Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **Am. Sub. S.B. 98** DATE: **October 22, 1997**

STATUS: **As Reported by House Criminal Justice** SPONSOR: **Sen. B. Johnson**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Limitations on judicial power to dismiss criminal matters under certain circumstances; effect of domestic violence criminal temporary protection orders and anti-stalking protection orders issued by a municipal court or county court**

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Potential negligible increase	Potential negligible increase	Potential negligible increase
Reparations Fund			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	- 0 -	- 0 -

- **Criminal case dismissals.** Impressionistic data suggests the number of existing criminal matters that will not be dismissed as a result of the bill appears to be relatively small. From the state's perspective, this raises two fiscal possibilities. First, a little bit more court cost revenue may be collected from persons who would not otherwise have been convicted of a felony or misdemeanor, with any such amounts collected being spread between two state funds – the GRF and the Reparations Fund. Second, state expenditures may increase slightly as a result of a few additional offenders being convicted and sentenced to the control and custody of the state.

- **Temporary protection orders (TPOs) and anti-stalking protection orders (ASPOs).** The bill specifies the circumstances under which a TPO or an ASPO issued by a municipal court or county court remains in effect when a related criminal charge is subsequently transferred for prosecution in a court of common pleas. This provision has no immediate and direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Negligible increase	Negligible increase	Negligible increase
Municipalities			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Negligible increase	Negligible increase	Negligible increase

- **Criminal case dismissals.** Impressionistic data suggests that the number of criminal matters that will be prosecuted as a result of the bill rather than being dismissed should be relatively small. Assuming that to be the case, local criminal justice system costs will rise imperceptibly and a small amount of court cost and fine revenue may be collected.

- **Temporary protection orders (TPOs) and anti-stalking protection orders (ASPOs).** Although we are uncertain as to the number of TPOs and ASPOs currently being terminated that will be affected by the bill, it appears that the immediate and direct burden being placed on municipal, county courts, and common pleas courts will be negligible. Additionally, an unknown number of new criminal cases may be created as a result of arresting and then prosecuting individuals for an alleged violation of a TPO or an ASPO that previously would not have been in effect.

Detailed Fiscal Analysis

Criminal Case Dismissals

The bill will limit the authority of a common pleas, municipal, or county court to dismiss a criminal matter under one particular set of circumstances. Under the bill, a court would be prohibited from dismissing a criminal complaint, charge, information, or indictment if both of following conditions are met: (1) the request of the complaining witness constitutes the only reason for a dismissal; and (2) the prosecuting authority objects to the dismissal. Current rules of criminal procedure provide courts with considerable discretion in the exercise of their dismissal authority.

Presumably, a reasonable starting point in an assessment of this provision's fiscal effect would begin with ascertaining the frequency with which criminal matters are currently being dismissed solely at the request of the complaining witness and the prosecuting authority objects. As the reader is no doubt aware, that research task is made exceedingly problematic by the absence of a readily available statewide database from which such information can be extracted.

Based solely on impressionistic evidence gathered by the Legislative Budget Office (LBO) from conversations with a half-dozen or so individuals close to the criminal justice process, it appears that such dismissals are generally speaking fairly rare. (It should be noted that LBO has not systematically surveyed the state's prosecuting authorities – county prosecutors, directors of law, village solicitors, and so forth – which means it is possible that such dismissals are in fact more common in some jurisdictions and we have simply failed to uncover evidence of that fact.)

Additionally, we would offer the thought that, if dismissals of this sort were in fact a more frequent or regular occurrence, there would have been previous legislative attempts to curb or limit their occurrence, as is the intention of this bill. We are unaware of any such legislative attempts, further suggesting that, at least until recently, the number of occasions where a criminal matter has been dismissed solely upon the request of a complaining witness over a prosecutorial objection is relatively small.

If that impressionistic evidence is to be trusted, then the immediate fiscal effect of this provision of the bill will be to push a relatively small number of criminal matters forward that would otherwise have been dismissed, assuming of course that a court simply does not find another reason for dismissal. If these criminal matters move forward, then the local criminal justice system (prosecutors, courts, jails, and possibly indigent defense counsel) bears the burden of handling a matter that would otherwise have been dismissed.

