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Office of Research and Drafting

Legislative Budget Office

H.B. 699
134th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 699's Bill Analysis

Version: As Introduced

Primary Sponsor: Reps. Seitz and Galonski

Local Impact Statement Procedure Required: Yes

Jeffrey Golon, Principal Analyst, and other LBO staff

Highlights

- The bill makes a number of changes to current law's sealing and expungement provisions that are likely to result in a significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.
- The bill enacts a new judicial release mechanism, including notice, hearing, and other procedural requirements triggered by a Department of Rehabilitation and Correction (DRC) release recommendation that will create work and costs generally for courts, clerks of courts, county prosecutors, county sheriffs, and possibly indigent defense counsel. The amount of work and costs depends on the number of motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted.
- The bill's modifications to existing transitional control and earned credit provisions create a potential savings in incarceration costs, as certain offenders may be released from prison sooner than otherwise may have been the case under current law. The costs that DRC's Adult Parole Authority incurs to supervise such a prisoner subsequent to their release from prison may reduce the magnitude of that savings.
- Because of the bill's enhanced penalty for speeding, more violations may be contested and taken to trial than otherwise may have occurred under current law. The result may be (1) additional costs for the court, clerk of courts, prosecutors, law enforcement, and jails, and (2) additional revenues in the form of fines, and court costs and fees, some of which would be distributed to the state. The net fiscal effect for local criminal justice systems is indeterminate, as the number of applicable situations is unknown.

Detailed Analysis

The bill makes changes to a wide range of Criminal Law provisions. The fiscal analysis addresses the bill's subject matter in order as follows:

- Criminal record sealing and expungements.
- Judicial release mechanisms.
- Department of Rehabilitation and Correction's (DRC) operations (transitional control, earned credits, body-worn cameras, youthful offender parole review, and prison terms for operating a vehicle while impaired (OVI) offenders).
- Local jails (carrying firearms, internet access for prisoners, and grand jury inspections).
- County coroner (confidential law enforcement investigatory records).
- Civil protection orders.
- Speedy Trial Law.
- Department of Youth Services' (DYS) operations (transitional services and quality assurance committee).
- Traffic Law (OVI expansion to include "harmful intoxicants," affirmative defenses for certain driving offenses, and enhanced penalties for speeding violations).
- Immunity when seeking medical assistance for drug overdose.
- Gross sexual imposition penalty.

Criminal record sealing and expungement

The bill makes a number of changes to current law's sealing and expungement provisions, most notably by expanding eligibility, shortening waiting periods, and requiring the court hold a hearing between 45 and 90 days after the filing date of an application. The result is likely to be a significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.

Under current law, the court is required to send notice of an order to seal or expunge to the state's Bureau of Criminal Investigation (BCI) and to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record. The latter potentially includes state and local law enforcement, prosecuting attorneys, probation departments, and the Adult Parole Authority.

According to data collected by the Ohio Criminal Sentencing Commission, BCI received, on average, approximately 38,000 sealing/expungement orders annually from calendar year (CY) 2016 through 2018. The actual number of applications was higher, as the BCI data does not reflect applications denied or withdrawn. Because of the bill, the number of applications received and subsequent sealing/expungement orders issued will increase, perhaps significantly so in certain, likely urban, jurisdictions.

Under current law, unchanged by the bill, an applicant, unless indigent, must pay a nonrefundable $50 fee, regardless of the number of records the applicant requests to have

sealed or expunged. The court forwards (1) $30 of the fee to the state treasury, with $15 credited to the Attorney General Reimbursement Fund and $15 to the General Revenue Fund, and (2) $20 of the fee into the county general revenue fund if the conviction was pursuant to a state statute or into the general revenue fund of the municipal corporation involved if the conviction was pursuant to a municipal ordinance. The additional application revenue generated because of the bill will not offset the potentially significant cost increase.

There is a difference between the terms sealing a record and expungement of a record. "Sealing" a court record means that the criminal record is removed from all public records and the public no longer has access to the records of the criminal case, including employers generally. "Expungement" usually means that the criminal record is completely destroyed, erased, or obliterated from all records.

Sealing

The bill's modifications to the current record sealing law generally are summarized in the table below, most notably in terms of increasing eligibility, shortening waiting periods, and setting hearing deadlines.

