



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 185 of the 131st G.A. **Date:** November 30, 2016

Status: As Reported by Senate Criminal Justice **Sponsor:** Rep. Koehler

Local Impact Statement Procedure Required: No

Contents: Arson

State Fiscal Highlights

- As the result of a relatively small statewide increase in the number of felony arson convictions, there may be: (1) a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs, and (2) a negligible annual revenue gain to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020) in the form of locally collected state court costs.
- The bill amends the conditions under which the Department of Rehabilitation and Correction (DRC) is permitted to contract with the owner, operator, or manager of a correctional facility for the housing of inmates. Whether DRC's annual incarceration costs will increase or decrease as a result is uncertain.

Local Fiscal Highlights

- The annual prosecution, indigent defense, and sanctioning costs of a county criminal justice system may minimally increase due to the possibility of a relatively small increase in the number of felony arson charges filed and brought to trial. There may also be a related negligible annual gain in court costs, fees, and fines imposed on offenders by the sentencing court.

Detailed Fiscal Analysis

Arson

The bill: (1) prohibits damage by fire or explosion to a structure that is not occupied without requiring proof that the owner did not consent, (2) creates an affirmative defense that the owner consented to the damage, and (3) makes a violation of the prohibition a felony of the fourth degree.

LSC staff conversations with fire investigators and interested parties indicate that some jurisdictions are unable to file charges and/or attain convictions in certain circumstances of arson involving a structure that is not occupied, because the prosecution could not prove that the accused did not have the owner's consent. The bill makes it easier for a prosecutor to both file an arson charge and secure a conviction under these circumstances by shifting the burden of proof to the defendant. Also of note is that these problematic circumstances are relatively infrequent in most jurisdictions, and it is not unusual for an arson investigation to be closed for reasons of insolvability.

Local fiscal effects

To the degree that the bill has a local fiscal effect, it will be on county criminal justice systems, as additional felony arson charges may be filed and more convictions secured. From the perspective of a county criminal justice system, the disposition of these charges will presumably require some time and effort for prosecution, defense if the offender is indigent, and the court of common pleas to adjudicate the cases. If a conviction is secured, then there will also be costs to sanction the offender, including a possible jail stay. The average daily cost of a jail stay in Ohio is in the range of \$60 to \$70. The net of these increased costs for any given county will be minimal at most annually, as the number of additional felony cases will be relatively small, especially in the context of the criminal justice system's overall caseload.

Additional felony convictions mean that a county may realize a gain in court costs, fees, and fines imposed by the court and collected from offenders. The fine for a fourth degree offense is up to \$5,000. The court, however, rarely imposes the maximum permissible fine. It is also the case that collecting court costs, fees, and fines from offenders can be problematic, as many are financially unable or unwilling to pay. This suggests generally that the amount of additional annual revenue collected by any given county will be negligible.

State fiscal effects

The number of felony offenders sentenced to prison for arson currently runs between 20 and 40 per year, not including those sentenced for the offense of aggravated arson. The averaged prison time served for a fourth degree arson conviction is approximately one year. The bill may result in a relatively small increase in the number of fourth degree felony offenders sentenced to prison, the annual costs of which are

likely to be no more than minimal for the Department of Rehabilitation and Correction (DRC). This is because a relatively small increase in an existing prison population of 50,000-plus does not generate a significant increase in DRC's annual incarceration expenditures. Although DRC's annual cost per inmate currently averages around \$24,763, the marginal cost of adding a relatively small number of additional offenders to that population is lower, between \$3,000 and \$4,000 per offender per year.

As a result of a relatively small statewide increase in felony arson convictions, additional revenue in the form of state court costs may be collected from offenders and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs for a felony offense total \$60, of which Fund 5DY0 receives \$30 and Fund 4020 receives \$30.

Contract with owner, operator, or manager of a correctional facility

The bill amends the conditions under which the Department of Rehabilitation and Correction (DRC) is permitted to contract with the owner, operator, or manager of a correctional facility for the housing of inmates. Whether DRC's annual incarceration costs will increase or decrease as a result is uncertain.