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Legislative Budget Office

S.B. 288
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Final Fiscal Note & Local Impact Statement

Click here for S.B. 288's Bill Analysis

Primary Sponsor: Sen. Manning

Local Impact Statement Procedure Required: Yes

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Highlights

Criminal Law

- The bill makes a number of changes to current law's sealing and expungement provisions that are likely to result in a significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.
- The bill's new strangulation offense will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of strangulation or suffocation can instead be charged as a felony. As a result, a potentially significant number of misdemeanor cases, and the related processing and sanctioning costs, will shift from municipal and county courts to common pleas courts. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is not readily quantifiable. Neither is the amount of related annual revenue (fines, and court costs and fees) that will shift. The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction (DRC) may increase by hundreds of thousands of dollars annually, as the likely number of felony offenders affected by the bill appears to be quite large.
- The bill expands the current judicial release mechanism to apply with respect to "state of emergency-qualifying offenders" (SEQ) during a declared state of emergency. Subsequent to such declaration, the notice, hearing, and other procedural requirements triggered by the filing of a motion for an SEQ offender judicial release creates work and costs generally

for the court, the clerk of courts, county prosecutors, county sheriffs, and DRC. The amount of work and costs will depend on the number of motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted.

- The bill's modifications to existing transitional control and earned credit provisions create a potential savings in incarceration costs, as certain offenders may be released from prison sooner than otherwise may have been the case under current law. The costs that DRC's Adult Parole Authority incurs to supervise such a prisoner subsequent to their release from prison may reduce the magnitude of that savings.
- Because of the bill's enhanced penalty for speeding, more violations may be contested and taken to trial than otherwise may have occurred under current law. The result may be (1) additional costs for the court, clerk of courts, prosecutors, law enforcement, and jails, and (2) additional revenues in the form of fines, and court costs and fees, some of which would be distributed to the state. The net fiscal effect for local criminal justice systems is indeterminate, as the number of applicable situations is unknown.

Distracted driving

- There may be a minimal annual gain in fine revenue collected from drivers cited for using an electronic wireless communications device (EWCD) while driving by the Ohio State Highway Patrol and credited to the state's existing Security, Investigations, and Policing Fund (Fund 8400).
- Law enforcement agencies, including the Ohio State Highway Patrol, may incur additional costs if the officer or trooper who issued a citation has to appear in court for a traffic violation charge that otherwise might not have been issued or contested under existing law.
- The state may gain a minimal amount of court cost revenue annually to be apportioned between certain state funds.[1]
- There may be a minimal annual gain in fine, court cost and fee revenue from traffic citations distributed pursuant to state law between counties, municipalities, and townships.
- State and local law enforcement agencies will likely have to expend additional time and effort, thus incurring additional costs, to comply with the bill's reporting requirements. This is particularly true for those law enforcement agencies that do not have the capability to compile the required information electronically and will instead be required to hand tabulate all citations written in the previous two-month period.
- The Ohio Department of Transportation will incur costs to design and erect signs regarding the EWCD-while-driving prohibition at certain specified locations. The one-time costs will be up to around $100,000, and to be paid from the Highway Operating Fund (Fund 7002).

[1] The state funds include the Indigent Defense Support Fund (Fund 5DY0), the Victims of Crime/ Reparations Fund (Fund 4020), the Drug Law Enforcement Fund (Fund 5ET0), and the Justice Program Services Fund (Fund 4P60).

Fentanyl drug testing strips

- The bill's removal of fentanyl drug testing strips from the offense of "illegal use or possession of drug paraphernalia" has the potential to create a minimal cost savings to county and municipal criminal justice systems.

Tenth Amendment Center

- The bill codifies the Office of the Solicitor General and creates the Tenth Amendment Center, both of which already exist within the Office of the Attorney General. Thus, this provision has no direct fiscal effect on the state or political subdivisions.

Sexual assault examination kits for trafficking in persons cases

- Local law enforcement agencies may incur minimal ongoing operating costs to comply with the bill's requirement that biological evidence in a trafficking in persons investigation or prosecution be secured for a specified period.
- The Office of the Attorney General's Bureau of Criminal Investigation (BCI) may experience a minimal increase in annual workload and costs related to performing a DNA analysis of any sexual assault examination kit related to a trafficking in persons offense forwarded by a law enforcement agency.
- Local law enforcement agencies generally will experience a short-term increase in administrative costs to review all records and reports related to investigations of trafficking in persons, and forward the contents of any related sexual assault examination in its possession to BCI. The one-time cost increase to any given agency will depend on the length of the lookback period and the number of cases requiring such review.
- There may be a relatively small increase in the number of persons charged and convicted of a felony sex offense and subsequently sentenced to a term of incarceration in state prison. The associated annual operating costs for county criminal justice systems and the Department of Rehabilitation and Correction are expected to be minimal at most.
- Eliminating the authorization in certain circumstances for the use of the Reparations Fund (Fund 4020) to pay for electronic monitoring may result in a potential savings of up to $300,000 per year for Fund 4020, and a potential cost increase for certain courts if they continue to order monitoring for indigent persons who are unable to pay, the amount of which is uncertain.

Disturbing a lawful meeting

- The increased penalty for the offense of "disturbing a lawful meeting" may create some additional costs for county or municipal criminal justice systems, in terms of increased jail time and adjudication costs. Any increase is likely to be minimal annually and may be partially offset by fines, court costs and fees, if collected.

Mandatory reporter of adult abuse, neglect, or exploitation

- Local criminal justice systems may experience a minimal increase in their annual operating costs to process cases involving failure to make a mandatory report. The number of impacted cases statewide is likely to be negligible for any given jurisdiction.
- Local criminal justice systems may realize a negligible annual reduction in revenue, as the maximum fine amount decreases from $500 to $250.

Age-appropriate child sexual abuse instruction

- Some school districts, community schools, and STEM schools may incur minimal costs to update their health education curricula and in-service training programs to meet the requirements of the bill and to provide a parental notification.

Detailed Analysis

Criminal record sealing and expungement

The bill makes a number of changes to current law's sealing and expungement provisions, most notably by expanding eligibility, shortening waiting periods, and requiring the court hold a hearing between 45 and 90 days after the filing date of an application. The result is likely to be a significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.

The bill specifically: (1) modifies and reorganizes the current laws regarding the sealing of conviction records and records of bail forfeitures, (2) modifies and reorganizes the current laws regarding the sealing of records after a not guilty finding, a dismissal of proceedings, or a no bill by grand jury, and extends those laws to also apply regarding records after a pardon, (3) maintains and relocates the current laws regarding the expungement in limited circumstances of certain conviction records, (4) enacts new provisions regarding the expungement of a conviction record in the same manner and under the same procedures that apply regarding sealing of a conviction record, and (5) enacts a new mechanism pursuant to which a prosecutor may request and obtain, in specified circumstances, the sealing or expungement of the record of conviction of a low-level controlled substance offense.

Under current law, the court is required to send notice of an order to seal or expunge to the state's Bureau of Criminal Investigation (BCI) and to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record. The latter potentially includes state and local law enforcement, prosecuting attorneys, probation departments, and the Adult Parole Authority.

According to data collected by the Ohio Criminal Sentencing Commission, BCI received, on average, approximately 38,000 sealing/expungement orders annually from calendar year (CY) 2016 through 2018. The actual number of applications was higher, as the BCI data does not reflect applications denied or withdrawn. Because of the bill, the number of applications received and subsequent sealing/expungement orders issued will increase, perhaps significantly so in certain, likely urban, jurisdictions.

There is a difference between the terms sealing a record and expungement of record. "Sealing" a court record means that the criminal record is removed from all public records and the public no longer has access to the records of the criminal case, including employers generally. "Expungement" usually means that the criminal record is completely destroyed, erased, or obliterated from all records.

Under the bill, expunge means the following:

- As used in R.C. 2953.32, "expunge" means the expungement process described in R.C. 2953.32 of the Revised Code.
- As used in R.C. 2953.33 to 2953.521, "expunge" means both of the following: (a) the expungement process described in R.C. 2953.36, 2953.39, and 2953.521, and (b) to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

Filing fee

The bill changes the provisions governing the filing fee for an application for sealing of a conviction record (or, as currently added under the bill, for expunging a conviction record) so that:

- The fee generally will be not more than $50, unless it is waived (currently, it is $50, unless waived);
- The fee will be waived if the applicant presents a poverty affidavit showing that the applicant is indigent (currently, the poverty affidavit is not required);
- The court will: (1) pay three-fifths of the fee collected into the state treasury, with half of that amount credited to the Attorney General Reimbursement Fund (Fund 1060) and the General Revenue Fund (GRF), respectively, and (2) pay two-fifths of the fee collected into the county general revenue fund if the sealed or expunged conviction or bail forfeiture was under a state statute or into the general revenue fund of the municipality involved if it was under a municipal ordinance (currently, the court pays $30 of the fee collected into the state treasury for crediting to the GRF, and $20 of the fee collected into the county general revenue fund if the sealed, or expunged under the bill, conviction or bail forfeiture was under a state statute, or into the general revenue fund of the municipality involved if it was under a municipal ordinance).

The additional application revenue generated because of the bill will not offset the potentially significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.

The bill's change in the crediting of the state's $30 portion of the filing fee means that $15 of the fee that, which under current law is credited to the GRF, instead will be credited to Fund 1060. LBO has yet to estimate the potential annual magnitude of the revenue shift.

Sealing

The bill's modifications to the current record sealing law generally are summarized in the table below, most notably in terms of increasing eligibility, shortening waiting periods, and setting hearing deadlines.

Table 1. Criminal Record Sealing		
Subject Matter	**Current Law**	**Bill's Proposed Changes**
Recording sealing definitions	Defines "eligible offender" based upon the offense level of conviction(s) and the number of prior convictions.	Eliminates definition of "eligible offender" and instead limits applicability of the record-sealing statutes by excluding specified types of convictions.
Number of convictions and waiting periods	Current waiting periods (from final discharge of case): ▪ Three years for third degree felony except for a violation of theft in office. ▪ One year for fourth or fifth degree felony or one misdemeanor except for theft in office or an offense of violence. ▪ Seven years for one conviction of soliciting improper compensation in violation of theft in office.	Expands sealing eligibility and access by eliminating cap on number of convictions and reducing waiting periods to: ▪ Three years from final discharge for one or two third degree felonies, so long as none is theft in office. ▪ One year from final discharge for one or more fourth or fifth degree felonies or one or more misdemeanors, so long as none is theft in office or a felony offense of violence. ▪ Seven years from final discharge if record includes one or more convictions for soliciting improper compensation in violation of theft in office. ▪ In limited circumstances for sexually oriented offenders subject to SORN Law notification requirements five years after their notification requirements end. ▪ Six months from final discharge for minor misdemeanor.
Timing of hearing on application	Left to the court's discretion.	Requires the court hold a hearing between 45 and 90 days after the filing date, requires the prosecutor

Table 1. Criminal Record Sealing		
Subject Matter	**Current Law**	**Bill's Proposed Changes**
		object in writing 30 days prior to that hearing date, and requires the victim to be notified of the date and time of the hearing.

Expungement

The bill permits an application for expungement to be made in the same manner as for an application for sealing, as described above, but modifies as follows:

- If the offense is a misdemeanor, at the expiration of one year after the offender's final discharge.
- If the offense is a minor misdemeanor, at the expiration of six months after the offender's final discharge.
- If the offense is a felony, at the expiration of ten years after the time specified in the bill's current provisions setting forth the time at which a person convicted of an offense may apply for sealing with respect to that felony offense.
- Specifies that the bill's provisions regarding expungement of a conviction record do not apply with respect to convictions of more than two third degree felonies.
- Specifies that a person may apply for the expungement of the record that pertains to the case at any time after the expiration of three years from the date on which the bail forfeiture was entered on the court's minutes or journal, whichever entry occurs first.

With regard to the expungement process described in R.C. 2953.32, the bill:

- Requires BCI, when it receives notice from a court that a conviction has been expunged, to maintain a record of the expunged conviction record for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement.
- Prohibits the court from compelling BCI to expunge those records.
- Provides that those records may only be disclosed or provided to law enforcement for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement.

