



# OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 365 of the 132nd G.A.  
(L\_132\_1563-2)

**Status:** In House Criminal Justice

**Sponsor:** Reps. Hughes and Boggs

**Local Impact Statement Procedure Required:** Yes

**Subject:** Indefinite prison terms, GPS monitoring, reentry programs, and the Adult Parole Authority

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### State Fiscal Highlights

- The fiscal effect of the bill's Felony Sentencing Law modifications will depend, to a significant degree, on the response of sentencing courts to recommendations submitted by the Director of the Department of Rehabilitation and Correction (DRC) for a reduction in an offender's minimum prison term. If the courts approve most of the recommendations, then DRC expects the effect may be a slight increase in the overall size of the prison population, and any concomitant increase in institution-related expenditures would be no more than minimal annually. If the courts disapprove most of the recommendations, then DRC expects the effect may be an increase of up to 1,700 offenders in the prison population, and that the annual increase in institution-related expenditures could reach up to approximately \$44.8 million after a period of three to six years.
- The cost for DRC to develop and operate the statewide offender database as required by the bill is uncertain, but potentially significant given the overall complexity and scope.
- The bill requires DRC to create and implement a new reentry program with appropriate housing facilities for offenders released from prison who are not accepted by existing halfway houses. The overall cost could potentially be significant, easily in the millions of dollars annually, depending on the number of offenders that qualify as a targeted offender under the bill.
- The bill requires DRC's Adult Parole Authority to establish supervision standards for parole and field officers of its Field Services Section. The new standards may require DRC to hire additional staff, which would cost about \$75,000 annually per hire for salary and benefits.

### Local Fiscal Highlights

- County criminal justice systems will incur minimal at most one-time costs to ensure that important stakeholders (common pleas courts, prosecutors, public defenders,

and so forth) are adequately educated and trained in the bill's Felony Sentencing Law modifications.

- The potential costs incurred by law enforcement agencies to provide training to investigators on how to use the offender database with the crime scene correlation program, as well as how to collect and format data from crime scenes, could potentially exceed minimal annually in certain jurisdictions.

## **Detailed Fiscal Analysis**

### **Indefinite prison terms**

The bill modifies the Felony Sentencing Law by providing for indefinite prison terms for offenders who are sentenced to prison for a first or second degree felony, or for a specified category of third degree felony, committed on or after its effective date. The indefinite terms will consist of a minimum term selected by the sentencing judge from a range of terms authorized for the degree of the offense and a maximum term set by statute based on the selected minimum. The bill specifies that each offender serving an indefinite prison term will have a presumptive release date, which is at the end of the offender's minimum term.

The bill further provides for both the possible reduction of the minimum term based on a recommendation by the Department of Rehabilitation and Correction (DRC) under specified circumstances in which the offender exhibits exemplary institutional conduct and the possible rebuttal by DRC of the presumptive release date (the minimum term) and continued confinement of the offender up to the maximum term if the offender has exhibited violent behavior in prison.

The bill will likely create some degree of a stacking effect, in which certain offenders with institutional violations who would otherwise be released sooner under current law will be held for a longer period in accordance with the new maximum term of imprisonment. The institutional population pressures that may be created by the longer sentences under the bill will likely be lessened to some extent by the provisions in the bill establishing a presumed release date at the end of the minimum term. Offenders released at this minimum term may serve less time than they would have under current law involving definite terms.

Additionally, the provision in the bill generally allowing DRC to recommend the reduction of an offender's minimum term for exceptional conduct by 5% to 15% may, under certain circumstances, provide even more flexibility to manage the overall size of the prison population. If DRC recommends such a reduction in the minimum sentence, they are required to notify the sentencing court, which will render a judgment on the recommendation. Under the bill there is a presumption that the court will grant the recommended reduction of the minimum sentence. The court must conduct a hearing to determine whether to grant the proposed reduction or rebut the presumption and deny the DRC recommendation. The county prosecutor may present testimony at the hearing.

As of May 2018, the prison population managed by DRC totaled 49,250. A relatively precise estimate of the net effect of these Felony Sentencing Law modifications on the size of that population is difficult to calculate because of several unknown factors. For example, the stated minimum terms that will be selected by the sentencing judges statewide for offenders convicted of a first or second degree felony, or a specified category of third degree felony, is unknown. Additionally, the behavior of these offenders while incarcerated is difficult to predict. Depending upon that behavior, an offender could possibly earn a recommendation for a reduction of their minimum term or be kept in prison up to the maximum term. The likely result is that, relative to current law, time served for some offenders will be lower while for other offenders time served will be higher.

Perhaps the most significant variable is the role of the sentencing court in this process. If the sentencing courts routinely approve most of the recommendations for early release, then DRC expects the net effect may be a slight increase in the overall population, and any concomitant increase in institution-related expenditures would be no more than minimal annually. The early releases will, in effect, help to manage the potential population growth stemming from the stacking effect.

