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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 226  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 226's Bill Analysis](#)

**Version:** As Reported by House Criminal Justice

**Primary Sponsors:** Reps. Pavliga and A. Miller

**Local Impact Statement Procedure Required:** No

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### Highlights

- The bill's expansion of existing "intimidation" offenses to include additional victims (guardians ad litem and court-appointed special advocates) and prohibited conduct may result in a relatively small statewide increase in criminal cases handled by county and municipal criminal justice systems. Any additional costs are likely to be minimal at most annually. Revenue in the form of court costs, fees, and fines may offset those costs to some degree.
- There may be a negligible annual gain in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- Any increase in incarceration expenditures resulting from a few additional offenders sentenced to a jail term is likely to be minimal at most annually for any given county or municipal criminal justice system.
- The Department of Rehabilitation and Correction may experience an increase in marginal incarceration costs, which is currently around \$4,000 per offender per year.

### Detailed Analysis

The bill expands intimidation offenses, most notably to include guardians ad litem (GALs) and court-appointed special advocates (CASAs) as victims who certain conduct cannot be committed against, and adds to the prohibited conduct. The bill also specifies that a violation occurs, generally, if the offender knows or had reason to know the offense is being committed against a member of the expanded victim class. Presumably most cases of intimidation would involve the circumstance where the offender specifically targeted a person to hinder them from

fulfilling the duties associated with their profession or role in a court action or proceeding, or in retaliation for outcomes of those duties.

GALs are frequently attorneys who represent the best interest of a person who is the subject of a court case; CASAs are volunteers who have been trained to advocate for the best interest of a child. CASA volunteers almost exclusively handle abuse, neglect, and dependency cases. According to the Ohio CASA/GAL Association, there are approximately 5,000 individuals serving in this capacity in Ohio.

## **Offenses and penalties**

The specific offenses modified by the bill are “intimidation” and “intimidation of an attorney, victim, or witness in a criminal case.” The distinction between those offenses is with respect to the type of court action or proceeding in which the person against whom the act of intimidation is directed is involved. Generally, the former offense applies to intimidation regarding a civil matter and the latter applies to intimidation involving a criminal prosecution. The bill does not change the penalty for these offenses against existing victims. Intimidation in a civil case remains a third degree felony, and in a criminal case remains either a misdemeanor of the first degree or third degree felony depending on the circumstances present. However, the bill provides that a violation of either intimidation offense, in all circumstances, is a misdemeanor of the first degree when the victim is a GAL or CASA.

## **Criminal caseloads**

From calendar years (CYs) 2015 through 2019, an average of 20 charges were filed annually with the Franklin County Municipal Court for “witness intimidation/retaliation.” This suggests that a corresponding statewide average could be around 200 charges annually under current law – a number that may slightly increase under the bill. The number of arrestees of “intimidation” or “intimidation of an attorney, victim, or witness in a criminal case” as reported by law enforcement agencies to the Ohio Incident-Based Reporting System (OIBRS) in CY 2020 was 41 and 113, respectively, further suggesting a relatively low number of offenses generally.<sup>1</sup>

These factors suggest that the bill will generate few new criminal cases. Most new cases will involve intimidation of a CASA or GAL and fall under the jurisdiction of a municipal or county court as a misdemeanor offense. However, the bill’s expansion of intimidation offenses to prohibit abuse, threats, or harassment (in addition to any attempt to influence, intimidate, or hinder any of the protected victim classes) may also lead to new cases. Felony violations of newly prohibited conduct against a member of the existing protected victim class would be adjudicated by courts of common pleas.

It is also possible some conduct would likely be tied to other offenses, for instance “menacing,” which is a fourth degree misdemeanor absent any specification. However, the conduct addressed by the bill may not explicitly, or unambiguously, violate an existing criminal prohibition. Presumably, it would depend on the seriousness and nature of the conduct involved. Under the bill, such conduct may be more prosecutable. That said, there could be circumstances

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<sup>1</sup> These statistics are based upon information voluntarily reported to OIBRS by participating law enforcement agencies as of April 28, 2021, and may not reflect all violations statewide, since not all Ohio law enforcement agencies’ data are available through OIBRS.

that trigger multiple alternative charges. As an additional charge, the likely result would be to give prosecutors additional avenues in which to prosecute the prohibited behavior. Some cases may traverse the legal system as originally charged, while others may be pled down. Others may be dismissed outright in lieu of an amended charge.

Any additional costs for county and municipal criminal justice systems to prosecute, adjudicate, and sanction a few additional offenders is likely to be minimal at most annually, and absorbed by utilizing existing staff and resources. Money collected from violators (fines and court costs and fees) may offset those costs to some degree. The state may also gain a minimal at most amount of court cost revenue annually. State court costs for a felony total \$60, of which the Indigent Defense Support Fund (Fund 5DY0) and Victims of Crime/Reparations (Fund 4020) each receive \$30. Such costs for a misdemeanor total \$29, of which Fund 5DY0 receives \$20 and Fund 4020 receives \$9.

## **Incarceration**

### **Local jails**

The penalty for “intimidation” and “intimidation of an attorney, victim, or witness in a criminal case” when the victim of the offense is a GAL or CASA is a first degree misdemeanor punishable by a jail term of not more than 180 days. The average cost per inmate for a full-service jail is estimated at close to \$74 per day. The marginal cost of occasionally incarcerating an additional offender would be much smaller. The court may impose a reimbursement sanction as part of the sentence to offset the cost of confinement. It is unclear whether much reimbursement revenue would be collected, as it is dependent upon an offender’s ability and/or willingness to pay. This suggests that imposing a jail term for a small number of offenders in any given year will result in a no more than minimal increase in county and municipal criminal justice system incarceration expenditures.

### **Department of Rehabilitation and Correction**

As mentioned in the preceding paragraph, intimidation offenses committed against a GAL or CASA will not result in additional offenders being sentenced to a prison term. However, the expansion of these offenses to include intimidation by way of abuse, threats, or harassment may have this effect when committed against a member of the existing protected victim class.

Under the current Felony Sentencing Law, there is no guidance for or against the imposition of a prison term in the case of a third degree felony generally. The court is permitted to impose a definite prison term of 9, 12, 18, 24, 30, or 36 months.

The average number of annual prison commitments for the existing intimidation offenses combined was 35 from CYs 2016 through 2020. The most recent averaged time served information for CYs 2014 through 2016 suggests that generally: (1) offenders committed for intimidation served two years more or less, and (2) offenders committed for intimidation in a criminal case served three years more or less.

To the extent that a few additional offenders are convicted of felony-level offenses and sentenced to prison because of the bill, the Department of Rehabilitation and Correction may experience an increase in marginal costs that will likely be absorb by utilizing existing staff and resources. The annual marginal cost for adding an additional offender to the prison system is currently around \$4,000 per offender.