



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 86 of the 129th G.A. **Date:** September 30, 2011
Status: As Enacted **Sponsor:** Reps. Blessing and Heard

Local Impact Statement Procedure Required: Yes

Contents: Criminal sentencing and juvenile justice reforms

State Fiscal Highlights

STATE AGENCY

FY 2012 – FY 2015

Department of Rehabilitation and Correction (DRC)

Revenues	- 0 -
Expenditures	Four-year incarceration cost savings of up to \$46.2 million, likely offset to some degree by need to increase subsidies for local community corrections programs

Department of Youth Services (DYS)

Revenues	- 0 -
Expenditures	Likely expenditure reduction, annual magnitude uncertain

Note: The state fiscal year is July 1 through June 30. For example, FY 2012 is July 1, 2011 – June 30, 2012.

- **Department of Rehabilitation and Correction.** The bill, over the course of approximately four years subsequent to its effective date, will reduce the number of inmate beds in the Department of Rehabilitation and Correction's (DRC) prison system and is estimated to generate a total four-year incarceration cost savings of up to \$46.2 million. The magnitude of this savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions.
- **Department of Youth Services.** Changes to the disposition of certain juvenile delinquency cases and the release of juveniles from a state juvenile correctional facility may generate a minimal annual savings in the Department of Youth Services' institutional operating costs.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2011 – FUTURE YEARS

Counties and Municipalities (criminal justice systems)

Revenues	Potential gain in state community corrections funding, annual magnitude uncertain
Expenditures	Potential increase to the criminal justice system to sanction offenders, annual magnitude uncertain

Counties (juvenile justice systems)

Revenues	- 0 -
Expenditures	Potentially significant annual increase for certain counties to establish juvenile competency assessment and treatment procedures

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Threshold amount determining increased penalties.** There will be a shifting of some cases from the felony jurisdiction of the courts of common pleas to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings for affected counties, and a corresponding cost increase in criminal case processing for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around \$65 per day, it would take just 77 additional jail days to exceed the minimum local impact threshold of \$5,000 per year for any affected county or municipality.
- **Increased diversion of offenders.** The bill provides, in certain felony cases, a preference for one or more community control sanctions rather than the imposition of a prison sentence. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding.
- **Subsidy revenues.** The additional cost that counties and municipalities will incur, in particular the costs to sanction offenders diverted from prison and into community control sanctions, will in all likelihood be offset to some degree by additional state community corrections subsidies distributed by DRC. The degree to which that state funding will offset increased local sanctioning costs is uncertain.
- **Juvenile competency procedures.** The requirement that juvenile courts establish competency procedures may significantly increase the assessment and attainment costs of certain counties.

Detailed Fiscal Analysis

The bill makes numerous criminal sentencing provision changes, as well as changes to the state's juvenile justice system. For the purposes of this fiscal analysis, the bill has been organized into the following two broad categories: (1) criminal justice system changes, and (2) juvenile justice system changes.

Criminal justice system changes

The bill's numerous criminal sentencing changes are generally designed to reduce the size of the state's prison population and related institutional operating expenses by: (1) diverting otherwise prison-bound nonviolent offenders into less expensive community-based alternative sanctions, and (2) reducing the lengths of stay for certain offenders that are sentenced to a prison term from what those lengths of stay might otherwise have been under current law and practice.

For the purposes of this analysis, we have identified some of the most fiscally salient provisions of the bill and discussed each in more detail below. The net fiscal effect of these provisions will be to reduce enough inmate beds to create a total savings, through FY 2015, of approximately \$46.2 million in the Department of Rehabilitation and Correction's (DRC) institutional operating costs.

With regard to these estimated incarceration cost savings, the following caveats should be noted:

- The magnitude of this savings effect may be reduced by the need to transfer GRF funds not needed for the appropriated purpose of institutional operations to the Department's parole and community services operations for the purpose of handling an increase in the number of offenders subject to community-based sanctions. In that regard, Am. Sub. H.B. 153 the main operating budget of the 129th General Assembly contains a temporary law provision requiring, for the purposes of implementing criminal sentencing reforms, the Director of Budget and Management, at the request of the Director of Rehabilitation and Correction, to transfer up to \$14,000,000 in appropriations, in each of FYs 2012 and 2013, from GRF appropriation item 501321, Institutional Operations, to certain GRF appropriation items that fund community-based corrections programs.
- Not all of the bill's criminal justice system provisions will have an immediate effect in terms of reducing DRC's institutional operating expenses. Some provisions, such as the earned credit reform, may not begin to reduce the prison population and produce a savings effect until a year or two after the bill becomes effective. Accordingly, most of the cost savings estimates below are based on the impact of the provisions after a three-year period.

