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Office

H.B. 343
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsor: Rep. White

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill increases the duties and responsibilities of local criminal and juvenile justice systems with regard to notifications to victims and their representatives and their participation in various proceedings. Local law enforcement, prosecutors, courts, clerks of courts, probation departments, and custodial agencies will incur one-time and ongoing costs to comply with the bill's requirements. Costs will depend on the number of victims, the frequency of notifications, and the capacity and capability of existing victim notification systems to absorb more work, including the availability of staff and electronic communications.
- The annual costs for the Governor and the departments of Rehabilitation and Correction and Youth Services to comply with the bill's notification requirements are expected to be minimal.
- Annual administrative costs will increase for the Attorney General, the Supreme Court, and law enforcement agencies to produce, distribute, or provide, as applicable, the required victim's bill of rights pamphlet, information card, and victim's rights request form. The extent of these costs will largely depend on the format in which the information will be provided, e.g., online or print.

Detailed Analysis

Victim's rights

The bill makes numerous changes to the Victim's Rights Law and related provisions in the Criminal Law more broadly. Most notably, these changes expand a victim or victim's representative rights. For this purpose, the bill provides early information regarding the rights of a victim, increased notification points, and increased access to information pertaining to the

disposition of their case, and any subsequent actions affecting the sanctioning of the offender(s). The bill most notably affects local justice systems, including law enforcement, prosecutors, courts, clerks of courts, probation departments, and custodial agencies.

Timely information to the victim

Under current law, a law enforcement agency investigating a crime is required, after its initial contact with the victim, to provide the victim, in writing, certain specified information that is more or less contained in a victim's rights pamphlet distributed by the Attorney General. The bill modifies the provision by (1) requiring the information be provided "on," rather than after its initial contact, and (2) adding information and materials to be provided (a victim's rights request form to be created by the Ohio Supreme Court and related informational page, and an information card to be created by the Attorney General). Law enforcement agencies generally will incur minimal ongoing costs to comply with this informational requirement.

The bill adds several items, including the victim's rights request form, to the information that the prosecutor or designee must provide to the victim or victim's representative, and specifies that all of the information, including that required under continuing law, must be provided within 14 days after prosecution commences. The impact on the daily operations and related operating costs of a local prosecutor's office will depend on the ease with which their existing victim notification system can be modified to deliver more information in a timely manner.

The bill also specifies the timing of various notices that must be provided to victims of crime under continuing law. For certain notices that are only required to be provided upon request, such as acquittal, conviction, and judicial release, the bill provides a seven-day timeframe.

Increased notification

The bill increases the number of circumstances under which certain state and local governmental agencies are required to notify or contact the victim, the victim's representative, or the victim's attorney. The affected entities include law enforcement, prosecutors, courts, clerks of courts, probation departments, custodial agencies (including the departments of Rehabilitation and Correction and Youth Services), and the Governor.¹ The impact on the daily operations and related operating costs of local governmental agencies would be dependent on the number of victims of a criminal offense or delinquent act.

VINE²

Victim Information Notification Everyday (VINE) is an automated notification system that is available to crime victims of incarcerated offenders in county jails and the departments of Rehabilitation and Correction (DRC) and Youth Services (DYS). The costs for county jails, DRC, and

¹ Prior to granting a pardon, commutation, or reprieve for an offense of violence or an act that would be an offense of violence if committed by an adult, the bill requires the Governor or a designee to notify the victim of the application and that the victim, victim's representative, and victim's attorney may submit a written statement concerning the application.

² VINE is a service provided by the Attorney General in partnership with the Buckeye State Sheriffs' Association and the departments of Rehabilitation and Correction and Youth Services.

DYS to comply with the bill's notification requirements will likely be minimized to the degree that VINE can be modified for that purpose.

Other additional rights

The bill expands the list of persons who may exercise the rights of a victim under the Victim's Rights Law as the victim's representative. As such, a representative, where designated, is allowed to receive the same notice and standing as a victim.

The bill provides that a victim or their representative is entitled to certain information at no cost, including a copy of the certificate of judgment and judgment entry filed with the court in the victim's case and any public records related to the victim's case. Other case documents may be provided at cost. For local governments (clerks of courts, courts, prosecutors, and law enforcement), the bill is likely to increase the amount of information requested and provided, as well as the costs to copy and provide. The amount of money that local governments will forego that otherwise would have been collected from requestors is uncertain. If copies are provided in electronic format, as permitted under the bill, the cost may be reduced to some degree. The bill's provisions related to providing previously prepared video and audio recordings of court proceedings at cost appear to reflect requirements established in Ohio's Public Records Law.