Table 1. Criminal Record Sealing

Subject Matter	Current Law	Bill's Proposed Changes
Recording sealing definitions	Defines "eligible offender" based upon the offense level of conviction(s) and the number of prior convictions.	Eliminates definition of "eligible offender" and instead limits applicability of the record-sealing statutes by excluding specified types of convictions.
Number of convictions and waiting periods	Current waiting periods (from final discharge of case): ▪ Three years for third degree felony except for a violation of theft in office. ▪ One year for fourth or fifth degree felony or one misdemeanor except for theft in office or an offense of violence. ▪ Seven years for one conviction of soliciting improper compensation in violation of theft in office.	Expands sealing eligibility and access by eliminating cap on number of convictions and reducing waiting periods to: ▪ Three years from final discharge for one or more third degree felonies, so long as none is theft in office. ▪ One year from final discharge for one or more fourth or fifth degree felonies or one or more misdemeanors, so long as none is theft in office or a felony offense of violence. ▪ Seven years from final discharge if record includes one or more convictions for soliciting improper compensation in violation of theft in office.

Table 1. Criminal Record Sealing		
Subject Matter	**Current Law**	**Bill's Proposed Changes**
		▪ In limited circumstances for sexually oriented offenders subject to SORN Law notification requirements five years after their notification requirements end. ▪ Five years from final discharge for first degree misdemeanor domestic violence offense. ▪ Six months from final discharge for minor misdemeanor.
Timing of hearing on application	Left to the court's discretion.	Requires the court hold a hearing between 45 and 90 days after the filing date, requires the prosecutor object in writing 30 days prior to that hearing date, and requires the victim to be notified of the date and time of the hearing.

Expungement

The bill enacts, relative to the expungement of a conviction record, new provisions that:

- Authorize a person to apply for expungement of a conviction record in the same manner that a person may apply for sealing of a conviction record;
- Authorize the Governor to issue a writ of expungement of such a record in the same manner that the Governor may issue a writ for the sealing of such a record; and
- Authorize a person to apply for expungement of a dismissal for intervention in lieu of conviction in the same manner that the person may apply for sealing of a dismissal.

Judicial release

State of emergency-qualifying offenders

The bill expands one of two existing judicial release mechanisms to apply to "state of emergency-qualifying offenders" (SEQ offenders), who are defined as inmates serving a state prison term during a state of emergency declared by the Governor as a direct response to a pandemic or public health emergency. Upon the filing of a motion by an SEQ offender with the sentencing court, or the court on its motion, the court may reduce the offender's aggregated nonmandatory prison term or terms through a judicial release. Subsequent to a state of emergency declared by the Governor, the notice, hearing, and other procedural requirements triggered by the filing of a motion for an SEQ offender judicial release creates work and costs generally for the court, the clerk of courts, county prosecutors, county sheriffs, and DRC, and possibly indigent defense counsel. The amount of work and costs depends on the number of

motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted. Generally, it is less expensive for DRC to supervise an offender in the community than it is to house an offender in prison.

The notice, hearing, and other procedural requirements are described below under the subheadings "**Motion**," "**Hearing**," and "**Court determination**."

Motion

The court: (1) may deny the motion without a hearing, schedule a hearing on the motion, or grant the motion without a hearing, (2) may order the prosecuting attorney to respond to the motion in writing within ten days, and (3) must, after receiving the response from the prosecuting attorney, either order a hearing as soon as possible, or enter its ruling on the motion as soon as possible. If the court conducts a hearing, it must be in open court or by a virtual, telephonic, or other form of remote hearing, and the court must enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, it must enter its ruling on the motion within ten days after the motion is filed or after it receives the response from the prosecuting attorney. If the court schedules a hearing, the existing notice provisions regarding a hearing on a motion made by an inmate as a qualifying offender apply (i.e., notice to DRC, the prosecuting attorney, and victims).

Hearing

Prior to the date of the hearing, DRC must send to the court an institutional summary report on the offender's conduct while in prison. The indicting prosecuting attorney or any law enforcement agency may request and DRC must send, a copy of the report. If the court grants a hearing, the offender must attend the hearing if ordered to do so by the court. DRC must deliver the offender to the sheriff of the county in which the hearing is to be held, who must convey the offender to and from the hearing.

Court determination

If the court grants a motion for judicial release, it must order the SEQ offender's release; place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the probation authority serving the court; and reserve the right to reimpose the reduced sentence if the offender violates the sanction.

Replacement of current "80% release mechanism"

The bill enacts a new judicial release mechanism and repeals the statute that contains the current "80% release mechanism." The most significant differences are that, compared to the "80% release mechanism," the new mechanism:

- Appears to expand the "eligible offender" population;
- Requires the court schedule a hearing (not required under current law); and
- Creates a rebuttable presumption requiring the court grant the offender judicial release unless the prosecuting attorney proves to the court, by clear and convincing evidence, that the release of the offender would constitute a present and substantial risk that the offender will commit an offense of violence.

The notice, hearing, and other procedural requirements triggered by a DRC release recommendation creates work and costs generally for courts, clerks of courts, county prosecutors, county sheriffs, and DRC, and possibly indigent defense counsel. The amount of work and costs depends on the number of motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted. The bill's new judicial release mechanism may result in a significant increase in that work and costs. Generally, it is less expensive for DRC to supervise an offender in the community than it is to house an offender in prison.