Divulging confidential information

The bill relocates existing provisions regarding investigatory work product and divulging confidential information related to sealed records. Specifically, the bill retains the provision that prohibits an officer or employee of the state or any of its political subdivisions from knowingly divulging any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision the records of which have been

sealed, but adds that such an officer or employee divulged the information or data "knowing" the records had been sealed. A divulging confidential information violation is a fourth degree misdemeanor under current law and is unchanged by the bill.

Anecdotal information suggests that an officer or employee as described above being charged for such a violation is likely to be rare. If true, then the bill's addition of the term "knowing" should have no discernible direct fiscal effect on the state or its political subdivisions.

Sealing and expungement – "low-level controlled substance offense"[2]

The bill: (1) enacts a mechanism under which the prosecutor in a case in which a person is or was convicted of a "low-level controlled substance offense" may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction, and (2) enacts procedures under the mechanism similar to those of the bill's current mechanism under which a person convicted of an offense may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction.

The fiscal effect on the state and its political subdivisions will depend on the frequency with which prosecutors opt to apply to a sentencing court for the sealing or expungement of the record of the case that pertains to the conviction, which is unknown.

Under the mechanism, the bill:

- Provides for offender and victim notification and an opportunity to object to the application; and
- Provides for the sealing or expungement of the record of the case if the court determines after a hearing that no criminal proceeding is pending against the offender, that the offender's interests in having the records sealed or expunged are not outweighed by legitimate governmental needs to maintain the records, and that the offender's rehabilitation has been attained to the court's satisfaction.

Strangulation offense

The bill creates the offense of strangulation and adds strangulation to the definition of "offense of violence." The new offense prohibits a person knowingly, by means of strangulation or suffocation, from: (1) causing serious physical harm, (2) creating a substantial risk of serious physical harm, or (3) causing or creating a substantial risk of physical harm. Depending on the circumstances present, a violation is either a second, third, fourth, or fifth degree felony.

Existing offenses

According to the Ohio Prosecuting Attorneys Association, prosecutors typically have two choices under current law in strangulation and suffocation cases, prosecute the case as:

[2] The bill defines a "low-level controlled substance offense" as a violation of any provision of R.C. Chapter 2925 that is a fourth degree misdemeanor or minor misdemeanor or of a substantially equivalent municipal ordinance that, if it were to be charged under the R.C. provision, would be a fourth degree misdemeanor or minor misdemeanor.

(1) felonious assault (second degree felony), or (2) domestic violence (first degree misdemeanor). However, prosecuting the case as felonious assault can be difficult, particularly in cases without proof of external trauma, as the offense imposes a standard of "serious physical harm." For cases without external trauma, such a charge often depends on the strength of the available evidence of internal harm. The bill provides a clear avenue to prosecute the prohibited behavior as a felony offense in cases where serious physical harm is not involved or difficult to prove.

Because of the serious harm standard for felonious assault, absent the bill, strangulation and suffocation involving family or household members in many cases otherwise would be charged and prosecuted as domestic violence. The bill can arguably be seen as enhancing the penalty of domestic violence involving this conduct from a first degree misdemeanor to a fourth or third degree felony.

Domestic violence incidents

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In CY 2019, law enforcement responded to 37,607 incidents of domestic violence in which domestic violence charges were filed; in CY 2018, that number was 38,475.[3] Information obtained from the Domestic Violence Division of the Columbus City Attorney's Office indicates that, in CY 2018, approximately 20% of their estimated 3,200 domestic violence cases involved allegations of strangulation or suffocation. Extrapolating this number across the state (20% of 38,000 or so charges) suggests that thousands of misdemeanor domestic violence cases involving strangulation or suffocation could instead be charged as a fourth or third degree felony. In some cases, a felony charge may induce some offenders to accept a plea bargain, but this does not alter the possibility that thousands of cases could shift from municipal and county courts that currently handle domestic violence misdemeanor cases to common pleas courts that have jurisdiction over felonious strangulation or suffocation cases.

State fiscal effects

Incarceration expenditures

Under current law and sentencing practices, around 700 offenders per year enter prison for felony domestic violence offenses. The bill will shift some felony domestic violence cases to, predominately, a felony of the third degree if the offender is charged with, and then convicted of, strangulation. As a result, these offenders would be sentenced for a longer prison term that they otherwise would have received under current law. The bill also will increase the number of offenders entering prison by: (1) potentially shifting a large number of the misdemeanor domestic violence cases involving strangulation or suffocation to a third degree felony, and (2) potentially increasing ease of prosecution for felony cases under the offense of "strangulation or suffocation" instead of "felonious assault." The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction (DRC) may increase by hundreds of thousands of dollars or more annually, as the potential number of offenders affected by the bill each year

[3] The Attorney General's report does not distinguish between misdemeanor and felony domestic violence charges. Based on anecdotal evidence, it appears that the majority of charges were for misdemeanor offenses.

appears to be quite large. For FY 2021, the average annual cost of incarcerating an offender in prison was $97.00 per day, or $35,405 per year.

Court cost revenues

The bill's strangulation offense will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of strangulation or suffocation can instead be charged as a fourth or third degree felony. A conviction in this situation creates the possibility of increased state revenues from the $60 in court costs imposed for a felony conviction, an amount that is $31 more than the $29 in court costs imposed for a misdemeanor conviction. The amount collected annually is likely to be minimal at most because many felony offenders are either financially unable or unwilling to pay. The state court costs are apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local criminal justice system fiscal effects

Expenditures

As previously mentioned, the bill's new offense carries the potential to shift a significant number of cases that, based on current law, would most likely be adjudicated as misdemeanors in a municipal court or county court to a felony-level charge in a common pleas court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter in terms of the costs to process the case and sanction the offender.

From the fiscal perspective of local governments, such an outcome will simultaneously:

- Increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) additional felony offenders; and
- Decrease the analogous municipal and county court criminal justice system expenditures related to the prosecution of that subset of misdemeanor domestic violence offenses involving strangulation or suffocation.

The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is not readily quantifiable.

Revenues

The bill will affect the local revenue collected from strangulation or suffocation cases as follows:

- The elevation of a misdemeanor to a felony means that revenue from fines, and court costs and fees collected by municipal and county courts will instead be collected by courts of common pleas. The maximum fine for a misdemeanor is $1,000 (first degree misdemeanor). The fines for felonies generally start at up to $2,500 (fifth degree felony); and
- The enhancement of an existing felony domestic violence offense, if the offender is charged with, and then convicted of, "strangulation," creates the possibility of increased

fine revenues. The maximum permissible fines for fifth, fourth, or third degree felonies are $2,500, $5,000, and $10,000, respectively.

The likely revenue loss for municipal criminal justice systems and revenue gain for county criminal justice systems, while potentially significant, is difficult to calculate precisely because many offenders, especially those convicted of a felony, are either financially unable or unwilling to pay. It is also the case that the court rarely imposes the maximum permissible fine.

Judicial release mechanisms

The bill addresses four mechanisms that use the sentencing court as a means of releasing certain offenders from prison.

1. Eligible offenders

The bill modifies several aspects of the existing mechanism that applies with respect to inmates who are "eligible offenders." An "eligible offender" is any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms, but the term does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of a list of specified criminal offenses that was a felony and was committed while the person held a public office in Ohio. A person may be an eligible offender and also may be an 80% qualifying offender or, during a declared state of emergency, a "state of emergency-qualifying offender" for purposes of the judicial release expansion described below that applies with respect to such offenders.

The bill's modifications, as described below, appear unlikely to generate any significant increase in the judicial release workload and related operating cost of county criminal justice systems (courts, clerks of courts, county prosecutors). The fiscal impact on a county to modify its judicial release practices should be minimal at most, assuming compliance with current law. Under the bill, the pool of "eligible offenders" does not appear to change, which suggests that, from the perspective of DRC, the number of offenders eligible to file a motion and subsequently be granted judicial release may not be all that different from what otherwise might have occurred under current law.

The bill's modifications include:

- Requiring the county prosecutor, upon receiving notice from the court regarding the scheduling of a hearing for an eligible offender motion, to notify the victim or victim's representative pursuant to the Ohio Constitution and an existing statutory provision;
- Adding a preliminary step to the decision process on an eligible offender motion by specifying that, if an inmate files a motion as an eligible offender and the court makes an initial determination that the subject offender satisfies the criteria for being an eligible offender, the court then is to determine whether to grant the motion;
- Requiring the prosecuting attorney, after the court rules on the motion, to notify the victim of its ruling pursuant to an existing statutory provision; and
- Requiring the county prosecutor, subsequent to receiving notice from the court granting an eligible offender motion for judicial release, to notify the victim or victim's

representative when required pursuant to the Ohio Constitution and, in all other circumstances, pursuant to an existing statutory provision.

2. State of emergency-qualifying offenders

The bill expands the above-discussed "eligible offenders" judicial release mechanism to apply to a "state of emergency-qualifying offender" (SEQ offender)[4]. Upon the filing of a motion by an SEQ offender with the sentencing court, or the court on its motion, the court may reduce the offender's aggregated nonmandatory prison term or terms through a judicial release.

Subsequent to a state of emergency declared by the Governor, the notice, hearing, and other procedural requirements triggered by the filing of a motion for an SEQ offender judicial release creates work and costs generally for the court, the clerk of courts, county prosecutor, county sheriff, and DRC. The amount of work and costs depends on the number of motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted. Generally, it is less expensive for DRC to supervise an offender in the community than it is to house an offender in prison.

The notice, hearing, and other procedural requirements are described below under the subheadings "**Motion**," "**Hearing**," and "**Court determination**."

Motion

With regard to a motion having been filed, the bill:

- Permits the court to deny the motion without a hearing, schedule a hearing on the motion, or grant the motion without a hearing;
- Requires the court to notify the prosecuting attorney of the county in which the offender was indicted of the motion;
- Permits the court to order the prosecuting attorney to respond to the motion in writing within ten days (the prosecutor must notify the victim, and must include any statement that the victim wants to be given to the court);
- Requires the court, after receiving the response from the prosecuting attorney, either order a hearing as soon as possible, or enter its ruling on the motion as soon as possible; and
- Specifies that existing notice provisions regarding a hearing on a motion made by an "eligible offender" apply (i.e., notice to DRC, the prosecuting attorney, and victims).

[4] The bill defines a "state of emergency-qualifying offender" as any inmate to whom all of the following apply: (1) the inmate is serving a stated prison term during a declared state of emergency declared by the Governor as a direct response to a pandemic or public health emergency, (2) the geographical area covered by the declared state of emergency includes the location at which the inmate is serving the stated prison term, and (3) there is a direct nexus between the emergency that is the basis of the Governor's declaration of the state of emergency and the circumstances of, and the need for release of, the inmate.

- Provides that a SEQ offender may only file a motion for judicial release with the sentencing court during the declared state of emergency once every six months.

Hearing

With regard to a hearing being scheduled, the bill:

- Requires DRC, prior to the date of the hearing, send certain specified information on the offender while in prison, including an institutional summary report, program participation, work assignments, disciplinary history, and security level to the court, and the county prosecutor or law enforcement, if requested.
- Specifies that existing notice provisions regarding a hearing on a motion made by an "eligible offender" apply (i.e., notice to DRC, the prosecuting attorney, and victims).
- Requires: (1) the offender to attend the hearing if ordered to do so by the court, (2) DRC to deliver the offender to the sheriff of the county in which the hearing is to be held, and (3) the sheriff to convey the offender to and from the hearing; and
- Requires, if a hearing is conducted, the court to conduct the hearing in open court or by a virtual, telephonic, or other form of remote hearing.

Court determination

With regard to a court determination, the bill:

- Requires the court: (1) if a hearing is held, to enter its ruling on the motion within ten days after the hearing, or (2) if the court denies the motion without a hearing, to enter its ruling on the motion within ten days after the motion is filed or after it receives the response from the prosecuting attorney; and
- Requires the court, if it court grants a motion for judicial release, order the SEQ offender's release, place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the probation authority serving the court, and reserve the right to reimpose the reduced sentence if the offender violates the sanction.

