Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	**S.B. 9**	DATE:	**May 9, 2007**
STATUS:	**As Reported by Senate Judiciary--Criminal Justice**	SPONSOR:	**Sen. Clancy**

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

CONTENTS: **Period of limitations for certain felony offenses**

State Fiscal Highlights

STATE FUND	FUTURE YEARS*
General Revenue Fund (GRF)	
Revenues	Potential negligible gain in locally collected state court costs
Expenditures	Potential incarceration cost increase, not likely to exceed minimal
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Potential negligible gain in locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.
*The earliest point in time that the bill's statute of limitations provision may generate any state fiscal effects would most likely be around the year 2028.

- ***GRF-funded incarceration expenditures.*** As a result of the bill's expansion of the list of offenses for which there is no period of limitations, it is possible that some individuals that might not otherwise have been sentenced to prison will be so sentenced. Presumably, if offenders are sentenced to prison that, absent the bill would not have been sentenced to prison, then the Department of Rehabilitation and Correction's GRF-funded incarceration costs increase. It appears that the number of additional offenders that might be sentenced to prison annually is likely to be relatively small, especially in the context of a prison system currently housing more than 49,000 inmates. The costs associated with the likely number of affected offenders would be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated expenditure increase of less than $100,000 per year for the state. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts affected by the bill, it appears that the earliest point at which the bill might affect the prison population and related operating costs would be around the year 2028.

- ***Court cost revenues.*** The bill's statute of limitations exceptions create the possibility that additional offenders may be assessed fines and court costs, including locally collected state court cost revenues that, if collected, are deposited in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). As the number of offenders that could be affected in this manner annually statewide appears likely to be relatively small, the amount of court cost revenues that those state funds may gain annually is likely to be negligible. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts

affected by the bill, it appears that the earliest point at which any additional state court cost revenues might be generated would be around the year 2028.

- ***Division of Criminal Justice Services.*** The bill's requirement that the Department of Public Safety's Division of Criminal Justice Services apply to the U.S. Attorney General for a "Jessica Lunsford and Sarah Lunde Grant" appears unlikely to generate more than a minimal administrative burden and related cost. From LSC fiscal staff's perspective, if the state were an eligible recipient, it seems highly probable that the Department would have applied for such a grant independent of the bill's mandate that it do so.

Local Fiscal Highlights

LOCAL GOVERNMENT	FUTURE YEARS*
Counties (local criminal justice systems)	
Revenues	Potential gain in court costs and fines, not likely to exceed minimal
Expenditures	Potential increase in criminal justice system operating costs, not likely to exceed minimal

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.
*The earliest point in time that the bill's statute of limitations provision may generate any local fiscal effects would most likely be around the year 2028.

- ***County expenditures.*** As a result of the bill's statute of limitations provision, it is possible that additional offenders could be arrested, tried, adjudicated guilty, and sentenced to prison. If this in fact occurs, then theoretically, the affected local criminal justice system may incur costs related to the investigation, prosecution, adjudication, and defense (if the offender is indigent) of that offender's alleged criminal conduct. Information collected for the preparation of this fiscal analysis suggests that the number of criminal matters that might be affected by the bill in any given local jurisdiction in any given year is likely to be relatively small. Assuming that were true, then any increase in the criminal justice system expenditures of any affected county may be no more than minimal on an ongoing basis. For purposes of this analysis, in the context of expenditures, minimal means an estimated annual cost of no more than $5,000 for any affected county criminal justice system. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts affected by the bill, it appears that the earliest point at which any additional county criminal justice system expenditures might occur would be around the year 2028.

- ***County revenues.*** By creating the possibility for some new successful criminal prosecutions, the bill also creates the potential for additional court cost and fine revenues to be collected by county criminal justice systems. Although it is rather difficult to estimate the number of criminal cases that might be affected annually in this manner in any given county criminal justice system in the future, the likely number appears to be relatively small. Assuming that were true, then any revenue gain may be no more than minimal on an ongoing basis. For purposes of this analysis, in the context of revenues, minimal means an estimated annual gain of no more than $5,000 for any affected county. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts affected by the bill, it appears that the earliest point at which any additional county revenues might be collected would be around the year 2028.

Detailed Fiscal Analysis

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

- Expands the list of offenses for which there is no period of limitations for commencing a criminal prosecution.
- Requires the Department of Public Safety's Division of Criminal Justice Services to apply to the U.S. Attorney General for a "Jessica Lunsford and Sarah Lunde Grant."

Existing law

Existing law specifies that, in general, a criminal prosecution is barred unless it is commenced within six years if the offense is a felony, within two years if the offense is a misdemeanor other than a minor misdemeanor, or six months if the offense is a minor misdemeanor. Two exceptions to this general specification are as follows:

(1) There is no period of limitation for the criminal prosecution of the offense of aggravated murder or murder.

(2) In general, a criminal prosecution of any of the following offenses is barred unless it is commenced within 20 years after the offense is committed: (a) the offenses of voluntary manslaughter, involuntary manslaughter, kidnapping, rape, sexual battery, unlawful sexual contact with a minor, gross sexual imposition, compelling prostitution, aggravated arson, soliciting or providing support for an act of terrorism, making a terrorist threat, terrorism, criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, money laundering in support of terrorism, aggravated robbery, robbery, aggravated burglary, burglary, aggravated riot, felonious assault or aggravated assault if the victim is a peace officer, assault when it is a felony, or the former offense of felonious sexual penetration, or (b) a conspiracy to commit, attempt to commit, or complicity in committing any of the offenses described in clause (a) of this paragraph.

