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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 Passed by the Senate

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.
- Medicaid costs for treatment services are likely to increase under the bill, the magnitude of which will depend on the number of individuals receiving treatment, as well as its type and duration. In addition, any treatment costs not covered under Medicaid or other health insurance may instead be paid for by local alcohol, drug addiction, and mental health services boards, courts, or hospitals.
- The bill's restraint prohibition appears unlikely to affect the state or local courts, but will affect to some degree the operations of secure, county-operated facilities. There is likely to be some cost to develop and implement an appropriate policy, including employee training and health care professional contact protocols, but presumably should not be fiscally problematic to maintain once established.
- It appears that the filing of criminal and/or civil actions for violating the bill's restraint prohibition will be relatively infrequent and that there will be no discernible ongoing costs to the state and local governments.

- The one-time cost for the Attorney General to develop and distribute the required training materials to state and local officials is likely to be no more than minimal and potentially absorbed using existing personnel and appropriated resources.
- 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.
- The work and related annual operating costs of the Ohio Criminal Sentencing Commission's expanded duties under the bill can be absorbed utilizing its existing staff and appropriated resources.

Detailed Analysis

Intervention in lieu of conviction

The bill grants a presumption of eligibility for intervention in lieu of conviction (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

¹ R.C. 2953.31 to 2953.36.

² R.C. 2953.51 to 2953.56.

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 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.

Involuntary treatment

The bill modifies the criteria governing applications for, granting of, and treatment under a mechanism providing for a probate court order requiring involuntary treatment for a person suffering from alcohol or other drug abuse. These modifications are likely to increase the number of petitions and subsequent hearings in probate courts to initiate orders for involuntary treatment, while at the same time reducing the courts' revenue from filing fees.

It is possible that this could increase the number of people who will receive treatment, which would increase treatment costs. The amount of any increase is uncertain, but will depend on the following factors: the number of individuals affected, whether the individual has health insurance, and whether the services rendered are reimbursable by the individual's health insurance. If an individual is enrolled in Medicaid, it is possible that Medicaid will realize an increase in treatment costs. If the individual is uninsured, it is possible that costs could increase for local alcohol, drug addiction, and mental health services boards, courts, or hospitals.

Community control violations

With respect to the prison term that a court may impose for a violation of a community control sanction or for a violation of a law or leaving the state without the permission of the court or the offender's probation officer, the bill specifies that:

- If the remaining period of the offender's community control, or the remaining period of the offender's suspended prison sentence, is less than 90 or 180 days, the prison term may not exceed the length of the remaining period of community control or the remaining period of the offender's suspended prison sentence; and

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.

- The time the offender spends in prison under the term must be credited against the offender's community control sanction or the offender's suspended prison sentence that was being served at the time of the violation.

Under the bill, a court is not limited in the number of times it may sentence an offender to a prison term under existing law and the bill for a violation of the conditions of a community control sanction or for a violation of a law or leaving the state without the permission of the court or the offender's probation officer.

Prohibition against restraints

The bill: (1) generally prohibits a law enforcement, court, or corrections official from knowingly restraining or confining a pregnant charged or adjudicated child or pregnant criminal offender during the child's or woman's pregnancy, hospital transport, labor, delivery, or postpartum recovery (up to six weeks), and (2) subjects the use of restraints to contacting, or being notified by, certain specified health care professionals. If an emergency circumstance exists, the official may contact a health care professional once the child or woman has been restrained and let them know the type of restraint and expected duration. In all other cases, the notification must occur prior to restraining the child or woman.

The bill will not likely have a discernible impact on the departments of Rehabilitation and Correction or Youth Services, as both departments currently have policies in place dealing with the use of restraints on a child or woman as described above. The bill is also unlikely to have a discernible impact on courts, as the Ohio Judicial Conference reports that it is extremely uncommon for judges to order a child or woman as described above be restrained.

The prohibition is likely to affect to some degree local, mostly county, law enforcement and corrections agencies operating residential facilities. This includes jails, juvenile detention centers, community-based correctional facilities (CBCFs), and community corrections facilities (CCFs).

County sheriffs are responsible for transporting persons being held in a county jail to court. Some counties are able to use video conferencing, but for those that do not have those capabilities, the county sheriff's office would be responsible for contacting a health care professional who is treating a child or woman as described above prior to the use of restraints, should the need arise.

According to the Buckeye State Sheriffs' Association, leg shackles, handcuffs, and waist belts are common everyday restraints used when transporting anyone under arrest or those who are incarcerated and are exiting the security perimeter of the jail, regardless of pregnancy status. A pregnant child or woman may require frequent trips to a physician outside of the facility for prenatal care.

It is possible that the bill will result in delays for both court proceedings and medical attention if the county sheriff first needs to contact the appropriate health care professional before using restraints. The potential cost of such delays is not readily quantifiable. Presumably, a policy will be implemented that prospectively addresses the potential for delays and minimizes any related costs.

Penalty and civil remedy

The bill provides that a violation of the restraint prohibition is a violation of the existing offense of “interfering with civil rights.” A violation is a first degree misdemeanor, which is punishable by a jail stay of no more than 180 days, a fine of up to \$1,000, or both. As state and local officials are expected to incorporate the bill’s requirements into their daily operations, including ensuring that employees are trained, it is likely that violations will be infrequent. This suggests that, for county and municipal criminal justice systems that process misdemeanor cases and sanction violators, there will be no discernible ongoing costs, and occasional revenue (court costs and fees, and fines) generated for distribution between local governments and the state, as applicable.

The bill also permits a child or woman as described above to file a civil action for damages against the official who committed the violation, the official’s employing agency or court, or both. Depending on the circumstances of the violation, the action would be filed in one of the following: a common pleas, municipal, or county court, or the state’s Court of Claims. If, as described in the immediately preceding paragraph, violations are infrequent, then it is likely that the filing of civil actions will be relatively infrequent as well. The state and local governments may incur occasional costs to defend and adjudicate such matters. The timing and magnitude of any damage payments that the state or a local government may incur is indeterminate.

Attorney General training materials

The bill requires the Attorney General to provide training materials to law enforcement, court, and corrections officials to train employees on the proper implementation of the requirements regarding restraining or confining a child or woman as described above. The one-time cost for the Attorney General to develop and distribute the required training materials to state and local officials is likely to be no more than minimal and potentially absorbed using existing personnel and appropriated resources.

Ohio Criminal Sentencing Commission

According to staff of the Ohio Criminal Sentencing Commission, the work and related annual operating costs of its expanded duties under the bill can be absorbed utilizing existing staff and appropriated resources.⁴ Those expanded duties:

- Designate the Commission a criminal justice agency and specifies that it is authorized to apply for access to the computerized databases of the National Crime Information Center or the Law Enforcement Automated Data System (LEADS) in Ohio, and to certain other computerized criminal justice information databases; and

⁴ The Ohio Criminal Sentencing Commission is an affiliated office of the Supreme Court of Ohio that, among other things, studies Ohio’s criminal laws, sentencing patterns, and juvenile offender dispositions, and recommends comprehensive plans to the General Assembly that encourage public safety, proportionality, uniformity, certainty, judicial discretion, deterrence, fairness, simplification, additional sentencing options, victims’ rights, and other reasonable goals.

- Require the Commission to study the impact of sections relevant to the bill on an ongoing basis and to make biennial reports, commencing not later than December 31, 2020, to the General Assembly and the Governor regarding the results of the study described above and recommendations.