3. 80% release mechanism replacement

The bill enacts a new judicial release mechanism that largely mirrors the current "80% release mechanism" (R.C. 2929.20) and repeals the statute that contains the current 80% release mechanism (R.C. 2967.19).

The bill specifies that separate from and independent of the provisions of the other judicial release mechanisms, DRC's Director may recommend in writing to the sentencing court that the court consider releasing from prison, through a judicial release, an "80% qualifying offender." The Director may file the recommendation by submitting to the sentencing court a notice, in writing, of the recommendation, within the same timeframe applicable to the making of a recommendation under the current 80% release mechanism.

It appears that there is no difference between the types of offenders eligible under the new or current 80% release mechanisms. If so, then this suggests that the bill will not change the

number of offenders for whom the DRC Director will recommend a judicial release from what otherwise might have occurred under current law. How the bill's changes, as described below, may affect future judicial release decisions by the courts is unknown.

For the purposes of this fiscal analysis, the bill most notably:

- Establishes a rebuttable presumptive release (no presumption for or against under current law);
- Requires the court, if it makes an initial determination that the offender satisfies the criteria for being an 80% qualifying offender, to determine whether to grant the offender judicial release (current law does not require);
- Requires the court to hold the hearing in open court not less than 30 or more than 60 days after the Director's notice is submitted (current law leaves to court's discretion);
- Requires the court, if it makes an initial determination that the offender satisfies the criteria for being an 80% qualifying offender, to determine whether to grant the offender judicial release (current law does not reference the making of an initial determination);
- Requires the court to grant the release unless the prosecuting attorney proves to the court, by a preponderance of the evidence, that the legitimate interests of the government in maintaining the offender's confinement outweigh the interests of the offender in being released from that confinement (current law does not require);
- Requires the court to enter its ruling on the notice recommending judicial release within ten days after the hearing is conducted (current law leaves to court's discretion); and
- Permits DRC's Division of Parole and Community Services, if the court does not enter a ruling on the notice from DRC recommending judicial release within ten days after the hearing is conducted, to release the offender.

4. Medical reasons

The bill modifies the current judicial release mechanism that applies with respect to offenders who are in imminent danger or death, are medically incapacitated, or are suffering from a terminal illness in two ways. The modifications described below have no readily apparent direct fiscal effect on the state or its political subdivisions.

First, the bill clarifies that the procedures that apply under the mechanism include the victim notification provisions of the existing provisions regarding an eligible offender that are modified by the bill. Second, the bill specifies that the bill's provisions with respect to a judicial release motion regarding an eligible offender or an SEQ offender that require a court to issue an order granting the judicial release if the court does not take certain actions within a specified period of time do not apply regarding a motion made under this mechanism.

Transitional control

Current law establishes a "judicial veto" that applies whenever DRC wishes to transfer a prisoner in a specified category to any transitional control program DRC establishes. Currently, the "judicial veto" provisions apply whenever DRC proposes a transfer to transitional control of

a prisoner who is serving a definite term of imprisonment or definite prison term of two years or less for an offense committed on or after July 1, 1996, or who is serving a minimum term of two years or less under a nonlife felony indefinite prison term. The bill retains a "judicial veto," but changes the categories of prisoners with respect to whom the "judicial veto" provisions apply. Under the bill, they apply whenever DRC proposes a transfer to transitional control of a prisoner who is serving a definite term of imprisonment or definite prison term of *less than one year* for an offense committed on or after July 1, 1996, or who is serving a minimum term of *less than one year* under a nonlife felony indefinite prison term.

In CY 2018, DRC submitted 3,104 judicial notices in accordance with their transitional control program. Of those, 2,437 notices received a response, and of those, 1,131 were subjected to a judicial veto. In CY 2019, numbers were similar with 3,071 judicial notices sent, 2,356 responses received, and 1,136 vetoed. Due to timing, there is some overlap in these year-to-year statistics. The number of these transitional control decisions that would not have been subject to a "judicial veto" had the bill been in effect at that time is unknown.

By limiting the circumstances in which a judicial veto is applicable, DRC will likely realize cost savings in terms of administrative workload and incarceration expenditures. Currently, as part of the process to prepare an individual for transitional control, DRC first determines that an offender is eligible. A letter is then produced and mailed to the appropriate court. The correspondence is tracked via a database and if a judge denies the request, DRC must notify the inmate and the home institution. Additionally, all administrative tasks that had been completed in anticipation of the transfer must be reversed. For a portion of these cases, due to the time constraints, DRC would have already completed work to make referrals to a halfway house to ensure space would be available. If enacted, the bill would effectively eliminate the need to send and track the judicial notices and subsequent costs incurred to roll back preparations that may have been taken. In terms of incarceration expenditures, the GRF-funded incarceration costs incurred by DRC are likely to decrease, as more offenders will likely be transferred to transitional control, which is typically less expensive than remaining in an institutional setting. The potential cost savings will depend on the total number of prisoners who meet the criteria for transfer and are no longer subject to a possible judicial veto. Additional revenue may be collected from offenders that otherwise may not have been allowed to participate in the transitional control program.

Courts of common pleas may experience a cost savings because the court will no longer receive notice of the pendency of the transfer to transitional control for certain prisoners identified by DRC. The magnitude of those savings will vary from court to court but will likely be commensurate with the number of offenders adjudicated by each court. In other words, courts with higher criminal caseloads and convictions will experience larger savings as they will likely receive fewer notices of pendency of transfer.

Earned credits

Maximum amount

Current law provides two mechanisms under which a DRC prisoner generally may earn credit against their sentence. The bill amends the mechanism that provides for an award of days of credit to a prisoner for participation in, or completion in specified circumstances, of

programming. The maximum amount of earned credit a prisoner may earn is 8% of the total number of days in their prison term. The bill increases that maximum to 15% of the prisoner's prison term. The result is that a prisoner reaching existing law's maximum earned credit will be able to reduce their prison term even further under the bill.

The bill specifies that:

- The earned credit provisions of existing law will apply, until the date that is one year after the effective date of the bill, to persons confined in a state correctional institution or in the substance use disorder treatment program.
- Beginning one year after the effective date of the bill, the earned credit provisions of the bill will apply to persons confined in a state correctional institution or in the substance use disorder treatment program.

The table below displays LBO examples of what may happen under the bill to a prisoner serving a term of one, two, or three years, including DRC's potential institutional operating cost savings. The costs that DRC's Adult Parole Authority incurs to supervise such a prisoner subsequent to their release from prison may reduce the magnitude of that savings. That said, it is generally less expensive for DRC to supervise an offender in the community than it is to confine them in a prison.

Table 2. Maximum Amount of Earned Credit (Expressed in Days)

Earned Credit	Length of Prison Term		
	1 Year	2 Years	3 Years
8% (under current law)	29.20	58.40	87.60
15% (under the bill)	54.75	109.50	164.25
Days Earned Increase	25.55	51.10	76.65
Total Marginal Cost Savings*	**$282.07**	**$564.14**	**$846.22**

*DRC's reported marginal daily incarceration cost per offender for FY 2021 was $11.04.

Types of programs

Current law authorizes the awarding of days of credit to prisoners who actively participate in or complete certain programs developed by DRC, including education, vocational training, and substance abuse treatment. The bill expands the types of activities for which earned credit may be awarded upon completion to also include any other constructive program developed by DRC with specific standards for performance by prisoners. The bill also modifies the provisions that specify the amount of credit that may be awarded so that: (1) a prisoner serving a prison term that includes a term imposed for a sexually oriented offense committed prior to September 30, 2011, may earn one day of credit under the mechanism for each completed month during which the prisoner productively participates in such a program or activity, and (2) if clause (1) does not apply, a prisoner may earn five days of credit for each completed month during which the

prisoner productively participates in such a program or activity. The amount of additional credit that may be earned is unknown.

Correctional employee and youth services employee body-worn camera recordings

The bill establishes, for body-worn camera recordings of a correctional employee and a youth services employee, the same public records exemption that current law provides for recordings made by a visual and audio recording device worn on a peace officer or mounted on a peace officer's vehicle. For purposes of the bill:

- "Correctional employee" means any DRC employee who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.
- "Youth services employee" means any employee of the Department of Youth Services (DYS) who in the course of performing the employee's job duties has or has had contact with children committed to the custody of DYS.

Under current law, unchanged by the bill, certain "restricted portions" of a body-worn camera or a dashboard camera recording are exempted from disclosure under the Public Records Law. If a person requests a recording that contains restricted portions, a state or local law enforcement agency is required to redact objectionable parts of the recording, unless consent is obtained when certain criteria are met.

The practical impact of adding correctional employee and youth services employee to the same public records exemption is that some recordings may require redaction that otherwise would not have been the case under current law. As a result, DRC and DYS may likely experience an increase in administrative work, including time and effort, to comply with the bill's exemption. The associated costs will depend on the volume of requests, the number of staff available to handle requests, the manner in which redaction is performed, the extent to which DRC or DYS utilizes cameras, and how long recordings are retained. DRC and DYS will also incur a likely no more than minimal one-time cost to adjust existing public records training and public records policy.

Under continuing law, if a public office denies a request to release a restricted portion of a body-worn or dashboard camera recording, any person may: (1) file a writ of mandamus with the appropriate court of common pleas or court of appeals, or (2) file a complaint with the Court of Claims to order the release of all or portions of the recording. A person may choose one or the other, but not both. The number of filings and state legal and settlement expenses that could result subsequent to the bill's enactment are unpredictable.

Youthful offender parole review

Current law provides special parole eligibility dates, under certain specified circumstances, for persons serving a prison sentence for an offense committed when under 18. The Parole Board, a section of DRC, is required: (1) to conduct a hearing to consider the prisoner's release on parole within a reasonable time once a prisoner is eligible for parole, (2) to permit the State Public Defender to appear at the hearing to support the prisoner's release, and (3) to notify

the State Public Defender, the victim, and the appropriate prosecuting attorney at least 60 days before the Board begins any review or proceeding.

Exemption

The bill exempts an offender who is paroled on an offense committed when the offender was under 18 years of age who subsequently returns to prison from being eligible for parole under the special youthful offender parole provisions of current law. As the effective date of these provisions was April 12, 2021, little is known as to how many offenders might be exempt in the future that otherwise may have been eligible under current law. That said, LBO expects that, to the degree there is a fiscal effect on DRC, the State Public Defender, and county prosecutors, it will be minimal annually.

Parole hearings

Current law governing special parole eligibility dates of offenders convicted of a crime committed when under age 18 requires that, if the Parole Board denies release on parole, it must conduct a subsequent release review not later than five years after release was denied. The bill instead requires that, if the Board denies release on parole, it must set a time for a subsequent release review and hearing in accordance with rules adopted by DRC in effect at the time of the denial. This change has no direct fiscal effect on DRC.

Prison term for repeat OVI offender specification

Currently, the prison term for conviction of a repeat OVI offender specification only applies if the requisite number of offenses (five) occurred within the past 20 years. Because of the 20-year look back, certain offenders who previously served an additional mandatory prison term for the specification have been able to avoid a later imposition of the specification, even after committing an additional felony OVI offense. The bill imposes the repeat OVI offender specification (an additional one-, two-, three-, four-, or five-year mandatory prison term) on an OVI offender who has previously been convicted of the specification, *regardless of the number of years between offenses*. The offender serves the additional prison term consecutively and prior to any prison term imposed for the underlying offense.

It appears that very few OVI offenders have avoided the imposition of the additional mandatory prison term. DRC's annual marginal cost to incarcerate an offender in FY 2022 was $4,128 ($11.31 per day x 365 days).

