

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **H.B. 395** DATE: **April 22, 2008**
STATUS: **As Introduced** SPONSOR: **Rep. Hughes**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Return of personal property and exclusion of Social Security benefits in divorce proceedings**

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
Counties, Municipalities, and Townships	
Revenues	- 0 -
Expenditures	Potential minimal annual fiscal effect on courts and law enforcement agencies

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

- **Courts and law enforcement agencies.** The bill's return of personal property and divorce proceedings provisions will primarily affect three local governmental entities: (1) courts that issue protection orders, (2) law enforcement agencies that are in the possession of personal property, and (3) courts with jurisdiction in divorce proceedings. As a result, these local governmental entities may spend less time and effort in performing certain tasks, for example, dividing property in a divorce proceeding, and more time and effort in performing certain other tasks, for example, returning a firearm. From a fiscal perspective, this likely creates a mix of potential costs and savings, the net of which is likely to be no more than minimal annually, if that, for any affected court or law enforcement agency.
- **Local revenues.** The bill will have no direct fiscal effect on any of the state's political subdivisions.



Detailed Fiscal Analysis

Overview

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

- Requires any law enforcement agency that is in possession of personal property belonging to a party under a protection order return the property to that party upon the expiration or termination of the protection order.
- Requires the court issuing the protection order provide the parties with a notice of the procedure to be followed for the return of any personal property in the possession of a law enforcement agency.
- Requires, if the property to be returned is a firearm, the law enforcement agency in possession of that firearm make a reasonable effort to determine whether or not the owner is under any state or federal firearm disability.
- Modifies the manner in which a court divides property in divorce proceedings, including generally excluding Social Security benefits.

Local fiscal effects

Courts and protection orders

From the perspective of courts issuing protection orders, the bill most notably: (1) provides a procedure for the return of personal property in the possession of a law enforcement agency, and (2) requires the court provide a party with a notice on the manner in which the return of personal property can be requested. Existing law does not provide any such procedures.

LSC fiscal staff has not found, at this time, any discernible evidence that the bill's return of personal property provisions will create courts that issue protection orders. By all accounts, retrieval of personal property by its owner after a protection order has expired or been terminated is not a process fraught with widespread problems or difficulties. To the degree that the return of personal property is an issue, it appears to be intermittent or perhaps limited to certain local jurisdictions.

From LSC fiscal staff's perspective, the effect on a court's day-to-day operations may be two-fold and contrasting. First, it provides a procedure for the return of personal property where none currently exists. The practical effect may be to reduce any role that a court may have otherwise had in resolving any dispute related to the return of personal property. Second, the court will have the appropriate notice readily at hand to issue to any appropriate parties. The net fiscal effect of these provisions on any affected court is likely to be minimal at most.

Courts and divorce proceedings

In its conversations with a member of the Judicial Conference of Ohio, LSC fiscal staff learned that federal law regards Social Security benefits as, for all intents and purposes, untouchable, which is to say that only the Internal Revenue Service or a child support order can factor Social Security benefits when weighing a citizen's assets and financial obligations. The state of Ohio, however, is one of six states that do not conform to that interpretation, as evidenced by the Supreme Court of Ohio's ruling in *Neville v. Neville* that found it permissible for a court to factor in Social Security benefits during a divorce proceeding. This arguably might raise a court's decision costs as, to do so, an appraisal of the current day value of one's future Social Security benefits has to be conducted.

In the course of its conversations with practitioners in the domestic relations arena, LSC fiscal staff found that the permissive nature of the *Neville* ruling generates the arguably obvious effect where some courts choose to include Social Security benefits in the division of property and others do not. In the instance where a court does factor Social Security benefits into divorce proceedings, a final resolution is, at least theoretically, delayed longer than when a judge does not factor those benefits into the proceedings.

It stands to reason, then, that by generally excluding Social Security benefits from the divorce court's jurisdiction, the bill may expedite certain divorce proceedings by eliminating the need for an appraisal of those benefits, potentially allowing more proceedings to move through the courts quicker and ultimately easing the time and resources expended by court personnel. Such an outcome creates a potential savings effect, the annual magnitude of which is likely to be no more than minimal, if that, for any affected court.

Law enforcement and return of personal property

The bill: (1) provides a procedure for a law enforcement agency to return personal property in its possession upon the expiration or termination of a protection order, and (2) requires that, if the property is a firearm, the law enforcement agency make a reasonable attempt to determine whether or not the owner is under any state or federal firearm disability. Existing law does not provide any procedures for the return of property that is in the possession of a law enforcement agency.

From LSC fiscal staff's perspective, the bill's return of personal property provisions may have two contrasting effects on any affected local law enforcement agency's day-to-day operations. First, it provides a procedure for the return of personal property and clarifies any ambiguity relative to duties and responsibilities of a law enforcement agency and the owner of personal property that is in the possession of the former. The practical effect may be to make the return of personal property easier and more straightforward, thus reducing the time and effort that a law enforcement agency may otherwise have expended on such matters.

Second, in being required to determine the firearm disability status of an owner, a law enforcement agency may have to expend more time and effort in ascertaining certain information prior to returning a firearm than might otherwise have been the case under current law and practice. Based on discussions with members of the Judicial Conference of Ohio and staff of the Buckeye State Sheriffs' Association, the net fiscal effect of these provisions is likely to be minimal at most.

Local revenues

The bill will have no direct fiscal effect on any of the state's political subdivisions.

State fiscal effects

The bill will have no direct fiscal effect on the state.

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