The notice, hearing, and other procedural requirements for the current "80% judicial release mechanism," and largely applicable to the new judicial release mechanism, are described below.

- The Director of DRC may recommend by submitting a written notice to the sentencing court that the court consider releasing from prison an "eligible offender" (a term that appears to be expanded under the bill), including an institutional summary report of the offender's conduct while in prison. The notice and report must also be provided to the appropriate prosecuting attorney and victim or victim's representative, as well as law enforcement, if requested.
- The court either schedules a hearing to consider the release or informs DRC that it will not be conducting a hearing (the bill requires a hearing to be scheduled).
- If ordered by the court, DRC is required to deliver the offender to the appropriate county sheriff, and the sheriff is required to convey the offender to and from the hearing. The court may permit the offender to appear at the hearing by video conferencing equipment.
- The court, subsequent to scheduling a hearing, must notify the prosecuting attorney, and the attorney must notify the victim or victim's representative. After the ruling, the court is required to notify the victim or victim's representative.
- If the court grants a motion for judicial release (the bill creates a rebuttable presumption of release), it must order the offender's release; place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the department of probation serving the court; and reserve the right to reimpose the reduced sentence if the offender violates the sanction.

Department of Rehabilitation and Correction

Transitional control

The bill eliminates a current law provision barring DRC from transferring a prisoner to transitional control, under any transitional control program it establishes, if the sentencing court within a specified period disapproves of the transfer. Transitional control is a prison program designed to facilitate an offender's transition back into the community from prison. Inmates who are deemed eligible by the Ohio Parole Board may participate in the transitional control program during the final 180 days prior to their release from prison. Depending on sentence length, some inmates may require approval from the applicable sentencing judge prior to transfer.

In CY 2018, DRC submitted 3,104 judicial notices in accordance with their transitional control program. Of those, 2,437 notices received a response, and of those, 1,131 were subjected to a judicial veto. In CY 2019, numbers were similar with 3,071 judicial notices sent, 2,356

responses received, and 1,136 vetoed. Due to timing, there is some overlap in these year-to-year statistics.

By repealing the judicial veto, DRC will likely realize cost savings in terms of administrative workload and incarceration expenditures. Currently, as part of the process to prepare an individual for transitional control, DRC first determines that an offender is eligible. A letter is then produced and mailed to the appropriate court. The correspondence is tracked via a database and if a judge denies the request, DRC must notify the inmate and the home institution. Additionally, all administrative tasks that had been completed in anticipation of the transfer must be reversed. For a portion of these cases, due to the time constraints, DRC would have already completed work to make referrals to a halfway house to ensure space would be available. If enacted, the bill would effectively eliminate the need to send and track the judicial notices and subsequent costs incurred to roll back preparations that may have been taken. In terms of incarceration expenditures, the GRF-funded incarceration costs incurred by DRC are likely to decrease, as more offenders will likely be transferred to transitional control, which is typically less expensive than remaining in an institutional setting. The potential cost savings will depend on the total number of prisoners who meet the criteria for transfer and are no longer subject to a possible judicial veto. Additional revenue may be collected from offenders that otherwise may not have been allowed to participate in the transitional control program.

Courts of common pleas

Courts of common pleas will experience a potential cost savings because the court will no longer be required to consider notices of the pendency of the transfer to transitional control for prisoners identified by DRC. The magnitude of those savings will vary from court to court but will likely be commensurate with the number of offenders adjudicated by each court. In other words, courts with higher criminal caseloads and convictions will experience larger savings as they will likely receive fewer notices of pendency of transfer.

Earned credits

Current law provides two mechanisms under which a DRC prisoner generally may earn credit against their sentence. The bill amends the mechanism that provides for an award of days of credit to a prisoner for participation in, or completion in specified circumstances of, programming. The maximum amount of earned credit a prisoner may earn is 8% of the total number of days in their prison term. The bill increases that maximum to 15% of the prisoner's prison term. The result is that a prisoner reaching existing law's maximum earned credit will be able to reduce their prison term even further under the bill.

The table below displays LBO examples of what may happen under the bill to a prisoner serving a term of one, two, or three years, including DRC's potential institutional operating cost savings. The costs that DRC's Adult Parole Authority incurs to supervise such a prisoner subsequent to their release from prison may reduce the magnitude of that savings. That said, it is generally less expensive for DRC to supervise an offender in the community than it is to confine them in a prison.