Prison term for a third degree felony OVI offense

The bill specifies that the discretionary prison term, in addition to the mandatory prison term, that may be imposed for a third degree felony OVI (operating a vehicle while impaired) offense is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months, rather than 9, 12, 18, 24, 30, or 36 months as specified by the 2015 Ohio Supreme Court in *State v. South*. The resulting potential increase in prison time served for certain OVI offenders is unclear. DRC's annual marginal cost to incarcerate an offender in FY 2022 was $4,128 ($11.31 per day x 365 days).

Local jails

County correctional officers carrying firearms

The bill authorizes a county correctional officer to carry firearms while on duty in the same manner as a law enforcement officer if the county correctional officer is specifically authorized to carry firearms and has received firearms training. This provision largely affects operations of county sheriffs, the Attorney General, and affiliated Ohio Peace Officer Training Commission (OPOTC).

County sheriffs

With regard to the authorization of a county correctional officer to carry firearms while on duty, the bill requires: (1) certification by OPOTC as having successfully completed training that qualifies the officer to carry firearms while on duty, and (2) completion of an annual firearms requalification program approved by OPOTC's Executive Director. It appears to be the intention of county sheriffs generally to pay costs to train and equip officers, including, as necessary, a firearm, ammunition, holster, duty belt, belt stays, ammunition pouches, and gun belt. The county sheriff's costs will depend, to some degree, on the number of county correctional officers the sheriff authorizes to carry firearms while on duty. There may be an offsetting savings effect related to prisoner transportation, e.g., court dates or medical visits, if an armed county correctional officer is available in lieu of using a deputy sheriff that otherwise might have been performing other duties.

Attorney General

The bill requires OPOTC to recommend to the Attorney General, and the Attorney General to adopt rules governing the training and certification of county correctional officers authorized to carry firearms while on duty. The one-time rule adoption costs are likely to be minimal. The subsequent ongoing costs for OPOTC will depend on the number of county correctional officers authorized to carry firearms while on duty.

Protection from civil and criminal liability

The bill grants a county correctional officer who is carrying firearms as described above with protection from civil or criminal liability for any conduct occurring while carrying firearms to the same extent as a law enforcement officer. The practical effect may be to reduce the amount a county otherwise may have incurred to litigate and settle allegations of misconduct by a county correctional officer carrying firearms while on duty.

Internet access for prisoners in jails

The bill allows prisoner access to the internet for uses or purposes approved by the managing officer of a county or municipal correctional facility or their designee, rather than only while participating in an educational program that requires use of the internet for training or research, as under current law. If a facility opts to permit such access, the cost would depend on the type of computer network, computer system, computer services, telecommunications service, or information service utilized and any related monitoring or supervision. A potential financing source is the commissary fund, which consists of money deducted from a prisoner's personal account for their purchases from the commissary.

There are approximately 300 local jails in Ohio. Jails are classified into five types: (1) full-service jails, (2) minimum security jails, (3) 12-day jails, (4) 12-hour jails, and (5) temporary holding facilities. LBO estimates that the operations of 144 of these jails are potentially affected by this provision as follows: 88 full-service jails, 51 12-day jails, and five temporary holding facilities.

Grand jury inspection of local correctional facility

The bill expressly authorizes grand jurors of involved counties to periodically visit, and examine conditions and discipline at, multicounty, multicounty-municipal, and municipal-county correctional centers and report on the specified matters. Current law requires: (1) the report be submitted, in writing, to the common pleas court of the county served by the grand jurors, and (2) the court's clerk forward a copy of the report to DRC.

LBO has identified four local correctional centers, typically referred to as regional jails (identified below), affected by this provision.

- Corrections Center of Northwest Ohio (located in Stryker and serves Defiance, Fulton, Henry, Lucas, and Williams counties).
- Multi-County Correctional Center (located in Marion and serves Marion and Hardin counties).
- Southeastern Ohio Regional Jail (located in Nelsonville and serves Athens, Hocking, Morgan, Perry, and Vinton counties).
- Tri-County Regional Jail (located in Mechanicsburg and serves Champaign, Madison, and Union counties).

Grand juries are not currently inspecting any of these four regional jails. There would be minimal at most costs for any county served by a regional jail to assist with a grand jury inspection and subsequent reporting.

County coroner

Law enforcement investigative notes in possession of coroner

The bill modifies current law to eliminate a journalist's ability to submit to the county coroner a request to view records of a deceased person that are confidential law enforcement investigatory records. The practical effect is that more of the records in the possession of a county coroner may not be available until a case is concluded. The additional work and costs for a county coroner will depend on the number of public records requests submitted by journalists, the availability of staff to respond, the need for legal assistance from the prosecuting attorney of the county, and the redaction process (blacking out portions of a document so that they cannot be read).

Civil protection orders

Definition of "family or household member"

The bill corrects the definition of "family or household member" in the civil stalking protection order law by referring to the family or household member of the *petitioner*. It appears that courts, with the exception of one court's decision that was successfully appealed, are interpreting the definition as intended. Thus, this correction should have no direct fiscal effect on the courts of common pleas handling civil protection order matters.

Speedy Trial Law

The bill provides an additional 14 days to begin a trial after a person charged with a felony has been discharged because the person has not been brought to trial within the required amount of time. The bill provides that, if it is determined by the court that the time for trial has expired, no additional charges arising from the same facts and circumstances as the original charges may be added during the 14-day period specified under the bill.

Currently, a charged individual must be brought to trial within 270 days after the person's arrest. If the preliminary hearing is not held within that time, the felony charge is dismissed and further criminal proceedings based on the same conduct are dismissed with prejudice, although such situations occur infrequently.

Currently, the previously described outcome generally occurs when a person has been arrested on one or more felony charges on more than one occasion within 270 days of their first charge. This complicates the calculation of the 270-day window and results in charges being dismissed. The bill affords the prosecution an additional two weeks to begin trial proceedings. As noted, these circumstances are relatively infrequent, which means the number of felony cases that could move forward to trial, result in a conviction, and the imposition of a jail or prison term will be relatively small. Any additional costs to prosecute, defend (if indigent), adjudicate, and sanction offenders will be minimal annually. If the convicted offender spent all, or a considerable portion, of those 270 days in jail awaiting trial, a judge may opt to sentence that offender to time served, thus avoiding a longer jail stay or possible prison term. The number of offenders likely to be sentenced to prison will be relatively small, which means at most a minimal increase in DRC's annual incarceration costs. The annual marginal cost of adding a relatively small number of offenders to the prison population in FY 2022 was $4,128 per inmate (based on DRC's reported FY 2022 marginal daily cost of $11.31).

The potential revenue effects of a relatively small increase in felony convictions will originate from fines, and court costs and fees that the sentencing court generally is required to impose on the offender. The county retains the fees and fines, and a portion of the court costs, collected from the offender. Of the court costs collected, $60 is forwarded to the state, with $30 being deposited into the Victims of Crime/Reparations Fund (Fund 4020) and $30 being deposited into the Indigent Defense Support Fund (Fund 5DY0). As the felony matters affected by the bill are relatively small, and collecting payments from offenders can be problematic, the amount of annual revenue that might be gained will be minimal for any given county and negligible for the state.

Department of Youth Services

The two provisions of the bill described below directly affect DYS operations. The Department's existing staff and funding levels should be sufficient to absorb any associated work or costs.

Transitional services program

The bill permits DYS to develop a program to assist a youth leaving its supervision, control, and custody at 21 years of age. The program is required to provide supportive services for specific educational or rehabilitative purposes under conditions agreed upon by both DYS and the youth and terminable by either.

Quality assurance committee

The bill replaces current law creating the Office of Quality Assurance and Improvement in DYS (including appointment of a managing officer) with a requirement that the Director of Youth Services appoint a central office quality assurance committee consisting of staff members from relevant DYS divisions.

Traffic law

Expansion of the OVI law to include "harmful intoxicants"

The bill expands the scope of the OVI laws by prohibiting the operation of a vehicle or watercraft while under the influence of a "harmful intoxicant." According to data provided by the Bureau of Motor Vehicles (BMV), in recent years, more than 40,000 individuals were convicted annually of an OVI-related violation in Ohio. The bill's "harmful intoxicant" provision may result in a relatively small increase in that number for the following two reasons:

- Over the previous five years, the Ohio State Highway Patrol has issued around 100 traffic citations for abusing harmful intoxicants, or an average of about 20 per year statewide. Although there are no comparable traffic law violation statistics readily available for local jurisdictions, anecdotal information suggests that any increase in OVI-related arrests and convictions under the jurisdiction of counties, municipalities, and townships will be relatively small.
- In OVI cases involving a drug of abuse where there is no physical evidence such as urine or blood results to establish the presence of a drug of abuse, the court is limited to circumstantial evidence. This suggests that securing an OVI conviction where use of a harmful intoxicant may be present generally could be problematic.

State revenues

The vast majority of OVI-related convictions are misdemeanors. In addition to any mandatory fines, state court costs totaling $29 are also imposed on an offender convicted of or pleading guilty to a misdemeanor, $20 of which is directed to the Indigent Defense Support Fund (Fund 5DY0) and $9 is directed to the Victims of Crime/Reparations Fund (Fund 4020). If the statewide number of additional OVI convictions resulting from offenders driving under the influence of "harmful intoxicants" were relatively small, the additional court cost revenue collected by the state would be no more than minimal annually.

Under current law, those convicted of an OVI-related offense face a one-year administrative license suspension (ALS) of their driver's license. The reinstatement fee for a suspended driver's license resulting from an OVI-related offense is $475. The reinstatement fee revenue is distributed across eight state funds, which are listed in the table below. Given the expectation that the bill would yield a relatively small number of new OVI convictions, the likely revenue gain for any given fund would be no more than minimal per year.

Table 3. Distribution of $475 License Reinstatement Fee	
State Fund	**Portion of Fee**
State Bureau of Motor Vehicles Fund (Fund 4W40)	$30.00
Indigent Drivers Alcohol Treatment Fund (Fund 7490)	$37.50
Victims of Crime/Reparations Fund (Fund 4020)	$75.00
Statewide Treatment and Prevention Fund (Fund 4750)	$112.50
Services for Rehabilitation Fund (Fund 4L10)	$75.00
Drug Abuse Resistance Education Programs Fund (Fund 4L60)	$75.00
Trauma & Emergency Medical Services Grants Fund (Fund 83P0)	$20.00
Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0)	$50.00
Total Reinstatement Fee	**$475.00**

Because of the likely small number of additional OVI-related convictions stemming from the bill, LBO staff estimates that very few, if any, additional offenders might be sentenced to prison annually. This means that the potential increase in DRC's annual incarceration costs would be minimal at most.

Local revenues

The amount of the mandatory fine for an OVI violation depends on certain specified circumstances, such as the number of prior OVI convictions, and ranges from $375 to $10,500.[5] As the number of additional OVI convictions is likely to be relatively small and those convicted are not expected to have many, if any, prior OVI convictions, the amount of fine revenue that would be generated annually for any given governmental entity and/or fund would be minimal at most.

The disposition of the fine generally can be described as follows:

[5] R.C. 4511.19(G).

- $25 of the fine imposed for a first offense and $50 of the fine imposed for a second offense are deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of the court. The court is permitted to use this money to pay the cost of offender assessments (including transportation) and alcohol and drug addiction services.
- $50 of the fine imposed is deposited into special projects funds under the control of the court to be used to cover the cost of immobilizing or disabling devices, including ignition interlock devices and remote alcohol monitoring devices. If no special projects fund exists, the $50 is deposited into the indigent drivers interlock and alcohol monitoring fund of the county where the conviction occurred.
- Between $75 and $500, depending on the number of prior convictions, is transmitted to the state treasury for deposit into the Indigent Defense Support Fund (Fund 5DY0). Fund 5DY0 is used by the Ohio Public Defender Commission to support the state and county criminal indigent defense service delivery systems.
- Between $25 and $210, depending on the number of prior convictions, is paid into an enforcement and education fund established by the legislative authority of the law enforcement agency that was primarily responsible for the arrest of the offender. Such funds are to be used to support enforcement and public information efforts by the law enforcement agency.
- Between $50 and $440, depending on the number of prior convictions, is paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration.

The balance of the fine imposed is distributed as provided by law, which generally means the county or municipal general fund depending on the court where the conviction occurred.

