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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 166
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. Boggs and Carfagna

Local Impact Statement Procedure Required: No

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Highlights

- The one-time and ongoing costs for the Department of Rehabilitation and Correction (DRC) to establish and maintain a global positioning system (GPS) for monitoring certain offenders is uncertain. However, given the potential scope and complexity of that GPS monitoring in comparison to DRC's current use of electronic monitoring, those costs could be significant. An important unknown is the number of "GPS-monitored offenders."
- DRC is likely to experience an annual increase in GRF-funded incarceration costs because of a potential increase in the length of prison terms to which first and second degree felony offenders are sentenced.
- Local law enforcement is permitted, not required, to request certain access to, or information from, the GPS. The manner in which such requests are to be submitted and the form of the information provided is unclear.
- As DRC has not made any decisions on the details of the bill's reentry program, its one-time costs to create, and ongoing costs to maintain, are indeterminate. Presumably, one of the notable uncertain cost components will be the number of individuals labeled a "target offender."
- The bill requires DRC's Adult Parole Authority to establish supervision standards for parole and field officers of its Field Services Section. The new standards may require DRC to hire additional staff, which would cost about \$75,000 annually per hire for salary and benefits.
- The annual magnitude of the work and related costs for the Bureau of Criminal Investigation to perform its required data entry work is uncertain.

- The annual cost for the Department of Public Safety to incorporate the additional information required by the bill into the Law Enforcement Automated Data System (LEADS) is likely to be minimal, at most, as the existing LEADS/National Crime Information Center (NCIC) Supervised Release File would likely be utilized for that purpose.
- The bill appears to broaden the law governing appellate review of felony sentencing, including the grounds upon which a defendant or prosecutor may appeal as a matter of right. The result could be additional work and related operating expenses created for courts of appeals, prosecutors, and defense counsel.
- It appears that the State Criminal Sentencing Commission, which is affiliated with the Supreme Court of Ohio, can utilize existing staff and appropriated funding to absorb any costs associated with establishing the Offender Supervision Study Committee and performing a biennial study and report on the impact of the Reagan Tokes Law.

Detailed Analysis

Global positioning system monitoring changes

The bill makes various changes to the law governing global positioning system (GPS) monitoring of offenders released from prison. Most notably, those changes include: (1) real-time or active GPS access to information about a GPS-monitored offender's location, and (2) the inclusion of specified information regarding GPS-monitored offenders in the Law Enforcement Automated Data System (LEADS).

Real-time and active GPS access to an offender's location

The bill requires the Department of Rehabilitation and Correction (DRC) to establish system requirements for GPS monitoring of offenders by DRC and third-party administrators and that contracts entered into by DRC for GPS monitoring services specify that the GPS used include a crime scene correlation program with continuous monitoring. The bill's GPS provisions apply to an offender who, on or after the effective date of the bill, is released from confinement in a state correctional institution, or placed on transitional control, with conditions that include GPS, or is placed under post-release control that includes GPS as a condition. The number of these offenders, defined as "GPS-monitored offenders," is uncertain.

It appears that DRC's Adult Parole Authority (APA) is supervising over 3,000 offenders daily for whom electronic monitoring (EM) is required. It is LBO's understanding that the APA does not currently utilize either active or passive GPS tracking devices except through contracts with halfway houses utilizing third-party vendors and that GPS tracking is more expensive than EM. This presumably means that DRC will need to establish and maintain a new offender tracking system. As the scope and complexity of this system have yet to be determined, DRC's one-time costs to establish, and ongoing annual costs to maintain, such a system are uncertain. It is unclear to LBO as to whether the bill will have any effect on DRC's current methods of offender monitoring.

The bill also requires DRC, third-party administrators, and secondary entities performing the actual monitoring under a contract with an administrator to provide local law enforcement personnel upon request either real-time access to information related to an offender's current and prior (if available) locations, as well as recent criminal activity that is possibly related to the offender's location, or provide such information. It is unclear whether the bill's intent is to allow

local law enforcement actual real-time entry into the system, or to request specified information be provided, or possibly both. The manner in which such requests are to be submitted and the form of the information provided is unclear.

GPS-monitored offenders' information included in LEADS

The bill requires DRC, not later than 12 months after the bill's effective date, to adopt procedures for DRC or third-party administrators to use to provide specified information pertaining to GPS-monitored offenders to the Bureau of Criminal Investigation (BCI). Upon receipt of the information, BCI is immediately required to enter the information into LEADS. The Superintendent of the Ohio State Highway Patrol is required to ensure that LEADS is so configured as to permit the entry into, and the transmission through, the system of that information.

The annual magnitude of the work and related costs for BCI to perform its required data entry work is uncertain. LBO understands that BCI does not currently serve as data entry personnel for LEADS. A notable uncertainty is the number of GPS-monitored offenders for whom data will need to be entered.

The cost for the Department of Public Safety to incorporate the additional information required by the bill into LEADS is likely to be minimal, at most, as the existing LEADS/National Crime Information Center (NCIC) Supervised Release File would likely be utilized for that purpose. The LEADS/NCIC Supervised Release File, which currently includes records on individuals under specific restrictions during their probation, parole, supervised release sentence, or pretrial sentencing, already includes much of the information that the bill requires to be entered into LEADS with the monitoring parameters and restrictions added into the "Miscellaneous Information" field within that file. Currently, any local, state, or federal supervision officers may enter records into the LEADS/NCIC Supervised Release File for those individuals.

