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Office of Research and Drafting

Legislative Budget Office

H.B. 88
136th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 88's Bill Analysis

Version: As Reported by House Judiciary

Primary Sponsors: Reps. Abrams and Plummer

Local Impact Statement Procedure Required: No

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Highlights

- The bill will increase incarceration costs for the Ohio Department of Rehabilitation and Correction (DRC) as some offenders may be subjected to "mandatory" instead of "discretionary" prison terms and others may be sentenced to longer terms than otherwise under current law.
- For the penalty increases related to drug trafficking, DRC estimates that the bill will result in a bed count increase of at least 1,300 to 1,500, which would likely be observed beginning two years after the bill's effective date, with most of the impact occurring by the end of seven to eight years. Based on present day cost figures, such an increase could result in annual expenditure increases of varying magnitude that eventually reach a maximum ranging from several millions of dollars to tens of millions of dollars.[1] The bill's impact on individual local criminal justice systems related to prosecuting, defending (if indigent), adjudicating, and sanctioning of offenders is not expected to exceed minimal.
- School districts and other public schools may incur minimal costs to adapt or update existing curricula on substance abuse prevention to comply with the bill's required instruction on fentanyl awareness and abuse prevention. Similarly, state institutions of higher education may incur costs to develop and implement an education program to advise students regarding the dangers of fentanyl.

[1] These estimates are based on the As Introduced version of the bill. LBO has not yet had the opportunity to update those estimates to reflect the changes made to H.B. 88, As Reported by House Judiciary. A revised fiscal note will be released once updated bed count data is received from DRC.

Detailed Analysis

The bill makes numerous changes to certain drug laws generally pertaining to drug trafficking. In addition to these changes, the bill also modifies certain prohibitions related to fentanyl and death certificate information. Finally, the bill requires schools and institutions of higher education to incorporate instruction and policies on fentanyl awareness and abuse prevention and designates the month of August as "Fentanyl Poisoning Awareness Month."

Penalties for drug trafficking

The bill increases penalties and modifies the threshold required for certain trafficking offenses involving cocaine, fentanyl-related compounds, heroin, and methamphetamine, and removes the presumption against a prison term for all fourth and fifth degree felony drug trafficking offenses. While these changes are not expected to result in any new felony cases for local courts to adjudicate, as this drug trafficking conduct is already classified as a felony, the bill will likely increase the amount of time and effort that prosecutors, defense attorneys, and the court expend to adjudicate these types of drug trafficking cases. The bill is expected to increase the length of prison terms for some offenders and may result in the imposition of a prison term for certain fourth and fifth degree felony drug trafficking offenders that may otherwise have received a community control sentence under existing law. Additionally, some prison term sentences will convert to "mandatory" instead of "discretionary" under the bill, thus limiting early release mechanisms such as earned credit and judicial release.

This analysis primarily focuses on the adult inmate population. However, regarding the Ohio Department of Youth Services (DYS), in FY 2024, approximately 3% of the 381 admissions to DYS were for drug-related offenses. There is no breakdown specifically for drug trafficking. While DYS may be impacted by the bill's penalty enhancements, the overall fiscal impact would likely be negligible.

The table below provides some context regarding the current adult inmate population, based on Ohio Department of Rehabilitation and Correction (DRC) commitment data from CY 2019 through CY 2023. Drug trafficking offenses, tracked as the most serious committing offense, accounted for an average of 9.5% of total commitments over this time period. According to DRC, in CY 2024, the overall average length of stay for all trafficking commitments was approximately 2.8 years, while first degree felony traffickers served just over five years.

Table 1. Prison Commitments for Drug Trafficking Offenses, CY 2018-CY 2023[2]

Offense	2019	2020	2021	2022	2023
Trafficking in Drugs	1,736	1,076	1,275	1,269	1,319
Total Commitments	**16,856**	**11,174**	**13,677**	**14,090**	**14,774**

[2] See ODRC Commitment Reports for CY 2019 through CY 2022, which are available on ODRC's website: drc.ohio.gov. The CY 2023 Commitment Report data was not available online and came directly from DRC.

For context, the table below shows the range of sentences and fines for felony offenses. The bill's various penalty increases and threshold modifications for cocaine, fentanyl-related compounds, heroin, and methamphetamine are described in detail in the LSC bill analysis.

Table 2. Felony Sentences and Fines for Offenses Generally		
Offense Level	**Fine**	**Term of Incarceration**
Felony 1st degree*	Up to $20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years indefinite prison term
Felony 2nd degree*	Up to $15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term
Felony 3rd degree	Up to $10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Felony 4th degree	Up to $5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony 5th degree	Up to $2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term

*The sentencing court must impose a minimum sentence for first and second degree felony offenses and specify a maximum sentence that is 50% greater than the minimum sentence. The court, after a hearing, may reduce the minimum sentence by 5% to 15% upon recommendation of DRC.

