

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 22 (LSC 127 0398-2)** DATE: **May 8, 2007**
STATUS: **In Senate Judiciary--Criminal Justice** SPONSOR: **Sen. Faber**
LOCAL IMPACT STATEMENT REQUIRED: **Yes**
CONTENTS: **Civil commitment of certain sexually violent predators**

State Fiscal Highlights

STATE FUND	FY 2007*	FY 2008 and Annually Thereafter
General Revenue Fund (GRF) and Other State Funds**		
Revenues	- 0 -	(1) Potential reimbursement of DMH evaluation and treatment costs, source and magnitude uncertain, and (2) potential, at most minimal, gain in offender GPS supervision payments
Expenditures	- 0 -	(1) Increase in annual DMH treatment and housing costs, potentially in the tens of millions of dollars due to anticipated stacking effect, (2) potential decrease in legal services costs, judgments, and settlements related to immunity from civil liability provisions, (3) potential annual increase estimated at \$330,000 in DRC multidisciplinary team operating costs, and (4) potential debt service increase to finance DMH and/or DRC capital improvements

Note: The state fiscal year is July 1 through June 30. For example, FY 2006 is July 1, 2006 – June 30, 2007.

* For the purposes of this analysis, any state fiscal effects generated by the bill will occur no earlier than FY 2008.

** The magnitude and mix of revenue and expenditure effects on the GRF and other state funds is uncertain.

- **Civil commitments.** Estimating the number of persons that will be determined by a court to meet the statutory criteria and subsequently civilly committed is problematic. Based on release data provided by the Department of Rehabilitation and Correction (DRC), it appears that, in the first year after the bill's enactment, upwards of 1,100 offenders could be released from prison that were originally sentenced to prison for a sexually violent offense and potentially subject to a petition to be civilly committed. The magnitude of that number in future years is uncertain, especially in light of recently enacted penalty enhancements and longer prison terms. Predicting how local prosecutors would implement this new sentencing tool is rather difficult. However, based on the experiences in other states, LSC fiscal staff believe that it is reasonable to assume that only a relatively small number or percentage of offenders potentially meeting the statutory criteria will actually be civilly committed per year. The uncertainties surrounding the implementation of this civil commitment process in Ohio mean that LSC fiscal staff is unable to reliably estimate the number of offenders potentially meeting the statutory criteria, the number of offenders who will or might be subject to a petition to civilly commit, and the number of offenders actually committed.



- **Housing and treatment cost escalation.** The Department of Mental Health's (DMH) annual housing and treatment costs will likely increase due to what is termed a "stacking effect." This term refers to the increase in DMH's civilly committed sexually violent predator (SVP) population that occurs as offenders stay confined over an extended period of time and the number of SVPs that are civilly committed to the Department's custody does not decrease. The result would be a continued increase related to stacking in DMH's annual housing and treatment costs. Theoretically, the effect of stacking on DMH's annual housing and treatment costs stabilizes at the point where the number of civilly committed persons entering and the number leaving confinement in a secure facility annually are the same. As stated in the previous dot point, quantifying related fiscal effects for DMH is problematic and will largely depend on the number of offenders who are civilly committed annually. Based on the experiences in other states, it seems reasonable to assume that these potential annual costs could be estimated in the millions of dollars, and not in terms of tens or hundreds of thousands of dollars.
- **Examination and court review.** From DMH's perspective, the most costly feature of the initial one-year examination followed by a review every three years and court review process is likely to be the evaluation of the person's mental condition. For the purposes of this fiscal analysis, LSC fiscal staff has assumed that: (1) each person will receive two evaluations: one performed by DMH and one performed by a qualified expert or professional person, the latter most likely being court appointed as virtually all of these civilly committed persons will be determined indigent, and (2) DMH will be responsible for the costs of both evaluations (a total of at least \$2,400 per person).
- **Transitional release and conditional release.** Under the bill, DMH will be responsible for all costs related to administering the transitional release program and the conditional release program, into either of which the court may order a person be placed subsequent to determining that it is safe to do so. The average annual outpatient community treatment costs of other states vary greatly from jurisdiction to jurisdiction. Based on the experiences of other jurisdictions with a similar civil commitment law, LSC fiscal staff assume that, for the purposes of this fiscal analysis, extremely few, if any, persons will be placed in the transitional release program or conditional release program in the first five years or so following the bill's effective date.
- **Capital improvements.** As of this writing, it appears that DMH may not have adequate and appropriate space to house and treat the SVPs that would be civilly committed to its custody under the bill. It is also uncertain as to whether, when, or at what cost DMH might need to purchase, lease, build, or renovate a facility or facilities to house and treat such persons. It seems probable, however, that DMH would contract with DRC to fulfill a portion, if not all, of its facility needs. The cost of the required capital improvements for either or both state agencies is uncertain.
- **Department of Rehabilitation and Correction multidisciplinary team.** According to DRC personnel, the multidisciplinary team would be made up of three psychologists at a cost of \$110,000 per person per year in terms of salary and fringe benefits for a total annual cost in salary and fringe benefits of \$330,000.
- **Public Defender Commission.** As currently drafted, the bill appears unlikely to have a direct and immediate fiscal impact on the Public Defender Commission for two reasons. First, the bill requires the court appoint counsel to assist indigent offenders at certain stages in the commitment process and subsequent annual court reviews. This would appear to place the cost of defense counsel (public defenders and appointed counsel) on the affected county. Second, the Commission's existing reimbursement system for county indigent defense services is provided in the context of a criminal action, not legal services provided in a civil commitment case.

