Michael J. O'Neill *Legislative Service Commission*

H.B. 67

124th General Assembly
(As Introduced)

Reps. Latell, Redfern, Seitz

BILL SUMMARY

- Generally requires the state to pay 100% of certain costs and expenses that a local criminal justice agency incurs in investigating or prosecuting a felony or delinquent act that would be a felony that is committed in or on the grounds of a facility operated by the Department of Rehabilitation and Correction, Department of Youth Services, Department of Mental Health, or Department of Mental Retardation and Developmental Disabilities by any person.

- Generally requires the state to pay 100% of certain costs and expenses that a trial court incurs in hearing a charge of such a felony offense or act.

- Generally requires the state to pay 100% of certain costs and expenses that a county incurs in providing legal representation for an indigent person on a charge of such a felony.

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CONTENT AND OPERATION

In general

The bill establishes a new mechanism for full reimbursement by the state of a local criminal justice agency's expenses of investigating and prosecuting a felony committed in or on the grounds of an institution or facility operated by the Department of Rehabilitation and Correction (DRC), Department of Youth Services (DYS), Department of Mental Health (DMH), or Department of Mental Retardation and Developmental Disabilities (DMRDD) and of a trial court's expenses in a case involving such an offense. It also modifies the existing program pursuant to which the state reimburses counties for their expenses in providing legal representation for indigent defendants, so that the state will provide full reimbursement to counties for their expenses in providing legal representation for indigent defendants who are charged with committing such an offense.

State payment of a local criminal justice agency's expenses of investigating and prosecuting a felony committed at a facility operated by a specified state department

Filing of itemized statement of expenses

The bill provides that, in each case in which a person is charged with committing a "felony offense or act" in or on the grounds of any institution or facility operated by DRC, DYS, DMH, or DMRDD (hereafter, referred to as a "DRC, DYS, DMH, or DMRDD institution felony charge"), each "local criminal justice agency" that was involved in the investigation or prosecution of the offense or act, that incurred any "expense" as a result of its involvement, and that wishes to be reimbursed by the state for the expense must file with the court of common pleas or juvenile court in which the charge was filed an "itemized statement of the expenses" it incurred, as of the "final disposition of the charge," as a result of its involvement in the investigation or prosecution (see "***Definitions***," below for definitions of terms in quotes). The itemized statement must be filed no later than 30 days after the final disposition of the charge and must include for each expense specified in the statement documentation that the agency incurred the expense as a result of its involvement in the investigation or prosecution of the offense or act.

Upon the expiration of 30 days after the final disposition of the charge, the court of common pleas or juvenile court must review each itemized expense statement submitted by an agency to determine whether the documentation supports each expense specified in the statement. If the court determines that the documentation submitted for a particular expense specified in an itemized expense statement does not support the expense, it must disapprove that particular expense. In all other cases, the court must approve the expenses specified in an itemized expense statement. For each itemized expense statement, the court, upon completion of the disapproval and approval process, must prepare a list of the total expenses allowed for the submitting agency. After it prepares a list of that type for each agency, the court must prepare a certified report that cumulates the lists of allowed expenses. It must submit the certified report to the Attorney General (the A.G.) for state reimbursement of the allowed expenses. (See "***Payment of expenses***," below.) (R.C. 2929.30(B)(l).)

Duties of Attorney General

Upon receipt of a certified report listing allowed local criminal justice agency expenses as described above, the A.G. must review the report and, except as described below, prepare a billing invoice for 100% of the expenses in the period of time covered by the certified report and send a certified copy of the billing invoice to the Director of Budget and Management (OBM) and to the director of the state department that operated the institution or facility in question for payment in accordance with the provisions described below in "***Payment of expenses***."

If the A.G. receives a request for reimbursement later than 90 days after the end of the calendar month in which occurs the final disposition of the charge in question, the A.G. is prohibited from preparing a billing invoice for the requested reimbursement and from sending any such invoice to any state department unless, upon request of the local criminal justice agency requesting the reimbursement, the A.G. grants an extension of the 90-day limit.

