Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL:	**Am. Sub. S.B. 153 (LSC 123 1109-1)****	DATE:	**October 20, 1999**
STATUS:	**In Senate Judiciary**	SPONSOR:	**Sen. Spada**

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

CONTENTS: **Transfers from the Court of Claims to the Attorney General the responsibility of awarding reparations, expands the benefits available under the Crime Victims Reparations Law and makes other changes in the Crime Victims Reparations Law**

****** with LSC Amendment: A-9 and LBO amendment: 1-1 HC**

*State Fiscal Highlights**

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase of approximately $250,000	Potential increase of up to $1.4 million	Potential increase of up to $1.4 million
Reparations Fund (Fund 402)			
Revenues	Loss of approximately $1 million	Loss of approximately $1.5 million	Loss of approximately $18,000
Expenditures	Short-term transitional increase	Short-term transitional increase	Factors increasing and decreasing, with the net effect uncertain
Department of Health - General Operations Fund (Fund 470)			
Revenues	Gain of $1 million	Gain of $1.5 million	- 0 -
Expenditures	Potential increase, offset by revenue gain	Potential increase, offset by revenue gain	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.
* For the purpose of this fiscal note, the assumed effective date of the transfer is January 1, 2000.

- The move of responsibilities to the AGO changes the ratio of split funding at the Court of Claims from 50-50 GRF/Reparations Fund to 70-30. This means an increased share of fixed costs will have to be provided for by GRF expenditures. The size and timing of such an impact is dependent upon the date of the program transfer. The Court of Claims has estimated that increases in GRF appropriations in the range of $250,000 – $1,400,000 may be required to maintain the operation of the civil side of the Court.

- The elimination of the $7.50 filing fee with the application for awards will have an insignificant effect upon the Reparations Fund. The filing fee represents less than one-tenth of one percent of the annual income

collected by the fund. Based upon an average of the past four years, the filing fee generates a total annual income of approximately $18,000 for the Reparations Fund.

- The expansion of victims' benefits (counseling, crime scene cleanup, destroyed property) and the initial increased start-up costs (increased vouchers) following the transfer of the majority of the program from the Court of Claims to the Attorney General may potentially lead to significant increases in expenditures from the Reparations Fund. The long-term effects of the transfer and other changes are more uncertain as initial start-up costs decrease and possibly fewer overall employees potentially could lead to decreases in expenditures.

- The bill contains a transfer of $2.5 million from the Reparations Fund (Fund 402) to the Department of Health's General Operations Fund (Fund 470) across the biennium. Appropriation line item 440-618, General Operations, will be increased by $1 million in FY 2000 and $1.5 million in FY 2001. These funds shall be used for services, outreach and public awareness efforts related to sexual assault.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
Local Health Districts			
Revenues	Potential gain of up to $2.5 million	Potential gain of up to $1.5 million	- 0 -
Expenditures	Potential increase, offset by revenue gain	Potential increase, offset by revenue gain	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill contains a transfer of $2.5 million from the Reparations Fund (Fund 402) to the Department of Health's General Operations Fund (Fund 470). Appropriation line item 440-618, General Operations, shall be used for services, outreach and public awareness efforts related to sexual assault. These funds will flow to public and private providers through either the state department or the local health districts.

Detailed Fiscal Analysis

Amended Substitute Senate Bill 153 represents the most significant overhaul of the Ohio Victims of Crime Compensation Program since the General Assembly established it by passing the Victims of Crime Act in 1976. In the following twenty-three years, the program and the corresponding Crime Victims Reparations Law have undergone minor modifications related to the expansion of revenue sources and changes in benefits and eligibility. The changes contained within this restructuring bill can be divided into two categories: procedural and substantive. The procedural changes center on the transfer of responsibility for the awarding of reparations from the Court of Claims to the Attorney General. The substantive changes center on the increase and decrease of certain benefits provided to victims of crime and their immediate family members. The bill will also directly alter the balance of funding for the civil operation of the Court of Claims, creating the potential need for an increase in GRF appropriations. Additionally, the bill transfers $2.5 million in funds from the Reparations Fund (Fund 402) to the Department of Health for services related to sexual assault.

