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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

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Office

S.B. 258
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 258's Bill Analysis](#)

Version: As Passed by the House

Primary Sponsor: Sen. Gavarone

Local Impact Statement Procedure Required: No

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Highlights

- The bill enters Ohio into the Psychology Interjurisdictional Compact (PSYPACT). As a result, the State Board of Psychology may pay annual assessments of up to \$6,000 per year. In addition, the Board will have additional administrative costs related to regulation, investigations, and notification requirements.
- The bill eliminates a township's authority to license individuals acting as massagers within the unincorporated area of the township, resulting in lost revenue for certain townships. Current law specifies that fees for these licenses are \$100 for an initial license and \$50 to renew the license annually.
- Only townships that have adopted a resolution to regulate massage establishments will be affected. Revenue loss for affected townships could range from a few hundred dollars per year to several thousand dollars per year depending on the number of individuals the township has licensed.
- The bill prohibits a court from ordering a criminal defendant to undergo inpatient competency evaluations at facilities operated by the Ohio Department of Mental Health and Addiction Services or Ohio Department of Developmental Disabilities unless the defendant has been charged with a felony or an offense of violence or unless the court determines the defendant is in need of immediate hospitalization. Courts could be impacted assuming that a defendant is sent for an evaluation at a private center instead of one of these prohibited facilities.
- The bill's impact on the annual operating costs of local criminal justice systems is uncertain.

Detailed Analysis

Psychology Interjurisdictional Compact

The Psychology Interjurisdictional Compact (PSYPACT) is a multi-jurisdictional psychology contract created in 2015 to regulate the practice of telepsychology and temporary in-person, face-to-face psychology across state boundaries. The bill enters Ohio into PSYPACT, permitting eligible psychologists to practice telepsychology and temporary in-person, face-to-face psychology with patients in other compact states. Temporary in-person, face-to-face psychology is where a psychologist is physically present with a patient, in a state other than the one in which the psychologist is licensed, for up to 30 days within a calendar year. All states participating in PSYPACT help establish the Psychology Interjurisdictional Compact Commission, a collective governing agency overseeing the implementation of PSYPACT. Under the bill, the State Board of Psychology is responsible for appointing Ohio's member on the Commission.

The bill establishes the Commission's powers and authority and specifies that the Commission is to pay, or provide the payment of reasonable expenses associated with its establishment, organization, and ongoing activities. The Commission is allowed to accept any and all appropriate revenue sources, donations, grants, equipment, etc. and may also levy on and collect an annual assessment from each compact state or impose fees on other parties. The bill establishes the requirements a psychologist must meet to practice under PSYPACT. The bill establishes which compact state has authority regarding disciplinary actions when telepsychology is practiced and when temporary in-person, face-to-face psychology is practiced. Also, the Commission is responsible for developing and maintaining a Coordinated Licensure Information System to record licensure and disciplinary action for practicing PSYPACT psychologists. Compact states are required to submit uniform data and promptly notify all other compact states of any adverse action taken against, or any significant investigative information on, any licensee.

The State Board of Psychology will be required to pay an annual assessment to the Commission. The amount that the Board must pay is not explicitly stated in the bill; however, a rule developed by the Commission that went into effect on October 9, 2019, states that a compact state will be charged \$10 per PSYPACT participating psychologist licensed in their home state up to a maximum of \$6,000 annually. In addition to these annual assessments, there may be additional administrative costs to investigate complaints and take disciplinary actions. If witnesses are necessary for hearings or investigations, it is possible that the Board may pay witness fees, travel expenses, and mileage and other required fees in certain instances. There will also be other costs to the Board associated with submitting uniform data to the Commission and notifying other compact states of certain actions taken about any licensees. The total costs will depend on the number of Ohio psychologists that opt to practice under PSYPACT, the number of other compact state psychologists that practice in Ohio, and the number of complaints that the Board is required to investigate.

There could be other impacts associated with Ohio entering PSYPACT. For instance, additional PSYPACT psychologists located in other compact states could provide services to Ohio residents. If this occurs, there could be additional reimbursements from state and local programs that reimburse for these services. In addition, if an Ohio resident utilizes an out-of-network provider located in another compact state there could be some additional costs to state and local programs or health plans. However, if the provision of these services led to any

avoidances in hospital admissions or any other more expensive treatments, there could be a reduction in costs.

Massage therapy

The bill eliminates a township's authority to issue licenses to individuals who perform massage therapy and will result in minimal lost revenue for certain townships. Under current law, fees for these licenses are set at \$100 for an initial license and \$50 for annual renewal of the license. Although eliminating authority to license individuals performing massage applies to all townships, current law requires a township to have adopted a resolution to regulate massage establishments in order to exercise this licensing authority. Thus, only those townships that have adopted a resolution to regulate massage establishments will be affected by this change. Because the number of townships that regulate massage establishments and the number of individuals licensed by townships as a massager is not readily available, it is difficult to estimate how much revenue any affected township may lose. However, given the current law fees, it is plausible to expect the loss to range from a few hundred dollars per year to several thousands of dollars per year, depending on the number of licensed individuals within a township.

