

# Fiscal Note & Local Impact Statement

122<sup>nd</sup> General Assembly of Ohio

BILL: S.B. 98 (with amendments BEJ1 and BEJ2) DATE: June 11, 1997

STATUS: As Recommended by Senate Subcommittee on 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 a domestic violence criminal temporary protection order issued by a municipal or county court

## State Fiscal Highlights

STATE FUND	FY 1997	FY 1998	FUTURE YEARS
<b>General Revenue Fund</b>			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	Potential negligible increase	Potential negligible increase
<b>Reparations Fund</b>			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	- 0 -	- 0 -

- Criminal case dismissals.** Impressionistic data suggests the number of existing criminal matters that will go forward as a result of the bill, possibly to a trial and conviction, as opposed to being dismissed as might happen under current law, appear 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.** There is no immediate and direct fiscal effect on the state as a result of the bill's provision which speaks to a domestic violence criminal temporary protection order issued by a municipal or county court on a criminal matter that is subsequently transferred for prosecution in a court of common pleas.



## ***Local Fiscal Highlights***

LOCAL GOVERNMENT	FY 1997	FY 1998	FUTURE YEARS
<b>Counties</b>			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	Negligible increase	Negligible increase
<b>Municipalities</b>			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	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.** Although we are uncertain as to the number of TPOs affected by the bill, at this time it appears that the burden being placed on municipal and county courts, as well as the potential savings to common pleas courts, will be negligible.

---

## ***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**

The bill contains a provision specifying that a domestic violence criminal protection order (TPO) issued by a municipal or county court continues in effect subsequent to its issuance if the defendant who is the subject of the order is bound over for prosecution in a court of common pleas. It appears that current state law does not speak specifically to this matter and that such TPOs are being terminated once the criminal case is transferred to a court of common pleas.

As of a result of this provision, these TPOs would remain in effect. Additionally, a municipal or county court that had issued such a TPO will be required to deliver a copy of that order to a court of common pleas.

That said, this raises the matter of the number of occasions on which TPOs 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 being terminated may in fact vary from jurisdiction-to-jurisdiction.

The fiscal effect of this provision of the bill is twofold. First, a municipal or county court incurs the burden of providing a copy of a TPO 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 that was terminated by a municipal or county court. Although we are uncertain as to the number of TPOs affected by this provision, at this time it appears that the burden being placed on municipal and county courts, as well as the potential savings to common pleas courts, will be negligible.

□ LBO staff: Jeffrey E. Golon, Senior Budget Analyst

H\FN122\SB0098S1.DOC