- **Immunity from civil liability.** The bill contains two immunity from civil liability provisions that potentially reduce state legal costs and limit the exposure of the state to having to pay court-ordered judgments or settlements.
- **State revenues.** The bill permits DMH to obtain reimbursement for the cost of their evaluation and treatment costs. As of this writing, the nature or magnitude of that potential reimbursement stream is uncertain.
- **GPS monitoring.** The bill requires that, in all cases in which an offender is sentenced under the Sexually Violent Predator Sentencing Law and in which the offender's prison term is modified or terminated, the Adult Parole Authority (APA) must supervise the offender via an active global positioning system (GPS) device. At the time of this writing, it is unclear how many new offenders would be subject to GPS monitoring. The cost of monitoring by the APA is approximately \$6 to \$8 a day, or \$2,200 to \$3,000 a year. APA is permitted to charge the offender for the cost of monitoring, but it seems likely that most would be considered indigent and would not be able to reimburse APA.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
Counties			
Revenues	No readily apparent and discernible fiscal effect	No readily apparent and discernible fiscal effect	No readily apparent and discernible annual fiscal effect
Expenditures	Increase, could easily be tens of thousands of dollars or more for any affected county	Increase, could easily be tens of thousands of dollars or more for any affected county	Increase, could easily be tens of thousands of dollars or more annually for any affected county

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

- **Record reviews.** Based on release data provided by DRC, it appears that, in the first year after the bill's enactment, upwards of 1,100 offenders could be released from prison that were originally sentenced to prison for a sexually violent offense. The names of these released offenders would then be referred to a county prosecutor who would then presumably review the person's record to determine if the person meets the definition of an SVP for the purpose of filing a petition to have that person civilly committed.
- **Petition filings.** At the time of this writing, it is extremely difficult to predict the number of petitions that could be filed annually by each of Ohio's 88 county prosecuting attorneys. Further complicating the matter is the issue of discerning what percentage of the 1,100 or so "sexually violent" offenders would be deemed to "suffer from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence," a key criteria for civil commitment.
- **County costs generally.** The bill's civil commitment proceedings and related duties and responsibilities will likely generate significant additional work for certain officials and associated costs for various operating budget components of county government, including the following: the general division of the common pleas court (judge(s), court-affiliated personnel), the county prosecutor, the county sheriff, indigent defense services, and expert evaluations and testimony (for the prosecution and defense). Although the costs associated with these proceedings for any given county are difficult to quantify, the experience of other states with implementing similar civil commitment laws suggests the total cost for each commitment proceeding could easily range anywhere from \$30,000 to \$80,000 or more for any affected county.

- **Counties: rural versus urban.** The effect and related annual local cost of the bill's civil commitment proceeding will almost certainly vary depending upon whether the county is: (1) located in a rural area with a relatively small population, or (2) located in an urban area with a relatively large population. Arguably, a rural county would lack the experience and resources necessary to adequately handle civil commitment proceedings, in particular money and expertise, but, in any given year, would not make many, if any, civil commitment decisions. Conversely, an urban county would most likely possess more of the skills and resources necessary to adequately handle civil commitment proceedings, but, in any given year, would make a considerably larger number of civil commitment decisions.
- **Prosecution and defense costs.** From the perspective of county prosecutors and defense counsel, many of the decision points associated with the civil commitment process, in particular the probable cause hearing and initial commitment trial, will be problematic. As a result, both parties are likely to expend considerable time and money building the case in support of their respective positions, presenting evidence, and cross-examining witnesses. A costly and critical component for both parties is likely to be the utilization of experts.
- **County sheriff.** The county sheriff will likely incur costs related to the following: (1) transporting a person between a secure DMH facility, a county jail, and the courtroom, (2) intermittent housing of a person in a hearing or trial phase, and (3) possible security enhancements given the risk that a person may represent while being housed or moved.
- **County revenues.** As of this writing, it does not appear that revenue will be generated or lost for local governments, in particular counties, as a result of the bill's civil commitment provisions.

