



OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

Fiscal Note & Local Impact Statement

Bill: H.B. 296 of the 132nd G.A.
(L_132_1377-1)

Status: In House Criminal Justice

Sponsor: Rep. Gavarone

Local Impact Statement Procedure Required: No

Subject: Penalty enhancement for drug offenses committed in the vicinity of a community addiction services provider

State & Local Fiscal Highlights

- The Department of Rehabilitation and Correction's (DRC) annual GRF-funded incarceration costs will increase as a result of: (1) the likelihood of additional offenders being sentenced to prison who would not otherwise have been under current law, and (2) the "stacking effect" of longer prison terms for certain drug offenders. The magnitude of that annual cost increase is dependent upon the number of offenders sentenced under the bill's penalty enhancements.
- County criminal justice systems should be able to utilize existing staffing levels and appropriated funds to absorb any additional work created by penalty-enhanced felony drug trafficking cases.

Detailed Fiscal Analysis

The bill enhances the penalties for certain drug crime violations when committed on the premises of, or within 1,000 feet of, a community addiction services provider¹ when the offender recklessly disregards whether the offense is being committed within that vicinity. According to the Ohio Department of Mental Health and Addiction Services, there are approximately 2,200 community addiction service providers in the state. Offenses with enhanced penalties include trafficking in cocaine, L.S.D., heroin, hashish, Schedule I and II controlled substances (excluding marijuana), and controlled substance analogs.

¹ R.C. 5119.01 defines a community addiction services provider as an agency, association, corporation, individual, or program that provides one or more of the following: (1) alcohol and drug addiction services that are certified by the Department of Mental Health and Addiction Services, and (2) gambling addiction services.

Felony drug offenses

The bill enhances penalties for felony-level offenses of aggravated trafficking and trafficking, each with sentencing variations based on type and amount of the controlled substances involved. Table 1 shows the commitment numbers for those offenses as reported by the Department of Rehabilitation and Correction (DRC) for FYs 2012-2016. On average, 9.5% of the commitments in each year were for drug trafficking with potentially elevated penalties under the bill. The subset of violations committed within the specified distance from a community addiction services provider is unknown.

Offense	2012	2013	2014	2015	2016	2017
Trafficking in drugs	2,027	1,845	1,971	1,824	1,948	1,792
Total Commitments	19,957	20,533	20,120	19,755	20,109	19,340

The principal fiscal effect of these penalty enhancements is likely to be a steady increase over a period of several years in the amount of GRF funding that DRC expends annually on institutional operations. The magnitude of that annual increase will be dependent upon the number of offenders committing certain drug trafficking offenses in the vicinity of a community addiction services provider. 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." 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 penalty enhancements in the bill is about the same as the number leaving prison after serving their additional time.

Additionally, some number of offenders may be sentenced to prison under the bill who may have otherwise been alternatively sentenced. As an example, trafficking in cocaine in an amount greater than or equal to 10 grams but less than 20 grams is a third degree felony under current law and according to sentencing guidelines there is a presumption of prison time. Under the bill, this offense elevates to a second degree felony with a mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years. On average, a second degree felony drug offender will serve about 1.5 years longer than a third degree felony offender.

Table 2 shows the average time served by all drug offenders released from prison in calendar year (CY) 2015, the most recently published data from DRC. The average time served for all felony drug offenders was 1.6 years.

Table 2. Average Time Served Among Ohio Prison Releases, CY 2015	
Drug Offense Level	Average Time in Years
Felony 1	5.48
Felony 2	3.45
Felony 3	1.92
Felony 4	1.11
Felony 5	0.66
All drug offenses	1.60

Generally, the bill elevates specified drug offenses by one degree, which using the most recent time-served data, suggests the following potential outcomes:

- Elevating an offense from a fifth degree felony (0.66 years average time served) to a fourth degree felony (1.11 years average time served) increases the average time served by 5.4 months.
- Elevating an offense from a fourth degree felony (1.11 years average time served) to a third degree felony (1.92 years average time served) increases the average time served by 9.7 months.
- Elevating an offense from a third degree felony (1.96 years average time served) to a second degree felony (3.45 years average time served) increases the average time served by 18.4 months.
- Elevating an offense from a second degree felony (3.45 years average time served) to a first degree felony (5.48 years average time served) increases the average time served by 24.4 months.

Under the bill, the average time served for the lowest level offenders increases by approximately 5.4 months, or 164 days, and the average time served for those moving from a second to a first degree felony increases by 24.4 months, or 741 days. Using the annual daily cost per inmate as of April 2018, the increases in time served could potentially cost the state between \$11,846 (\$72.23 average daily cost x 164 days) and \$53,522 (\$72.23 average daily cost x 741 days) per inmate for the increased length of stay based on average time served.

The bill will not generate new felony drug cases, but may require county criminal justice systems to expend additional time and effort on such cases. This is because the penalty enhancements may make it more likely that defense counsel will fight a drug offense charge, as the prison sanction is more problematic from the offender's perspective. That said, county criminal justice systems should be able to absorb any associated costs utilizing existing staffing levels and appropriated funds.

Synopsis of Fiscal Effect Changes

Relative to the As Introduced version of the bill, the substitute bill (L_132_1377-1) reduces the number of penalty-enhanced offenses and requires an offender to recklessly disregard whether the offense is being committed within the vicinity of a community addiction services provider for the enhancement to apply. The substitute bill will likely reduce the state and local fiscal effects in two notable ways. First, there will be fewer offenders sentenced to a prison term, which means the increase in DRC's annual incarceration costs is reduced from what would have occurred under the As Introduced version of the bill. Second, the substitute bill's removal of penalty-enhanced misdemeanor drug offenses eliminates any costs that may have been generated for municipal criminal justice systems.

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