Release of offenders who have served at least 80% of their sentences

The bill authorizes the Director of Rehabilitation and Correction to petition the court for the judicial release of an offender with a stated prison term of one year or more who has served at least 80% of the term. This provision does not apply to any offender serving a life term or a term for any of a list of specified felonies of violence, including sexually oriented offenses. The bill further requires that an offender, serving a sentence for a first or second degree felony, who is released pursuant to a DRC petition, be placed in one or more appropriate community sanctions, and that the court must consider global positioning system (GPS) monitoring in specified cases.

State fiscal effects

After a period of about three years, this provision of the bill will potentially eliminate the need for approximately 360 or so inmate beds, thus creating an incarceration cost savings of around \$1,473,120 (360 beds x \$4,092, the estimated FY 2013 marginal cost per inmate). Any such cost reductions or savings could potentially be offset by expenditures for the GPS supervision placed on first and second degree felony offenders if so ordered by the courts. These GPS related costs could reach \$1.4 million if it is required for all applicable offenders. If DRC is expected to pay for the monitoring of indigent offenders, the net amount of any savings is not clear.

Establishment of community alternative sentencing centers

The bill provides for the establishment and operation of community alternative sentencing centers by counties or affiliated groups of counties, the purpose of which would be to confine misdemeanants sentenced directly by the court under a community residential sanction not exceeding 30 days, or pursuant to an "OVI term of confinement" not exceeding 60 days.

State fiscal effects

There is no expectation at this time that the state will provide financial assistance to defray any of the related capital improvements or operating expense costs that a county might incur.

Local fiscal effects

The cost that a county might incur in order to establish and operate a community alternative sentencing center is uncertain. For example, the legal and regulatory requirements that such a center would have to comply with, and any attendant costs, are unclear. Also unclear is whether a county would need to utilize debt financing to undertake the necessary capital improvements. That said, to the extent that these misdemeanor beds replace more expensive full-service jail beds, then a county may realize some long-term savings in correctional expenditures.

Threshold amount determining increased penalties

The bill increases the initial threshold amount that is used in determining increased penalties, generally from a misdemeanor to a felony, for theft-related offenses and certain elements of the offenses of "vandalism" and "engaging in a pattern of corrupt activity." This set of provisions will reduce the number of offenders sentenced to a prison term, and increase the number of offenders sanctioned locally.

State fiscal effects

This set of provisions will potentially result in the elimination of around 440 or so inmate beds within a three-year period, thus creating an incarceration cost savings of \$1,800,480 (440 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

Local fiscal effects

There will also be a shifting of some cases from the felony jurisdiction of the courts of common pleas to the misdemeanor jurisdiction of municipal and county courts. As misdemeanor cases are generally less expensive to process, there should be some savings, of uncertain magnitude, for an affected county, and, in theory, a corresponding cost increase in criminal case processing for an affected municipality. Presumably, counties and municipalities will also incur additional jail costs to sanction these offenders who would not be sentenced to a prison term. It is not clear how much additional jail time will result from the bill, but at an average cost of around \$65 per day, it would take just 77 additional inmate jail days to exceed the minimum local impact threshold of \$5,000 per year for any affected county or municipality.

Penalties for felony "nonsupport of dependents"

The bill provides, in certain cases of felony "nonsupport of dependents," a preference for one or more community control sanctions. This provision of the bill would reduce the likelihood that certain offenders will be sentenced to a prison term.

State and local fiscal effects

After three years, this provision could potentially eliminate the need for about 100 inmate beds, thus creating an incarceration cost savings of about \$409,200 (100 beds x \$4,092, the estimated FY 2013 marginal cost per inmate). This provision of the bill will not reduce the number of convictions for "nonsupport of dependents," but will change the range of sanctions that are available to the court in certain cases. To the degree that the preference functions as envisioned, then there would presumably be some increased demand on local community control sanction systems. This could in turn increase the local demand for DRC's community corrections grants funding, which means that any incarceration cost savings will be partially offset by the need to enhance funding for its parole and community services operations.

Offense of "escape"

Prior to the bill, offenders on parole or post-release control (PRC) who abscond supervision can be charged with the offense of escape, the penalty for which ranges

from a felony of the fifth degree to a felony of the first degree depending on the severity of the offense for which the offender was under supervision. The bill creates a new prohibition within the offense of "escape" that parallels the current prohibition but applies only to a person under "supervised release detention" and reduces the penalty generally to a felony of the fourth or fifth degree if the supervised release detention was for murder, an offense with a life sentence, or a first or second degree felony.