The bill specifically requires the A.G. to administer the program for the reimbursement of local criminal justice agencies for expenses incurred in relation to a case in which a person is charged with a DRC, DYS, DMH, or DMRDD institution felony. The A.G. must perform all duties related to that program. (R.C. 2929.30(C), and 109.43.)

Payment of expenses

The bill specifies that the expenses listed in a billing invoice prepared by the A.G. and sent to the Director of OBM and to the Director of DRC, DYS, DMH, or DMRDD must be paid in the manner described below (see

COMMENT 1). A person may enforce payment of the expenses listed in the invoice by writ of mandamus directed to the appropriate official.

Upon receipt of such a billing invoice, the Director of OBM must charge 100% of the expenses listed in the billing invoice against available unencumbered moneys in the appropriations to DRC, DYS, DMH, or DMRDD, whichever is named in the invoice as being responsible for its payment. The Director of OBM has sole discretion to determine whether unencumbered moneys in a particular appropriation are available for payment of the invoice and is required to provide for payment to the entity or person specified in the invoice of 100% of the expenses listed in the invoice.

If the Director of OBM determines that sufficient unencumbered moneys do not exist in the particular appropriations to pay 100% of the expenses listed in the billing invoice, the Director must make application for payment of the remaining unpaid amount out of the unencumbered moneys out of the Emergency Purposes Account (see **COMMENT** 2) or any other appropriation for emergencies or contingencies. Payment out of this Account or other appropriation is authorized if there are sufficient moneys greater than the sum total of then-pending Emergency Purposes Account requests or requests for releases from other appropriations. If sufficient moneys do not exist in that Account or any other appropriation to pay the remaining amount of the expenses, DRC, DYS, DMH, or DMRDD, as applicable, must request the General Assembly to make an appropriation sufficient to pay the remaining amount, and no payment may be made until the appropriation is made. The state department in question must make this appropriation request during the then-current biennium and during each succeeding biennium until a sufficient appropriation is made. (R.C. 2929.30(D).)

Expenses as court costs

The above-described provisions relating to the state's payment of the expenses of a local criminal justice agency do not limit or affect any provision of law requiring or authorizing an expense of a local criminal justice agency that is subject to payment under those provisions to be taxed as part of the costs in the case. If any such expense is taxed as part of the costs, upon payment it must be delivered to the State Treasurer. The State Treasurer must deposit all costs so delivered into the General Revenue Fund. (R.C. 2929.30(E).)

Return of excess reimbursement

If any local criminal justice agency receives an amount of money pursuant to the above-described provisions that is in excess of the amount or reimbursement the agency is entitled to receive, the A.G. must request the legislative authority of the agency to return the excess payment. The legislative authority, upon receipt of

the request, must direct the appropriate officer to return the excess payment to the state. (R.C. 2929.30(F).)

State payment of a court's expenses in a case in which a person is charged with committing a felony at a facility operated by a specified state department

In each case in which a person is charged with a DRC, DYS, DMH, or DMRDD institution felony, the municipal or county court in which the charge initially is filed, if applicable, and the court of common pleas or juvenile court in which the charge is filed, if it wishes to be reimbursed by the state for its "expenses" in the case, must prepare an "itemized statement of the expenses" it incurred, as of the "final disposition of the charge," as a result of the portion of the case dealing with that offense or act. The itemized expense statement must be prepared no later than 30 days after the final disposition of the charge and must include, for each expense specified in the statement, documentation that the court incurred the expense as a result of the portion of the case dealing with that offense or act. The court must prepare a certified report containing the itemized expense statement. It must submit the certified report to the A.G. for state reimbursement of the expenses, in the manner described below. (R.C. 2929.30(B)(2).)