The Ohio Victims of Crime Compensation Program is a comprehensive system for the payment of compensation for economic losses suffered by crime victims, persons attempting to prevent or to apprehend a person suspected of engaging in criminal conduct and dependents of such victims and persons who are killed as a result of crime. Compensation is paid in the form of awards of reparations. The maximum award is currently $50,000. This award is meant to compensate the claimant for: medical expenses, lost wages, funeral expenses, replacement services and income that has been lost to dependents because the victim is deceased. Claimants can be compensated only for expenses not reimbursed by another entity.

The program is operated with revenue from the Reparations Fund. This fund collects revenue from several different sources, the majority of which is derived from court costs imposed upon felons and misdemeanants. The fund provides amounts not only for claims awarded to victims, but also takes care of all administrative costs of the program and funds various other victims' assistance programs. The Ohio Court of Claims administers the program. It has exclusive, statewide jurisdiction in all civil cases against the state, but the majority of its resources are used to operate this program. The court balances the scales of justice between the needs of the victim's of crime and the interests of the state as represented by Ohio's Attorney General. The Ohio Attorney General's Victims of Crime Section conducts an investigation into all claims for awards and issues a Finding of Fact and Recommendation. This is a document containing the results of the Attorney General's investigation, and a suggestion to the court on whether the claim should be awarded or denied.

Procedural Changes

Hearing Process

The current process for determining claims is similar in form to a criminal trial. A claim for reparations is made to the proper authority: the local clerk of a common pleas court or directly to the clerk of the Court of Claims. The claim is investigated by the Attorney General's crime victims compensation section with the assistance of local law enforcement agencies. The Attorney General issues a finding of fact and makes a recommendation. The hearing process can progress through a primary determination and then on to two levels of appeal, if necessary. A single commissioner from the Court of Claims handles the primary hearing. The Attorney General or the claimant may appeal all or part of the single commissioner's decision to a panel of commissioners. The decision of the panel of commissioners can also then be appealed to a judge of the Court of Claims whose determination is finally and unappealable.

The bill would modify the hearing process by leaving out the single commissioner and the judge. The Attorney General would no longer make a recommendation, but would investigate and render the initial decision on the claim. The claimant, if unsatisfied with part or all of the decision, would have the right to appeal to a panel of commissioners, but only after first requesting the Attorney General to reconsider the decision. The Attorney General can also motion for itself to reconsider its original decision.

The new hearing process removes the need for individual commissioners and takes the appellate jurisdiction away from the judges of the Court of Claims, who remain to handle the civil cases filed against the state. The Court anticipates that this change will result in the number

of commissioners decreasing by one from eight to seven. The number of judges will remain at four. The changes also enable the Attorney General to decide whether to grant themselves an extension to the 120-day investigation period and/or the 60-day reconsideration period. Currently, if the Attorney General cannot finish the investigation and make a recommendation within the 120-day period, then the Attorney General must file a motion for an extension with the single commissioner, which may be granted upon a showing of good cause. Both changes should result in a minimal decrease in hearing costs.

Payment of an Award of Reparations

Presently, the law allows payment to either the claimant, an assignee of the claimant or both parties. This means that the victim and/or the assignee receive a check for the total amount of loss incurred, including any amount owed to a provider of medical, funeral and other services. The new provisions allow payment to only the claimant or providers in the amount certified by the Attorney General or the Court. Apparently, some claimants do not use the reparation award to pay the expenses of the providers. Victims will now receive reimbursements for bills paid out of their own pocket, and for other eligible expenses.

While this change should increase the amount of funds reaching providers, the administrative task of paying an increased number of parties may prove overwhelming in the short-run. Since the program's inception, the Court and the Office of Budget and Management have been operating in a mutually agreeable fashion outside of the language found in the Revised Code. The Court has been making the payments from the Reparations Fund without the direct involvement of the Office of Budget and Management. The Attorney General has indicated a desire to continue this method of operation, but expects an undetermined increase in the administrative cost of handling the higher level of vouchers. However, the bill maintains current language regarding the role of the Office of Budget and Management and its director in paying out the award. It is unclear whether the Attorney General and the Office of Budget and Management will maintain the current method of operating, or will seek to codify this relationship.

