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## ***Detailed Fiscal Analysis***

Essentially, 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 the bill'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 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 bill'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 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 the bill is in fact ruled unconstitutional, then the bill has no fiscal effect whatsoever.

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