The bill's provisions pertaining to state reimbursements to local criminal justice agencies, described above in "***Duties of Attorney General***," "***Payment of expenses***," "***Expenses as court costs***," and "***Return of excess reimbursement***," and the definitions of "felony offense or act," and "final disposition of a charge" that are set forth above in "***Definitions***," all apply regarding a certified report submitted by a court to the A.G. under the provisions described in the preceding paragraph and to the payment of the expenses identified in the certified report (sec. 2929.30(A)(3) and (A)(4) and (C) to (F)).

State payment of defense expenses in a case involving a felony committed at a facility operated by a specified state department

Existing law--background

Existing law permits a county to provide for the representation of indigent defendants through a county public defender system it establishes, through a joint county public defender system it establishes with one or more adjacent counties, or through a system of appointed counsel (R.C. Chapter 120.). It also authorizes a court to appoint counsel outside of any such system to represent an indigent person and to permit an indigent person to select his or her own personal counsel to represent him or her (R.C. 120.16(E) and 120.26(E)—not in the bill, and 2941.51). In lieu of using a county public defender system, joint county appointed counsel system, or appointed counsel system, a county may contract with the State Public Defender (SPD) for the SPD's legal representation of indigent defendants

(R.C. 120.33(B)). Existing law provides for the reimbursement by the state, through the SPD, of a portion of the operating costs of a county public defender office or a joint county public defender office, and for the payment of the expenses of an attorney appointed to represent an indigent person under a county appointed counsel system or by a court (R.C. 120.18, 120.28, 120.33, 120.34, 120.35, and 2941.51).

Operation of the bill

Overview. The bill increases the amount of reimbursement that the state must provide to counties for the costs and expenses of representation provided to indigent persons in situations in which the representation is provided regarding a charge of a DRC, DYS, DMH, or DMRDD institution felony. In doing so, it generally follows the existing procedures for providing reimbursement to counties for costs and expenses incurred in providing representation to indigent persons and retains the existing procedures and amounts of reimbursement in situations in which the representation is provided other than regarding a DRC, DYS, DMH, or DMRDD institution felony charge. For all of the following provisions of the bill, "felony offense or act," and "final disposition of a charge" have the same meanings as they have in the bill's provisions dealing with reimbursement of a local criminal justice agency, as described above.

County public defender and joint county public defender systems--in general. Regarding state reimbursement of the expenses of a county public defender office or joint county public defender office that pertain to a DRC, DYS, DMH, or DMRDD institution felony charge, the bill requires the county public defender commission or joint county public defender commission to prepare and send to the Ohio Public Defender Commission (OPDC), and either to the board of county commissioners of the county or to the joint board of county commissioners, monthly reports relating to reimbursement and associated case data on the total costs of the office resulting from activities of the office undertaken in relation to charges alleging that a person committed a DRC, DYS, DMH, or DMRDD institution felony charges and that reached final disposition in the month covered by the report. Costs resulting from activities of this type may not be included in any report filed under the provision until the month in which the charge in relation to which the activities were undertaken reaches final disposition and never may be included in a report under existing provisions that pertains to services undertaken in relation to other types of charges. (R.C. 120.14(C)(2)(b) and (c) and 120.24(C)(2)(b) and (c).)

The reports must be audited by the county auditor of the county or by the fiscal officer designated by the affiliating counties, and the board of county commissioners or joint board of county commissioners, after review and approval of the audited reports, may certify them to the SPD for reimbursement. The SPD

generally may not prepare a billing invoice for such a requested reimbursement or send any such billing to any state department unless the SPD receives the request for the reimbursement no later than 60 days after the end of the calendar month in which the charge in relation to which the activities were undertaken reaches final disposition. But, the county may request and the SPD may grant an extension of the 60-day period. Each request for reimbursement must include a certification by the county public defender or joint county public defender that the persons provided the representation during the period covered by the report were indigent. The SPD also must review the reports and, in accordance with standards, guidelines, and maximums the SPD establishes, must do both of the following: (1) prepare a billing invoice for 100% of the total cost of the office that is identified in the certified report and that resulted from activities of the office undertaken in relation to DRC, DYS, DMH, or DMRDD institution felony charges that reached final disposition in the month covered by the report, and (2) send a certified copy of the billing invoice to the Director of OBM and to the director of the department that operated the institution or facility in question for payment in the manner described below in the portion of this part of the analysis entitled "***Payment of reimbursement***."

