



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 227 of the 131st G.A.

Date: February 9, 2016

Status: As Introduced

Sponsor: Sen. Bacon

Local Impact Statement Procedure Required: No

Contents: Attorney General duties and functions

State Fiscal Highlights

- **Debt collections.** The bill permits, in addition to the amount owed the state, the indebted party to be assessed a collection cost. The assessment of a collection cost would mean that more of the outstanding debt will go to the state entities owed the money, rather than costs of the Attorney General or special counsel incurred in the debt collection process. The potential annual magnitude of that gain is uncertain.
- **Bureau of Criminal Identification and Investigation (BCII).** Additional revenue will be generated for use by BCII from two sources: (1) an additional record sealing fee to be established by the Attorney General, and (2) a portion of asset forfeitures. The amount of revenue generated annually from the record sealing fee is uncertain, while the amount of revenue that may be generated from asset forfeitures will vary considerably from year-to-year.
- **Organized Crime Investigations Commission (OCIC).** Additional revenue may be generated for use by OCIC from two sources: (1) a portion of asset forfeitures, and (2) expense reimbursements. The amount of money that may be generated from these two sources is likely to be highly variable from year-to-year.
- **Reparations Fund (Fund 4020).** Fund 4020 retains any interest earned by the fund, which is expected to be minimal annually. Changes to the filing period for an award of reparations may result in an increase in the number of claims made to the fund, but are not expected to significantly increase annual expenditures.
- **Incarceration expenditures.** As a result of making cases related, generally (1) to patient abuse and neglect an offense of violence, and (2) conspiracy against trade a felony, it is possible that a small number of individuals (likely less than ten per year) could be sentenced to prison. Any related increase in the Department of Rehabilitation and Correction's GRF-funded incarceration-related expenditures will be no more than minimal annually.

Local Fiscal Highlights

- **Debt collections.** The bill permits, in addition to the amount owed a local governmental entity, the indebted party to be assessed a collection cost. The assessment of a collection cost would mean that more of the outstanding debt will go to the local governmental entity owed the money, rather than costs of the Attorney General or special counsel incurred in the debt collection process. The potential annual magnitude of that gain is uncertain.
 - **Local courts, county coroners, and county recorders.** Changes to processes involving criminal fingerprinting, identification of a deceased person, and the Medicaid Estate Recovery Program are likely to create administrative efficiencies for local courts, county coroners, and county recorders, respectively.
 - **County criminal justice systems.** The bill's criminal provisions, in particular, those related to the offenses of conspiracy against trade and patient abuse, may create additional work for the portion of county criminal justice systems that handle felonies. The cost of that work (prosecution, adjudication, and sanctioning) will be minimal at most annually, and may be offset to some degree by the collection of fines, fees, and court costs from offenders.
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Detailed Fiscal Analysis

The bill contains numerous provisions that are generally related to the operations of the Office of the Attorney General (herein known as "the Office"). For the purpose of this analysis, those provisions which are expected to have a fiscal impact on the revenues or expenditures of the state or local governmental entities are listed and discussed in more detail below.

Financial institution records

The bill exempts the Attorney General and the Organized Crime Investigations Commission from the obligation to pay a financial institution the cost of providing a customer's financial records in connection with a criminal investigation or prosecution.

According to the Office, in the course of its investigations, it is often necessary to issue subpoenas to financial institutions to obtain account records, checks, and statements. Current law exempts prosecuting attorneys and grand juries from being charged fees by financial institutions but not the Office of the Attorney General. As such, the Office has been charged thousands of dollars in the past. One recent case resulted in fees of \$2 per page/statement and \$20 per hour for research.

As a result of this exemption, the annual cost of obtaining records from a financial institution will decrease. The funds used by the Office that will be affected by this change include the General Reimbursement Fund (Fund 1060), the Attorney General Claims Fund (Fund 4190), the Consumer Protection Enforcement Fund (Fund 6310), and the Charitable Foundations Fund (Fund 4180).

Collection costs and enforcement

Currently, the Office collects debt owed to the state of Ohio and local governments and for this purpose uses its Collections Enforcement Section and appointed special counsel. The collection costs are in effect covered by a portion of the amount owed and collected from the indebted party. The bill permits, in addition to the amount owed, the indebted party to be assessed a collection cost. The assessment of a collection cost would mean that more of the outstanding debt will go to the state and local governmental entities owed the money. The potential annual magnitude of that gain is uncertain.