The direct payment of providers will also make it easier for the Attorney General to attempt to gain savings by evaluating medical and psychological services bills for reasonableness, and reimbursing only reasonable charges. The net effect of this provision is unclear. For medical care-related allowable expenses, the bill permits the Attorney General to do all of the following: 1) establish standard medical fees and approved medical procedures for which an award of reparations may be made, 2) determine the eligibility and reasonableness of claims for medical, psychological, dental, chiropractic, hospital and nursing services, 3) recognize usual, customary and reasonable methods of payment for covered service, and 4) audit fee bill payments and adjust fee bill reimbursement to be consistent with medical cost containment and reimbursement guidelines promulgated by the administrator of the Bureau of Workers' Compensation.

Additionally, the bill states that a medical provider that accepts payment for medical care-related allowable expenses as part of an award of reparations shall be considered paid in full for those allowable expenses and shall not seek reimbursement for any part of those allowable expenses from the claimant who was granted the award. It is unclear as to whether this provision could create an environment in which medical providers seek payment from a victim instead of

accepting an award of reparations. If victims pay for such treatment, then would the Attorney General deny the reimbursement to the victim of these out of pocket expenses? This provision may also have the effect of denying reimbursement of medical benefits currently provided for under the present system. It is impossible to predict whether these provisions of the bill will have a positive or negative effect on the amount of administrative costs and benefits paid out from the Reparations Fund.

Subrogation Rights

The bill replaces general language that provides the Attorney General the right of subrogation with specific and detailed language that states that the Attorney General is the legal representative of the Reparations Fund. The Attorney General may institute, prosecute and settle actions or proceedings for the enforcement of the Fund's right of repayment, reimbursement, recovery and subrogation. The Attorney General must defend all suits, actions or proceedings brought against the Fund. The new language also states that the subrogation right of the Fund is enforceable through the filing of an action within six years of the date of the last payment of any part of an award of reparations. These provisions should allow the Attorney General to provide greater protection to the Fund.

Filing Fees

Currently, there is a $7.50 filing fee required with most applications for awards. The fee can be waived when applying if the applicant also files an affidavit of indigence and claims the fee poses a financial hardship. The fee, if waived, is deducted from any reparations that are awarded. The filing fee contributes towards the Reparations Fund. However, in FY 1998, the $15,122 collected in filing fees amounted to only 0.058 percent of the $26,058,160 deposited into the Reparations Fund that year. While the amount is negligible in comparison to the total fund, the elimination of the fee cuts back resources that were expended on the collection and administration of such funds.

Substantive Changes

Benefits

The Victims of Crime Compensation Program exists to provide benefits to the victims of violent crime. This bill has several procedural provisions that indirectly affect the provision of these benefits. However, the bill also has provisions that expand and potentially contract benefits provided for victims and immediate family members. The bill expands benefits by providing for reimbursement of the cost of crime scene cleanup, the cost of property destroyed by evidence collection and the costs associated with mental health counseling for certain family members. The bill potentially contracts claimant's legal benefits by modifying provisions related to the awarding of attorney's fees. At the present, all legal services for claimants is funded by the Reparations Fund and does not count towards the $50,000 cap on total awards. New constraints include a limit on attorney fees and are contingent upon a successful reparations award.

The role of the administrative agency overseeing the program is to make awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

The bill expands the definition of "economic loss" to include the cost of crime scene cleanup and the cost of evidence replacement. This change enables these costs to be reimbursed from the Reparations Fund. The bill defines cost of crime scene cleanup as the reasonable and necessary costs of cleaning the scene where the criminally injurious conduct occurred. The bill defines cost of evidence replacement as the costs for replacement of clothing, bedding or other property confiscated for evidentiary purposes related to the criminally injurious conduct. Both of these definitions also include the limitation that such cost not exceed $750 in the aggregate per claim. The direct beneficiaries of these new benefits will be the victims. But with the knowledge of such new reimbursements, it is possible that third parties with these expenses may attempt to seek payment by billing the victims for these costs.

The existing definition of "economic loss" already contains the term "allowable expenses." The definition of which is expanded to provide for the reimbursement of psychiatric care or counseling needed as a result of criminally injurious conduct on an immediate family member that consists of a homicide, a sexual assault, domestic violence or a severe and permanent incapacitating injury resulting in paraplegia or a similar life-altering condition. This definition also includes the limitation that the cumulative allowable expense for care or counseling of that nature for each family member may not exceed $2,500.

