



OHIO LEGISLATIVE SERVICE COMMISSION

Jessica Murphy

Fiscal Note & Local Impact Statement

Bill: H.B. 38 of the 132nd G.A.

Status: As Introduced

Sponsor: Rep. Greenspan

Local Impact Statement Procedure Required: No

Subject: Increase penalty for murder or assault of certain persons

State and Local Fiscal Highlights

- The Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration expenditures will increase given the likely longer prison terms for certain felonious assault offenders will produce a "stacking effect." The result is that DRC's incarceration costs will increase by an estimated \$4 million or more annually starting roughly six years after the bill's effective date.
- The bill's penalty enhancements may extend the amount of time and effort that a county criminal justice system might otherwise have spent in resolving certain felonious assault cases. Any additional costs will be minimal at most annually.

Detailed Fiscal Analysis

The bill most notably increases the penalty for felonious assault from a secondary degree felony, absent any specification, to a first degree felony when the victim is a first responder or military member, including a person that previously served as a first responder or military member. For the purposes of the penalty increase, the bill also expands the definitions of "law enforcement officer" and "peace officer" to include any federal law enforcement officer or anyone who has previously served as a federal or state law enforcement officer.

This class of victims (first responders, military members, law enforcement officers, and peace officers) account for approximately one million, or 9%, of Ohio's total population (11.5 million). Assuming that the frequency at which these offenses are committed is uniform across the entire population, then, of the offenders sentenced to prison for felonious assault, about 9% would have involved one of the above-noted victims.

Incarceration costs

Felonious assault

The bill will not create additional felony cases for county criminal justice systems to prosecute and adjudicate, but is more likely to result in offenders that are already prison-bound to be sentenced for a longer term than otherwise might have been the case under current law and sentencing practices.

Under current law, felonious assault generally is a felony of the second degree and carries a 2, 3, 4, 5, 6, 7, or 8-year prison term. The average prison time served for second degree felonious assault is about four years, whereas the average prison time served for felonious assault of the first degree is about six years. This means that the average prison time served by these offenders will likely increase by approximately two years. It should be acknowledged that how a judge may actually sentence such an offender is uncertain. The range for a felony of the first degree is a definite prison term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years.

The principal fiscal effect of this penalty enhancement may be a steady increase over a period of several years in the amount of GRF funding that the Department of Rehabilitation and Correction (DRC) expends annually on institutional operations. In effect, by extending prison stays beyond what the amount of time served would otherwise have been under current law, the bill will trigger a "stacking effect." This term refers to the increase in the prison population that occurs as certain offenders currently serving time stay in prison longer while the number of new offenders entering prison does not decrease. This "stacking" process will stabilize when the number of offenders who begin serving additional time as part of the penalty enhancement in the bill is about the same as the number leaving prison after serving additional time.

The key factor in estimating the fiscal effect on state incarceration costs is determining the number of offenders that will likely be subject to the bill's penalty enhancement. DRC data on offenders sent to prison indicates that from FY 2013 through FY 2016, an average of 904 offenders were committed to prison each year for felonious assault or attempted felonious assault. Based on the size of the victim class relative to the overall population, about 9% of those commitments likely involve assaults against the victims addressed by the bill; therefore, we can estimate that somewhere around 81 offenders will be subject to the bill's penalty enhancement annually. At around the sixth year following the bill's effective date, the "stacking" process is likely to stabilize. An estimated 81 offenders, serving an additional two years, will require about 162 beds every year (81 x 2 additional years). At the current annual institutional operating cost of \$24,763 per bed, these additional beds will cost DRC around \$4 million (162 x \$24,763) per year.

Mandatory term of incarceration for felonious assault

The bill also specifies that, if an offender knew or had reasonable cause to know the victim's profession, the offender would be subject to a mandatory prison term of three to 11 years that is in addition to an offender's prison term for any other offense

connected to the assault. Under current law, the mandatory prison term only applies when the victim is a peace officer or Bureau of Criminal Investigation investigator and the victim suffered serious physical injury as a result of the assault. The provision is expanded to include first responders and military members and eliminates the requirement that the victim must suffer serious physical harm as a result of the assault. The frequency and likelihood that an offender will know a victim's profession is uncertain. Thus, it is difficult to determine whether the specification will subject more felonious assault cases to a mandatory prison term than what would be the case under current law. Based on available information, it is reasonable to assume that this provision could increase the prison term for some first degree felonious assault offenders, but the effect on DRC's annual incarceration costs is indeterminate.

Aggravated murder

The bill expands: (1) the offense of aggravated murder to include purposely causing the death of a first responder or military member when the victim was engaged in official duties or the offender's specific purpose was to kill a first responder or military member, and (2) the definitions of "law enforcement officer" and "peace officer" to include any federal law enforcement officer or anyone who has previously served as a federal or state law enforcement officer. Existing law relative to the offense of aggravated murder already includes when the victim is a law enforcement officer.

This expansion may result in a minimal at most annual increase in DRC's incarceration costs, as a few offenders may serve considerably longer prison terms than is likely to be the case under current law and sentencing practices.

County criminal justice systems

The bill's penalty enhancements will affect the processing of cases that are processed as felonies under the subject matter jurisdiction of county criminal justice systems. It may extend the time and effort required to prosecute, defend, and adjudicate certain cases, with any additional associated annual cost being minimal at most.