The bill entitles a victim with a disability, a non-English speaking victim, or a victim with limited English proficiency to a qualified or certified interpreter at all court proceedings, meetings with the prosecutor, and investigative contacts, at no cost to the victim. The cost is to be paid by the court. The annual costs for a given court to comply with this requirement are uncertain, as is the degree to which this provision may be codifying current practice.

Continuing law provides specific times at which the prosecutor in a case must confer with the victim. In addition to these times, the bill extends this requirement to when requested by the victim or their representative, to the extent practicable. The court is required to monitor prosecutor compliance with these requirements. The costs for prosecutors and courts to establish and maintain a compliance monitoring system are indeterminate.

Victim's bill of rights

The bill requires the Attorney General:

- Modify the victim's bill of rights pamphlet that the Attorney General is required to produce and distribute under continuing law; and
- Create an information card that (1) outlines victim's rights contained in the Ohio Constitution and Revised Code, (2) references the victim's rights request form, and (3) provides contact information for the Attorney General's crime victim's services and the Ohio Crime Victim's Justice Center.

The bill requires the Attorney General to make the victim's rights pamphlet available online and in a printable format (to be downloaded and printed locally), as well as continue to provide a limited number of paper copies to law enforcement agencies that order copies directly and to law enforcement agencies and prosecutors to provide to victims. The cost for the Attorney General to provide all agencies and prosecutors print copies of the expanded pamphlet could have been as much as a few hundred thousand dollars annually.

Victim's rights request form

The bill requires the Ohio Supreme Court to create a victim's rights request form and make the form available to law enforcement agencies, local chief legal officers (e.g., prosecuting attorneys), and organizations that represent or provide services for victims of crime. The bill requires law enforcement officials to provide an informational page to the victim as part of the victim's rights request form that includes specified information on various topics. These requirements will likely pose minimal annual administrative costs.

Victim's representative and victim's attorney

The bill clarifies that both the victim and the victim's representative, if applicable, must be notified by the prosecutor if the court schedules a hearing or grants a motion for a sentence reduction through judicial release. Further, the bill clarifies that a victim's attorney is able to present oral or written information relevant to a motion for judicial release. Similar to the opportunity afforded to the offender and the offender's attorney, the prosecuting attorney, the victim, the victim's representative, and any other person the court determines is likely to present additional relevant information may already do so under current law. These clarifying changes are unlikely to have any direct fiscal impact on local criminal and juvenile justice systems.

The bill also makes changes to eliminate ambiguity in provisions related to misdemeanor sentencing determination to ensure that all relevant information is considered. These changes largely safeguard the rights of the victim and have no direct fiscal effect.

Ohio's Public Records Law

Current law provides for a process that allows a crime victim to file a motion to make information regarding their case confidential. This may include pleadings, motions, exhibits, transcripts, orders, and judgments, or any documentation prepared by a court, clerk of court, or law enforcement agency or officer. The bill modifies the process to make these confidential in all cases, absent a request, unless the victim otherwise consents or the court determines that the fundamental demands of due process of the law in the fair administration of criminal justice prevails over the victim's rights to keep the information confidential.

In addition, the bill specifies that these confidential records, as well as the portion of a completed victim's rights request form that contains a victim's name or identifying information, are exempt from disclosure under Ohio's Public Records Law. The bill will affect state and local criminal justice agencies in responding to public records requests and may increase, to some degree, the cost that such an agency incurs to ensure that exempted portions of a record are not disclosed.

Record sealing and expungement

The bill:

- Changes the timeline for a court to provide the prosecutor with notice of a proceeding to seal and expunge criminal or juvenile records from "promptly" to "not less than 60 days prior to the hearing";
- Requires the prosecutor provide timely notice to the victim and victim's representative; and

- Permits the victim, victim's representative, and victim's attorney to be present at the proceedings and to be heard.

These provisions will not change the number of record sealing and expungement requests, but may increase the time and effort that the court and prosecutor otherwise may have expended on such proceedings.

Enforcement of rights by appeal

The bill creates a mechanism for a victim, victim's representative, or victim's attorney to enforce the victim's rights under the Victim's Rights Law with or without the prosecutor, including enforcement by appealing or petitioning the court of appeals or the Ohio Supreme Court. According to the Ohio Prosecuting Attorneys Association, this provision has the potential to generate significant additional litigation, as well as delays in the prosecution of a case. The extent of any such delay is uncertain, as the bill provides that such an appeal shall proceed on an expedited basis. The bill permits the speedy-trial rights of a criminal defendant to be tolled during any period that an appeal or petition for an extraordinary writ to enforce victim's rights.