Neither the Court, nor the Attorney General has estimated the increase in expenditures that will be faced by the Reparations Fund due to these additional benefits. It is unknown how many people will take advantage of these new benefits. But, these additional benefits are still contained by a total cap of $50,000 per criminal incident. The Reparations Law maintains that reparations payable to a victim and all other claimants sustaining economic loss because of injury to or the death of that victim shall not exceed $50,000 in the aggregate. The one benefit that does not fall within the $50,000 cap is the legal benefit.

The bill codifies most of the existing attorney's fees provisions contained within the Rules of the Court of Claims. Currently, attorney's fees are determined and awarded by either a single commissioner, a panel of commissioners or by a judge of the Court of Claims. The Attorney General will now handle this. Reimbursement is made on the basis of a maximum $60 per hour, but limited to the maximum amounts authorized by the final level of determination. Unless lowered by some other provision of the rule, the following are the current maximum levels of reimbursement allowed for services performed during certain stages of the process: 1) Through determination by a single commissioner, $720; 2) Through determination by a panel of commissioners, $1,020; 3) Through determination by a judge of the Court of Claims, $1,320. The bill also sets a maximum attorney fee of $200 if the claim is denied on the basis of a claimant's or victim's conviction of a felony offense prior to the filing of the claim. The Attorney General may also determine that a lesser number of hours should have been required in a given case, or that additional reimbursement is warranted based upon the requirements of a particular claim.

Eligibility for Participation

The bill not only makes changes to procedures and benefits, but also changes who can receive an award of reparations. In one instance, the bill expands those who may apply by loosening a prohibition against victims who have engaged in criminal behavior. A victim or claimant convicted of a felony within the past ten years or during the pendency of the claim now

is ineligible to receive an award. Under the bill, a person who, based upon a preponderance of the evidence, engaged within the past ten years or during the pendency of the claim in felonious conduct would no longer be automatically ineligible for an award, as long as the conduct engaged was not an offense of violence or drug trafficking. If the conduct were drug trafficking, an offense of violence or something substantially similar to an offense of violence, then the individual still would be ineligible.

The bill also tightens some restrictions on who may apply for an award. A prohibition would now exist for those claimants who have been convicted of child endangering, domestic violence or any substantially similar other state law or municipal ordinance within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim. It is difficult to estimate how these two provisions would weigh against each other in forecasting the pool of potentially eligible claimants. As such, a determination of a potential net fiscal effect is incalculable.

The bill also codifies existing case law regarding restrictions upon who is eligible to participate in the program. A victim who by the preponderance of the evidence engaged in felony drug possession at the time of being victimized will be denied compensation. A passenger over the age of fifteen in a vehicle driven by a driver under the influence of alcohol or drugs is ineligible to receive compensation for any criminally injurious conduct arising out of such activity. This prohibition does not apply to sixteen or seventeen year olds when the driver is a parent, guardian or other care provider. Since these provisions already exist as case law, their codification in this bill has no direct fiscal effect.

Changes to the Court of Claims and the Attorney General

The main focus of the bill is the transfer of the majority of the operation of the program from the Court of Claims to the Attorney General. The bill also adds new available benefits and restructures already existing ones. However, neither of the two agencies has been able to estimate the impact of the bill's provision with the exception of the Court of Claims and their estimate of the redistribution of the GRF and Reparations Funding within their budget.

The Attorney General has indicated that the addition of the responsibility of making awards of reparations under the new law will not result in any efficiencies within the current administrative structure. The Attorney General anticipates no potential GRF savings from their operating budget. This means that either the addition of the program will entail using Reparations funded personnel to administer the program or that some of programs administrative personnel will be funded by the GRF. It appears unlikely that any of the personnel will be split funded between the GRF and the Reparations Fund. The Attorney General has yet to confirm how many new employees will be hired to handle the program or increases related to maintenance or equipment costs. But, it is reasonable to assume that additional investigators will be needed as well as support personnel to handle the increased voucher function related to the direct payment of providers.