Expenditures

The bill will likely result in a small number of additional OVI cases statewide and a corresponding increase in expenditures related to the arrest, prosecution, possible indigent defense, adjudication, and sanctioning in these cases. Since the potential number of new cases in any jurisdiction is expected to be small, any additional local expenditures would not likely exceed minimal annually.

Affirmative defenses for certain driving offenses

The bill allows a person to assert the existing affirmative defense of driving in an emergency with regard to a prosecution for driving under a suspended driver's license under specified laws. This provision may result in a relatively small statewide reduction in the number of persons that, under current law, otherwise may have been convicted of driving under suspension (DUS). A DUS violation is a misdemeanor offense, the penalty for which depends on the type of suspension and prior DUS convictions. Penalties for DUS include jail time, fines, vehicle immobilization or forfeiture, impoundment of license plates, community work services, and additional suspension time. The fiscal effect on local criminal justice systems and the state,

in particular the BMV that administers the license suspension and reinstatement process, is expected to be minimal at most annually.

Enhanced penalties for speeding violations

Current law establishes an "enhanced penalty" that applies to a first-time speeding offense under three specified circumstances. The enhanced penalty is a fourth degree misdemeanor; the standard penalty is a minor misdemeanor. If the offense under those circumstances is the offender's second offense within one year, the standard penalty applies. The bill expands the scope of the "enhanced penalty" so that it applies to the second offense within one year.

A minor misdemeanor carries a fine of up to $150, but jail time is not authorized. A fourth degree misdemeanor carries a potential of up to 30 days in jail, a fine of up to $250, or both. Thus, under the bill, for a second-time speeding offense, as described in the immediately preceding paragraph, the "enhanced penalty" applies rather than the standard minor misdemeanor penalty as under current law. Thus, more speeding violations may be contested and taken to trial than otherwise may have occurred under current law. The result may be: (1) additional costs for the court, clerk of courts, prosecutors, law enforcement, and jails, and (2) additional revenues in the form of fines, and court costs and fees, some of which would be distributed to the state. The net fiscal effect for local criminal justice systems is indeterminate, as the number of applicable situations is unknown.

Underage drinking

The bill reduces the penalty for underage drinking from a first degree misdemeanor to a third degree misdemeanor. To the degree that this provision has a fiscal effect, it may be in reducing sanctioning costs and fine revenues.

Operating a vehicle after underage alcohol consumption (OVUAC)

The bill modifies provisions of current law that provide for consideration of prior convictions of operating a vehicle or vessel after underage alcohol consumption as a penalty enhancement or for other specified purposes. The fiscal effect of these modifications on the state and counties is likely to be some reduction in sanctioning costs and fine revenue that otherwise might have resulted under current law. The number of offenders that will be affected by these penalty enhancement modifications is unknown.

The bill's modifications involve:

- Removing a conviction of a prior OVUAC offense (while under age 21, operating a vehicle with a specified prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine) as a penalty enhancement for subsequent conviction of certain offenses. The penalty enhancements include an increased term of confinement, a longer driver's license suspension, impoundment of vehicle, a higher fine, etc. The offenses with respect to which this removal applies are: (a) a current OVUAC offense, (b) an OVI offense, (c) refusing to submit to a chemical test (i.e., "implied consent"), (d) aggravated vehicular homicide, (e) aggravated vehicular assault, and (f) operating a watercraft vessel while under the influence;

- Repealing the specification that imposes an additional six-month jail term for an offender who commits an OVUAC offense and has been convicted of or pleaded guilty to five or more prior equivalent offenses;
- Removing consideration of prior OVUAC offenses when considering whether an offender is eligible for the enhanced prison term for the multiple OVI specification;
- Removing consideration of a prior operating a watercraft vessel after underage consumption of alcohol offense in order to enhance the penalty of a current offense (similar to OVUAC, above); and
- Removing a conviction of an OVUAC offense or operating a watercraft vessel after underage consumption of alcohol offense from the definition of "equivalent offense" that applies to the Motor Vehicle Law, and a prior conviction of which is a penalty enhancement for endangering children (committing an OVI offense while children are in the vehicle), for driving under an OVI suspension, for the enhanced prison term for the felony OVI specification, and for certain other provisions that could result in certain increased sanctions or negative consequences for an offender.

Fourth degree felony OVI – community alternative center

The bill expands the authorized use of "community alternative sentencing centers" (CASCs) so that they may be used with respect to fourth degree felony OVI offenses. Currently, CASCs generally may be used only for confinement of offenders sentenced for qualifying misdemeanor offenses or for OVI under a term of confinement of not more than 90 days (this which precludes the use for certain fourth degree felony OVI offenders who must be sentenced to a 120-day term of incarceration). The local fiscal effects of these OVI sentencing provisions is uncertain.

With respect to CASCs, the bill:

- Authorizes a court to sentence a person guilty of a fourth degree felony OVI (generally, someone who has three or four prior OVI offenses within the past ten years of the current OVI offense) to serve the person's jail term or term of local incarceration, up to 120 days, at a CASC or district CASC; and
- Expands from 90 days to 120 days the maximum amount of time that a person sentenced for an eligible OVI offense may serve at a CASC or district CASC, in order to encompass the minimum term of local incarceration for a fourth degree felony OVI offender with a high test for alcohol.

Good Samaritan Law

Medical assistance for drug overdose – immunity

The bill provides immunity from arrest, charges, prosecution, conviction, or penalty for the offenses of "possessing drug abuse instruments," "illegal use or possession of drug paraphernalia," and "illegal use or possession of marihuana drug paraphernalia" if a person seeks or obtains medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance, or is the subject of another person seeking or obtaining medical

assistance for that overdose. Similar immunity currently exists for a minor drug possession offense when a person seeks or obtains medical assistance for an overdose.

Under the bill, a person is qualified for the expanded immunity and the current minor drug possession offense immunity if the person acts in good faith to seek or obtain medical help for self or another person or is the subject of another person seeking or obtaining medical help, in one of the specified manners (currently, under a criterion repealed by the bill, the person also must not be on community control or post-release control).

The bill extends the criteria for being within the scope of the protections currently applicable with respect to minor drug possession offenses to also apply with respect to the drug paraphernalia offenses. The bill extends the limitation on immunity that currently applies with respect to minor drug possession offenses to also apply with respect to the drug paraphernalia offenses. Under the bill, no person may be granted immunity under the controlled substance offense Good Samaritan provisions more than two times, and the immunity provisions do not apply to any person who twice previously has been granted immunity.

This immunity provision may reduce the number of persons, who because of seeking medical assistance, otherwise might have been arrested, charged, prosecuted, and sanctioned for drug instruments/paraphernalia offenses. For counties and municipalities with jurisdiction over such matters, this could mean some decrease in cases requiring adjudication, thus creating a potential expenditure savings and related revenue loss (fines, fees, and court costs generally imposed on an offender by the court).

Anecdotal information suggests the number of instances in which a person is, under current law and practice, prosecuted subsequent to seeking medical assistance is relatively small, especially in the context of the total number of criminal and juvenile cases handled by counties and municipalities annually. Thus, the net annual fiscal effect of any expenditure savings and revenue loss is likely to be minimal. For the state, there may be a related negligible annual loss in court costs that otherwise might have been collected for deposit in the state treasury and divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/ Reparations Fund (Fund 4020).

Possible indirect effects

Because of the bill, it is possible that additional individuals will receive treatment in public hospitals for drug-related medical emergencies. Thus, government-owned hospitals could indirectly realize an increase in treatment costs. The increase would depend on the number of individuals receiving treatment, the services rendered, and the insurance status of the individual. Government-owned hospitals might receive reimbursements or payments for individuals who have insurance coverage or who are enrolled in the Medicaid Program.

Likewise, the Medicaid Program could also experience an indirect increase in costs for treatment relating to the medical emergency and possibly for substance abuse treatment if the individual seeks such treatment after release from the hospital. Under the Medicaid Program, the federal government typically reimburses the state for approximately 64% of medical service costs.

Gross sexual imposition penalty

Currently, the court must impose on an offender convicted of gross sexual imposition in violation of either of the two prohibitions under the offense of "gross sexual imposition" in certain specified circumstances a mandatory prison term for a third degree felony if either of the following applies:

1. Evidence other than the testimony of the victim was admitted in the case corroborating the violation.
2. The offender previously was convicted of or pleaded guilty to gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than 13 years of age.

The bill eliminates (1), above, as a reason for imposing a mandatory prison term. As the Ohio Supreme Court, in *State v. Bevly* (2015), found that provision unconstitutional, its elimination from the Revised Code has no direct fiscal effect on the state or its political subdivisions.

Statewide electronic warrant system

The bill:

- Requires that any warrant issued for a "Tier One Offense" (32 specified serious offenses) be entered into the state's Law Enforcement Automated Data System (LEADS) and the appropriate federal National Crime Information Center (NCIC) database by the law enforcement agency requesting the warrant within 48 hours of receipt of the warrant, and entered into LEADS by the law enforcement agency that receives the warrant with a nationwide extradition radius; and
- Requires that any warrant issued for a "Tier One Offense," if entered in error, be removed within 48 hours after discovering the error, and removed within 48 hours of warrant service, dismissal, or recall by the issuing court.

Any costs for the state and its political subdivisions may be minimized to the degree that eWarrants can be utilized to comply with these requirements. eWarrants is a free, centralized, web-based system for entering protection orders and warrants for law enforcement, courts, and clerks across all 88 counties. It is being developed and implemented by Innovate Ohio in partnership the departments of Public Safety and Administrative Services.

Fraudulent or nonconsensual assisted reproduction

The bill creates the offense of "fraudulent assisted reproduction" and provides for civil actions for an assisted reproduction procedure without consent. These provisions of the bill are not likely to result in a notable number of new criminal or civil case filings, as it seems likely that few health care professionals would knowingly engage in the prohibited conduct. Thus, any resulting state and local fiscal effects will be minimal.

Criminal penalty

The bill prohibits a health care professional from knowingly using human reproductive material from the health care professional, a donor, or any other person while performing an assisted reproduction procedure if the patient receiving the procedure has not expressly consented to the use of the material. A violation is a third degree felony, which is punishable by a 9, 12, 18, 24, 30, or 36-month definite prison term, a fine of up to $10,000, or both. If the violation occurs as part of a course of conduct involving fraudulent assisted reproduction violations, the offense is a second degree felony. Under current sentencing guidelines, a felony of the second degree is punishable by an indefinite prison term consisting of a minimum term selected by the sentencing judge from the range of terms authorized for a second degree felony (2, 3, 4, 5, 6, 7, or 8 years), a fine of up to $15,000, or both.

Civil penalties

The bill authorizes a civil action for recovery against a health care professional to be filed by: (1) the patient on whom the procedure was performed and the patient's spouse or surviving spouse when performed without consent, (2) the child born as a result of the procedure, and (3) a donor of human reproductive material when the donor's material was used and the health care professional knew or reasonably should have known it was used without consent.

Illegal use or possession of marijuana drug paraphernalia

The bill:

- Provides that an arrest or conviction for illegal use or possession of marijuana drug paraphernalia does not constitute a criminal record and does not need to be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record;
- Repeals a provision that authorizes the court to suspend for not more than five years the offender's driver's or commercial driver's license or permit; and
- Removes a conviction for illegal use or possession of marijuana drug paraphernalia from a list of disqualifying offenses for certain categories of service, employment, licensing, or certification.

The fiscal effects of these changes could be as follows: (1) a one-time cost for certain state and local governmental entities to modify their respective procedures for recording and reporting criminal histories, (2) a decrease in costs and license reinstatements fee revenue for the state's Bureau of Motor Vehicles, and (3) a gain in state and local revenue from licensing or certifying persons who otherwise might have been disqualified under current law.