Table 2. Maximum Amount of Earned Credit (Expressed in Days)			
Earned Credit	Length of Prison Term		
	1 Year	2 Years	3 Years
8% (under current law)	29.20	58.40	87.60
15% (under the bill)	54.75	109.50	164.25
Days Earned Increase	25.55	51.10	76.65
Total Marginal Cost Savings*	**$282.07**	**$564.14**	**$846.22**

*DRC's reported marginal daily incarceration cost per offender for FY 2021 was $11.04.

Correctional employee body-worn camera recordings

The bill establishes, for body-worn camera recordings of a correctional employee, the same public records exemption that current law provides for recordings made by a visual and audio recording device worn on a peace officer or mounted on a peace officer's vehicle. For purposes of the bill, "correctional employee" means any DRC employee who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

DRC began the process of implementing body-worn cameras in December 2021, with the goal of outfitting around 5,100 prison and parole staff by June 2022.

Under current law, unchanged by the bill, certain "restricted portions" of a body-worn camera or a dashboard camera recording are exempted from disclosure under the Public Records Law. If a person requests a recording that contains restricted portions, a state or local law enforcement agency is required to redact objectionable parts of the recording, unless consent is obtained when certain criteria are met.

The practical impact of adding correctional employees to the same public records exemption is that some recordings may require redaction that otherwise would not have been the case under current law. As a result, DRC may likely experience an increase in administrative work, including time and effort, to comply with the bill's exemption. The associated costs will depend on the volume of requests, the number of staff available to handle requests, the manner in which redaction is performed, the extent to which DRC utilizes cameras, and how long recordings are retained. DRC will also incur a likely no more than minimal one-time cost to adjust existing public records training and public records policy.

Under continuing law, if a public office denies a request to release a restricted portion of a body-worn or dashboard camera recording, any person may (1) file a writ of mandamus with the appropriate court of common pleas or court of appeals, or (2) file a complaint with the Court of Claims to order the release of all or portions of the recording. A person may choose one or the other, but not both. The number of filings and state legal and settlement expenses that could result subsequent to the bill's enactment are unpredictable.

Youthful offender parole review

Current law provides special parole eligibility dates, under certain specified circumstances, for persons serving a prison sentence for an offense committed when under 18. The Parole Board, a section of DRC, is required: (1) to conduct a hearing to consider the prisoner's

release on parole within a reasonable time once a prisoner is eligible for parole, (2) to permit the State Public Defender to appear at the hearing to support the prisoner's release, and (3) to notify the State Public Defender, the victim, and the appropriate prosecuting attorney at least 60 days before the Board begins any review or proceeding.

The bill exempts an offender who is paroled on an offense committed when the offender was under 18 years of age who subsequently returns to prison from being eligible for parole under the special youthful offender parole provisions of current law. As the effective date of these provisions was April 12, 2021, little is known as to how many offenders might be exempt in the future that otherwise may have been eligible under current law. That said, LBO expects that, to the degree there is a fiscal effect on DRC, the State Public Defender, and county prosecutors, it will be minimal annually.

Reduction of prisoner's minimum term

The bill modifies a provision of the Felony Sentencing Law applicable to first and second degree felonies to require DRC to provide sentencing courts with "all relevant information" when it recommends to the court that a prisoner sentenced under that Law be granted a reduction in the offender's minimum prison term. DRC is currently required to provide an institutional summary report[1] and other available information requested by the court. This provision, as modified by the bill, appears unlikely to generate additional work and costs relative to what DRC otherwise may have incurred under current law. To date, DRC has made no recommendations to reduce an offender's minimum prison term, as the provision has only been in effect since March 2019.

Prison term for repeat OVI offender specification

Currently, the prison term for conviction of a repeat OVI offender specification only applies if the requisite number of offenses (five) occurred within the past 20 years. Because of the 20-year look back, certain offenders who previously served an additional mandatory prison term for the specification have been able to avoid a later imposition of the specification, even after committing an additional felony OVI offense. The bill imposes the repeat OVI offender specification (an additional one-, two-, three-, four-, or five-year mandatory prison term) on an OVI offender who has previously been convicted of the specification, *regardless of the number of years between offenses*. The offender serves the additional prison term consecutively and prior to any prison term imposed for the underlying offense.

It appears that very few OVI offenders have avoided the imposition of the additional mandatory prison term. DRC's marginal cost to incarcerate an offender for one year is $4,030 ($11.04 per day x 365 days).

Prison term for a third degree felony OVI offense

The bill specifies that the discretionary prison term, in addition to the mandatory prison term, that may be imposed for a third degree felony OVI (operating a vehicle while impaired) offense is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months, rather than 9, 12, 18, 24, 30, or 36 months as specified by the 2015 Ohio Supreme Court in *State v. South*. The resulting potential increase

[1] The institutional summary report covers the offender's participation in rehabilitative programs and activities and any disciplinary action taken against the offender while confined.

in prison time served for certain OVI offenders is unclear. DRC's marginal cost to incarcerate an offender for one year is $4,030 ($11.04 per day x 365 days).

