



	more than minimal	be no more than minimal	be no more than minimal
Expenditures	Potential criminal justice system cost decrease, not likely to exceed minimal	Potential criminal justice system cost decrease, not likely to exceed minimal	Potential criminal justice system cost decrease, not likely to exceed minimal

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

- ***County criminal justice system expenditures.*** The bill could increase a given county criminal justice system's costs related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and subsequent sanctioning of certain offenders, as such offenders may work harder to avoid the imposition of a term, or a longer term, of incarceration in jail or prison. As the number of criminal cases likely to be affected by the bill appears to be relatively small, then any potential increase in any given county criminal justice system's expenditures seems unlikely to exceed minimal on an ongoing basis. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated cost of no more than \$5,000 per year for any affected county criminal justice system.
- ***Municipal criminal justice system expenditures.*** Arguably, the bill may shift criminal cases that would have been handled by municipal courts and county courts as misdemeanors under existing law to courts of common pleas where such cases will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may shed some of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning certain offenders. The number of offenders, however, that could be affected in this manner in any given municipal criminal justice system annually appears likely to be relatively small. Assuming that were true, then any decrease in the annual operating costs of any given municipal criminal justice system seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal expenditure decrease means an estimated annual cost reduction of no more than \$5,000 for any affected municipal criminal justice system.
- ***Court cost and fine revenues.*** As noted, the bill may shift certain cases handled by county courts and municipal courts (which handle misdemeanors) into courts of common pleas (which handle felonies), which creates a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that offenders may be convicted of a more serious felony offense and subsequently fined higher amounts than might otherwise have been the case under current law and sentencing practices. As the number of affected criminal cases appears likely to be relatively small, the amount of annual court cost and fine revenue that municipalities might lose and counties might gain would be no more than minimal. For the purposes of this fiscal analysis, minimal in the context of revenues means an estimated gain or loss of no more than \$5,000 per year for any affect local jurisdiction.
- ***Testing costs.*** As a result of the bill's expanded prohibitions, additional persons may be charged with the offense of harassment with a bodily substance and be required to submit to, and pay for, the appropriate test(s). As of this writing, however, LSC fiscal staff has not collected any information suggesting that there will be a noticeable increase in the number of additional persons that might be charged, tested, and determined to be unable to pay the testing costs in any given local criminal justice system. Assuming that were true, then any affected county or municipal criminal justice system appears unlikely to experience a problematic increase in testing costs.
- ***Nunc pro tunc orders.*** The bill permits, under certain circumstances, a sentencing court to issue a *nunc pro tunc* order to make a correction to a judgment of conviction of specified types by adding the necessary post-release control provisions to a defendant's sentence while that defendant is still in prison. As of this writing, the potential fiscal effect on any given county criminal justice system is uncertain.

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## *Detailed Fiscal Analysis*

### ***Overview of the bill***

For the purposes of this fiscal analysis, the bill most notably:

- Renames the offense "harassment by an inmate" as "harassment with a bodily substance."
- Expands the renamed offense to additionally prohibit: (1) a person from causing or attempting to cause a "law enforcement officer" to come into contact with a bodily substance, a violation of which is a felony of the fifth degree under current law, and (2) a person with knowledge of certain health conditions from causing or attempting to cause "any person" to come into contact with a bodily substance, a violation of which is a felony of the third degree under current law.
- Addresses post-release control notification matters that were the subject of the Ohio Supreme Court's 2006 ruling in *Hernandez v. Kelly*.
- Declares an emergency, but specifies that the provisions regarding the offense of "harassment with a bodily substance" are to take effect 90 days after the bill's effective date.

### ***Harassment with a bodily substance charges***

Based on LSC fiscal staff's research, it seems most likely that a violation of the renamed and expanded harassment offense would most likely occur under a circumstance in which an individual was already facing arrest and prosecution. Such circumstances that jump readily to mind would be emotionally charged environments tied to disorderly conduct, resisting arrest, domestic violence, assault, or operating a motor vehicle

while under the influence. Thus, rather than creating new criminal cases, arguably, the bill's expanded prohibitions will primarily permit a prosecuting attorney to stack more charges against an individual and possibly secure a more serious punishment than might otherwise have occurred under current law.

### Local fiscal effects

#### Criminal cases generally

The bill may affect county and municipal criminal justice systems in at least two ways. First, some persons whose criminal conduct would have been processed as a misdemeanor may face the possibility that a similar case in the future could be elevated to a felony. Second, some offenders who would likely have been prosecuted and sanctioned under existing law for a felony offense could face a potentially more serious punishment. As of this writing, it appears that the number of criminal cases that could be affected in either manner in any given local criminal justice system annually is likely to be relatively small.

#### Criminal justice system expenditures

One notable local effect of the bill may be to shift a criminal case that would have been handled by a municipal court or a county court as a misdemeanor under existing law to a court of common pleas where such a case would be handled as a felony and the offender could be subjected to more serious sanctions. As a result, municipalities may shed some of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning certain offenders. Conversely, counties could experience an increase in their annual criminal justice system expenditures, as felonies are typically more time-consuming and expensive to resolve and the local sanctioning costs can be higher as well.

The number of offenders, however, that could be affected in this manner in any given county or municipal criminal justice system annually appears likely to be relatively small. Assuming that were true, then any decrease in the annual operating costs of any given municipal criminal justice system and any related increase in the annual operating costs of any given county criminal justice system seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal expenditure increase or decrease means an estimated cost or reduction of no more than \$5,000 for any affected county or municipal criminal justice system per year.