Bureau of Criminal Identification and Investigation (BCII)

BCII Asset Forfeiture and Cost Reimbursement Fund

The bill adds the Bureau of Criminal Identification and Investigation Asset Forfeiture and Cost Reimbursement Fund (Fund 4Z20) to the list of funds that receive a portion of the proceeds of sales of forfeited property, requires the fund be used for law enforcement purposes, and prohibits use of the fund for the Office's operating costs.

Any forfeited assets recovered in state investigations are governed by R.C. Chapter 2981., which outlines a "waterfall" of who shall receive revenue from the sale of forfeited assets. After covering the costs of seizure, storage, maintenance, security, and sale for the property, proceeds must go to satisfy victim restitution or any recovery ordered. Next, the proceeds are to pay any balance due on any security interest. The remaining balances are to go to the law enforcement trust fund of the prosecutor and law enforcement agencies that substantially contributed to the investigation. However, the statute specifically lists which funds are to be credited with a share if the applicable law enforcement agency conducted the investigation. Fund 4Z20 is not currently one of those listed funds. As such, the Office is precluded from receiving state forfeitures, despite the fact that BCII may have substantially participated in the investigation. This provision of the bill will allow the fund to receive revenues in the future. However, the potential revenue stream is not expected to be large due to the fact that forfeiture proceeds are typically exhausted by other higher priority recipients in the "waterfall."

Assistance to county coroners

The bill requires the Superintendent of BCII, upon a county coroner's request, to assist the coroner in the identification of a deceased person through the use of fingerprint impressions. Under current law, the Office has maintained that fingerprint impressions obtained via the state's criminal justice system are available for use in cases in which a county coroner is seeking assistance. However, the Office believes that fingerprint impressions obtained via the civilian record check system are not available for this purpose under current law. The bill clarifies that such fingerprints obtained in this manner would be available to a county coroner when identifying a deceased

person.¹ Approximately four such requests are made each year. There will negligible costs for BCII to provide such assistance.

Court authority to take fingerprints

The bill gives court personnel the authority to collect fingerprints for submission to BCII. This change will support the use of new LiveScan technology that is being distributed by the Office to over 100 courts for this purpose. The goal is more timely disposition reporting. As a result of this change, greater efficiencies are expected to be created in the collection of fingerprints. The additional LiveScan machines are funded via federal grants and are being provided to the courts at no charge.

Law Enforcement Trust Fund

The bill creates the Organized Crime Law Enforcement Trust Fund for receiving reimbursement of expenses the Organized Crime Investigations Commission incurred in investigating criminal activity through a task force, and requires the Commission to use the money to purchase, replace, update, or maintain equipment used by task forces or law enforcement agencies for the purpose of investigating organized criminal activity. All investment earnings on money in the fund are credited to the fund. The Commission is prohibited from using the money to meet its operating expenses. The amount of money credited to, and expended from, the fund is likely to be highly variable from year-to-year.

Ohio's Anti-Trust Law (Valentine Act)

The bill makes changes to state law governing monopolies and consumer transactions, also known as the Valentine Act. This includes: (1) adding to the list of prohibited trusts, (2) increasing the criminal penalties for committing a conspiracy against trade offenses generally from a first degree misdemeanor to a felony ranging from a fifth degree felony to a third degree felony, (3) making a conspiracy against trade a corrupt activity, (4) allowing a civil action to be brought by the person who is injured or threatened against the person who committed the offense, (5) applying Ohio's Criminal Forfeiture Law to a criminal action for a violation of the Law that is initiated and prosecuted by the Attorney General, and (6) making certain felony-level environmental violations a corrupt activity.

The predominant fiscal effect generally is tied to the penalty enhancements for committing a conspiracy against trade. As a result, a relatively small number of cases that would have been tried and adjudicated in a municipal or county court would be processed in a court of common pleas. The costs for a county criminal justice system to process these cases is expected to be minimal at most annually, with any revenue

¹ This change was precipitated by a specific instance last year. A county coroner had contacted BCII seeking assistance to identify a John Doe. However, the only means to identify would be with civilian fingerprints. BCII explained that the prints could not be released because they were obtained for a civilian reason.

collected in the form of fines, fees, and court costs expected to be minimal as well. Convictions may create a small increase in the number of offenders sent to prison. Additional incarceration-related expenditures incurred by the Department of Rehabilitation and Correction would be minimal at most annually.