The Court of Claims anticipates a significant change in their office. The number of full time staff is estimated to shrink in half from 68 to 34 employees. The number of employees funded 100 percent from the Reparations Fund will likely decrease from 37 to 6. The number of employees funded 100 percent from the GRF is likely to increase from 12 to 14. These estimates

are dependent upon the effective date of the transfer and the amount of time involved in changing the system. The number of employees totally funded either by the GRF or the Reparations Fund will represent only 59 percent of the restructured Court personnel. The Court has operated with people funded by the GRF, the Reparations Fund or split 50-50 between both funds. The number of split-funded employees will shrink from 19 to 14, but the ratio of GRF to Reparations Funding for their salaries will increase from 50-50 to 70-30 in favor of GRF funding. This shift reflects the new balance of work that will take place at the Court. The majority of the work will be handling the civil case side of the Court. The amount of GRF-funded civil work will not increase, but the percentage of overhead costs associated with it will increase. While increases in the GRF appropriations related to payroll will be necessary, the Court has predicted that overall payroll costs will diminish by approximately $1.5 million from $4.1 million to $2.6 million. Also, as the personnel needs of the court change so do the office space requirements. The change to the program will also cut the space needed by the court by 28 percent. While it is possible for the Court to empty and release one of the two floors they occupy, the Court cannot realize any savings from the empty space remaining on the floor they will maintain. The release of the 34 employees may also pose problems related to the cashing out of accrued vacation and other leave time, plus the issue of unemployment benefits remains to be dealt with by the Court.

Currently, the bill has no set effective date. The determination of economic loss and the amount of attorney's fees are dependent upon whether the filing of applications or supplemental applications occurs before or after the date the bill becomes effective. However, the bill is silent as to which agency pays which award and which fees at what exact time during the period of transition. The lack of clarity has caused the Court of Claims to make GRF and Reparations estimates under different scenarios of timing and amount of involvement in the process. The bill's effect on GRF funding at the Court may potentially require a GRF increase of $1.4 million in FY 2001. The estimates of GRF needed for the remainder of FY 2000 and up to the amount forecasted for FY 2002 vary significantly.

The amount of the Court's Reparations funding will decrease with the transfer of the program. Depending upon the effective date scenarios not fully addressed by the bill, the amount of reparations appropriations needed in FY 2001 has varied from $1.7 million to $11.2 million. While the difference between these two amounts is fairly large, the Court was already granted a $23 million appropriation of Reparations funding for FY 2001 in the latest biennial budget, Am. Sub. H.B. 283.

Overall, the total budget for the Court of Claims will decrease and the total budget for the Attorney General will increase when the transfer of the program is completed. It is difficult to predict whether the net fiscal effect will be an increase or a decrease once additional benefits are available to claimants, the process of making determinations and paying awards has changed and the ratio of GRF to Reparations work has shifted at the Court. It is highly likely that GRF expenditures will increase because of the transfer of the program and the changes indicated at the Court. The Attorney General believes that expenditures from the Reparations Fund will also increase, at least in the short run. In the end, outside factors that the program is dependent upon (crime rates, victim's advocacy and medical costs) will have an equally significant impact on the health and long-term viability of the Reparations Fund and the Victims of Crime Compensation Program.

Transfer of Funding and Increased Appropriation Authority

The bill would transfer $2.5 million in funding in the FY 2000-2001 biennium from the Reparations Fund (Fund 402) to the General Operations Fund (Fund 470) in the Department of Health. Appropriation line item 440-618, General Operations, would increase by $1 million in FY 2000 and by $1.5 million in FY 2001. The Department of Health is to use the $2.5 million for four activities: funding of new services in counties with no services for sexual assault; expansion of services in currently funded projects so that comprehensive crisis intervention and prevention services are offered; start-up funding for Sexual Assault Nurse Examiner (SANE) projects; and statewide expansion of local outreach and public awareness efforts.

The Department of Health receives federal money for sexual assault services under the Violence Against Women Act (VAWA) as part of the Preventive Health and Health Services Block Grant. According to the Department of Health, there are currently nine functioning SANE programs in Ohio with another nine in development. There are approximately 180 hospitals in Ohio with emergency departments and many have contacted the Department to inquire about establishing a SANE program at their facility. This funding would pass through to local public and private entities through either the state department or the local health districts.

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