State fiscal effects

The new prohibition against absconding would allow the Adult Parole Authority (APA) to utilize various sanctions at their disposal, thus avoiding new felony charges in some instances. The bill also generally reduces the penalties for escape. These provisions would eliminate the need for about 50 beds within three years, thus creating an incarceration cost savings of around \$204,600 (50 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

Elimination of penalty distinction between cocaine and crack cocaine

The bill eliminates the distinction between the criminal penalties provided for drug offenses involving crack cocaine and those offenses involving powder cocaine, and provides a penalty for all such drug offenses involving any type of cocaine that generally has a severity that is between the two current penalties.

State fiscal effects

The impact of eliminating certain distinctions will be to generally reduce the total number of years served by offenders in the state's prison system for cocaine-based offenses. After three years, this provision would potentially eliminate the need for an estimated 267 inmate beds, thus creating an incarceration cost savings of \$1,092,564 (267 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

Penalties for certain trafficking offenses

For the offenses of "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish," the bill creates a new category of the amount of the drug involved and provides for a potentially shorter mandatory prison term if the new category applies to the offender.

The bill also provides that, in specified circumstances regarding an offender who is guilty of "trafficking in marihuana," "trafficking in hashish," or "possession of cocaine," the current felony sentencing guidelines apply in determining whether to impose a prison term on the offender. Existing guidelines, which are not changed by the bill, state a presumption against a prison term. Currently, for the two trafficking offenses in the specified circumstances, there is neither a presumption for nor a presumption against a prison term, and for the possession offense in the specified circumstances, there is a presumption for a prison term.

State fiscal effects

This provision will generally reduce the total number of years served by offenders for the above-referenced drug offenses. After three years, this provision will likely eliminate the need for 140 beds, thus creating an incarceration cost savings of \$572,880 (140 beds x \$4,092, the estimated FY 2013 marginal cost per inmate).

Intervention in lieu of conviction eligibility and procedures

The bill provides that intervention in lieu of conviction (ILC) is available to persons charged with specified theft or nonsupport offenses, and authorizes ILC for an offender whose mental illness or retardation contributed to the criminal behavior. The bill also requires that a request for ILC include a statement as to whether the offender alleges that drug or alcohol use or mental illness or retardation contributed to the offense. Offenders alleging that drug or alcohol use contributed to the offense must be assessed by a certified program or credentialed professional for ILC eligibility, a plan of intervention recommended, and the assessment be given to the court.

State and local fiscal effects

This provision will likely divert certain offenders away from the prison system and into local treatment programs, and eliminate the need for around 31 inmate beds, thus creating an incarceration cost savings of \$126,852 (31 beds x \$4,092, the estimated FY 2013 marginal cost per inmate). While the diversion of these offenders from prison may reduce DRC's incarceration expenditures, there would likely be a corresponding increase in local expenditures for the assessment and treatment of certain additional offenders. The magnitude of these potential additional local assessment and treatment costs is uncertain.

Earned credit for DRC inmates

Prior to the enactment of this bill, an eligible offender in a state correctional institution could earn one day of credit as a monthly deduction from the offender's prison term for productive participation in specified prison programs. The bill revises that earned credit mechanism so that:

- (1) Certain offenders, if eligible for the mechanism under the current criteria as expanded, may earn five days of credit for completion of a specified program;
- (2) Other offenders, if eligible for the mechanism under the current criteria as expanded, who are imprisoned for any of a list of specified, serious offenses, may earn one day of credit for completion of a specified program;
- (3) The types of programs that may be available for earning days of credit under the mechanism will be limited to those involving education, vocational training, prison industry employment, and substance abuse treatment (sex offender treatment programs and other "constructive programs" developed by DRC are removed);

- (4) All offenders, if eligible for the mechanism under the current criteria, who successfully complete two specified programs may earn up to five days of credit for the successful completion of the second program; and
- (5) Offenders serving a sentence for a sexually oriented offense, as defined in the SORN Law, are not eligible for the mechanism.

State fiscal effects

Within a three-year period, this provision will eliminate the need for around 380 or so beds, thus creating an incarceration cost savings of \$1,554,960 (380 beds x \$4,092, the estimated FY 2013 marginal cost per inmate). To the extent that disqualifying offenses are added to the existing list, any estimated savings would be reduced as fewer offenders would be eligible for the five days of earned credit. The total number of days of credit an offender may earn under the earned credit mechanism cannot exceed 8% of the total number of days in the offender's stated prison term.