Targeting Community Alternatives to Prison (T-CAP) Program

The bill moves the date for DRC's implementation of required changes to the T-CAP Program from September 1, 2022, to June 30, 2022. House Bill 110 of the 134th General Assembly expanded the program to apply to fourth degree and fifth degree felonies instead of only fifth degree felonies. The act included a deadline of September 1, 2022, by which certain requirements under the act, including the application of the program with respect to fourth degree felonies, applied and certain duties under the act satisfied. The program is currently voluntary, which means a county must choose to participate and by doing so qualifies for DRC's T-CAP grant funding.

The fiscal effect of moving the required effective date two months sooner is unchanged from what otherwise would have been the case. Subsequent to implementation of these changes, DRC may realize some institutional operating cost savings, as fewer offenders convicted of a fourth degree felony may be sentenced to a prison term than otherwise would have been the case under current law and practice. Participating counties are provided DRC grants for community correction operating expenses, including those associated with residential and nonresidential sanction programs.

Local jails

County correctional officers carrying firearms

The bill authorizes a county correctional officer to carry firearms while on duty in the same manner as a law enforcement officer if the county correctional officer is specifically authorized to carry firearms and has received firearms training. This provision largely affects operations of county sheriffs, the Attorney General, and affiliated Ohio Peace Officer Training Commission (OPOTC).

County sheriffs

With regard to the authorization of a county correctional officer to carry firearms while on duty, the bill requires: (1) certification by OPOTC as having successfully completed training that qualifies the officer to carry firearms while on duty, and (2) completion of an annual firearms requalification program approved by OPOTC's Executive Director. It appears to be the intention of county sheriffs generally to pay costs to train and equip officers, including, as necessary, a firearm, ammunition, holster, duty belt, belt stays, ammunition pouches, and gun belt. The county sheriff's costs will depend, to some degree, on the number of county correctional officers the sheriff authorizes to carry firearms while on duty. There may be an offsetting savings effect related to prisoner transportation, e.g., court dates or medical visits, if an armed county correctional officer is available in lieu of using a deputy sheriff that otherwise might have been performing other duties.

Attorney General

The bill requires OPOTC to recommend to the Attorney General, and the Attorney General to adopt rules governing the training and certification of county correctional officers authorized to carry firearms while on duty. The one-time rule adoption costs are likely to be minimal. The subsequent ongoing costs for OPOTC will depend on the number of county correctional officers

authorized to carry firearms while on duty. As with peace officers under current law, OPOTC is not authorized to collect a certification fee.

Protection from civil and criminal liability

The bill grants a county correctional officer who is carrying firearms as described above with protection from civil or criminal liability for any conduct occurring while carrying firearms to the same extent as a law enforcement officer. The practical effect may be to reduce the amount a county otherwise may have incurred to litigate and settle allegations of misconduct by a county correctional officer carrying firearms while on duty.

Internet access for prisoners in jails

The bill allows prisoner access to the internet for uses or purposes approved by the managing officer of a county or municipal correctional facility or their designee, rather than only while participating in an educational program that requires use of the internet for training or research, as under current law. If a facility opts to permit such access, the cost would depend on the type of computer network, computer system, computer services, telecommunications service, or information service utilized and any related monitoring or supervision. A potential financing source is the commissary fund, which consists of money deducted from a prisoner's personal account for their purchases from the commissary.

There are approximately 300 local jails in Ohio. Jails are classified into five types: (1) full-service jails, (2) minimum security jails, (3) 12-day jails, (4) 12-hour jails, and (5) temporary holding facilities. LBO estimates that the operations of 144 of these jails are potentially affected by this provision as follows: 88 full-service jails, 51 12-day jails, and five temporary holding facilities.

Grand jury inspection of local correctional facility

The bill expressly authorizes grand jurors of involved counties to periodically visit, and examine conditions and discipline at, multicounty, multicounty-municipal, and municipal-county correctional centers and report on the specified matters. Current law requires (1) the report be submitted, in writing, to the common pleas court of the county served by the grand jurors, and (2) the court's clerk forward a copy of the report to DRC.

LBO has identified four local correctional centers, typically referred to as regional jails (identified below), affected by this provision.

- Corrections Center of Northwest Ohio (located in Stryker and serves Defiance, Fulton, Henry, Lucas, and Williams counties).
- Multi-County Correctional Center (located in Marion and serves Marion and Hardin counties).
- Southeastern Ohio Regional Jail (located in Nelsonville and serves Athens, Hocking, Morgan, Perry, and Vinton counties).
- Tri-County Regional Jail (located in Mechanicsburg and serves Champaign, Madison, and Union counties).