To the extent that additional fine revenue is collected due to the elevation of certain felony convictions, it would be retained by the county in which the offense occurred for a violation of state law, the municipality in which the offense occurred for a violation of a local ordinance, or credited to the state Security, Investigations, and Policing Fund (Fund 8400) if the offender was cited by the Ohio State Highway Patrol. However, it should be noted that those convicted of felonies typically are unable or unwilling to pay these fines.

Fiscal impact to DRC

Increasing drug trafficking penalties and making certain prison terms mandatory, will lead to additional offenders being sentenced to prison and longer prison terms for others. As a result, DRC will likely experience an increase in related operating and incarceration costs. According to the DRC December 2024 Fact Sheet, DRC's inmate population totaled 45,490[3] and total institutional operating costs total approximately $1.3 billion.

Under the As Introduced version of the bill, DRC estimated that the bill would result in a bed count increase of at least 1,300 to 1,500, which, based on the December 2024 population and assuming all other factors remain the same, equates to a population increase of at least 2.9% to 3.3%. The stacking effect increase would begin to be seen approximately two years after the bill's effective date, and then with most of the impact occurring by the end of a seven to eight-year period. Based on the December 2024 cost figures, such an increase could result in annual expenditure increases of varying magnitude beginning approximately two years from the bill's effective date, eventually reaching a maximum ranging from several millions of dollars to tens of millions of dollars annually by year seven to eight (when the full increase of offenders sentenced

[3] See ODRC December 2024 Fact Sheet, which is available on DRC's website: drc.ohio.gov.

under the bill's new sentencing is reached). LBO has requested an updated bed count analysis from DRC.[4]

There are two cost scenarios that may be considered when determining the overall "bed count" cost to DRC: (1) marginal cost increases or (2) institutional cost increases. Either scenario seems equally likely at the time of this writing, but as shown the overall costs can fluctuate substantially based on the cost method considered. Both estimates are provided below. In addition to these bed count costs, there would also be increased expenditures in supervision and post release control (PRC) costs. These costs would begin to be realized after the first newly sentenced offenders have served their terms.

Both estimates are dependent on a variety of assumptions, least of which is the assumption that no other sentencing factors will be altered between the time the bill is enacted and when the first impacts to the bed counts begin to occur.

Marginal cost scenario

According to DRC , the FY 2024 average marginal cost to house an additional offender was $13.47 per day or $4,916.55 per year. Marginal costs, as defined by DRC, are those that increase or decrease directly on a per-person basis with changes in prison population. The major categories that comprise marginal costs, from largest to smallest, are:

- Medical (pharmaceuticals, medical supplies, hospitalization, and ambulance services);
- Food Service;
- Storeroom/Quartermaster (clothing, mattresses, and sheets and blankets); and
- Mental Health (pharmaceuticals and mental health supplies).

Using this cost basis scenario, once all 1,300 to 1,500 beds have been added, DRC would incur additional expenditures of between $6.4 million and $7.4 million annually. Again, these costs would not be immediate and would gradually occur beginning in year two and eventually peaking by year seven or eight.

Institutional cost scenario

According to the DRC December 2024 Fact Sheet, the average institutional cost to house an offender was $105.75 per day or $38,598.75 per year. Institutional costs are calculated by dividing all DRC operating costs by the number of housed offenders, for a certain time period. Included in this cost are items such as employee salaries, building costs and maintenance, and other items of expense that are incurred regardless of inmate population. Traditionally, DRC relies on "marginal cost" for forecasting future expenditure estimates. However, given that the anticipated population increase and length of time (seven to eight years) that all future impacts would be realized, it is possible that the "institutional cost" scenario may be equally possible, especially in terms of potential staffing needs. Under this scenario, once all 1,300 to 1,500 beds have been added, DRC would incur additional expenditures of between $50.2 million and $57.9 million annually for each year thereafter under this scenario.

[4] A revised fiscal note will be released once updated bed count data is received from DRC.

Involuntary manslaughter

The bill creates a specification for involuntary manslaughter when a lethal amount of fentanyl or a fentanyl-related compound was present in the decedent victim and the results of an autopsy are consistent with an opioid overdose as the cause of death. If both of those conditions are present for an offender who is convicted of, or pleads guilty to, involuntary manslaughter, the bill requires the court to impose a mandatory five-year prison term in addition to any other penalty imposed.

Prosecutors have been able to obtain convictions for involuntary manslaughter in some overdose deaths based on the sale of fentanyl however, those cases tend to be more difficult to prove as decedent victims often have multiple drugs in their system that may have been purchased from multiple dealers or which drug precipitated the death. That said, the bill's specification is not likely to impact a significant number of involuntary manslaughter cases but it will increase the likelihood of a longer prison term for certain offenders.

