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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 1
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by Senate Judiciary

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 and municipal criminal justice systems, including 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. 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.
- Given the potential number of additional sealing or expungement orders to be processed by the Bureau of Criminal Identification, the Attorney General may need to hire more fingerprint examiners. The annual cost of a fingerprint examiner is approximately \$50,600 and \$82,668, including salary and benefits.
- The bill requires that \$15 of the fee for application for the sealing of a record of conviction be credited to the Attorney General Reimbursement Fund (Fund 1060) rather than the GRF. The result is that up to \$390,000 or more that otherwise would have been credited to the GRF will be redirected to Fund 1060.

Detailed Analysis

The bill:

- 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;

- Expands the law that allows an offender to have conviction records sealed so that more offenders are eligible to have their records sealed; and
- Requires \$15 of the \$50 fee collected for the sealing of a record of conviction be deposited to the Attorney General Reimbursement Fund (Fund 1060) and used by the Bureau of Criminal Identification (BCI) for expenses related to the sealing or expungement of records.

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 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 and 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 and municipal criminal justice systems noted in the immediately preceding paragraph.

Record sealing

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 otherwise have been the case 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. For the state's larger more populous urban areas, that cost could be significant.

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, 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.

Sealing of an ILC record

Under current law, a court may order the sealing of records related to an offense for which a person has successfully completed ILC based on statutes related to records of conviction.¹ The bill modifies the statutes on which record sealing for ILC is based to statutes related to dismissals and nonconvictions.² As a result, a person whose records are so sealed is not subject to sanctions for which sealed records of conviction may be eligible under continuing law, such as certain employment and licensing sanctions including automatic license suspension, denial, or revocation for certain professions. This may reduce the workload of certain licensing boards.

Attorney General

Record sealing costs

Sealing and expungement requests are processed by BCI's Fingerprint Unit. An increase in record sealing requests will lead to additional work for BCI and the possibility that additional staff may be needed. A job listing for the Fingerprint Examiner position from February 2020 lists the hourly pay range as between \$19.97 and \$26.05, or between \$41,538 and \$54,184 annually based on 40 hours per week. Including retirement contributions (14%) and state contributions to employee health insurance for bargaining unit employees for FY 2019 (\$8,247 single, or \$20,898 family), the range for payroll costs for a single fingerprint examiner can be estimated at between approximately \$50,600 and \$82,688 annually. These costs may be offset somewhat by the bill's requirement for a portion of sealing fees to be used by BCI for expenses related to sealing or expungement as described below.

Attorney General Reimbursement Fund

The bill requires that, when a person pays the required \$50 fee to apply for the sealing of a record of conviction, \$15 of the \$30 deposited into the state treasury be credited to the

¹ R.C. 2953.31 to 2953.36.

² R.C. 2953.51 to 2953.56.

Attorney General Reimbursement Fund (Fund 1060), and the remaining \$15 will continue to be credited to the GRF as under continuing law.

BCI reports an average of 26,000 sealing and expungement orders processed annually from 2016-2019. Depositing \$15 of the fee paid upon application related to each of those orders would result in revenues of up to \$390,000 each year.³

The bill requires the \$15 portion of the application fee credited to Fund 1060 to be used by BCI for expenses related to the sealing or expungement of records. Under existing law, all other moneys in Fund 1060 are required to be used for the expenses of the Office of the Attorney General in providing legal and other services on behalf of the state.

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³ It is important to note the following when considering these numbers: (1) indigent applicants are not required to pay a fee, (2) the court is not required to assess a fee for sealing the record of a juvenile, and certain sealed records are expunged without application to the court, and (3) fees may be collected for applicants who are denied by the court and, therefore, not included in BCI's statistics.