Detailed Fiscal Analysis

Provisions of the bill

For the purposes of this fiscal analysis, the bill most notably in rough chronological order as it pertains to the adjudication and commitment of offenders:

- Requires the Director of Rehabilitation and Correction (DRC) to establish a multidisciplinary team for the purposes of determining if an incarcerated sex offender is a sexually violent predator (SVP), as defined by the bill.
- Permits the prosecuting attorney to file a civil commitment petition in the general division of the court of common pleas irrespective of whether the multidisciplinary team determines that a certain person is an SVP, as defined by the bill.
- Requires a judge to determine whether probable cause exists to believe the person named in the petition is an SVP, as defined by the bill.
- Requires the court to hold a hearing to contest probable cause within 72 hours from the time a person who is an alleged SVP, as defined by the bill, is taken into custody.
- Requires the court to direct that the person, if determined at a probable cause hearing to be an SVP, as defined by the bill, be transferred to an appropriate secure facility for an evaluation by a qualified professional person.
- Requires the court to conduct a trial, within 60 days of the probable cause hearing, to determine whether the person who is the subject of the probable cause hearing is an SVP, as defined by the bill.
- Requires the court, if the court determines that the person is an SVP, as defined by the bill, to civilly commit the sexually violent person to the custody of the Director of Mental Health for control, care, and treatment.
- Requires each person civilly committed to the Department of Mental Health (DMH) to have an examination of the person's mental condition after the first year and every three years thereafter.
- Requires the court to conduct a review of the status of the committed person after the first year and every three years thereafter.
- Requires the court to hold a hearing under certain circumstances to determine if the status of the committed person has changed.
- Requires the court, at the conclusion of the hearing, to either: (1) order the person to remain in the custody of DMH, (2) transfer the person to a transitional release or conditional release program, or (3) order the person finally discharged.
- Provides procedures for the handling of persons placed in transitional release or conditional release, including periodic examinations and program violations.

- Requires DMH to be responsible for all costs relating to the evaluation and treatment of persons committed to the Department's custody and permits DMH to contract with DRC for the housing of such persons.
- Requires DMH to give written notice of the placement or release of the person to certain victims of the person's activities or crime.
- Requires that, in all cases in which an offender is sentenced under the Sexually Violent Predator Sentencing Law and in which the offender's prison term is modified or terminated, the Adult Parole Authority (APA) supervise the offender via an active global positioning system (GPS) device and requires that a sexually violent predator pay the cost of GPS monitoring unless the offender is unable to pay the cost.

Sexual offender commitment in the United States

Today's laws

Relative to the enactment of state laws permitting the civil commitment of SVPs, several observations can be made as follows:

- Nineteen states have laws for the special civil commitment of sex offenders.
- The majority of these sex offender commitment statutes were enacted in the 1990s and, unlike their predecessors, made no provision for commitment or treatment until after an offender had served their criminal sentence and was about to be released from confinement.
- Enacted in 1990, the state of Washington was the first of these new sex offender civil commitment laws written expressly for the post-sentence commitment of sex offenders.
- The state of Washington's sex offender commitment law has served as the model for most of the states that have enacted laws for the special civil commitment of sex offenders.

State of Washington

The factors that qualify a sex offender for civil commitment under the bill are very similar to those under the state of Washington's special civil commitment law in terms of the definition of an SVP and mental abnormality.

In Washington, committed offenders are placed in a secure facility, the Special Commitment Center, which resides within the walls of the state prison at McNeil Island. The delivery of mental health services to these offenders is the responsibility of the state of Washington's Department of Social and Health Services. The number of offenders confined at the Center doubled between 1998 and 2000, and the associated annual operating costs increased from \$6.5 million in 1998 to about \$38.6 million in 2006. Approximately one in every three of those dollars was spent on legal fees connected to the Center, according to the state (Porterfield, 2000). It appears that other states largely mirror Washington's practice, which is to confine such offenders within its prison system and place responsibility for treatment with the appropriate state mental health agency. Under the bill that is the subject of this fiscal analysis, the court civilly commits a sexually violent person to the custody of the

Director of Mental Health for control, care, and treatment. LSC fiscal staff believes it is reasonable to conclude that the civil commitment process in Ohio may gravitate toward Washington state's model in which DRC becomes a prominent partner in the housing and confinement of these civilly committed offenders.