Grand juries are not currently inspecting any of these four regional jails. There would be minimal at most costs for any county served by a regional jail to assist with a grand jury inspection and subsequent reporting.

County coroner

Law enforcement investigative notes in possession of coroner

The bill modifies current law to eliminate a journalist's ability to submit to the county coroner a request to view records of a deceased person that are confidential law enforcement investigatory records. The practical effect is that more of the records in the possession of a county coroner may not be available until a case is concluded. The additional work and costs for a county coroner will depend on the number of public records requests submitted by journalists, the availability of staff to respond, the need for legal assistance from the prosecuting attorney of the county, and the redaction process (obscuring portions of a document so that they cannot be read).

Civil protection orders

Continuance of full hearing

The bill modifies the grounds that authorize a court of common pleas to grant a continuance of a full hearing scheduled after the issuance of an *ex parte* civil protection order by (1) allowing the "respondent" to obtain counsel (rather than to allow "a party" to obtain counsel, as under current law), and (2) eliminating the grounds that "the continuance is needed for other good cause." The effect on the number of continuances granted from what otherwise may have occurred under current law, as well as on a court's daily operations, is unclear.

For some background on civil protection orders, LBO notes:

- Continuances appear to be common.
- From 2017 through 2020, the Franklin County Court of Common Pleas issued an average of 1,882 civil stalking protection orders, 2,211 domestic civil protection orders, and 51 juvenile protection orders per year.
- The Cuyahoga County Court of Common Pleas reported that, in 2020, magistrates held 730 hearings in civil stalking order cases.
- The Domestic Relations Division of the Montgomery County Court of Common Pleas reported that the number of civil protection orders sought ranged from 1,463 in 2016 to 2,040 in 2020.

Definition of "family or household member"

The bill corrects the definition of "family or household member" in the civil stalking protection order law by referring to the family or household member of the *petitioner*. It appears that courts, with the exception of one court's decision that was successfully appealed, are interpreting the definition as intended. Thus, this correction should have no direct fiscal effect on the courts of common pleas handling civil protection order matters.

Speedy Trial Law

The bill provides an additional 14 days to begin a trial after a person charged with a felony has been discharged because the person has not been brought to trial within the required amount of time. Currently, a charged individual must be brought to trial within 270 days after the person's arrest. If the preliminary hearing is not held within that time, the felony charge is dismissed and further criminal proceedings based on the same conduct are dismissed with prejudice, although such situations occur infrequently.

The previously described outcome generally occurs when a person has been arrested on one or more felony charges on more than one occasion within 270 days of their first charge. This complicates the calculation of the 270-day window and results in charges being dismissed. The bill affords the prosecution an additional two weeks to begin trial proceedings. As noted, these circumstances are relatively infrequent, which means the number of felony cases that could move forward to trial, result in a conviction, and the imposition of a jail or prison term will be relatively small. Any additional costs to prosecute, defend (if indigent), adjudicate, and sanction offenders will be minimal annually. If the convicted offender spent all, or a considerable portion, of those 270 days in jail awaiting trial, a judge may opt to sentence that offender to time served, thus avoiding a longer jail stay or possible prison term. The number of offenders likely to be sentenced to prison will be relatively small, which means at most a minimal increase in DRC's annual incarceration costs. The annual marginal cost of adding a relatively small number of offenders to the prison population is $4,030 per inmate (based on DRC's reported FY 2021 marginal daily cost of $11.04).

The potential revenue effects of a relatively small increase in felony convictions will originate from fines, and court costs and fees that the sentencing court generally is required to impose on the offender. The county retains the fees and fines, and a portion of the court costs, collected from the offender. Of the court costs collected, $60 is forwarded to the state, with $30 being deposited into the Victims of Crime/Reparations Fund (Fund 4020) and $30 being deposited into the Indigent Defense Support Fund (Fund 5DY0). As the felony matters affected by the bill are relatively small, and collecting payments from offenders can be problematic, the amount of annual revenue that might be gained will be minimal for any given county and negligible for the state.

Department of Youth Services

The two provisions of the bill described below directly affect DYS operations. The Department's existing staff and funding levels should be sufficient to absorb any associated work or costs.

Transitional services program

The bill permits DYS to develop a program to assist a youth leaving its supervision, control, and custody at 21 years of age. The program is required to provide supportive services for specific educational or rehabilitative purposes under conditions agreed upon by both DYS and the youth and terminable by either.

Quality assurance committee

The bill replaces current law creating the Office of Quality Assurance and Improvement in DYS (including appointment of a managing officer) with a requirement that the Director of Youth

Services appoint a central office quality assurance committee consisting of staff members from relevant DYS divisions.