If a conviction occurs as a result, then some revenue might be gained and sanctioning costs (incarceration, treatment or programming services, and community supervision) incurred. The state, counties, and municipalities may collect some court cost revenue, and counties may collect fine revenue for felony and state law misdemeanor violations. Whether the local government or the state bears any additional sanctioning burdens associated with a possible mix of incarceration, treatment or programming services, and supervision depends upon the sentence rendered by the trial court.

If we are right, and the number of affected criminal matters is relatively small, then the revenue gains and expenditure increases experienced by the state and local governments should be, in the scheme of things, fairly small as well.

Some Additional Uncertainties. The thrust of this analysis really has been to assess the this provision's possible fiscal effect almost retrospectively on the basis of experiences that predate in many ways the recent Ohio Supreme Court ruling in *State v. Busch*, a ruling which the bill seeks to overturn legislatively. It could be argued that the legal precedence established by that ruling, if not somehow reversed, will in time actually lead to an increase in the number of instances where a criminal matter is dismissed solely upon the request of the complaining witness over a prosecutorial objection. One area of criminal law that could be particularly sensitive to that effect involves matters of domestic violence.

Not typically raised in a fiscal note are matters related to whether a particular bill or provision of a bill will in fact pass constitutional muster. It has been suggested in some quarters that this provision of the bill constitutes a legislative intrusion into the inherent power of the judicial branch of government and as such is unconstitutional. We have no way of making a prospective judgment on whether the bill could withstand a constitutional test, nor whether such a test is in the offing. However, we offer a rather obvious observation. If this provision of the bill is in fact ruled unconstitutional, then it would carry no fiscal effect whatsoever.

Temporary Protection Orders & Anti-Stalking Protection Orders

Currently, a domestic violence criminal protection order (TPO) or an anti-stalking protection order (ASPO) issued by a municipal or county court is terminated when the person who is the subject of such an order is bound over to a court of common pleas for prosecution of a felony arising out of the same activities as those that were the basis of the complaint upon which the TPO or ASPO is issued. The bill specifies that under this circumstance: (1) such a TPO or an ASPO does not terminate, remaining in effect while the felony charges are pending in the court of common pleas; and (2) the court of common pleas assumes jurisdiction over that TPO or ASPO. Additionally, a municipal or county court that issues such a TPO or an ASPO will be required to deliver a copy of that order to a court of common pleas.

As we understand it, this provision attempts to fill a gap in time that typically occurs between the termination of a TPO or an ASPO by a municipal or county court and the subsequent issuance of another TPO or ASPO by a common pleas court. That said, this raises the matter of the number of occasions on which TPOs and ASPOs are being terminated under these circumstances. At this time, we do not know the number of circumstances, nor do we know if the practice of TPOs and ASPOs being terminated may in fact vary from jurisdiction-to-jurisdiction or how promptly subsequent TPOs and ASPOs are being issued by a common pleas court, if at all.

The immediate fiscal effect of this provision of the bill is threefold. First, a municipal or county court incurs the burden of providing a copy of a TPO or an ASPO to a court of common pleas. Second, a common pleas court might save the burden of conducting a hearing at the request of a complainant who has filed a motion to replace a TPO or an ASPO that was terminated by a municipal or county court. Third, jurisdiction over a TPO or an ASPO in this instance is transferred from the municipal or county court to the court of common pleas. Although we are uncertain as to the number of TPOs and ASPOs affected by these provisions, at

this time it appears that any additional burdens being placed on municipal, county, and common pleas courts will be negligible.

This provision may also generate some new criminal cases. How so? As a TPO or an ASPO would stay in effect and not automatically terminate, any alleged violation by the person who is the subject of such an order becomes a criminal matter. And depending upon the circumstances of that violation the matter would be prosecuted as either a misdemeanor or felony. We have no way of estimating the number of those occurrences at this time. Clearly, it then creates a burden for the local criminal justice system (prosecutors, court, law enforcement, and such), as well as the possibility of generating some court cost and fine revenue for counties and the state.

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