Commitments and releases

Commitments. According to a New York Times article, approximately 2,700 sexual offenders are currently being held in civil commitment type settings.¹ Based on the same source, only 250 offenders have been released unconditionally. Roughly half of these numbers were released based on legal or technical grounds, and not as a result of successful treatment.²

Releases. Based on the experiences of other states, there are at least three mechanisms by which a civilly committed sex offender is released from confinement: (1) placement in outpatient treatment as a less restrictive alternative to confinement, (2) transition to conditional or transitional release after some period of confinement, and (3) outright release by a court.

Available research also suggests the following general observations: (1) most civilly committed sex offenders released from confinement were placed on conditional or transitional release, (2) in the initial years following the enactment of a law authorizing the civil commitment of certain sex offenders, very few, if any, civilly committed sex offenders are released from confinement, and (3) in subsequent years, the number of sex offenders released annually could range anywhere from zero to twelve or so, with the average appearing to be around four.

Costs

Based on the work of others, in particular Fitch and Hammen, the costs associated with the implementation of a sex offender civil commitment law includes the following readily identifiable components, some of which are discussed in more detail immediately below:

- End-of-sentence review to determine whether an offender should be the subject of a petition for commitment.
- Expert evaluations (prior to initial commitment hearing and subsequent annual reviews).
- Legal costs associated with initial commitment hearing and subsequent annual review (probate courts, prosecutors, defense counsel).
- Housing and treatment.
- Capital improvements (construction or renovation of facilities).
- Post-release (outpatient community treatment and supervision costs).

¹ Davey, Monica, and Abby Goodnough, "Doubts Rise as States Hold Sex Offenders after Prison. (National Desk)." *The New York Times* (March 4, 2007): A1 (L), *InfoTrac OneFile*, Thomson Gale, Columbus Metropolitan Library, April 28, 2007.

Confinement costs. The Davey and Abby article published in the New York Times on March 4, 2007, provided an inventory of the civil commitment costs per offender as well as the total budget for each of the 19 states that have implemented these programs (see Table 1 below). Based on this data, and verified by DRC, the average annual cost to commit a single sexually violent offender appears to be approximately \$100,000.

Table 1
Civil Commitment of Sexually Violent Predators*
(as of March 2007)

State	Year Effective	Committed	Total Ever Fully Discharged	Average Cost per Person Committed	Total Civil Commitment Budget (in millions)
Arizona	1995	71	81	\$110,000	\$11.3
California	1995	443	59	\$166,000	\$147.3
Florida	1998	240	7	\$41,845	\$23.3
Illinois	1997	169	2	\$88,000	\$25.8
Iowa	1998	65	9	\$70,000	\$5.0
Kansas	1994	159	13	\$69,070	\$10.9
Massachusetts	1999	105	4	\$48,396	\$30.7
Minnesota	1994	342	0	\$141,255	\$54.9
Missouri	1999	79	1	\$73,724	\$9.8
Nebraska	2006	10	0	\$100,000	\$13.5
New Hampshire	2006	0	---	N/A	N/A
New Jersey	1998	342	13	\$67,000	\$21.9
North Dakota	1997	37	0	\$94,728	\$5.4
Pennsylvania	2003	9	0	\$180,000	\$1.8
South Carolina	1998	70	32	\$41,176	\$2.0
Texas	1999	66	0	\$32,000	\$0.9
Virginia	1999	37	1	\$140,000	\$8.1
Washington	1990	167	4	\$127,632	\$38.6
Wisconsin	1994	283	26	\$102,500	\$34.7

*Davey, Monica, and Abby Goodnough, "Doubts Rise as States Hold Sex Offenders after Prison. (National Desk)." *The New York Times* (March 4, 2007): A1 (L), *InfoTrac OneFile*, Thomson Gale, Columbus Metropolitan Library, April 28, 2007.

Outpatient community treatment costs. Available research suggests that estimating the outpatient community treatment costs for this type of offender population is problematic for various reasons, not the least of which is that the needs of each offender varies widely and the number of offenders who have been released from confinement and placed on conditional or transitional release has been relatively small. That said, the work of various individuals over the last few years indicates that those average annual outpatient community treatment costs vary greatly from jurisdiction to jurisdiction.

² *Ibid.*

It should be noted that outpatient community treatment might not be a viable treatment alternative in the future based on recent reactions across the state to community treatment centers that house sex offenders. In addition, as laws related to sex offender residency continue to become more restrictive, it seems logical to conclude that in time, fewer of these outpatient treatment options will exist.