Other changes made by the bill appear to have little or no fiscal effect, including those changes that affect the law governing the State Medical Board's authority to regulate and license massage therapy under Chapter 4731 of the Revised Code. Changes made by the bill affecting the Board clarify existing law provisions that allow certain other licensed occupations to perform limited types of massage services and would not result in additional duties or workloads for the Board. Please see the LSC bill analysis for an explanation of these changes.

Competency evaluations

The bill prohibits a court from ordering a criminal defendant to undergo inpatient competency evaluations at a center, program, or facility operated or certified by the Ohio Department of Mental Health and Addiction Services (OhioMHAS) or Ohio Department of Developmental Disabilities (ODODD) unless the defendant has been charged with a felony or an offense of violence or unless the court determines the defendant is in need of immediate hospitalization. OhioMHAS estimated that for calendar year 2018,¹ 15 individuals had been charged with a nonviolent misdemeanor and ordered to receive an inpatient evaluation at a state OhioMHAS hospital. OhioMHAS or other entities costs could be reduced if these individuals did not receive treatment at this facility. ODODD indicated that they rarely conduct inpatient competency evaluations for individuals charged with a nonviolent misdemeanor. Due to the rarity of evaluations in these circumstances, the bill should have a minimal to negligible fiscal impact to ODODD. Continuing law states that the cost of evaluations are to be borne by the legislative authority of the court – the municipality or county, depending on the court – and are taxed as court costs in the case; therefore, except for cases of indigence, the costs for evaluations are recovered by the court as costs charged to the offender. If a defendant is sent to a private facility for an evaluation that would have otherwise been sent to a facility prohibited under the bill, the impact will depend on whether the costs at the private facility are

¹ This figure was provided by OhioMHAS on December 13, 2018.

higher or lower than at the prohibited facilities. The magnitude of the impact on the courts, if any, is uncertain.

Written report by an examiner

The bill requires a written report filed by the examiner who assesses a defendant's mental state to be filed with the court under seal and requires the court to allow for inspection of the report by certain parties.² The report is not open to public inspection, but the bill permits a person to file a motion seeking disclosure for good cause and requires the court to notify the defendant of the pending motion. If the defendant objects to the disclosure, the court is required to hold a hearing.

Incompetence to stand trial

The bill allows a criminal trial court that finds a defendant charged with a misdemeanor offense, other than a misdemeanor offense of violence, incompetent to stand trial to do one of the following:

- Dismiss the charges pending against the defendant without prejudice and discharge the defendant from custody; or
- Order the defendant to undergo outpatient competency restoration treatment at a facility operated or certified by the Department of Mental Health and Addiction Services as being qualified to treat mental illness, at a public or community mental health facility, or in the care of a psychiatrist or other mental health professional.

If a defendant who has been released on bail or recognizance refuses to comply with this court-ordered outpatient treatment, the court is permitted to dismiss the charges pending against the defendant or amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by the Department of Mental Health and Addiction Services for treatment.

The bill prohibits a court from proceeding against a defendant under the above process if the defendant is charged with a misdemeanor offense of violence and found incompetent to stand trial unless the prosecutor recommends that the court follow those diversion procedures. If the prosecutor does not recommend those procedures and the court is unable to determine whether there is a substantial probability that the defendant will become competent to stand trial within the period permitted under existing law for treatment, the court may order continuing evaluation of the defendant for a period not to exceed that maximum period.

Involuntary status

The bill authorizes a hospital's chief clinical officer to file an affidavit for involuntary treatment of a mental health patient in voluntary status if the patient refuses to accept the written treatment plan required under existing law. The bill requires a hospital's chief clinical officer to immediately notify the appropriate trial court or prosecutor if the officer decides to

² Parties include the defendant, the defendant's guardian, and any mental health professional involved in the treatment of the defendant, probate courts, and boards of alcohol, drug addiction, and mental health services.

discharge a mental health patient in voluntary status who had, within the past 12 months, been a defendant found incompetent to stand trial for a misdemeanor charge and subject to involuntary mental health treatment or institutionalization by court order because of intellectual disability. The bill authorizes the trial court or prosecutor, not later than three court days after being notified of the intent to discharge, to file an affidavit for involuntary mental health treatment with the probate court of the county where the patient is hospitalized or the county where the patient resides. The bill requires that if such an affidavit is filed, the patient's discharge must be postponed until a hearing on the involuntary treatment is held. The impact of this provision is unclear.