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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 64  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 64's Bill Analysis](#)

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

**Primary Sponsor:** Rep. Powell

**Local Impact Statement Procedure Required:** No

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### Highlights

- It is expected that violations of the bill's prohibition will be infrequent, which means that there should be no discernible ongoing fiscal effect on county criminal and civil justice systems.
- Criminal convictions may generate negligible annual court cost revenue credited to the state's Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020), and a marginal annual increase in prison incarceration costs.

### Detailed Analysis

#### Penalties

##### Criminal penalties

The bill creates the criminal offense of "fraudulent assisted reproduction," under which a health care professional is prohibited from knowingly using human reproductive material from the health care professional, a donor, or any other person while performing an assisted reproduction procedure if the patient receiving the procedure has not expressly consented to the use of the material. A health care professional who violates this prohibition is guilty of a third degree felony, which is punishable by a 9, 12, 18, 24, 30, or 36-month definite prison term, a fine of up to \$10,000, or both. If the violation occurs as part of a course of conduct involving fraudulent assisted reproduction violations, the offense is a second degree felony. Under current sentencing guidelines, a felony of the second degree is punishable by an indefinite prison term

consisting of a minimum term selected by the sentencing judge from the range of terms authorized for a second degree felony (2, 3, 4, 5, 6, 7, or 8 years), a fine of up to \$15,000, or both.<sup>1</sup>

Prosecution for a violation of the prohibition is barred unless it is commenced within five years after the offense is committed. However, prosecution that would otherwise be barred may be commenced within five years after the date of the discovery of the offense by either (1) an aggrieved person or (2) the aggrieved person's legal representative who is not party to the offense.

The bill states that patient consent to the use of human reproductive material from an anonymous donor is not effective to provide consent for the use of the material of the health care professional performing the procedure, and is not a defense to the criminal offense of fraudulent assisted reproduction.

### **Civil penalties**

The bill authorizes a civil action for recovery against a health care professional to be filed by: (1) the patient on whom the procedure was performed and the patient's spouse or surviving spouse when performed without consent, (2) the child born as a result of the procedure, and (3) a donor of human reproductive material when the donor's material was used and the health care professional knew or reasonably should have known it was used without consent. Under the bill, a person may bring a separate action for each child born to the patient or spouse as a result of an assisted reproduction procedure performed without consent, or in the case of a donor, for each individual who received the donor's human reproductive material without the donor's consent. Civil actions must be brought within ten years after the procedure was performed or within five years from the earliest date after the occurrence of any of the following: (1) the discovery of DNA evidence, (2) the discovery of a recording providing evidence, or (3) the confession of the health care professional. If a person born as a result of an assisted reproduction procedure discovers any of the abovementioned evidence before the person reaches 21 years old, the five-year period does not begin to run until the person reaches 21 years old.

### **Fiscal effect**

The bill is not likely to result in a notable number of new criminal or civil case filings, as it seems likely that few health care professionals would knowingly engage in the prohibited conduct.

To the degree that new cases are generated and a county and municipal justice system incurs costs, those costs will be minimal annually, as violations are expected to be few and infrequent. Costs may be offset to some degree by the collection of fines, and court costs and fees imposed by the court on a person found to have violated the bill or held liable in a civil action. Fines are generally credited to a county's general fund, while local court costs and fees can be deposited for a mix of general and special purposes. State court costs of \$60 for a felony are collected by local jurisdictions and forwarded to the state treasury for crediting as follows: \$30

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<sup>1</sup> For first and second degree felonies committed after March 22, 2019, the sentencing court is required to impose a minimum sentence and to specify a maximum sentence that is 50% greater than the minimum sentence. The court may, after a hearing, reduce the minimum sentence by 5% to 15% upon recommendation of the Department of Rehabilitation and Correction.

to the Indigent Defense Support Fund (Fund 5DY0) and \$30 to the Victims of Crime/Reparations Fund (Fund 4020).

If additional offenders are found guilty and sentenced to prison, the Department of Rehabilitation and Correction (DRC) will experience increased expenses in terms of marginal costs, which currently range from \$3,000 to \$4,000 per year.