



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 207 of the 132nd G.A.

**Status:** As Introduced

**Sponsor:** Sen. Kunze

**Local Impact Statement Procedure Required:** Yes

**Subject:** Expands felonious assault to include suffocation or strangulation

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### State Fiscal Highlights

- The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars annually, as the likely number of felony offenders affected by the bill appears to be quite large.
- There is likely to be a no more than minimal annual revenue gain in locally collected state court costs credited to the state's Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).

### Local Fiscal Highlights

- The expansion of felonious assault has the potential to shift a significant number of misdemeanor domestic violence cases, and the related processing and sanctioning costs, from municipal and county courts to common pleas courts. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.
- Convictions for felonious assault could reduce fine, fee, and court cost revenues collected for misdemeanors by municipal and county courts and increase those amounts collected by common pleas courts. However, determining the likely amounts of such a revenue shift, while potentially significant, is difficult because many felony offenders are either indigent or unwilling to pay.

### Detailed Fiscal Analysis

The bill expands the offense of felonious assault to include knowingly causing or attempting to cause physical harm to another person by means of strangulation or suffocation. Currently some offenders may be charged under the felonious assault statute, as an existing prohibition under the offense prohibits a person from causing serious physical harm to another. However, in cases where serious physical harm is not obvious, offenders are often charged with an offense of domestic violence. The existing penalties for a felonious assault conviction, generally a felony of the second degree, apply with respect to a violation of the strangulation or suffocation prohibition added by the bill.

The expansion of the offense of felonious assault as specified in the bill is likely to have a significant impact in the area of domestic violence cases. Under current law, it appears that most domestic violence violations are charged as a misdemeanor. Under some circumstances involving previous convictions of domestic violence, a violator can be charged with a felony of the fifth, fourth, or third degree.

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In 2016, there were 38,740 incidents of domestic violence in which police responded and charges were filed. In 2015, that number was 38,343. Information obtained from the Domestic Violence Division of the Columbus City Attorney's Office indicates that approximately 30% of their estimated 6,000 misdemeanor domestic violence cases involve allegations of strangulation, and under the bill, they may be able to get an indictment for felonious assault in about 15% of cases each year. Extrapolating this number across the state suggests that thousands of misdemeanor domestic violence cases involving strangulation could instead be charged as a felony of the second degree. In some cases, a felony charge may induce some offenders to accept a plea bargain, but this does not alter the reality that thousands of cases could shift from municipal and county courts that currently handle domestic violence misdemeanor cases to common pleas courts which have jurisdiction over felonious assault cases.

## **State fiscal effects**

### **Incarceration expenditures**

Under current law and sentencing practices, around 700 offenders per year enter prison for felony domestic violence offenses of the fifth, fourth, or third degree. The bill will shift some of those fifth and fourth degree felony domestic violence cases to a felony of the second degree as well as a potentially large number of the misdemeanor domestic violence cases involving strangulation to a felony of the second degree. This could result in a large number of additional offenders entering prison as well as offenders being sentenced for longer terms than they would have received otherwise under current law. The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars or more annually, as the potential number of offenders affected by the bill each year appears to be quite large. As of November 2017, the average annual cost of incarcerating an offender in prison was \$26,365.

### **Court cost revenues**

When a person is convicted of, or pleads guilty to, a criminal offense, the sentencing court generally is required to impose upon that person state court costs in addition to any other applicable fines, fees, and costs. The bill's assault expansion will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses can instead be charged as a second degree felony, absent any specification. A conviction in this situation creates the possibility of increased state revenues from the

\$60 in court costs imposed for a felony conviction, an amount that is \$31 more than the \$29 in court costs imposed for a misdemeanor conviction. The amount collected annually is likely to be minimal at most because many felony offenders are either financially unable or unwilling to pay. The state court costs are forwarded for deposit into the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).<sup>1</sup>

### **Local criminal justice system fiscal effects**

The expanded felonious assault offense in the bill carries the potential to shift a significant number of domestic violence criminal cases that based on current law would most likely be adjudicated as misdemeanors under the subject matter jurisdiction of a municipal court or county court to a felony level charge under the subject matter jurisdiction of a common pleas court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter in terms of the costs to process the case and sanction the offender.

From the fiscal perspective of local governments, such an outcome will simultaneously increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) additional felonious assault offenders, while decreasing the analogous municipal and county court criminal justice system expenditures related to the prosecution of that subset of misdemeanor domestic violence offenses involving suffocation or strangulation. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.

### **Fines, fees, and court costs**

For persons convicted of, or pleading guilty to, a felony, the sentencing court generally is required and/or permitted to impose a fine, fees, and court costs that are retained locally for various purposes. A waiver of payment is permitted if the person is determined to be indigent.

The bill will affect the local revenue collected from strangulation cases in two ways.

1. The elevation of a misdemeanor to a felony means that revenue from local fines, fees, and court costs collected by municipal and county courts will instead be collected by courts of common pleas. The maximum fine for a misdemeanor is \$1,000 (misdemeanor of the first degree). The fines for felonies generally start at up to \$2,500 (felony of the fifth degree).

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<sup>1</sup> "State court costs" are statutorily specified amounts collected by local courts and forwarded for deposit in the state treasury. The court is generally required to impose state court costs totaling \$29 for a misdemeanor and \$60 for a felony. The \$29 misdemeanor amount is divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020). The \$60 felony amount is divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.

2. The enhancement of an offense from a felony of the fifth, fourth, or third degree creates the possibility of increased fine revenues. The maximum permissible fines for fifth, fourth, or third degree felonies are \$2,500, \$5,000, and \$10,000, respectively. The maximum permissible fine for a felony of the second or first degree is \$15,000 and \$20,000, respectively.

The likely revenue loss for municipal criminal justice systems and revenue gain for county criminal justice systems, while potentially significant, is difficult to precisely calculate because many offenders, especially those convicted of a felony, are either financially unable or unwilling to pay. It is also the case that the court rarely imposes the maximum permissible fine.