For purposes of these reimbursement provisions, "total costs" has the same meaning as under existing law and means total expenses minus costs and expenses reimbursable under the existing provision providing for reimbursement in capital cases (see below) and any funds received pursuant to a contract (generally), gift, or grant. (R.C. 120.18, 120.28, and 120.04(B)(8).)

County appointed counsel system--in general. Regarding state reimbursement of the expenses of a county appointed counsel system that pertain to a DRC, DYS, DMH, or DMRDD institution felony charge, the bill provides that, as with other expenses court-appointed counsel expenses, the county auditor must draw a warrant on the county for the payment of the counsel in the amount fixed by the court, plus the expenses the court fixes and certifies to the auditor. The County auditor must report periodically, but not less than annually, to the board of county commissioners and to the OPDC the amounts paid out pursuant to approval of the court. The auditor's report must consist of two separate reports. One report must state the amounts paid out pursuant to the approval of the court for activities undertaken in relation to a DRC, DYS, DMH, or DMRDD institution felony charge and one report must state the amounts paid out pursuant to the approval of the court for other activities.

Costs resulting from activities undertaken in relation to DRC, DYS, DMH, or DMRDD institution felony charges may not be included in the first type of report until the charge in question reaches final disposition and never may be included in the second type of report. For amounts paid out for activities

undertaken in relation to DRC, DYS, DMH, or DMRDD institution felony charges, the board of county commissioners, after review and approval of the auditor's report, may certify it to the SPD for reimbursement. Each request for reimbursement must required to be accompanied by an affidavit of indigency completed by the indigent person. The SPD generally may not prepare a billing invoice for a requested reimbursement for an operating expenditure undertaken in relation to a DRC, DYS, DMH, or DMRDD institution felony charge, or send any such billing invoice to any state department, unless the SPD receives the request for the reimbursement no later than 90 days after the end of the calendar month in which the case in relation to which the activities were undertaken reaches final disposition. But, the county may request and the SPD may grant an extension of the 90-day period.

The SPD also must review the report pertaining to activities undertaken in relation to DRC, DYS, DMH, or DMRDD institution felony charges and, in accordance with standards, guidelines, and maximums the SPD establishes, must do both of the following: (1) prepare a billing invoice for 100% of the total cost of the county appointed counsel system that is identified in the certified report and that resulted from activities undertaken in relation to DRC, DYS, DMH, or DMRDD institution felony charges that reached final disposition in the period covered by the report, and (2) send a certified copy of the billing invoice to the Director of OBM and to the director of the state department that operated the institution or facility in question for payment in the manner described below in "***Payment of reimbursement***." (R.C. 120.33 and 120.04(B)(8) and (9).)

Appointment by court or selection with permission of court--in general. Regarding state reimbursement in situations in which a court appoints counsel for an indigent person or permits an indigent person to select his or her own personal counsel for representation on a DRC, DYS, DMH, or DMRDD institution felony charge, the bill provides that the existing procedures, as described above, will be applicable through the time of payment of the expenses by the county. Thereafter, the bill's procedures discussed above in "***County appointed counsel system--in general***" will apply except that the 90-day requirement for the submission of a request for reimbursement will not apply. (R.C. 2941.51(A) to (F) and 120.04(B)(8).)