Limitation on implementing new licensing collateral sanctions

During the period commencing on the bill's effective date and ending on the date that is two years after that effective date, a "licensing authority" is prohibited from refusing to issue a license to a person, limit or otherwise place restrictions on a person's license, or suspending or revoking a person's license under any Revised Code provision that takes effect during that period and that requires or authorizes such a collateral sanction as a result of the person's conviction

of, judicial finding of guilt of, or plea of guilty to an offense. Under current law, unchanged by the bill, "licensing authority" means a state agency that issues licenses under Title XLVII or any other provision of the Revised Code to practice an occupation or profession.

The potential fiscal effect of this "moratorium" provision on state licensing authorities cannot be readily determined, and thus is unknown.

Certificate of qualification for employment filing fee

The bill changes the provisions governing the fee for an application for a certificate of qualification for employment so that:

- The fee generally will be not more than $50, including local court fees, unless waived (currently, it is $50, unless waived);
- The court may waive all or some of the fee for an applicant who presents a poverty affidavit showing that the applicant is indigent (currently, the poverty affidavit is not required); and
- If an applicant pays the fee, the first $20 or two-fifths of the fee, whichever is greater, collected is to be paid into the county general revenue fund, and the $30 or three-fifths, is paid into the state treasury for crediting to the GRF (currently, if the fee is partially waived, the first $20 collected is paid into the county general revenue fund and any amount collected in excess of $20 is paid into the GRF).

These changes do not appear to affect in any significant way the amount of filing fee revenue that otherwise would have been collected and distributed under current law.

Theft offense name

The bill renames the offense of "petty theft" as "misdemeanor theft," a change that has no readily apparent direct fiscal effect on the state or its political subdivisions.

Transfer of a child's case (bindovers)

The bill provides that if a complaint or complaints are filed in juvenile court alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, if the court is required to transfer the child's "case" or is authorized to do so, and if the complaint or complaints containing the allegation that is the basis of the transfer includes one or more counts alleging that the child committed an act that would be a felony if committed by an adult, both of the following apply:

- Each count included in the complaint or complaints with respect to which the court found probable cause to believe that the child committed the act charged must be transferred and the court to which the case is transferred has jurisdiction over all of the counts so transferred; and
- Each count included in the complaint or complaints that is not transferred must remain within the jurisdiction of the juvenile court to be handled by that court in an appropriate manner.

The bill makes similar changes to other transfers of a child's case, including "reverse bindovers," and defines "case" as all charges that are included in the complaint or complaints containing the allegation that is the basis of the transfer and for which the court found probable cause.

The fiscal effect of these bindover changes on the juvenile and general divisions of courts of common pleas is uncertain.

Sex offender therapy location

The bill specifies that, in the provision regarding removal of Sex Offender Registration and Notification(SORN) Law duties of a person convicted of "unlawful sexual conduct with a minor," one criterion to be an eligible offender under the provision is that the offender must complete sex offender therapy in the county in which the offender was sentenced if completion of such a program is ordered by the court, or, if such a program is ordered by the court and none is available in the county of sentencing, then in another county. This provision of the bill has no readily apparent direct fiscal effect on the state or its political subdivisions.

Intervention in lieu of conviction

The bill authorizes a court that grants an offender intervention in lieu of conviction to place the offender under the general control and supervision of a community-based correctional facility (but only during the period commencing on the effective date of the bill and ending two years later), as an alternative to the county probation department, the Adult Parole Authority, or another appropriate local probation or court services agency that are authorized under current law. The fiscal effect during this two-year period, in particular for counties, will depend on the number of offenders placed with a community-based correctional facility, and whether that placement is more or less expensive than the other available alternatives.

Aggravated murder or murder – statute of limitations

The bill specifies that there is no period of limitations for the prosecution of a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder. Currently, under the decision of the Ohio Supreme Court in *State v. Bortree* (November 3, 2022), Slip Opinion No. 2022-Ohio-3890, the period of limitations for attempted aggravated murder and attempted murder is six years. This change applies to such offenses: (1) committed on or after the bill's effective date, and (2) committed prior to that effective date if prosecution for that offense was not barred under the period of limitations for the offense as it existed on the day prior to that effective date.

The number of cases that this modification of existing provisions regarding criminal statutes of limitations relative to aggravated murder and murder may affect is uncertain, as are the fiscal effects on county criminal justice systems with jurisdiction in such matters.

Searches regarding convicted offender under supervision

The bill makes changes to the authority of probation officers and Adult Parole Authority (APA) field officers to conduct searches as described below. These changes appear to make it

quicker and easier for such searches to be conducted, and possibly discover that an offender is not abiding by the law or otherwise not complying with their sanctioning conditions.

The bill:

- Specifies the circumstances for a search of a felony offender sentenced to a nonresidential sanction that probation officers and Adult Parole Authority (APA) field officers have the authority to search, with or without a warrant, the offender's person, real property, motor vehicle, or personal property; and
- Specifies the circumstances for a search of a felon who is granted a conditional pardon or parole, transitional control, or another form of authorized release that APA field officers have the authority to search, with or without a warrant, the offender's person, real property, motor vehicle, or personal property.

Mandatory report of adult abuse, neglect, or exploitation

The bill increases the penalty for instances when a mandatory reporter of adult abuse, neglect, or exploitation fails to make such a report, and specifies that the culpable mental state for the offense is "knowingly."

The penalty increases from an unclassified misdemeanor offense, which is subject to only a monetary fine of $500, to a fourth degree misdemeanor. The penalty for a fourth degree misdemeanor is a fine of not more than $250, a possible jail term of not more than 30 days, or both. Because of this penalty enhancement, future cases filed in county and municipal courts may be impacted, possibly adding time and effort to process as the potential for jail time could add certain complexities to a case. As such, local criminal justice systems may experience a minimal increase in their annual operating costs.

Since the maximum permissible fine decreases from $500 to $250 under the bill, jurisdictions may realize less revenue than otherwise might have been the case under current law and practice. Judges commonly assess a fine in an amount that is less than that permitted in the law. A cursory review of adjudication data held by the Ohio Supreme Court via the Ohio Courts Network found no failure to report convictions from CYs 2016 through 2020. It is possible though that the data is incomplete, or a case was dismissed or resolved with a plea to a lesser charge.

Under current law, and unchanged by the bill, individuals who are subject to the mandatory reporting requirement, include, but are not limited to, attorneys, doctors, dentists, nurses, home health agency employees, nursing home employees, firefighters, peace officers, and clergy.

Fentanyl drug testing strips

The bill provides that the offense of "illegal use or possession of drug paraphernalia" does not apply to a person's use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound. Under current law, the penalty for a violation of this offense is a fourth degree misdemeanor, punishable by a jail term of not more than 30 days, a fine up to $250, or both.

According to the Ohio Prosecuting Attorneys Association, although the above offense as it relates to drug testing strips for testing fentanyl or a fentanyl-related compound is currently prohibited behavior, it is likely that under current law individuals are being arrested and charged with "illegal use or possession of drug paraphernalia" in combination with possession of other types of paraphernalia or other offenses, such as trafficking. To the degree that criminal charges are being pursued solely for the possession of drug testing strips that are being utilized to determine the presence of fentanyl or a fentanyl-related compound, the bill has the potential to create a minimal cost savings to local criminal justice systems, including courts, prosecutors, public defenders, law enforcement agencies, and detention/supervision facilities. Likewise, any fines, fees, and court cost revenue that are associated with these types of offenses would also be forgone, the net fiscal impact being effectively neutral.

According to the Ohio Department of Health's (ODH) 2020 Ohio Unintentional Drug Overdose Deaths Data report, the percentage of unintentional drug overdose deaths involving fentanyl has continued to increase over the years. From 2019 to 2020, the number of fentanyl-related overdose deaths has increased nearly 32%, increasing from 3,070 in 2019 to 4,041 in 2020. Since 2011, 2020 had the highest number of unintentional drug overdose deaths (5,017 deaths) with the second highest year being 2017 (4,854). In 2020, fentanyl was involved in 81% of all unintentional drug overdose deaths.[6]

Distracted driving

The bill modifies the law governing texting while driving by expanding the prohibition to a general prohibition against using an electronic wireless communications device (EWCD) while driving. This means that a person generally cannot use, hold, or physically support with any part of the person's body, as opposed to only handheld under existing law, any EWCD while operating a motor vehicle on any street, highway, or public property.[7] Under the bill, a law enforcement officer must visibly observe the offense in order to have probable cause to stop the vehicle and enforce the bill's prohibition against use of an EWCD while driving.

The bill also:

- Specifies that operating a motor vehicle, trackless trolley, or streetcar while using, holding, or supporting an electronic wireless communications device is a strict liability offense (similar to most other traffic offenses);[8]

[6] See page 4 of ODH's 2020 Ohio Drug Overdose Data: General Findings (PDF), which is available on ODH's website, under Injury Surveillance and Data: odh.ohio.gov/.

[7] The bill's exemptions from the EWCD while driving law include: (1) use of a two-way radio transmitter or receiver by a person licensed by the FCC to participate in the Amateur Radio Service, (2) storing an EWCD in a holster, harness, or article of clothing on the person's body, (3) use of an EWCD while in a stationary position at a red light or parked on a road or highway due to an emergency or road closure, and (4) use of an EWCD by a person who is holding the EWCD directly near the person's ear for purposes of conducting a telephone call.

[8] Strict liability exists when a defendant is liable for committing an action, regardless of what that person's intent or mental state was when committing the action.

- Makes the use of an EWCD while driving a primary traffic offense for all drivers instead of only those drivers who are under 18 years of age, as under existing law;
- Creates reporting requirements for law enforcement officers relating to use of an EWCD-while-driving violations;
- Waives, for a first-time offender within a two year period, the two points that would otherwise be assessed against the offenders driver's license for use of an EWCD while driving if the offender attends and successfully completes the existing distracted driving safety course;
- Requires the Ohio Department of Transportation to erect related highway warning signs; and
- Specifies a six-month warning period before authorizing full enforcement.

Citation activity

Under existing law, use of a handheld EWCD while driving is considered a secondary offense. This means that a law enforcement officer generally cannot issue a ticket, citation, or summons for use of an EWCD while driving unless the officer also arrests the driver or issues a ticket, citation, or summons for an offense other than a secondary offense. By making the bill's broader offense of using an EWCD while driving a primary traffic offense, the state, and those political subdivisions that have not already enacted stricter local ordinances, may experience an increase in the number of citations issued for such behavior. The magnitude of any increase in citation activity would depend upon how aggressively the state and each political subdivision enforces the bill's prohibition, including their willingness to allocate resources to handle contested violations.

LBO is aware that some cities and villages have utilized their constitutional home rule authority to enact local ordinances making distracted driving a primary offense. As such, the bill will have no impact on those municipalities. While no comprehensive list of those municipalities exists, LBO's research suggests that at least 39 municipalities (listed in the table below) may already be enforcing distracted driving, including the use of an EWCD while driving, as a primary offense.

Table 4. Enforcement of Distracted Driving as a Primary Offense				
Known Municipalities with Local Ordinances				
Avon	Cincinnati	Hilliard	New Albany	University Heights
Bay Village	Cleveland	Huron	North Olmstead	Upper Arlington
Beachwood	Cleveland Heights	Kettering	North Royalton	Walton Hills
Belpre	Columbus	Lakewood	Pepper Pike	Wauseon

Table 4. Enforcement of Distracted Driving as a Primary Offense				
Known Municipalities with Local Ordinances				
Bexley	Delaware	Lyndhurst	Portsmouth	Westerville
Brooklyn	Dublin	Mantua	Shaker Heights	Woodmere
Brook Park	Fairview Park	Marietta	South Euclid	Worthington
Canal Winchester	Granville	Moreland Hills	Toledo	

Note: Additional cities and villages may be enforcing distracted driving as a primary offense than those that are included in this table.

Violation revenues

Under existing law, the use of an electronic wireless communications device while driving is a minor misdemeanor, subject to a fine of up to $150. In the case of a minor misdemeanor, a law enforcement officer generally does not arrest a person, but instead issues a citation. In lieu of making a court appearance, that person either in person, by mail, or online where available, can waive their right to contest the offense before the court or jury, and pay the total amount of fines, fees, and court costs to the clerk of the court.