If the trend of the sentencing courts is to disapprove the recommended reductions to the minimum sentences, then the early release of prisoners will slow and the stacking effect will increase the prison population. DRC has estimated that, if very few early releases are approved by the courts, then the overall population may increase by as many as 1,700 offenders after a period of three to six years. At the current annual cost per inmate of \$26,365, the institutional operating costs may increase by as much as \$44.8 million (1,700 inmates x \$26,365) per year due to the stacking effect over this period.

## **Global positioning system (GPS) monitoring changes**

### **Statewide offender database**

The bill requires DRC to establish and operate a statewide Internet-based database that contains specified information for GPS-monitored offenders. The database must enable local law enforcement representatives to remotely search by electronic means the content of the database, and must contain a link to a crime scene correlation program. Third-party contract administrators that provide the GPS monitoring service are required to include that program in their systems. If the statewide offender database includes a link to a crime scene correlation program included in the GPS used by a third-party contract administrator, then local law enforcement representatives may use that link to obtain information contained in the program about a GPS-monitored offender as it pertains to the location of recent criminal activity.

The information contained in the statewide offender database must include, for each GPS-monitored offender to be included within the database, all of the following:

- The offender's name and address;

- The offense or offenses for which the offender is subject to GPS monitoring and the offender's other criminal history;
- The monitoring parameters and restrictions for the offender, including all inclusionary zones, exclusionary zones, and inclusionary zone curfews for the offender and all other restrictions placed on the offender;
- If a DRC employee is monitoring the offender, the identity of, and contact information for, the employee, and if a third-party contract administrator is being used for GPS monitoring of the offender, the identity of, and contact information for, the third-party contract administrator; and
- All previous violations of the monitoring parameters and restrictions applicable to the offender under the GPS monitoring that then is in effect for the offender.

The GPS system used by the third-party monitoring vendor must include a crime scene correlation program that can interface by Internet link with the statewide offender database created and operated by DRC. Crime scene correlation programs compare investigation data with GPS-monitored offender locations. This type of statewide offender database linked with a correlation program does not currently exist in Ohio. According to DRC, the cost to develop and operate the statewide offender database is uncertain, but potentially significant given the complexity of the data and database requirements, as well as the continuous process of updating GPS data.

For local law enforcement agencies to utilize this type of system as a crime solving tool they must be able to either upload or otherwise connect investigation data, crime scene notes, and such to the crime scene correlation program. It is uncertain if this requires changes in how investigation data is collected and organized such that it is compatible with the crime scene correlation program. The potential costs incurred by law enforcement agencies to provide training to investigators on how to use this system, and to collect and format data from crime scenes, could exceed minimal for certain local jurisdictions annually.

### **DRC reentry programs**

The bill modifies the law regarding the supervision of felony offenders released from prison by requiring DRC's Adult Parole Authority (APA) to establish a reentry program for offenders who are not accepted for residence in a halfway house or similar facility. While many of the details and questions inherent to the creation and implementation of a new reentry program with appropriate housing facilities have yet to be determined and resolved, the overall cost could be significant, easily in the millions of dollars annually, depending on the number of offenders that qualify as a targeted offender under the bill.

To provide some perspective, for FY 2018, DRC has an appropriation of \$66.8 million to provide approximately 2,100 halfway house beds, and around 200 permanent supportive housing beds which are provided for newly released offenders facing chronic homelessness while also undergoing treatment for mental health

problems, substance abuse issues, or other ongoing medical issues. The halfway house appropriation also supports about 250 community residential center housing units, which provide around three months of temporary housing for lower risk offenders.

### **APA parole and field officer case-loads and work-loads**

The bill requires the APA to establish supervision standards for parole and field officers of its Field Services Section. The standards must include a specification of a "case-load" and a "work-load" for parole and field officers. The case-load and work-load specified in the standards must comport with industry standards set forth by the American Probation and Parole Association. DRC must ensure that the Field Services Section has enough parole and field officers to comply with the standards and that the officers have been trained to the extent required to comply with the standards.

Depending on what is contained in these new standards, DRC may be required to hire additional staff for the Field Services Section. The number of additional personnel, if any, is uncertain, but each new hire would cost the Department about \$75,000 annually for salary and benefits. As of May 2018, the APA had 487 parole officers with 37,914 total offenders under supervision.

## **Synopsis of Fiscal Effect Changes**

The current substitute bill (L\_132\_1563-2) modifies the provision in the bill generally allowing DRC to recommend a 5% to 15% reduction of an offender's minimum term for exceptional conduct. If making such a recommendation, DRC would be required to notify the sentencing court, which will render a judgment on the recommendation. If the sentencing courts trend toward the disapproval of the recommended reductions to the minimum sentences, then the early release of prisoners will slow and the stacking effect will increase the prison population. DRC has estimated that, if very few early releases are approved by the courts, then the overall population may increase by as many as 1,700 after a period of three to six years. At the current annual cost per inmate of \$26,365, the institutional operating costs may increase by as much as \$44.8 million (1,700 inmates x \$26,365) per year due to the stacking effect over this period.