



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** S.B. 97 of the 131st G.A.

**Date:** May 23, 2016

**Status:** As Reported by House Judiciary

**Sponsor:** Sens. Hughes and LaRose

**Local Impact Statement Procedure Required:** No

**Contents:** Firearm specifications and terms of incarceration

### State Fiscal Highlights

- The Department of Rehabilitation and Correction's future GRF-funded incarceration expenditures will potentially increase by somewhere between \$11.5 million and \$54.4 million annually.
- The actual additional incarceration costs will begin to accrue when offenders subject to the bill's firearm specification and aggravated murder provisions have served their underlying sentences and have reached the point at which, under current law, they would be released, but under 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 will not begin to occur for a number of years following its effective date.
- The magnitude of any necessary capital improvements costs to the state prison system, which could include debt service financing, are uncertain.

### Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

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## Detailed Fiscal Analysis

### Overview of the bill

The bill:

- Increases by half the mandatory prison term for a conviction of a firearm specification, if the offender has been previously convicted of a felony and a firearm specification.
- Requires a mandatory prison term ranging between two and 11 years for a "violent career criminal" convicted of committing a violent felony offense while armed with a firearm.
- Provides that a person who purposely causes the death of another as part of a course of conduct involving the purposeful killing or attempt to kill two or more persons is guilty of aggravated murder.

### Mandatory term of incarceration for a firearm specification

#### Department of Rehabilitation and Correction (DRC)

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 increases by 50% 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.

DRC's data on offenders sent to prison in 2013 indicates that about 1,100, or 5.4%, out of a total intake population of 20,528 had a firearm specification as a primary or secondary conviction offense. That data further shows that 89, or 8%, of these 1,100 also had a previous conviction for a firearm specification. This subset of 89 offenders represents an estimate of the annual number of new offenders entering prison that would be subject to the increased mandatory prison term for a firearm specification as described in the bill.

The principal fiscal effect of increasing 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 otherwise would have been under current law, the bill will trigger a "stacking effect." This term 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 89 offenders subject to the provisions of the bill, and serving an additional six months or one and one-half years, will require around 80 additional beds every year. At the current annual institutional operating cost of \$24,715 per bed, these additional beds will potentially cost DRC approximately \$2 million (80 x \$24,715) per year.

### **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 will apply, and each of these would result in the imposition of a mandatory prison term of two to 11 years 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 will apply involves offenders with two or more previous convictions for specified violent felonies that use a firearm during the commission of another violent felony. DRC's 2013 intake data indicates that a population of approximately 2,050 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, we can estimate that somewhere around 123 offenders (2,050 x 6%) entering prison for a specified violent felony will likely qualify as a violent career criminal.

These 123 offenders entering prison each year will be subject to the additional two to 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 123 offenders subject to the provisions of the bill, if the court sentences them to the minimum of two additional years, will require around 246 additional beds every year. At the current annual institutional operating cost of \$24,715 per bed, these additional beds will cost DRC up to \$6.1 million (246 beds x \$24,715) per year. If we consider that each additional year served would add another 123 beds into the "stacking" effect calculation, then each additional year added to the sentence of a violent career criminal under the terms of the bill would, in theory, increase cost by around \$3 million (123 beds x \$24,715).

At the maximum point in which this "stacking" process stabilizes, the annual population of 123 offenders subject to the provisions of the bill, and serving the full additional 11 years, will potentially require around 1,353 additional beds every year. At the current annual institutional operating cost of \$24,715 per bed, these additional beds will cost DRC up to \$33.4 million (1,353 x \$24,715) per year. Please note that this is the logical high point of the cost estimate, and reflects no assumption that all judges will impose the maximum 11 additional years in all of these applicable cases.

## **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 two to 11 year prison term under the violent career criminal provision of the bill.

DRC's intake data shows that about 10% 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 10% 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 70 offenders each year would qualify for the additional mandatory prison term.

These 70 offenders entering prison each year will be subject to the additional two to 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 70 offenders subject to the provisions of the bill, if the court sentences them to the minimum of two additional years, will require around 140 additional beds every year. At the current annual institutional operating cost of \$24,715 per bed, these additional beds will cost DRC up to \$3.5 million (140 beds x \$24,715) per year. If we consider that each additional year served would add another 70 beds into the "stacking" effect calculation, then each additional year added to the sentence of a violent career criminal under the terms of the bill would, in theory, increase cost by around \$1.7 million (70 beds x \$24,715).

At the maximum point in which this "stacking" process stabilizes, the annual population of 70 offenders subject to the provisions of the bill, and serving the full additional 11 years, will potentially require around 770 additional beds every year. At the current annual institutional operating cost of \$24,715 per bed, these additional beds will cost DRC up to \$19 million (770 x \$24,715) per year. Please note that this is the logical high point of the cost estimate, and reflects no assumption that all judges will impose the maximum 11 additional years in all of these applicable cases.

## **Aggravated murder**

The bill amends the existing aggravated murder offense to include a person who purposely causes the death of another as part of a course of conduct involving the purposeful killing or attempt to kill two or more persons. This change will result in some offenders who, under current law, would be charged with murder being instead charged with the more serious offense of aggravated murder. In general, the penalty for murder is 15 years to life. The penalty for aggravated murder is either life imprisonment with the possibility of parole after 20, 25, or 30 years, or the possibility of the death penalty.

The number of homicide offenders likely to be affected by this provision is uncertain, but probably fairly small. The state will incur additional GRF incarceration related expenditures at least 15 years into the future when offenders who will be eligible for release under the current murder statute would remain in prison to serve the longer sentence for aggravated murder.

## **Combined fiscal effect on DRC's annual incarceration costs**

The combination of the penalty increases from all the provisions of the bill will result in an increase in DRC's annual prison population ranging somewhere between the minimum of approximately 466 offenders to a potential maximum of 2,200 offenders after the respective stacking effects have stabilized. At an annual cost of \$24,715 per bed, the potential minimum cost for the additional 466 beds will likely reach up to \$11.5 million per year in future years. The potential maximum future cost, if the courts impose the longest available sentences, for an additional 2,200 beds would be approximately \$54.4 million annually (2,200 total beds × \$24,715). 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, Adult Correctional Facilities Lease Rental Bond Payments. The potential cost of the required capital improvements is uncertain.

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