The bill makes the offense an unclassified misdemeanor, generally retaining the existing fine of not more than $150; however, the bill adds two points to the driver's license for a conviction. The bill has tiered penalties (see table below) where both the fine assessed and the number of points added to the driver's license increase with the number of prior convictions in the preceding two-year period. If an offender has had three or more convictions within that period, they may also be subject to a 90-day license suspension. The bill also increases the fine to two times the amount imposed for the violation if the offense occurred in a construction zone. Under the bill, an offender may elect to attend the existing Department of Public Safety Distracted Driving Safety Course in lieu of payment of the $150 fine for a first offense and prohibits a jail term or residential community sanction.

Because of increased citations issued under the bill and the potential for an increased fine, there will be a corresponding gain in the amount of fine, fee, and court cost revenue collected and distributed pursuant to state law between the state, counties, municipalities, and townships. The magnitude of any increase in fine, fee, and court cost revenue annually will depend upon how aggressively the state and each political subdivision enforces the bill's prohibition. The fine, fees, and court costs for using an EWCD while driving are summarized in the table below.

Table 5. Fine, Fees, and Costs: Use of an EWCD While Driving		
Financial Penalty Component	**Amount Paid by Violator**	**Recipient of Amount**
Fine	**R.C. violation** ▪ Up to $150 *(1st offense)* ▪ Up to $250 *(2nd offense)* ▪ Up to $500 *(subsequent offense)*	If citation is issued by: ▪ Sheriff or municipal law enforcement agency – retained by county ▪ Township – retains 50%, remainder to county (if accompanied by speeding violation, that portion of the fine is retained solely by the county) ▪ Ohio State Highway Patrol – credited to state's Security, Investigations, and Policing Fund (Fund 8400)
	Local ordinance violations Fine varies by local jurisdiction	Retained by the municipality
Local court costs and fees	Varies by local jurisdiction	Generally retained by the county or municipality with subject matter jurisdiction over traffic violations
State court costs*	$37.50	Deposited in state treasury as follows: ▪ $25 to the Indigent Defense Support Fund (Fund 5DY0) ▪ $9 to the Victims of Crime/Reparations Fund (Fund 4020) ▪ $3.40 to the Drug Law Enforcement Fund (Fund 5ET0) ▪ 10¢ to the Justice Program Services Fund (Fund 4P60)

*An additional $1.50 is sent to the county or municipal indigent drivers alcohol treatment fund under the control of the court.

Reporting requirements

The bill creates reporting requirements for state and local law enforcement agencies related to the issuance of EWCD-while-driving citations. Specifically, a law enforcement officer must report the issuance of the ticket, citation, or summons to the officer's law enforcement agency, and ensure that the report indicates the offender's race. Every other month, the agency must collect all of the reports from its officers for the prior two months and submit the data to the Office of the Attorney General.

The impact on law enforcement will vary by agency depending on whether the bill's required information is already being collected by the agency and whether or not the agency has the ability to compile that information electronically. The Model Uniform Traffic Ticket (MUTT) is used by all law enforcement agencies throughout the state. The MUTT currently includes a "race" data field. As such, it does not appear that new data collection methods will need to be created. A number of agencies, including the Ohio State Highway Patrol, currently use an electronic citation writing method, or e-Citation, whereby the citation is generated electronically in the patrol car, printed using a mobile printer, and then issued to the violator. Data from the traffic stop is stored on a central computer. LBO is aware of at least 139 local agencies that currently utilize the e-Citation software made available by the Patrol. An unknown number of additional agencies may also be using proprietary e-Citation software. With more than 900 law enforcement agencies in operation throughout the state though, the majority are still using hand-written, paper traffic citations.

Local law enforcement agencies

Under the bill, local law enforcement agencies will need to develop their own way of compiling EWCD-while-driving and related race statistics, as well as transmit or send the data to the Office of the Attorney General. While the impact on a given agency is likely to vary, in some cases the additional time, effort, and costs involved to comply with the reporting requirements may be significant, meaning they may exceed $5,000 for any given political subdivision, or $100,000 statewide. This is due to the extra time and effort that will be required to compile the necessary information and submit it to the Attorney General, especially if an agency does not have an electronic records management system.

For agencies utilizing e-Citation, compiling the necessary reporting information should only minimally increase administrative costs. For agencies that still hand write citations, compiling the necessary statistics will be a manual process and could be significant in both time and effort. The impact on these agencies will be greater than the impact on their counterparts with electronic records management systems. Some agencies may choose to compile the reports using simple databases or spreadsheets, while others may opt to create a specialized tracking system, or convert to e-Citation.

The bill is silent as to how these data reports are to be sent to the Attorney General. However, if standard email were sufficient, costs to transmit would likely be negligible.

Ohio State Highway Patrol

The bill's reporting requirement will likely have a no more than a minimal effect on the Ohio State Highway Patrol, as they will be able to compile the required information from their existing e-Citation database and transmit that information electronically to a designated recipient in the Office of the Attorney General.

Attorney General

The Office of the Attorney General will realize an increase in administrative workload to collect the required data and prepare an annual report on violations of the EWCD-while-driving prohibition or the distracted driving law. According to staff of the Attorney General, no

supplemental resources will be required to complete the report. Any related costs will be minimal.

Department of Public Safety

The bill requires the written driver's test to test the applicant's knowledge of the use of an EWCD while operating a motor vehicle. This will involve no more than minimal one-time costs for the Department to adopt such rules and to modify the written test.

Bureau of Motor Vehicles

The bill waives, for a first-time offender within a two-year period, the two points that would otherwise be assessed against the offender's driver's license for use of an EWCD while driving if the offender attends and successfully completes the existing distracted driving safety course. This may result in some administrative savings for the Bureau of Motor Vehicles if they no longer need to assess points against the driver's license of certain offenders. However, the amendment may also generate additional administrative work by having to verify that an offender has successfully completed the distracted driving safety course. The net effect on the Bureau of Motor Vehicles is minimal, at most.

The bill also specifies that operating a motor vehicle, trackless trolley, or streetcar while using, holding, or supporting an electronic wireless communications device is a strict liability offense (similar to most other traffic offenses). This provision has no direct fiscal effect, as it is technical in nature. Under Ohio's existing traffic law, prohibitions generally are strict liability offenses. Strict liability exists when a defendant is liable for committing an action, regardless of what that person's intent or mental state was when committing the action.

Department of Transportation

The bill requires the Ohio Department of Transportation (ODOT) to design and erect signs regarding the EWCD-while-driving prohibition. The bill specifies that ODOT is to erect the signs in the following locations: (1) where an interstate or United States route enters Ohio, and (2) where a road, originating from a commercial service airport, exits the airport's property. The one-time costs for ODOT to design and erect the signs will be approximately $100,000, to be paid from the Highway Operating Fund (Fund 7002).

Chief justice of the court of appeals

The bill changes the title of the chief judge of the court of appeals, selected annually by the judges of the court of appeals, to the chief justice of the court of appeals. This change has no direct fiscal effect on the state or its political subdivisions.

Tenth Amendment Center

The bill requires: (1) the Attorney General to set the duties of the Solicitor General, (2) the Tenth Amendment Center to actively monitor federal executive orders, federal statutes, and federal regulations for potential abuse overreach, and (3) to provide adequate staff, equipment, and materials to the Solicitor General and the Center. The Attorney General's compliance with these requirements will not necessitate modification or expansion of existing operations nor the allocation of additional resources.

The Solicitor General: (1) represents the state of Ohio and its agencies on appeals in the U.S. Supreme Court, the U.S. Court of Appeals for the Sixth Circuit, the Ohio Supreme Court, and other state and federal courts, (2) aides the Attorney General in the preparation of petitions, briefs, and other papers filed by the state on appeal, and (3) participates in oral arguments before those courts.

The Tenth Amendment Center, which is currently housed within the Office of the Solicitor General, actively monitors federal executive orders and federal regulations for potential abuse or overreach. Same as current practice, under the bill, the Tenth Amendment Center is required, upon determining that a federal order, statute, or regulation is not supported by law, to make a recommendation to the Solicitor General, who then advises the Attorney General about possible causes of action. The Attorney General has discretion about how to respond.

In FY 2022, the costs of operating the Office of the Solicitor General, including the Tenth Amendment Center, totaled $2.09 million. Of that amount, $1.98 million, or 94%, was paid from the GRF and the remainder, around $115,400, or 6%, was paid from the Attorney General Claims Fund (Fund 4190). In FY 2021, those costs totaled $1.83 million ($1.83 million, or 92%, GRF and $142,000, or 8%, Fund 4190).

Sexual assault examination kits for trafficking in persons cases

Preservation of biological evidence

The bill requires government retention entities in possession of a sexual assault examination kit during an investigation or prosecution for an offense of "trafficking in persons" to follow current law procedures for preserving and cataloging biological evidence. Local law enforcement agencies may incur minimal ongoing operating costs to comply with the bill's requirement that biological evidence in a trafficking in persons investigation or prosecution be secured for a specified period. There are likely to be no costs for law enforcement agencies with practices already compliant with this requirement.

The procedure currently applies to: (1) aggravated murder, (2) murder, (3) voluntary or involuntary manslaughter, (4) aggravated vehicular homicide, (5) rape or attempted rape, (6) sexual battery, and (7) certain cases of gross sexual imposition (generally pertaining to cases where the victim is less than 13 years of age).

Performance of DNA analysis

The bill requires sexual assault examination kits collected in relation to a trafficking in persons case to be tested and submitted to the Attorney General's Bureau of Criminal Investigation (BCI) or another crime laboratory for a DNA analysis of the contents of the kit if a DNA analysis has not previously been performed on the kit. The bill does not change the sexual assault examination kit collection process. An examination kit will continue to be voluntary, and a suspected victim will still be able to stop the biological evidence collection process at any time.

According to the Attorney General's Office, law enforcement and other entities that may possess human trafficking-related sexual assault examination kits are not prohibited from forwarding the contents of a kit to BCI, or a laboratory under contract with BCI, for DNA analysis. BCI and other laboratories are permitted to test any kit that is submitted. These entities are

required to test examination kits related to specified sexual offenses that, according to subject matter experts, would also be an underlying part of the trafficking in persons offense. As a matter of practice, if law enforcement suspects that a person is a victim of a sexual offense, evidence is obtained including if that offense is an element of a trafficking in persons case. This would suggest that the potential number of additional kits submitted for analysis will be relatively small and the related annual operating costs for BCI minimal.

Law enforcement agency review of records and reports

The bill requires that a law enforcement agency review all of its records and reports pertaining to its investigation of any violation of a trafficking in persons offense as soon as possible. If the review determines that a person committed a trafficking in persons offense, the law enforcement agency must forward the contents of the sexual assault examination kit to BCI not later than one year after the effective date of the bill. The one-time cost increase to any given agency will depend on the length of the lookback period and the number of cases requiring such review.

The table below provides a selected summary of Ohio's human trafficking statistics for the five-year period from CYs 2016 through 2020.[9] It includes the number of human trafficking investigations, arrests, and successful criminal convictions.

Table 6. Ohio Law Enforcement Human Trafficking Statistics, CYs 2016-2020

Human Trafficking Statistic	2016	2017	2018	2019	2020
Investigations	135	202	242	251	216
Arrests	79	70	80	166	76
Criminal Convictions	28	18	61	56	18

Criminal prosecutions

Because of the bill, there may be a relatively small increase in the number of persons charged and convicted of a felony sex offense and subsequently sentenced to a term of incarceration in state prison. The associated annual operating costs for county criminal justice systems to prosecute and adjudicate such cases are expected to be minimal at most.

As of December 2021, the prison population managed by the Department of Rehabilitation and Correction (DRC) totaled 43,234. For FY 2022, the average annual cost per inmate was $36,485 ($99.96 per day). The annual marginal cost of adding a relatively small number of offenders to the prison system was $4,128 per offender. If, as assumed, the bill will affect a relatively small number of offenders then any increase in DRC's annual incarceration costs is likely to be minimal.

[9] Data from the Office of the Attorney General's annual human tracking reports.