DRC study of GPS-related issues

Under current law, DRC is required to conduct a GPS-related study considering specified factors, regarding the feasibility of contracting with a third-party administrator for GPS monitoring that would include a crime scene correlation program that could interface by link with a statewide database for GPS-monitored offenders, as well as analyze the use of GPS monitoring as a supervision tool. The bill modifies this provision by instead requiring DRC to analyze only the use of GPS monitoring as a supervision tool and moves the deadline for completion from June 30, 2019 to December 31, 2022. Under current law, unchanged by the bill, DRC must submit copies to the Senate President and Minority Leader, the Speaker of the House of Representatives and Minority Leader, and the Governor. This provision may create a one-time savings effect, as it reduces the amount of work that DRC otherwise may have been required to perform.

DRC reentry program

The bill modifies the law regarding the supervision of felony offenders released from prison by requiring APA to establish a reentry program for offenders who are not accepted for residence in a halfway house or similar facility (referred to as a "target offender"). As DRC has not made any decisions on details of this reentry program, its one-time costs to create, and ongoing costs to maintain, are indeterminate. Presumably, one of the notable uncertain cost components will be the number of individuals labeled a "target offender."

APA parole and field officer caseloads and workloads

The bill requires the APA, not later than one year after the bill's effective date, to establish supervision standards for parole and field officers of its Field Services Section. The standards are required to include a specification of a "caseload" and a "workload" for parole and field officers. The caseload and workload specified in the standards are required to comport with industry standards set forth by the American Probation and Parole Association. Not later than two years after establishing the standards, DRC is required to ensure that the Field Services Section has enough parole and field officers to comply with the standards and that the officers have been trained to the extent required to comply with the standards.

Depending on what is contained in these new standards, DRC may be required to hire additional staff for the Field Services Section. The number of additional personnel, if any, is uncertain, but each new hire would cost the Department about \$75,000 annually for salary and benefits. As of the end of September 2021, the APA reported that it had 518 active officers (defined as those assigned with a workload) with a total workload of 27,718 offenders under supervision.

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.¹ Those expanded duties, as described below, include:

- Appointing an Offender Supervision Study Committee;
- Studying the impact of the Reagan Tokes Law and reporting the results and recommendations to the General Assembly and Governor on December 31 of every even-numbered year, beginning December 31, 2024; and
- Designating the Commission a criminal justice agency authorized to access computerized and other databases administered by state and local agencies for the administration of criminal justice.

Offender Supervision Study Committee

The bill requires the Ohio Supreme Court's State Criminal Sentencing Commission to appoint a 13-member Offender Supervision Study Committee to study and review all issues related to the supervision of offenders. Committee members serve without compensation, but are eligible to be reimbursed for their actual and necessary expenses. The Commission is permitted to appoint persons who are experts in issues related to the supervision of offenders to assist the Committee in the performance of its duties.

¹ 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.

Indefinite sentencing

The bill modifies the laws regarding indefinite sentencing enacted by S.B. 201 of the 132nd General Assembly to clarify the application of indefinite sentencing by trial courts and the implementation of resulting sanctioning by DRC. These modifications are described in more detail below, along with their likely or possible fiscal effects.

- **Maximum term definition.** The bill defines the maximum term as an additional term that is 50% of the minimum prison term imposed on an offender, rather than as the length of the total term including both the underlying minimum and required maximum portions of a sentence. The resulting minimum and maximum portions of the indefinite prison term are unchanged from current law.
- **Maximum term calculations.** For calculating the maximum term, the bill defines the most serious felony being sentenced as the offense carrying the highest degree rather than the longest minimum term as under current law. For cases in which the highest level felony also has the longest minimum term, there would be no change. However, in cases in which the highest level felony does not correspond to the longest minimum term, the resulting maximum term would be shorter than under current law.
- **Consecutive prison terms.** For prison terms to be served consecutively, the bill requires the minimum portion of each nonlife indefinite prison term to be aggregated and treated as one minimum portion and requires each maximum portion to be aggregated and treated as one maximum term to be served after the aggregated minimum. The likely outcome is to extend the maximum term compared to current law.
- **Rebuttal of presumption of release.** The bill requires DRC to rebut the presumption of release at least once during each portion of a maximum term when those terms were aggregated. This could result in additional administrative hearings for DRC.

These provisions generally will lead to longer prison terms than under current law for an unknown number of offenders. The bill will likely create some degree of a stacking effect, in which certain offenders who otherwise would have been released sooner under current law will be held for a longer period in accordance with the calculation requirements for the term of imprisonment and rebuttal requirements.

As of December 2021, the prison population managed by DRC totaled 43,234. The size of any prison population increase because of the bill is indeterminate. This is in large part due to the criminal justice system's ongoing adjustments to the felony sentencing law changes that became effective March 22, 2019, pursuant to S.B. 201 of the 132nd General Assembly. For FY 2021, the average annual cost per inmate was \$35,405 (\$97.00 per day). The annual marginal cost for adding an additional offender to the prison system is estimated at roughly \$4,000.

Appellate review

The bill makes changes applicable to felony appellate review of criminal sentencing, including modifying: (1) the grounds upon which a defendant or prosecutor may appeal as a matter of right, (2) the sentences that may not be reviewed by an appellate court, and (3) the presumptions and standards for felony appellate review. These provisions appear to broaden the law governing appellate review of felony sentencing. The result could be additional work and related operating expenses created for courts of appeals, prosecutors, and defense counsel.