GPS monitoring of certain offenders after release

The bill requires that an offender who is placed on post-release control from the offender's stated prison term by reason of earning 60 or more days of credit for participation in certain programs be subject to GPS supervision by the APA for the first 14 days after release from imprisonment.

State fiscal effects

DRC estimates that this provision will apply to at least several hundred offenders annually with third, fourth, or fifth degree felony convictions. The first and second degree felony offenders face GPS requirements through the other earned credit provision of this bill. If these offenders wear GPS monitors for 14 days after release, at \$11 per day, the annual cost to the Department could exceed \$100,000.

State v. Foster

The bill revises some of the provisions in the state's Felony Sentencing Law that were invalidated and severed by the Ohio Supreme Court's decision in *State v. Foster* to preserve the policy of the provisions but eliminates the procedures that the Court found to be objectionable.

State fiscal effects

The reenactment of these felony sentencing provisions from the *Foster* case is expected to lead to a gradual reduction in the prison population over the next several years. The Department expects this reduction in prison population could reduce incarceration costs by \$15.1 million to \$19.4 million over the next five years or more.

Justice Reinvestment provisions

The bill also incorporates several additional sentencing reform initiatives which stem from a study and report of the Council of State Governments' Justice Reinvestment

in Ohio. Some of the more fiscally relevant provisions among the sentencing reform recommendations from this study incorporated into the bill include:

- Requiring a community-based sanction for at least one year's duration for offenders who are convicted of or plead guilty to certain nonviolent felonies of the fourth or fifth degree, unless the offense involved a firearm. The fiscal effect of this provision would be to eliminate more inmate beds and further reduce prison-related GRF operating expenditures by diverting more low-level nonviolent offenders out of the prisons and into more cost-effective alternative sanctions; and
- Establishing a mechanism for "risk reduction sentencing" in which certain felony offenders may qualify and be recommended, by the sentencing judge, for risk reduction sentencing. If these offenders complete the required treatment or programming that is part of the risk reduction sentence, they may be granted release after serving a minimum of 80% of the stated prison term. Offenders serving a sentence for a sexually oriented offense would be excluded.

These Justice Reinvestment Reform provisions complement or enhance some of the other provisions in the bill to further increase the number of offenders either released early through sentence reduction or diversion away from prison altogether and into community-based sanctions.

The interrelationships between these provisions in the bill can be quite complex. For example, the diversion of nonviolent fourth and fifth degree felony offenders away from prison, as per the Justice Reinvestment Reforms, will complement the impact of the other provisions in the bill that divert offenders away from prison, such as increasing the felony thresholds for theft offenses and placing felony nonsupport offenders into community sanctions. The diversion of these offenders away from prison will simultaneously reduce the numbers of offenders subject to the early release or earned credit provisions in the bill. If low-level offenders are diverted away from prison in the first place, there will be fewer offenders that qualify for one of the early release provisions. These complex interrelationships between the provisions of the bill create difficulties in presenting an accurate estimate of the net savings effect. That said, the bill carries the potential to produce an incarceration cost savings of up to around \$46.2 million over the course of three to five years or so.

With respect to the provisions in the bill that would divert offenders from prisons into alternative community-based sanctions, it is also important to note that there would presumably be some increased demand on local community control sanction systems. This would in turn increase the local demand for DRC's community corrections grants funding, which means that the savings in state incarceration costs will be partially offset by the need to enhance funding for its parole and community services operations.

An additional area of reform stemming from the study and report of the Council of State Governments' Justice Reinvestment in Ohio involves changes to the operations of county level probation services. The most fiscally relevant of these provisions in the bill is the requirement that probation officers be trained in accordance with a set of minimum standards established by the APA.

Under current law, local jurisdictions that receive Community Corrections Act (CCA) grants from DRC to support probation services are required to have probation officers trained in accordance with APA standards. This provision of the bill would have little impact in these jurisdictions. For those local jurisdictions in which the probation departments do not receive any CCA grant funding, specific training is not required. Since the bill requires all probation officers to have APA-approved training, then some jurisdictions will incur costs to train their probation personnel. The precise cost of such training is unknown at this time, but depending on the number of personnel to be trained and the cost of the training, some counties and municipalities could incur costs in excess of the minimal threshold of \$5,000.

Juvenile justice system changes

The bill makes changes to the juvenile justice system designed generally to reduce the number of juveniles committed to a state juvenile correctional facility and to more effectively utilize the state and local resources available in the treatment of juvenile offenders. Most notably these changes include: (1) amending the manner in which a juvenile court disposes of certain cases, (2) standardizing juvenile competency procedures, (3) clarifying judicial release procedures, (4) creating the Ohio Interagency Task Force on Mental Health and Juvenile Justice, and (5) requiring prioritization of the use of money in a county felony delinquent care and custody fund. These provisions of the bill and their fiscal effects are discussed in more detail below.

