenses of menacing and aggravated menacing when the victim is a person that the offender knows is protected by a protection order (a "protected person"). In the absence of the bill, such an offender would likely be charged with the offense of violation of a protection order: a first degree misdemeanor which elevates to a fifth or third degree felony in specified circumstances.

Under current law, menacing is generally a fourth degree misdemeanor and in specified circumstances elevates to a first degree misdemeanor or a fourth degree felony, and aggravated menacing is a first degree misdemeanor generally and elevates to a fourth or fifth degree felony in specified circumstances. The bill amends the penalties such that, when the offender knows the victim is a "protected person," a violation of menacing is either a fifth or

fourth degree felony and a violation of aggravated menacing is either a third or fourth degree felony.

Department of Rehabilitation and Correction

As certain cases which would have otherwise been misdemeanors under current law are adjudicated as felonies under the bill, or cases which would have been lower level felonies are adjudicated as higher level felonies, the number of persons committed to the Department of Rehabilitation and Correction (DRC) and the length of stay for those committed both increase. The number of misdemeanor cases under current law that could be elevated to a felony under the bill and potentially result in commitment to DRC is uncertain.

According to the most recently available data from DRC, between calendar years (CYs) 2014 and 2018, there were, on average, about 80 offenders sent to state prison each year for the offense of violating a protection order. The table below shows the most recent calendar year data on the average time served for the offense of violating a protection order.

CY 2016 Prison Time Served for Protection Order Violations		
Felony Level	**Offenders Released**	**Average Time Served**
F3	27	2.41 years
F5	60	0.70 years

Under the bill, certain violations charged as a fifth degree felony under current law will be charged as either a fourth or third degree felony depending on the circumstances present. DRC commitment data would suggest that a potential maximum of 80 or so offenders committed to prison each year for violating a protection order might face an additional year or so of prison time under the enhanced penalty structure in the bill. At an annual cost of $27,835 per inmate, a maximum of 80 or so additional beds would cost DRC up to $2.2 million each year in institution-related GRF expenditures beginning one to two years after the effective date of the bill.

The penalty enhancements in the bill would not necessarily apply to every offender sent to prison for violating a protection order, so the potential increase in cost to DRC would likely be somewhat smaller. For example, the time-served data suggest that around 60 or so of the 80 offenders incarcerated for violating a protection order were convicted of a fifth degree felony offense. If just these 60 or so were elevated to the higher felony range, then the additional annual GRF incarceration expenditures would be around $1.7 million.

Local criminal justice systems

The bill's penalty increases will affect local expenditures on certain criminal cases in two ways. First, it will shift certain criminal cases that would have been handled by municipal courts and county courts as misdemeanors under existing law to courts of common pleas where they will be handled as felonies and offenders could be subjected to sanctions that are more serious. As a result, municipalities may realize a savings effect on their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and

sanctioning offenders who commit these offenses. Second, counties could experience an increase in their annual 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.

The number of criminal cases in any given local jurisdiction that will be affected by the increased penalties is uncertain, therefore any potential decrease in annual municipal criminal justice system expenditures and any potential increase in annual county criminal justice system expenditures is indeterminate. Additionally, it is possible that counties may gain and municipalities may lose an indeterminate amount of court cost, fee, and fine revenue.

The increased penalties may also lead to a minimal at most annual gain for the state in the amount of locally collected court cost revenue apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). This is because the total amount of state court costs imposed on an offender and apportioned between Fund 5DY0 and Fund 4020 is higher for a felony ($60) than it is for a misdemeanor ($29).

SB0028SP/lb