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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**S.B. 55**  
**133<sup>rd</sup> General Assembly**

## **Fiscal Note & Local Impact Statement**

[Click here for S.B. 55's Bill Analysis](#)

**Version:** As Passed by the House

**Primary Sponsor:** Sen. Gavarone

**Local Impact Statement Procedure Required:** No

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### **Highlights**

- Based on research of the Department of Rehabilitation and Correction (DRC), it is estimated that, within five years of the bill's effective date, DRC's GRF-funded incarceration costs will have increased by between \$1.5 million and \$5.3 million annually. 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.
- The bill reduces the penalties for violating local board of health and Ohio Department of Health orders related to pandemic diseases, which could result in fewer misdemeanor court cases.

### **Detailed Analysis**

The bill enhances the penalties for drug trafficking offenses when committed on the premises of, or within 1,000 feet of, a substance addiction services provider's facility as defined by the bill when the offender recklessly disregards whether the offense is being committed within that vicinity. Offenses with enhanced penalties include trafficking in cocaine, L.S.D., heroin, hashish, Schedule I and II controlled substances (excluding marijuana), controlled substance analogs, and fentanyl-related compounds. Additionally, the bill specifies sanctions for violations of any rule adopted or order issued by the Director of Health, the Ohio Department of Health (ODH), or the board of health of a city or general health district that relates to a pandemic

## Felony drug trafficking offenses

The bill enhances penalties for felony-level offenses of aggravated trafficking and trafficking, each with sentencing variations based on the type and amount of the controlled substances involved. Table 1 below shows the number of offenders committed annually to prison for felony trafficking in drugs, as reported by the Department of Rehabilitation and Correction (DRC) for FYs 2015-2019. On average, 9.7% 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 substance addiction services provider is not information tracked in DRC's inmate databases.

<b>Table 1. Number of Prison Commitments for Felony Drug Trafficking Offenses, FYs 2015-2019</b>					
<b>Offense</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Trafficking in Drugs	1,824	1,948	1,792	1,719	1,831
<b>Total Commitments</b>	<b>19,755</b>	<b>20,109</b>	<b>19,340</b>	<b>18,249</b>	<b>17,126</b>

The principal fiscal effect of these penalty enhancements is likely to be a steady increase over a period of several years in 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 substance 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 that may have otherwise been sanctioned locally at county expense. 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 1.6 years longer than a third degree felony drug offender.

Table 2 below shows the average time served by all drug offenders released from prison in calendar year (CY) 2016, as reported by DRC.

Table 2. Average Time Served, CY 2016	
Drug Offense Level	Average Time Served in Years
Felony 1	5.65
Felony 2	3.49
Felony 3	1.84
Felony 4	1.14
Felony 5	0.69

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

- Elevating an offense from a fifth degree felony (0.69 years average time served) to a fourth degree felony (1.14 years average time served) increases the average time served by 5.4 months.
- Elevating an offense from a fourth degree felony (1.14 years average time served) to a third degree felony (1.84 years average time served) increases the average time served by 8.4 months.
- Elevating an offense from a third degree felony (1.84 years average time served) to a second degree felony (3.49 years average time served) increases the average time served by 19.8 months.
- Elevating an offense from a second degree felony (3.49 years average time served) to a first degree felony (5.65 years average time served) increases the average time served by 25.9 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 25.9 months, or 788 days. Using the FY 2018 average daily cost per inmate, the increases in time served could potentially cost the state between \$12,507 (\$76.26 average daily cost x 164 days) and \$60,093 (\$76.26 average daily cost x 788 days) per inmate for the increased length of stay based on average time served.

Based on its research into selected inmate files, DRC expects the bill to create the need for between 109 and 380 additional beds annually overall, with half of that increase realized within the first five years following its effective date. The annual cost of these additional beds five years following enactment would be between \$1.5 million (55 beds x \$76.26 average daily cost x 365 days) and \$5.3 million (190 beds x \$76.26 average daily cost x 365 days).

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 prolong the adjudication of certain matters, as the prison sanction and “recklessly disregards” conduct standard are more problematic for the defense and prosecution, respectively. County criminal justice systems should be able to absorb any associated costs utilizing existing staffing levels and appropriated funds.

### **Health order violations during a pandemic**

The bill specifies that whoever violates any rule adopted or order issued by the Director of Health, the Ohio Department of Health (ODH), or the board of health of a city or general health district that relates to a pandemic will receive a warning on a first offense and be fined for each subsequent offense. Those with subsequent offenses violating ODH orders will be fined an amount not to exceed \$150 and those with subsequent offenses violating board of health orders will be fined an amount not to exceed \$100. If violators are fined instead of charged with a misdemeanor (as some of these violations are under current law), the number of court cases and court costs could be reduced. This could also reduce jail stays and associated misdemeanor fine revenue. Instead, ODH and local boards of health would collect fine revenues if any subsequent violations occur. The amount of fine revenue would depend on the number of violations.