Juvenile court dispositions

The bill's changes to a juvenile court's dispositional authority: (1) restrict the mandatory transfer of alleged delinquent juveniles to adult court to certain youth that are sixteen or seventeen years of age at the time of the offense, (2) create a new procedure whereby the dispositional jurisdiction of juveniles subject to mandatory bindover proceedings may be transferred back to the juvenile court under certain conditions, and (3) limit the length of confinement to a maximum of one year for certain youth found to be complicit in another person's violation of a firearm specification.

State fiscal effects

These provisions will affect the Department of Youth Services (DYS) by triggering factors that both increase and decrease institutional operating costs, the net effect of which will be a decrease in annual institutional operating costs. These factors include:

- (1) A potential increase in institutional population and corresponding commitment costs, as certain juveniles may be adjudicated and committed to

- a state juvenile correctional facility instead of being transferred to the criminal justice system and subsequently sentenced to a prison term; and
- (2) A potential decrease in institutional population and corresponding commitment costs resulting from confinement limitations for certain fire-arm related specifications, as certain juveniles may not be committed to a state juvenile correctional facility or may be committed for a shorter term than might otherwise have been the case under current law and practice.

Local fiscal effects

Juvenile courts may experience a potential increase in cases where jurisdiction of a juvenile offender is retained as a result of fewer transfers to the criminal (adult) justice system, and a corresponding increase in adjudication costs. Likewise, the criminal justice system may experience a potential reduction in the number of juvenile cases transferred to a court of common pleas, and the Department of Rehabilitation and Correction may experience a potential reduction in population resulting in a corresponding savings in county prosecution, investigation and indigent defense costs, and in state prison costs.

Juvenile competency procedures

The bill establishes: (1) procedures for determining the competency to participate in the proceeding of a juvenile who is the subject of a complaint alleging that the juvenile is unruly or delinquent, and (2) procedures for a juvenile to attain competency if the juvenile is found to be incompetent.

Local fiscal effects

The bill standardizes procedures for determining the competency of a juvenile in juvenile court. The standardized procedures include the possibility of additional hearings and findings, which would increase the amount of time the court spends on a given case, and a competency evaluation that is paid for by the court. Additionally, if a court finds that a juvenile is not competent but has reason to believe that the juvenile could attain competency within a specified time period, the court may order the juvenile to receive competency attainment services at the expense of the county. Current law does not address these issues, and as a result, each county has developed its own procedures for determining competency and dealing with a juvenile determined not to be competent.

The extent to which a juvenile court may incur additional costs is uncertain and would largely depend on the number of motions made to determine the competency of a juvenile alleged to be unruly or delinquent. Other factors would include the cost of any competency evaluations performed and the cost of any competency attainment services that may be ordered by the court. Certain counties, such as Hamilton and Cuyahoga, may incur fewer costs to implement the standardized procedures as they are likely to already have procedures in place that largely comport with the bill's requirements. There are likely, however, to be juvenile courts in other counties that

could incur significant costs to comply with the required competency determination and attainment procedures.

Judicial release procedures

The bill clarifies when a juvenile committed to DYS generally may be granted a judicial release and authorizes judicial release for a juvenile committed to DYS when the commitment includes a period of commitment imposed for certain specifications. The bill may result in shorter periods of confinement for certain juveniles committed to the custody of DYS and residing in one of the state's juvenile correctional facilities, the practical fiscal effect of which could be some reduction in the Department's annual institutional operating costs.

Ohio Interagency Task Force on Mental Health and Juvenile Justice

The bill establishes the Ohio Interagency Task Force on Mental Health and Juvenile Justice to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders. Not later than March 31, 2012, the Task Force is required to issue a report of findings and recommendations, after which it ceases to exist.

Task Force members will not be entitled to either compensation or reimbursement of expenses incurred in the performance of their duties and responsibilities. However, various state agencies involved in providing services to youth, including, but not limited to, the departments of Youth Services, Mental Health, and Education, may incur minimal one-time administrative costs to assist the Task Force by providing office and meeting space, information, and professional or clerical staff assistance. It is likely that these state agencies can fairly easily absorb these costs into their ongoing day-to-day business.

County felony delinquent care and custody funds

The bill encourages a county and the juvenile court that serves the county to prioritize the use of money in the county's felony delinquent care and custody fund to research-supported, outcome-based programs and services. As a result of this provision, certain programs and services may be more or less likely to be funded in the future.