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Office

H.B. 366
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Criminal Justice

Primary Sponsors: Rep. Ghanbari

Local Impact Statement Procedure Required: No

Jessica Murphy, Senior Budget Analyst

Highlights

- The bill establishes the Organized Retail Theft Task Force within the Organized Crime Investigations Commission (OCIC).
- Increases the fee for a sales tax vendor license from \$25 to \$50, and directs that additional money to the Organized Crime Commission Fund (Fund R042). Those funds are limited for use by OCIC exclusively to support the operations of the Organized Retail Theft Task Force. However, 5% may be used for certain expenses of the Organized Retail Theft Advisory Council, also created by the bill.
- The bill's modification of theft offenses related to retail property may result in minimal annual increases in GRF institutional operating expenses of the Department of Rehabilitation and Correction and the Department of Youth Services.
- The bill may have a minimal net annual fiscal effect on the revenues and expenditures of local criminal justice systems to the extent new cases are created or existing cases are shifted from the misdemeanor jurisdiction of municipal and county courts to the felony jurisdiction of the courts of common pleas.

Detailed Analysis

Organized Retail Theft Task Force and Advisory Council

The bill establishes an Organized Retail Theft Task Force within the Organized Crime Investigations Commission (OCIC) to investigate organized retail theft activity, including cargo theft. The Task Force may initiate an investigation based on complaints or information suggesting ongoing organized retail theft across one or more counties.

The bill also creates the Organized Retail Theft Advisory Council within the Office of the Attorney General. The Council will consist of nine specified members who are required to meet at least quarterly to advise OCIC on organized retail theft and recommend actions to be taken to further detect, deter, prevent, and prosecute organized retail theft. The Council is required to operate a secure retail theft web portal to share real-time crime information and intelligence on organized retail theft with retail businesses and law enforcement. Members of the Advisory Council will not be compensated, but will be reimbursed for actual and necessary expenses incurred in performing their official duties. OCIC is permitted to provide the Advisory Council with technical and clerical employees as necessary to accomplish the Council's various responsibilities specified under the bill.

Fiscal effect

Support for the Task Force will be funded by a dedicated portion of increased vendor licensing fees. Continuing law generally requires a person engaged in making retail sales (subject to sales tax) to have a vendor's license obtained from the county auditor of each fixed place of business or through the Department of Taxation. Currently, this license costs \$25 per fixed location. This bill increases the vendor license fee from \$25 to \$50. The additional \$25 collected from each license fee will be directed to the Organized Crime Commission Fund (Fund R042). The bill permits 5% of this money to be used for administrative expenses of the Organized Retail Theft Advisory Council and the operation of the retail theft web portal.

According to data from the Department of Taxation, from FY 2021 through FY 2023, 32,694 applications for a sales tax vendor license were filed each year on average, generating \$750,747 in average annual revenue. LBO estimates that doubling the filing fee and directing one-half, or \$25, from each fee for use by the Retail Crime Task Force would result in \$750,747 annually for the Task Force (50% of overall licensing fee revenue of \$1.5 million per year).

Criminal justice systems

The bill modifies various theft offenses and penalties related to retail property. Generally, these offenses include criminal mischief, theft, theft of mail (created by the bill), organized theft of retail property or cargo (created by the bill), counterfeiting, and corrupt activity. The LSC bill analysis provides full details for the circumstances and additional details that determine each offense. Depending on the circumstances of the offense, some cases may be subjected to a higher degree of penalty and fine. The net effect of these changes could be a complicated mix of possible sanctioning outcomes. Additionally, it is also not uncommon for criminal cases such as this to carry multiple charges related to a single incident or multiple incidents.

Fiscal effect

The bill will: (1) shift certain misdemeanor cases of criminal mischief (involving a retail pump or meter of an electric charging station) and theft (involving mail) from a municipal court or a county court to a felony-level case under the jurisdiction of a court of common pleas, and (2) increase the penalty of certain felony theft cases (grand theft, aggravated theft, theft from a person in a protected class) to a higher degree felony depending on the number of times the offender has been convicted of or plead guilty to a theft offense. As a result of the shift from misdemeanor to felony, municipalities may realize some savings in their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, counties may experience an increase in their annual

criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well. In the event of additional convictions, the bill may also shift sanctioning costs for certain offenders whose sentence involves a period of incarceration/supervision from a local jail to the Ohio Department of Rehabilitation and Correction (DRC) or the Department of Youth Services (DYS) in the case of juvenile offenders.

The bill will also create a relatively small number of criminal cases resulting from the expanded offense of counterfeiting and the new offense of organized retail theft cases. The base penalty for counterfeiting is a fourth degree felony and for organized retail theft, a third degree felony. The penalties for both offenses can escalate as high as a first degree felony depending on the value involved and other specified circumstances. Under the bill, there is a presumption for prison, or mandatory prison term, for certain third degree organized retail theft offenses. The magnitude of any increased costs incurred by criminal justice systems as a result of any new criminal cases generated by the bill will depend on the number of individuals who are ultimately charged, convicted, and sentenced to a period of incarceration or supervision. Based on conversations with subject matter experts, it is possible that these offenses would be tied to more serious felony offenses or create an additional avenue for prosecution for offenses that otherwise would be charged as corrupt activity. The bill also amends the definition of “organized retail theft” for purposes of the corrupt activities law, which in turn will likely make it easier to prosecute specific conduct under that offense.

Overall, the fiscal effect of a relatively small increase in an existing prison population of approximately 45,000 will not generate a significant increase in DRC’s annual incarceration expenditures. The marginal cost for DRC to add a relatively small number of offenders to its total inmate population is estimated at around \$4,000 per offender per year. Marginal costs are those that increase or decrease directly on a per-person basis with changes in prison population. Such costs include medical care, food service, clothing and bedding (for inmates), and mental health services. Likewise, similar increased costs to DYS will also likely be minimal.