Financial sanctions

The bill modifies the financial sanctions that a court may impose on a misdemeanor offender. Under continuing law, an offender may be required to pay a combination of restitution and fines, or to reimburse all or any of their sanctioning costs including community control. The bill specifies that global positioning system (GPS) device monitoring costs are a part of community control sanctioning and thus are reimbursable. The amount of local revenues that might be gained annually is problematic to calculate for a variety of reasons, including the permissive nature of the provision, the likelihood that, to some degree, the costs are already viewed as reimbursable, and the difficulty of collecting financial sanctions from unwilling or indigent offenders.

The bill's changes to the laws governing restitution for misdemeanor and felony offenses generally enable a victim to recover a larger portion of the total amount of restitution ordered to be paid by the offender. The purpose of these changes are to conform to the requirement set forth in the "Marsy's Law" amendment to Article I, Section 10a of the Ohio Constitution that restitution to a victim be mandatory, "full, and timely." The bill does not appear to affect the current order in which an offender's payments are assigned (i.e., court costs, state fines/costs, restitution, fines, and reimbursements).

The bill requires the clerk of a sentencing court, upon request, to make the payment history of an offender sentenced to pay restitution for a felony or misdemeanor available to the prosecutor, victim, victim's representative, probation department, and the court without cost. As a result, the clerk's administrative responsibilities will minimally increase to respond to these requests, the extent of which will depend on the volume of requests made and the format in which the information will be provided.

The Ohio Supreme Court will incur minimal annual costs to create and maintain a required standardized form to be made publicly available that provides guidance for victims and victims' representatives regarding the compilation of evidence to demonstrate losses for determining restitution.

Unclaimed money for crime victim restitution

The bill requires unclaimed money that is for restitution payments for crime victims to be sent to the Reparations Fund (Fund 4020) and for those moneys, if still unclaimed after five years, to be used by the Attorney General for the benefit of other crime victims. The Attorney General is required to pay any part of the restitution award owed to a victim at any time to the person who has the right to the money upon proper certification from the clerk, or other officer responsible for the collection and distribution of restitution payments, and documentation from the individual claiming such right. The timing and magnitude of this unclaimed money is unpredictable.

The money appropriated from Fund 4020 is used for: (1) victim compensation payments, (2) the Attorney General's compensation administrative costs, (3) the Sexual Assault Forensic Exam (SAFE) Program, (4) grants to victim assistance programs, (5) DNA specimen collection, analysis, and database entry, and (6) attorney fees.

The revenue sources for Fund 4020 consist primarily of: (1) court costs of \$30 and \$9 imposed upon an offender convicted of or pleading guilty to a felony or misdemeanor, other than a nonmoving traffic violation, (2) \$75 of the \$425 fee collected for the reinstatement of a driver's license that was suspended for operating a motor vehicle while under the influence of alcohol or drugs (OMVI), and (3) subrogation and restitution recoveries. The year-ending cash balance for Fund 4020 was \$11.2 million in FY 2018, \$6.3 million in FY 2019, \$7.4 million in FY 2020, and \$9.5 million in FY 2021.

Testimony of certain victims

The bill makes changes to current law as it relates to the taking of testimony of a child-victim or victim with a developmental disability in a juvenile case, in a preliminary hearing involving an alleged violation of certain felony offenses, and in a trial involving a specified criminal offense or an offense of violence. The bill allows for circumstances under which such testimony may be taken by deposition, taken remotely and televised by closed circuit equipment, or recorded. It is unclear as to how these provisions will affect local criminal and juvenile justice systems relative to the manner in which the testimony of these victims is currently being handled by trial courts statewide. Any costs will be a function of the manner in which judges exercise their discretion in such matters.

Evidence

Ohio's Rape Shield Law generally prohibits the introduction of evidence of the victim's sexual history in rape and gross sexual imposition cases. The law provides limited exceptions to allow evidence of a certain type, including when it involves the origin of disease generally. The bill narrows this to the more limited circumstance when the evidence involves the origin of sexually transmitted disease or infection. This provision of the bill is not expected to have a direct fiscal effect on the state or local governments.

State Victims Assistance Advisory Council

The bill adds four new members to the State Victims Assistance Advisory Council, increasing the number of members from 17 to 21. Council members are not compensated but may be reimbursed for travel and other necessary expenses. The amount necessary for the Attorney General to reimburse these additional members will be minimal at most annually.