Reimbursement in capital cases. Regarding the payment of costs and expenses in capital cases, the bill requires the SPD, pursuant to the above-described proposals of the bill contained in R.C. 120.18, 120.28, 120.33, and 2941.51, to: (1) prepare a billing invoice for 100% of all costs and expenses of conducting the defense in each capital case that qualifies as a DRC, DYS, DMH, or DMRDD institution felony charge, that are for expenditures undertaken in relation to DRC, DYS, DMH, or DMRDD institution felony charges, and that

have reached final disposition, and (2) send a certified copy of the billing invoice to the Director of OBM and to the director of the state department that operated the institution or facility in question for payment in the manner described below in "***Payment of reimbursement***." Existing reimbursement procedures will apply regarding costs and expenses of conducting the defense in other types of capital cases. (R.C. 120.35.)

Reimbursement of proportionate shares of costs and expenses. Under the bill, the existing provision that provides for the reduction of the amount of a county's reimbursement for costs and expenses of providing legal services to indigent persons in situations in which the total amount of money appropriated for that fiscal year by the General Assembly for that purpose is insufficient to pay the entire amount of the reimbursement will not apply to or limit the reimbursement of any county under the bill's proposed provisions governing the state reimbursement of the costs and expenses of providing legal representation to an indigent person regarding a DRC, DYS, DMH, or DMRDD institution felony charge or regarding a capital case in which the offense qualifies as a DRC, DYS, DMH, or DMRDD institution felony charge. (R.C. 120.34.)

Payment of reimbursement. The bill enacts a specific procedure for the payment of state reimbursements to counties that are for the costs and expenses of providing legal representation to an indigent person regarding a DRC, DYS, DMH, or DMRDD institution felony charge or regarding a capital case, as described above. It specifies that the costs and expenses listed in a billing invoice prepared by the SPD under any of the above-described provisions pertaining to such reimbursements and sent to the Director of OBM and to the Director of DRC, DYS, DMH, or DMRDD must be paid in the manner described below (see **COMMENT** 1). Payment of the costs and expenses listed in the invoice may be enforced by writ of mandamus directed to the appropriate official.

Upon receipt of such a billing invoice, the Director of OBM must charge 100% of the costs and expenses listed in the invoice against available unencumbered moneys in the appropriations to DRC, DYS, DMH, or DMRDD, whichever is named in the invoice as being responsible for its payment. The Director of OBM has sole discretion to determine whether or not unencumbered moneys in a particular appropriation are available for payment of the invoice and must provide for payment of the entity or person specified in the invoice of 100% of the costs and expenses listed in the invoice.

If the Director of OBM determines that sufficient unencumbered moneys do not exist in the particular appropriations to pay 100% of the costs and expenses listed in the billing invoice, the Director must make application for payment of the remaining amount of the costs and expenses that cannot be paid out of the unencumbered moneys out of the Emergency Purposes Account (see **COMMENT**

2) or any other appropriation for emergencies or contingencies. Payment out of this account or other appropriation is authorized if there are sufficient moneys greater than the sum total of then-pending Emergency Purposes Account requests or requests for releases from other appropriations. If sufficient moneys do not exist in the Emergency Purposes Account or any other appropriation for emergencies or contingencies to pay the remaining amount of the costs and expenses, DRC, DYS, DMH, or DMRDD, whichever is named in the invoice as being responsible for its payment, must request the General Assembly to make an appropriation sufficient to pay the remaining amount, and no payment may be made until the appropriation is made. The department in question must make this appropriation request during the then-current biennium and during each succeeding biennium until a sufficient appropriation was made. (R.C. 120.36 and 2941.51(G).)

