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H.B. 1
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. Plummer and Hicks-Hudson

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill's general broadening of intervention in lieu of conviction (ILC) will increase the workload and related annual operating expenses of county or municipal criminal justice systems, including the courts, prosecutors, and if applicable, indigent defense counsel, the magnitude of which is indeterminate.
- The bill potentially makes thousands of additional offenders eligible for conviction record sealing. Given the potential number of new applications, the associated costs for clerks of courts, sentencing courts, prosecutors, and probation departments could be significant, in particular for the state's larger more populous urban areas. The state, counties, and municipalities generally are likely to gain, at most, minimal annual application revenue.

Detailed Analysis

The bill: (1) broadens the scope of existing "intervention in lieu of conviction" (ILC) law to require the court, at a minimum, to hold an eligibility hearing for each application for ILC that alleges that drug or alcohol usage by the offender was a factor leading to the underlying criminal offense, and (2) expands the law that allows an offender to have conviction records sealed so that more offenders are eligible to have their records sealed.

Intervention in lieu of conviction

The bill grants a presumption of eligibility for ILC to offenders alleging that drug or alcohol abuse was a factor in the commission of a crime. If an offender alleges that drug or alcohol usage was a factor leading to the offense, then the court must hold a hearing to determine if the offender is eligible for ILC. The bill requires the court to grant the request for ILC unless the court finds specific reasons why it would be inappropriate, and, if the court denies the request, the court is required to state the reasons in a written entry. Under current

law, a court must, as a condition of ILC, require the offender to abstain from the use of illegal drugs and alcohol for at least one year. The bill places an upper limit of five years on this requirement.

This ILC broadening will increase the workload and related annual operating expenses of county or municipal criminal justice systems, including the courts, prosecutors, and if applicable, indigent defense counsel. The magnitude of that increase is indeterminate because of three unknowns: (1) the number of additional offenders that will request ILC, (2) the number of related hearings that will be required, and (3) whether, in the case of any given offender, it will cost more or less to allow them to participate in ILC rather than to find the offender guilty and impose an appropriate sanction.

The bill also narrows the scope of ILC by making an offender charged with a felony sex offense ineligible for ILC. Continuing law already prohibits an offender charged with a first, second, or third degree felony or an offense of violence from being eligible. The ILC narrowing may offset, to some degree, the increased workload and related annual operating expenses of county or municipal criminal justice systems noted in the immediately preceding paragraph.

Sealing of a record of conviction

The bill expands the law that allows an offender to have records sealed by: (1) eliminating a cap on the number of fourth and fifth degree felonies that an offender is eligible to seal, (2) raising the number of misdemeanor or felony offenses an offender can have been found guilty of and still be eligible for sealing, and (3) shortens the time at which an offender convicted of a third, fourth, or fifth degree felony is first eligible to apply for sealing.

The expansion potentially makes thousands of additional offenders eligible for conviction record sealing, and, at least in the near term, makes more offenders eligible to apply sooner than they would be under current law. Many of these offenders are likely to apply.

When an application to seal a record is filed, the court sets a hearing date and notifies the prosecutor's office. The prosecutor may object to the application by filing a formal objection with the court prior to the hearing date. The court also directs the relevant probation department providing services to that particular county to investigate and submit reports concerning the applicant.

The combined annual cost for the clerks of courts, sentencing courts, prosecutors, and probation departments to perform the required work generated by this provision is indeterminate. Given the potential number of new applications, however, that cost could be significant, in particular for the state's larger more populous urban areas.

Upon filing an application with a court, the applicant, unless deemed to be indigent, pays a \$50 fee, of which \$30 is forwarded to the state treasury for crediting to the General Revenue Fund, and \$20 is paid to the county or municipal general fund as appropriate. Thus, under the bill, the state, counties, and municipalities generally are likely to gain, at most, minimal annual revenue.