Traffic Law

Expansion of the OVI law to include "harmful intoxicants"

The bill expands the scope of the OVI laws by prohibiting the operation of a vehicle or watercraft while under the influence of a "harmful intoxicant." According to data provided by the Bureau of Motor Vehicles (BMV), in recent years, more than 40,000 individuals were convicted annually of an OVI-related violation in Ohio. The bill's "harmful intoxicant" provision may result in a relatively small increase in that number for the following two reasons:

- Over the previous five years, the Ohio State Highway Patrol has issued around 100 traffic citations for abusing harmful intoxicants, or an average of about 20 per year statewide. Although there are no comparable traffic law violation statistics readily available for local jurisdictions, anecdotal information suggests that any increase in OVI-related arrests and convictions under the jurisdiction of counties and municipalities will be relatively small.
- In OVI cases involving a drug of abuse where there is no physical evidence such as urine or blood results to establish the presence of a drug of abuse, the court is limited to circumstantial evidence. This suggests that securing an OVI conviction where use of a harmful intoxicant may be present generally could be problematic.

State revenues

The vast majority of OVI-related convictions are misdemeanors. In addition to any mandatory fines, state court costs totaling $29 are also imposed on an offender convicted of or pleading guilty to a misdemeanor, $20 of which is directed to the Indigent Defense Support Fund (Fund 5DY0) and $9 is directed to the Victims of Crime/Reparations Fund (Fund 4020). If the statewide number of additional OVI convictions resulting from offenders driving under the influence of "harmful intoxicants" were relatively small, the additional court cost revenue collected by the state would be no more than minimal annually.

Under current law, those convicted of an OVI-related offense face a one-year administrative license suspension (ALS) of their driver's license. The reinstatement fee for a suspended driver's license resulting from an OVI-related offense is $475. The reinstatement fee revenue is distributed across eight state funds, which are listed in the table below. Given the expectation that the bill would yield a relatively small number of new OVI convictions, the likely revenue gain for any given fund would be no more than minimal per year.

Table 3. Distribution of $475 License Reinstatement Fee

State Fund	Portion of Fee
State Bureau of Motor Vehicles Fund (Fund 4W40)	$30.00
Indigent Drivers Alcohol Treatment Fund (Fund 7490)	$37.50
Victims of Crime/Reparations Fund (Fund 4020)	$75.00

Table 3. Distribution of $475 License Reinstatement Fee	
State Fund	**Portion of Fee**
Statewide Treatment and Prevention Fund (Fund 4750)	$112.50
Services for Rehabilitation Fund (Fund 4L10)	$75.00
Drug Abuse Resistance Education Programs Fund (Fund 4L60)	$75.00
Trauma & Emergency Medical Services Grants Fund (Fund 83P0)	$20.00
Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0)	$50.00
Total Reinstatement Fee	**$475.00**

Because of the likely small number of additional OVI-related convictions stemming from the bill, LBO staff estimates that very few, if any, additional offenders might be sentenced to prison annually. This means that the potential increase in DRC's annual incarceration costs would be minimal at most.

Local revenues

The amount of the mandatory fine for an OVI violation depends on certain specified circumstances, such as the number of prior OVI convictions, and ranges from $375 to $10,500.[2] As the number of additional OVI convictions is likely to be relatively small and those convicted are not expected to have many, if any, prior OVI convictions, the amount of fine revenue that would be generated annually for any given governmental entity and/or fund would be minimal at most.

The disposition of the fine generally can be described as follows:

- $25 of the fine imposed for a first offense and $50 of the fine imposed for a second offense are deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of the court. The court is permitted to use this money to pay the cost of offender assessments (including transportation) and alcohol and drug addiction services.
- $50 of the fine imposed is deposited into special projects funds under the control of the court to be used to cover the cost of immobilizing or disabling devices, including ignition interlock devices and remote alcohol monitoring devices. If no special projects fund exists, the $50 is deposited into the indigent drivers interlock and alcohol monitoring fund of the county where the conviction occurred.
- Between $75 and $500, depending on the number of prior convictions, is transmitted to the state treasury for deposit into the Indigent Defense Support Fund (Fund 5DY0).

[2] R.C. 4511.19(G).

Fund 5DY0 is used by the Ohio Public Defender Commission to support the state and county criminal indigent defense service delivery systems.

- Between $25 and $210, depending on the number of prior convictions, is paid into an enforcement and education fund established by the legislative authority of the law enforcement agency that was primarily responsible for the arrest of the offender. Such funds are to be used to support enforcement and public information efforts by the law enforcement agency.
- Between $50 and $440, depending on the number of prior convictions, is paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration.

The balance of the fine imposed is distributed as provided by law, which generally means the county or municipal general fund depending on the court where the conviction occurred.