Disposition of costs and fees. The bill specifies, in a number of existing provisions that pertain to the collection by a juvenile court, clerk of court, judge, or sheriff of costs and fees in criminal cases, that in any case involving a DRC, DYS, DMH, or DMRDD institution felony charge, the specified official monthly must deliver to the State Treasurer all costs and fees collected under the particular section that represent costs and expenses that have been paid or are subject to payment by the state under any of the bill's provisions for reimbursements to counties that are for the costs and expenses of providing legal representation to an indigent person regarding a DRC, DYS, DMH, or DMRDD institution felony charge or regarding a capital case, as described above. The State Treasurer must deposit all costs and fees so delivered into the General Revenue Fund. (R.C. 2151.54, 2335.11, 2335.37, and 2947.23.)

Definitions

The bill defines the following terms that are used in the above-described provisions relating to the state's payment of the expenses of a local criminal justice agency (R.C. 2929.30(A)):

(1) "Local criminal justice agency" means any law enforcement agency, other public agency, or public official of a county, municipal corporation, or township that is involved in the investigation or prosecution of a DRC, DYS, DMH, or DMRDD institution felony charge, including a sheriff's office, a municipal, township, or township police district police department, the office of any prosecuting attorney, and the office of any city director of law, village solicitor, or similar municipal chief legal officer.

(2) "Expenses" means either of the following:

(a) The reasonable value of the time spent by an officer or employee of a local criminal justice agency in the investigation or prosecution of a DRC, DYS, DMH, or DMRDD institution felony charge, any moneys spent by the agency in the investigation or prosecution of any such offense or act, and the reasonable fair market value of resources used or expended by the agency in the investigation or prosecution of the offense or act;

(b) The reasonable value of the time spent by a judge or employee of the court on the case as a result of the portion of the case dealing with the offense or act, any moneys spent by the court on that portion of the case, and the reasonable fair market value of resources used or expended by the court on that portion of the case.

(3) "Felony offense or act" means a criminal offense classified as a felony or a delinquent act that would be classified as a felony if committed by an adult.

(4) "Final disposition of a charge" means any of the following, in relation to a DRC, DYS, DMH, or DMRDD institution felony charge: (a) if the person charged with the DRC, DYS, DMH, or DMRDD institution felony is convicted of or pleads guilty to that offense or is adjudicated a delinquent child for committing or admits that act, the imposition upon the person of the sentence or disposition for that offense or act, (b) if the person charged is not convicted of and does not plead guilty to that offense but is convicted of or pleads guilty to another offense that is based upon the same conduct that was the basis of the charge of the DRC, DYS, DMH, or DMRDD institution felony, the person's conviction of or plea of guilty to the other offense, (c) if the person is not adjudicated a delinquent child for committing and does not admit that act but is adjudicated a delinquent child for committing or admits another delinquent act that is based upon the same conduct that was the basis of the DRC, DYS, DMH, or DMRDD institution felony, the person's delinquent child adjudication or admission of the other act, (d) if the charge is dismissed, the dismissal of the charge, (e) if the person charged is found not guilty of the DRC, DYS, DMH, or DMRDD institution felony charge and is not convicted of and does not plead guilty to another offense, as described in clause (b), the entry of the not guilty verdict, or (f) if the person is found not to have committed the DRC, DYS, DMH, or DMRDD institution felony charge and is not adjudicated a delinquent child for committing and does not admit another delinquent act, as described in clause (c), above, the entry of the finding that the person did not commit that delinquent act.

(5) "Itemized expense statement" means the statement of expenses of a local criminal justice agency or court, as described above.

COMMENT

1. The bill's mechanism for paying the reimbursements determined to be due to a local criminal justice agency, court, or county under the bill, regarding their expenses incurred in investigating, prosecuting, or hearing, or in providing a defense for an indigent person charged with a DRC, DYS, DMH, or DMRDD institution felony generally parallels the existing provisions in the Court of Claims Law that provide for payment of judgments rendered in the Court against the state, except for the existing provisions that pertain to an award of interest (R.C. 2743.19).

2. The Emergency Purposes Account is a special purpose account of the Controlling Board from which the Board is authorized to release moneys to state agencies for specified purposes.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-06-01	p. 138

H0067-i.124/ejs