Operation of the bill

The bill expands the list of offenses for which there is no period of limitations. As illustrated in the list above, generally speaking, the majority of these offenses are subject to the 20-year statute of limitations. Under the bill, in addition to criminal prosecutions for the offenses of aggravated murder and murder (existing law), there is no period of limitation for the criminal prosecution of any of the following offenses:

(1) Kidnapping, abduction, unlawful restraint, or criminal child enticement if the victim is under age 13 at the time the offense is committed (when the victim is 13 or older, the bill retains the existing period of limitation for the specified offenses).

(2) Any violation of Chapter 2907. of the Revised Code (sex offenses) that is a felony.

(3) A conspiracy to commit, attempt to commit, or complicity in committing any offense or violation described in paragraph (1) or (2), above, or in committing aggravated murder or murder.

State fiscal effects

Incarceration expenditures

As a result of the bill's expansion of the list of offenses for which there is no period of limitations, it is possible that some individuals that might otherwise not have been arrested, successfully prosecuted, and sanctioned for committing certain felony offenses in the future will be arrested, successfully prosecuted, and sanctioned for committing those felony offenses. It is possible that the sanctions imposed by the sentencing court would include a prison term. Presumably, if offenders are sentenced to prison that, absent the bill would not have been sentenced to prison, then the Department of Rehabilitation and Correction's GRF-funded incarceration costs increase.

From LSC fiscal staff's perspective, it is rather difficult to estimate the number of offenders that might be affected in the above-noted manner in the future, including the imposition of a prison term. Based on a conversation with staff of the Ohio Criminal Sentencing Commission, it appears that the number of cases that might be affected by the bill's statute of limitations provision in any given year is likely to be relatively small because, under current practice, most cases are generally brought within the period of limitations in existing law. In addition, as time progresses, cases may become more difficult to bring to trial. Therefore, it may be less likely for a prosecutor to initiate a case if evidence is lacking or if witnesses cannot be found.

If one were to net the factors noted in the paragraph immediately above, it appears that the number of additional offenders that might be sentenced to prison annually as a result of the bill's statute of limitations provision is likely to be relatively small, especially in the context of a prison system currently housing more than 49,000 inmates. This would suggest that the future fiscal effect on DRC would likely be in terms of its marginal cost of incarcerating an offender, which LSC fiscal staff currently estimates at around $2,800 annually. The annual marginal costs associated with the likely number of affected offenders, to the degree that such a cost is actually realized, would be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated expenditure increase of less than $100,000 per year for the state. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts affected by the bill, it appears that the earliest point at which the bill might affect the prison population and related operating costs would be around the year 2028.

Court cost revenues

As noted, it is possible that some individuals that might otherwise not have been arrested, successfully prosecuted, and sanctioned for committing certain felony offenses in the future will be arrested, successfully prosecuted, and sanctioned for committing those felony offenses. This creates the possibility that such offenders may be assessed fines and court costs, including locally collected state court cost revenues that, if collected, are deposited in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). In the case of a felony conviction, the state court cost totals $45. Of that amount, $30 is deposited in Fund 402 and $15 is deposited in the GRF.

As the number of offenders that could be affected in this manner annually statewide appears likely to be relatively small, the amount of court cost revenues that those state funds may gain annually is likely to be negligible. For the purposes of this fiscal analysis, negligible means an estimated revenue gain of less than $1,000 for either state fund per year. It is also important to note that collecting court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unwilling or unable to pay. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts affected by the bill, it appears that the earliest point at which any additional state court cost revenues might be generated would be around the year 2028.

Division of Criminal Justice Services

The bill's requirement that the Department of Public Safety's Division of Criminal Justice Services apply to the U.S. Attorney General for a "Jessica Lunsford and Sarah Lunde Grant" appears unlikely to generate more than a minimal administrative burden and related cost. From LSC fiscal staff's perspective, if the state were an eligible recipient, it seems highly probable that the Department would have applied for such a grant independent of the bill's mandate that it do so.

Local fiscal effects

Criminal justice systems expenditures

As a result of the bill's provision regarding the removal of the statute of limitations on a number of offenses, it is possible that additional offenders could be arrested, tried, adjudicated guilty, and sentenced to prison. If this in fact occurs, then theoretically, the affected local criminal justice system may incur costs related to the investigation, prosecution, adjudication, and defense (if the offender is indigent) of that offender's alleged criminal conduct.

From LSC fiscal staff's perspective, it is rather difficult to estimate the number of offenders that might be affected annually in this manner in any given county criminal justice system in the future. That said, information that was collected for the preparation of this fiscal analysis suggests that the number of criminal matters that might be affected by the bill in any given local jurisdiction in any given year is likely to be relatively small. Assuming that were true, then any increase in the criminal justice system expenditures of any affected county may be no more than minimal on an ongoing basis. For purposes of this analysis, in the context of expenditures, minimal means an estimated annual cost of no more than

$5,000 for any affected county criminal justice system. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts affected by the bill, it appears that the earliest point at which any additional county criminal justice system expenditures might occur would be around the year 2028.

Court cost and fine revenues

By creating the possibility for some new successful criminal prosecutions, the bill also creates the potential for additional court cost and fine revenues to be collected by county criminal justice systems. As noted, it is rather difficult to estimate the number of offenders that might be affected annually in this manner in any given county criminal justice system in the future, but the likely number would be relatively small. Assuming that were true, then any revenue gain may be no more than minimal on an ongoing basis. For purposes of this analysis, in the context of revenues, minimal means an estimated annual gain of no more than $5,000 for any affected county. Given the existing statute of limitations, the exceptions to be enacted by the bill, and the prospective nature of criminal acts affected by the bill, it appears that the earliest point at which any additional county revenues might be collected would be around the year 2028.

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