Also, by making conspiracy against trade a corrupt activity, criminal sanctions, including forfeiture, will now be a sentencing option for such cases. It is unknown how often the Office or local prosecutors would utilize this option when investigating and prosecuting these types of cases or if such an option would impact the settlement of existing cases amongst interested parties. According to the Office, these changes are not expected to impact the number of cases filed annually, only the manner in which they are tried.

Consumer Sales Practices Act (CSPA)

The bill makes the failure to be licensed, registered, insured, or bonded as required by state law or local ordinance for a supplier to engage in the supplier's trade or profession an unfair or deceptive act or practice for purposes of Ohio's Consumer Sales Practices Act. This will allow an individual or the Office to bring an action against the supplier for violating the requirement in addition to the penalty to which the supplier may be subject for violating the applicable law.

The Office does not anticipate any increase in the caseload of the Consumer Protection Section. This provision is essentially viewed as an "additional tool" that the Section may utilize to resolve complaints tied to failure to register cases. The filing of civil cases is rare, as the Section typically attempts to resolve such cases before escalating to litigation.

Charitable organization late fees

The bill requires a charitable organization that does not pay registration fees in a timely manner as required by law to pay a late fee of \$200, which will be credited to the existing Charitable Foundations Fund (Fund 4180). The Office does not expect much revenue to be collected from the late fee, as it is likely to motivate organizations to make timelier payments.

Reparations Fund

The bill requires that the interest earned on money in the Reparations/Victims of Crime Fund (Fund 4020) be credited to the fund. If this provision had been in effect during FY 2015, interest credited to the fund would have totaled approximately \$34,600.

The bill also removes the requirement that, in order for a victim of criminally injurious conduct who was a minor to apply for an award of reparations, the victim file the application for the award within two years of the victim's 18th birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is earlier. Instead, the bill provides that the victim may file

the application at any time after the occurrence of the criminally injurious conduct. The

Office does not anticipate that this provision will result in a significant increase in the total amount of claims paid from Fund 4020 in any given year.

Record sealing

The bill requires an applicant for the sealing of a criminal record to pay an additional fee, to be established later by rule by the Attorney General, in order to have a record sealed. The fee will be collected by the appropriate court and forwarded for deposit into the state's existing General Reimbursement Fund (Fund 1060). The fee may be waived if the person is deemed indigent. The person's fingerprints must also be taken by the county sheriff and forwarded to BCII with a copy of the sealing order.

The new fee will be used to cover the administrative cost incurred by BCII to comply with the sealing orders. Under current law, the sealing of certain arrest and conviction records is already permitted. BCII currently does not receive any of the \$50 fee collected when a request to seal a record is submitted, yet BCII must process such a request upon receipt and then manually examine the order every time a criminal background check is processed for that person. With the passage of recent legislation, individuals are now eligible for additional record sealing and the administrative burden on BCII has significantly increased. This fee will permit proper staffing for these requirements and provide for enhanced system upgrades. BCII receives 1,800 to 2,200 sealing orders monthly. The fee would be charged when the sealing of a record of conviction is requested.

Offense of patient abuse

The bill adds to the definition of "offense of violence" a violation of the law prohibiting a person who owns, operates, or administers, or who is an agent or employee of, a care facility from committing abuse against a resident or patient of the facility. This change is not expected to affect the revenues or expenditures of the Office, however, it may alter the way in which such cases are adjudicated in local criminal justice systems and any resultant sentencing. Typically, "offenses of violence" are subject to stricter sentencing guidelines and therefore individuals convicted of these offenses may be more likely to be sentenced to prison and required to pay a higher fine.

Under current law, patient abuse is not an "offense of violence." As such, there is a presumption of community control sanctions instead of incarceration. The Office maintains that, by elevating the offense to an "offense of violence" (similar to other assault offenses), incarceration will now be a viable sentencing option. However, since this change only impacts the presumption and not the options permitted for sanctions, it is not anticipated that there will be a significant cost impact. Statewide, in calendar year 2012, there were nine convictions.

Medicaid Estate Recovery Program

The bill eliminates the requirement to complete a transfer on death affidavit unless the decedent was or may have been a Medicaid recipient. This change is estimated to reduce unnecessary filings by 75%, and eliminates the obligation that county recorders send transfer on death affidavits to the administrator of the Medicaid Estate Recovery Program.² County recorders need only provide the affidavit form to beneficiaries or their representatives. The Office believes that this provision would create greater efficiencies for all parties involved in such transactions. The form would be simpler, county recorders would not be required to mail the form, and the Office would have fewer forms to process.

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² The Attorney General administers the Medicaid Estate Recovery Program on behalf of the Ohio Department of Medicaid.