Expenditures

The bill will likely result in a small number of additional OVI cases statewide and a corresponding increase in expenditures related to the arrest, prosecution, possible indigent defense, adjudication, and sanctioning in these cases. Since the potential number of new cases in any jurisdiction is expected to be small, any additional local expenditures would not likely exceed minimal annually.

Affirmative defenses for certain driving offenses

The bill allows a person to assert the existing affirmative defense of driving in an emergency with regard to a prosecution for driving under a suspended driver's license under specified laws. This provision may result in a relatively small statewide reduction in the number of persons that, under current law, otherwise may have been convicted of driving under suspension (DUS). A DUS violation is a misdemeanor offense, the penalty for which depends on the type of suspension and prior DUS convictions. Penalties for DUS include jail time, fines, vehicle immobilization or forfeiture, impoundment of license plates, community work services, and additional suspension time. The fiscal effect on local criminal justice systems and the state, in particular the BMV that administers the license suspension and reinstatement process, is expected to be minimal at most annually.

Enhanced penalties for speeding violations

Current law establishes an "enhanced penalty" that applies to a first-time speeding offense under three specified circumstances. The enhanced penalty is a fourth degree misdemeanor; the standard penalty is a minor misdemeanor. If the offense under those circumstances is the offender's second offense within one year, the standard penalty applies. The bill expands the scope of the "enhanced penalty" so that it applies to the second offense within one year.

A minor misdemeanor carries a fine of up to $150, but jail time is not authorized. A fourth degree misdemeanor carries a potential of up to 30 days in jail, a fine of up to $250, or both. Thus, under the bill, for a second-time speeding offense, as described in the immediately preceding paragraph, the "enhanced penalty" applies rather than the standard minor misdemeanor penalty as under current law. Thus, more speeding violations may be contested and taken to trial than otherwise may have occurred under current law. The result may be

(1) additional costs for the court, clerk of courts, prosecutors, law enforcement, and jails, and (2) additional revenues in the form of fines, and court costs and fees, some of which would be distributed to the state. The net fiscal effect for local criminal justice systems is indeterminate, as the number of applicable situations is unknown.

Medical assistance for drug overdose – immunity

The bill provides immunity from arrest, charges, prosecution, conviction, or penalty for the offenses of "possessing drug abuse instruments," "illegal use or possession of drug paraphernalia," and "illegal use or possession of marihuana drug paraphernalia" if a person seeks or obtains medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance, or is the subject of another person seeking or obtaining medical assistance for that overdose. Similar immunity currently exists for a minor drug possession offense when a person seeks or obtains medical assistance for an overdose.

This immunity provision may reduce the number of persons, who because of seeking medical assistance, otherwise might have been arrested, charged, prosecuted, and sanctioned for drug instruments/paraphernalia offenses. For counties and municipalities with jurisdiction over such matters, this could mean some decrease in cases requiring adjudication, thus creating a potential expenditure savings and related revenue loss (fines, fees, and court costs generally imposed on an offender by the court).

Anecdotal information suggests the number of instances in which a person is, under current law and practice, prosecuted subsequent to seeking medical assistance is relatively small, especially in the context of the total number of criminal and juvenile cases handled by counties and municipalities annually. Thus, the net annual fiscal effect of any expenditure savings and revenue loss is likely to be minimal. For the state, there may be a related negligible annual loss in court costs that otherwise might have been collected for deposit in the state treasury and divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/ Reparations Fund (Fund 4020).

Possible indirect effects

Because of the bill, it is possible that additional individuals will receive treatment in public hospitals for drug-related medical emergencies. Thus, government-owned hospitals could indirectly realize an increase in treatment costs. The increase would depend on the number of individuals receiving treatment, the services rendered, and the insurance status of the individual. Government-owned hospitals might receive reimbursements or payments for individuals who have insurance coverage or who are enrolled in the Medicaid Program.

Likewise, the Medicaid Program could also experience an indirect increase in costs for treatment relating to the medical emergency and possibly for substance abuse treatment if the individual seeks such treatment after release from the hospital. Under the Medicaid Program, the federal government typically reimburses the state for approximately 64% of medical service costs.

Gross sexual imposition penalty

Currently, the court must impose on an offender convicted of gross sexual imposition in violation of either of the two prohibitions under the offense of "gross sexual imposition" in

certain specified circumstances a mandatory prison term for a third degree felony if either of the following applies:

1. Evidence other than the testimony of the victim was admitted in the case corroborating the violation.
2. The offender previously was convicted of or pleaded guilty to gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than 13 years of age.

The bill eliminates (1), above, as a reason for imposing a mandatory prison term. As the Ohio Supreme Court, in *State v. Bevly* (2015), found that provision unconstitutional, its elimination from the Revised Code has no direct fiscal effect on the state or political subdivisions.

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