Possessing a fentanyl-related compound

The bill eliminates existing law provisions that provide exceptions for unknowingly possessing a compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and marijuana, or a combination of a fentanyl-related compound and any Schedule III, IV, or V controlled substance that is not a fentanyl-related compound. Under continuing law, possession of a fentanyl-related compound is generally a fifth degree felony, but may elevate to a fourth, third, second, or first degree felony, based on the amount of the drug involved. A mandatory prison term may also apply in certain cases.

The number of individuals who are currently not charged with, or convicted of, drug possession due to unknowingly possessing a fentanyl-related compound is indeterminate. However, by eliminating the existing exceptions, it is possible that the bill could generate some number of additional drug possession cases for courts of common pleas to adjudicate. Any related sanctioning costs are likely to vary based on offense level and whether a state prison term is imposed. Table 2, as shown in "**Penalties for drug trafficking**" above, shows the penalties that generally apply for felony level offenses, including drug possession offenses.

Death certificates

Current law requires the Director of the Department of Health (DOH), by rule, to prescribe the form of vital statistics records and certificates. The bill requires all death certificates to include a space to indicate whether a person's cause of death was due to fentanyl poisoning based on the results of both a toxicology examination and an autopsy. DOH may experience a negligible cost increase to draft and amend rules in order to update their forms and to communicate these changes and requirements statewide. According to the Ohio State Coroner's Association, this provision should not impact county coroners, as it does not require a toxicology examination or an autopsy be conducted, but rather requires noting information that was already collected.

Corrupt activity

The bill modifies the definition of "enterprise" for the purposes of the Corrupt Activities Law by allowing an enterprise to consist of an individual acting alone, in addition to an individual acting in concert with others, at the time of the commission of the offense.

Under continuing law, if certain violations meet the criteria for "engaging in a pattern of corrupt activity" under R.C. 2923.32, the offender may also be subject to the penalties for a first degree felony under the state's Corrupt Activities Law. The sentencing court has the option to:

- Impose a fine in lieu of the general fine for a first degree felony, not exceeding the greater of three times the gross value gained or three times the gross loss caused payable to the state's existing Corrupt Activity Investigation and Prosecution Fund (Fund 6290);
- Assess court costs; and/or
- Assess investigative and prosecutorial costs.

It is unknown how often a sentencing court would impose these types of sanctions or how many cases would be impacted under the bill and subject to the Corrupt Activities Law. Existing data indicates that the option to impose a fine as described in the first bullet above is rarely used. From CY 2000 to date, no deposits have been made to Fund 6290.

Fentanyl education

Public schools

Beginning in the 2025-2026 school year (which has already begun), the bill requires traditional school districts, joint vocational school districts (JVSDs), community schools, and science, technology, engineering, and mathematics (STEM) schools to provide age-appropriate, research-based instruction regarding fentanyl abuse prevention and drug poisoning awareness to students in grades K-12. The bill requires the course material and instruction in the topic to include certain information such as the types and uses of fentanyl, side effects and risk factors of its use, detection of fentanyl and saving someone from an overdose, and awareness of how to access school and community resources. Under the bill, the instruction must be provided by a licensed educator, school nurse, school counselor, or public safety officer.

Districts and schools may already be providing some of this instruction under current law, and thus may incur minimal costs to adapt or update existing curricula on substance abuse prevention to comply with the bill's requirements. Current law requires districts and schools to include education on the harmful effects of using drugs of abuse and prescription opioid abuse prevention as part of the health curriculum. The Department of Education and Workforce (DEW) offers resources to this end, including the Health and Opioid Abuse Prevention Education (HOPE) Curriculum to provide age-appropriate instruction in substance abuse prevention to students in grades K-12.

State institutions of higher education

The bill also requires each state institution of higher education to develop and implement an age-appropriate and research-based education program to advise students regarding the dangers of fentanyl. Each program must include information on the same topics required of public school fentanyl course material and instruction as described above, including the types and uses of fentanyl, side effects and risk factors of its use, detection of fentanyl and saving someone from an overdose, and awareness of how to access university and community resources.

The bill may increase costs for state institutions to develop and implement these fentanyl education programs. The costs for each state institution will vary depending on the extent to which each already provides such a program to its students. It appears that at least several state

institutions already provide similar programs required by the bill to their students and staff through various means at their campuses. For example, the Ohio State University (OSU) offers Naloxone training to students, staff, and faculty which provides participants with information "on how to recognize the signs of an opioid overdose, administer Naloxone, and educate the importance of harm reduction and its concepts." OSU also offers several in-person and pre-recorded presentations to students on a number of wellness-focused topics including alcohol, tobacco, and other drugs. Cuyahoga Community College requires each of its students to receive a copy of its program "Choose Not to Abuse" each year, which includes information on the health risks associated with the use of illicit drugs. Additionally, current law requires all educator preparation programs to include instruction in opioid and other substance abuse prevention.

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