#### Court cost and fine revenues

As noted, one effect of the bill may be to shift certain cases handled by county courts and municipal courts (which handle misdemeanors) into courts of common pleas (which handle felonies), which creates a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that offenders may be convicted of a more serious felony offense and subsequently fined higher amounts than might otherwise have been the case under current law and sentencing practices. As the number of affected criminal cases appears likely to be relatively small, the amount of annual court cost and fine revenue that municipalities might lose and counties might gain appears likely to be no more than minimal. For the purposes of this fiscal analysis, minimal in the context of revenues means an estimated monetary gain or loss of no more than \$5,000 per year for any affected local jurisdiction.

#### Testing costs

Relative to the offense of harassment with a bodily substance, a person can be required to submit to, and pay for, the appropriate test(s) under current law. If the person is unable to pay, then the jurisdiction with custody of the person is charged for the cost of the test(s). Thus, as a result of the bill's expanded prohibitions, additional persons may be charged with the offense of harassment with a bodily substance and be required to submit to, and pay for, the appropriate test(s). As of this writing, however, LSC fiscal staff has not collected any information suggesting that there will be a noticeable increase in the number of additional persons that might be charged, tested, and determined to be unable to pay the testing costs in any given local criminal justice system. Assuming that were true, then any affected county or municipal criminal justice system appears unlikely to experience a problematic increase in testing costs.

### State fiscal effects

#### Incarceration expenditures

It is also possible as a result of the bill that, in the future: (1) offenders that might not otherwise have been prison-bound under current law and sentencing practices may be sentenced to a prison term, and (2) offenders that would have been prison-bound under current law and sentencing practices may be sentenced to a longer prison term. Assuming all other conditions remain the same, either outcome theoretically at least increases the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs. As the number of offenders that might be affected in either manner annually appears likely to be relatively small, any related increase in DRC's annual incarceration costs would be minimal at most. For the purposes of this fiscal analysis, minimal means an estimated cost of less than \$100,000 per year for the state.

#### Court cost revenues

If, as a result of the bill, an offender is convicted of a felony offense rather than a misdemeanor offense, then the state may gain locally collected court cost revenues that are deposited to the credit of the Victims of Crime/Reparations Fund (Fund 402). As the number of offenders that could be affected in this manner appears likely to be relatively small, the amount of court cost money that Fund 402 may gain annually appears likely to be negligible. For the purposes of this fiscal analysis, "negligible" means an estimated revenue gain of less than \$1,000 per year. It is also

important to note that collecting court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unable or unwilling to pay.

**Sentences and fines generally**

Table 1 below summarizes the existing sentences and fines, unchanged by the bill, for violating felony offenses generally. Under current law, depending upon the circumstances, a violation of the existing “harassment by an inmate” prohibitions is either a felony of the third or fifth degree. Under the bill, depending upon the circumstances, a violation of the renamed “harassment with a bodily substance” prohibition is either a felony of the third or fifth degree, with their respective sentences and fines noted in the shaded columns of Table 1.

<b>Table 1 Existing Sentences and Fines for Felonies and Misdemeanors Generally</b>		
<b>Offense Level</b>	<b>Fine</b>	<b>Term of Incarceration</b>
Felony of the 1st degree	Up to \$20,000	3, 4, 5, 6, 7, 8, 9 or 10 years definite prison term
Felony of the 2nd degree	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years definite prison term
Felony of the 3rd degree	Up to \$10,000	1, 2, 3, 4, or 5 years definite prison term
Felony of the 4th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months definite prison term
Felony of the 5th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term

**Sentencing and post-release control notification**

The bill responds to a 2006 ruling by the Ohio Supreme Court in the case of *Hernandez v. Kelly*. In this case, the Supreme Court ruled that the inmate in question was entitled to release from prison and from any further post-release control because the trial court did not notify him at his sentencing hearing that he would be subject to post-release control and did not incorporate post-release control into its sentencing entry.

According to staff of DRC’s Adult Parole Authority (APA), as a result of this decision, approximately 365 offenders released from prison since the beginning of 2006 are not subject to post-release control. This ruling has created what might perhaps be best viewed as a temporary, one-time reduction in the number of offenders being supervised in the community by the APA from what that number of supervised offenders might otherwise have been under current law and practice. Arguably, the APA may realize some savings relative to its expected level of community supervision expenditures, but LSC fiscal staff is unable to quantify the magnitude as of this time.

The bill’s post-release control provisions essentially specify that, regardless of whether the court imposed the prison term prior to, on, or after its effective date, the failure of the court to take certain actions has no affect on the mandatory period of post-release control that is required of the offender or the Parole Board’s authority to impose a prison term on the offender for a post-release control violation. The practical effect is to return the offender supervision workload and related expenditures to the levels that the APA anticipated prior to the Supreme Court ruling.

**Nunc pro tunc orders**

The bill permits the sentencing court to issue *nunc pro tunc* orders to make a correction to the original sentence by adding the necessary post-release control provisions to a defendant’s sentence while that defendant is still in prison. Before such an order can be issued, however, the court must hold a hearing. The county prosecutor is permitted to make a statement. The offender is permitted to be physically present, but upon a motion of the court, the county prosecutor, or court may appear by video-conferencing equipment. The bill is silent as to whether: (1) the offender would be entitled to counsel, and (2) DRC or the county sheriff would be responsible for transporting the offender to and from prison. As of this writing, the potential fiscal effect on the county criminal justice system and DRC is uncertain.

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