Engaging in prostitution with a person with a developmental disability

The bill creates the offense of "engaging in prostitution with a person with a developmental disability." Specifically, a person is prohibited from recklessly inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person if the other person is a person with a developmental disability and the offender knows or has reasonable cause to believe that the other person is a person with a developmental disability. A violation of the prohibition is a third degree felony.

The practical effect of the new offense is that it will serve as a victim-based penalty enhancement by creating felony status for conduct that is already prohibited in the Revised Code under the offense of "engaging in prostitution," which is a first degree misdemeanor. The following table shows the fine and term of incarceration applicable under current law for the existing misdemeanor offense of "engaging in prostitution" and the new felony offense of "engaging in prostitution with a person with a developmental disability."

Table 7. Felony and Misdemeanor Penalties for Engaging in Prostitution

Offense Level	Fine	Possible Term of Incarceration
Third degree felony (New victim enhancement)	Up to $10,000	9, 12, 18, 24, 30, or 36 month definite prison term
First degree misdemeanor (Existing general offense)	Up to $1,500	Jail, not more than 180 days

*In the case of a third degree felony generally, there is no presumption for a prison term versus community control.

By bifurcating the offense of "engaging in prostitution" to make conduct against a person with a developmental disability a felony offense, the bill would shift what is likely to be a small number of cases from misdemeanor jurisdiction of a county or municipal court to the felony jurisdiction of a court of common pleas. Although felony cases tend to be more time consuming and expensive to adjudicate, any related cost shifting that may occur will be minimal annually. Depending on the amount that an offender is fined and whether or not they pay that amount, it is possible that counties could experience a slight increase in fine, and fee and court cost revenue that would partially offset any increased costs.[10]

Additionally, if an offender is convicted of "engaging in prostitution with a person with a developmental disability," that offender could be sentenced to a term of incarceration in a state prison instead of local confinement in a jail. To the extent that a judge would sentence a prison term, DRC could incur marginal costs to incarcerate a small number of additional offenders and

[10] The state court costs total $60 for a felony and $29 for a misdemeanor. The $60 felony amount is divided as follows: $30 to the Indigent Defense Support Fund (Fund 5DY0) and $30 to the Reparations Fund (Fund 4020). The $29 misdemeanor amount is divided as follows: $20 to Fund 5DY0 and $9 to Fund 4020.

local jails may experience a corresponding decrease in costs. The magnitude of any increase or decrease in incarceration expenditures is expected to be negligible, as a small number of cases are expected to be impacted. The FY 2022 annual marginal cost of adding a small number of offenders to the prison system was $4,128 per offender.

Electronic monitoring

Under current law, if an offender violates a protection order that was issued under R.C. 2151.34 or 2903.214 and the offense required electronic monitoring of the offender, the court may require, in addition to any other sentence imposed, that the offender be electronically monitored by a law enforcement agency designated by the court. The court may also order electronic monitoring for violators of either of those types of protection orders. Unless the court determines that the offender is indigent, the court must order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the device. If the court determines that the respondent or offender is indigent, the installation and monitoring costs may be paid out of the Reparations Fund (Fund 4020), with the amounts paid subject to a maximum amount of $300,000 per year for all such payments and according to rules of the Attorney General. The bill eliminates this authorized use of the Reparations Fund. The elimination may result in a potential savings of up to $300,000 per year for the Reparations Fund and a potential cost increase for certain courts if they continue to order monitoring for indigent persons who are unable to pay, the amount of which is uncertain.

Funeral expenses for crime victims

The bill expands the circumstances the Attorney General is permitted to make an emergency award of reparations to include funeral expenses of a decedent victim of a crime when all of the following conditions are met:

- There is reasonable belief that the requirements of the written findings of fact and decision of the investigation before granting an award of reparations will be met;
- The decedent and claimant are indigent; and
- The claimant will suffer undue hardship if not granted immediate relief.

The bill will not increase the number of claims filed or amount disbursed as reparations under the state's Victim of Crime Compensation Program,[11] but will expedite part of the reimbursement of funeral expenses, that otherwise would have been paid before the full award. There is no statutory provision dictating the amount of time the Attorney General's office has to make a decision on a request for an emergency award however, according to the Attorney General, it typically takes two weeks. In FY 2021, the average processing time for a homicide claim for a final award of reparations was 125 days and 114 for all other claim types.

[11] The Attorney General pays for the reparations awards with money appropriated from the Reparations Fund (Fund 4020) and secondarily from the federal Crime Victim Assistance Fund (Fund 3FV0).

Disturbing a lawful meeting

The bill increases the penalty for "disturbing a lawful meeting" when committed in either of the following situations:

- The violation is committed with the intent to disturb or disquiet any assemblage of people met for religious worship at a tax-exempt place of worship and disturbs the order and solemnity of the assemblage.
- The violation is committed with the intent to prevent, disrupt, or interfere with a virtual meeting or gathering of people for religious worship, through use of a computer, computer system, telecommunications system, or other electronic device or system, or in any other manner.

Under current law generally, the offense of "disturbing a lawful meeting" is a misdemeanor of the fourth degree, punishable by up to 30 days in jail, a fine of up to $250, or both. The bill increases this penalty to a misdemeanor of the first degree, punishable by up to 180 days in jail, a fine of up to $1,000, or both, if either of the above two conditions apply.

Because of the bill, a person who violates the bill's conditions could serve additional jail time and a higher fine if convicted. Since the conduct is generally already prohibited under current law, the bill is not expected to generate new cases. Instead, it is likely the bill will only impact a relatively small number of cases that may be subject to the penalty enhancement (from a fourth degree misdemeanor to a first degree misdemeanor), possibly resulting in additional court time to adjudicate a case due to the potential for increased jail time and fines. Taken together, any increase a county or municipal criminal justice system incurs to process cases is likely to be minimal annually and may be partially offset by fines, and fees and courts costs, if collected.[12]

Elder Abuse Commission member appointments

The bill adds six new members to the Elder Abuse Commission, increasing the number of members from 39 to 45. 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.

Aggravated vehicular homicide – prison term specification

The bill applies a mandatory five-year prison term for aggravated vehicular homicide when the victim is a firefighter or an emergency medical worker. Current law applies the same mandatory sentence when the victim is a peace officer or a BCI investigator.

A violation of the offense of aggravated vehicular homicide, depending on the circumstances present, is a first, second, or third degree felony, each carrying varying penalties. A first or second degree felony carries a mandatory indefinite prison term with a minimum and maximum sentence by the sentencing court; a third degree felony carries a discretionary prison

[12] It is not unusual for fines to go uncollected, as some offenders are unwilling and/or unable to pay.

term. The additional five-year prison term enacted by the bill is served prior to, and consecutive to, the term imposed for the underlying aggravated vehicle homicide, as required under current law.

There are at least two likely future outcomes compared to what may have occurred in the sentencing of such persons under current law: (1) the person will be sentenced to a prison term instead of being sanctioned locally at the county's expense for a third degree felony offense, or (2) the person will serve an additional five years in prison.

The most notable fiscal effect will be to increase the Department of Rehabilitation and Correction's (DRC) annual incarceration costs. From FY 2018-FY 2022, the number of offenders committed annually to prison for the primary offense of aggravated vehicular homicide averaged 78 (ranged from 65 to 95). The number of those offenders involving a firefighter or an emergency medical worker is unknown. If that number is relatively small, then the increased incarceration costs are likely to be minimal annually. In FY 2022, DRC's annual cost to incarcerate an offender was $36,485; their annual marginal cost was $4,128.

Promising or giving things of value – debar vendor

When a person violates the prohibition against promising or giving things of value to a public official or employee, the bill: (1) allows a court to prohibit the person from participating in a public contract with any public agency for a period of two years if recommended by the agency employing the official or employee, and (2) allows a court to order the person to pay an additional fine equal to the amount of any thing of value unlawfully given. When a person violates certain provisions of Ohio Ethics Law, involving amounts or money or things of value unlawfully solicited, accepted, or received, the bill also requires a court to order the person to pay the costs of investigation and prosecution if requested by the Ohio Ethics Commission. The amount of money that might be generated for crediting to the Ohio Ethics Commission Fund (Fund 4M60) is unknown.

Domestic violence victim – prohibit reimbursement

The bill prohibits counties, townships, and municipal corporations from requiring reimbursement for costs associated with assisting a victim of rape, attempted rape, domestic violence, dating violence, abuse, or a sexually oriented offense. The number of local governments engaging in this practice is uncertain. The amount of money those local government will forego that otherwise would have been collected is also uncertain and would depend on the frequency that reimbursements are charged and able to be collected.

Age-appropriate child sexual abuse instruction

The bill adds two new areas of instruction to general health curriculum requirements that pertain to school districts, community schools, and STEM schools: (1) child sexual abuse prevention in grades K-6 and (2) sexual violence prevention in grades 7-12. The bill also requires schools to incorporate training on child sexual abuse into the in-service training required under current law for teachers, nurses, counselors, psychologists, and administrators, and requires such training to be provided by law enforcement officers or prosecutors with experience handling cases involving child sexual abuse or child sexual violence. Current law mandates instruction in personal safety and assault prevention under general health curriculum requirements for

students in grades K-6. Current law also mandates instruction in dating violence prevention education under those requirements for students in grades 7-12 and requires that the Ohio Department of Education (ODE) provide on its website links to free curricula addressing dating violence prevention. In addition, current law in-service trainings already must cover child abuse prevention and intervention.

School districts and schools may incur minimal costs to update their health education curriculum and in-service training programs to meet the requirements of the bill. However, many schools may already be teaching sexual abuse prevention as part of health curriculum instruction in personal safety for elementary students and sexual violence prevention as part of instruction in dating violence prevention for middle and high school students. In addition, there are various resources available at no cost to schools to assist them in meeting the bill's requirements. The Center for P-20 Safety and Security, a collaborative effort between the Ohio Department of Higher Education and ODE, links to several sources of curriculum that address both dating violence and sexual violence prevention on its website. There are other free resources available addressing these topics. For example, the Centers for Disease Control and Prevention (CDC)[13, 14] and the National Sexual Violence Resource Center[15] both provide links to resources and program guides. Resources are also provided through state-level organizations funded through the Department of Justice's State Sexual Assault and Domestic Violence Coalitions Program. In addition, ODE has developed in-service training curriculum that covers violence against children to help districts and schools meet the current law training requirement. This curriculum focuses on child abuse and human trafficking but also includes some information on sexual abuse. However, this training may need to be updated or adapted to meet the bill's requirements.

As noted above, the bill requires any in-service training provided on child sexual abuse to be presented by either law enforcement officers or prosecutors with experience handling cases involving child sexual abuse or child sexual violence. While the bill requires a law enforcement officer or prosecutor to deliver the training, it is silent on whether a state or local law enforcement agency or local prosecutor's office must participate if asked by a school district or community school. The bill also does not specify any arrangement by which schools and law enforcement agencies or prosecutors must administer the training. Presumably, school districts or community schools could enter into contracts to pay law enforcement agencies or prosecutors' offices for the time and resources necessary to conduct the training or share the costs of the training, or participating law enforcement agencies or prosecutors' offices could choose to bear any costs themselves or donate their time and expertise to schools.

Additionally, the bill may minimally increase district and school administrative costs by requiring districts and schools to notify parents and legal guardians of students receiving

[13] Centers for Disease Control and Prevention, "Child Abuse and Neglect Prevention," available online at cdc.gov/violenceprevention/childabuseandneglect/index.html.

[14] Centers for Disease Control and Prevention, "Sexual Violence Prevention Resources," available online at cdc.gov/violenceprevention/sexualviolence/resources.html.

[15] National Sexual Violence Resource Center, "Child Sexual Abuse Prevention: Programs for children," available online at nsvrc.org/publications/child-sexual-abuse-prevention-programs-children.

instruction in sexual violence prevention and dating violence prevention that such instruction is required as part of the school's curriculum, that parents or legal guardians may examine the instructional materials upon request, and that students will be excused from the instruction upon written request from their parent or legal guardian.

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