Legal costs. As of this writing, LSC fiscal staff has not had the opportunity to fully gather reliable information on the legal costs of sex offender civil commitment proceedings and subsequent annual reviews. A few years ago, a state of Washington official estimated that court costs and litigation costs averaged approximately \$35,000 per patient per year. And some years before that, Minnesota estimated that each commitment proceeding cost approximately \$100,000, for attorneys and experts alone, not including other court costs.

Estimating the number of referrals, filings, and commitments

Referrals

The bill appears likely to affect two groups of sex offenders that are prison bound under current law: (1) *sexually violent predators*, and (2) *sexual predators*. In order to mirror the bill however, and for purposes of this fiscal analysis, the affected offenders will simply be referred to as *sexually violent predators*.³ For purposes of civil commitment, the bill defines a *sexually violent predator* as possessing both of the following traits:

- (1) The person has been convicted of or pleaded guilty to a sexually violent offense, has been charged with a sexually violent offense and adjudicated incompetent to stand trial on the charge, or has been charged with a sexually violent offense and found not guilty by reason of insanity of the offense.
- (2) The person suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence.

As stated in section 2971.01 of the Revised Code, a sexually violent offense means any of the following:

- (1) A violent sex offense, which includes:
 - A violation of section 2907.02 (rape), 2907.03 (sexual battery), or former 2907.12 (felonious penetration), or of division (A)(4) of section 2907.05 of the Revised Code (gross sexual imposition if victim is less than 13).
 - A felony violation of a former law of this state that is substantially equivalent to a violation listed in the preceding dot point or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in the preceding dot point.
 - An attempt to commit or complicity in committing a violation listed in preceding dot points if the attempt or complicity is a felony.

³ Use of this term does not necessarily mean that the offender was adjudicated a sexually violent predator with the accompanying specification charge.

OR

- (2) A designated homicide, assault, or kidnapping offense that the offender commits with a sexual motivation.

Based upon research performed by DRC's Bureau of Research, approximately 1,200 offenders were released from prison in calendar year (CY) 2005 who met the criteria to be deemed a "sexually violent offender." Based on release data from the past five years provided by DRC, it appears that, in the first year after the bill's enactment, upwards of 1,100 offenders could be released from prison that were originally sentenced to prison for a "sexually violent offense" as defined by current law. The names of these released offenders would then be referred to a county prosecutor who would then presumably review the person's record to determine if the person meets the definition of an SVP for the purpose of filing a petition to have that person civilly committed.

Filings

Estimating the number of cases in which county prosecutors statewide will file, or alternatively decline to file, a petition is quite difficult. One readily problematic factor is, subsequent to the bill's enactment, how selective the law would be used to identify and civilly commit persons who are believed to be substantial risks of committing future acts of sexual violence. Presumably, a county prosecutor faces a difficult decision in excluding persons from the civil commitment process given the unknown consequences of such a decision should a person who has not been civilly committed later committed another crime. Thus, at the time of this writing, and in light of the heightened public saliency of sex offender sentencing law, LSC fiscal staff is unable to reliably estimate the number of petitions that could be filed annually by each of Ohio's 88 county prosecuting attorneys. Further complicating the matter is the issue of discerning what percentage of the estimated 1,100 or so "sexually violent" offenders would be deemed to "suffer from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence," a key criteria for civil commitment.

A county prosecutor may decline to file a petition for several reasons, including:

- The case review and filing processes could be too time consuming and complex.
- The inability to prove all of the necessary statutory criteria necessary for civil commitment.
- The lack of resources to pursue a civil commitment proceeding.

Commitments

Estimating the number of persons that will be determined by a court to meet the statutory criteria and civilly committed is no less problematic than estimating the number of referrals and filings. Based on release data provided by DRC, it appears that, in the first year after the bill's enactment, upwards of an estimated 1,100 offenders could be released from prison that were originally sentenced to prison for a sexually violent offense. Of this population, only those found to "suffer from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence," would appear to be subject to civil commitment. Predicting how local prosecutors would implement this new

sentencing tool is extremely problematic at this time. However, based on the experiences in other states, LSC fiscal staff believe that it is reasonable to assume that only a relatively small number of offenders potentially meeting the statutory criteria would be civilly committed annually. The uncertainties surrounding the implementation of this civil commitment process in Ohio mean that LSC fiscal staff is unable to reliably estimate the number of offenders potentially meeting the statutory criteria, the number of offenders who will or might be subject to a petition to civilly commit, and the number of offenders actually committed.

State costs

From the state's perspective, the bill will create additional ongoing operating costs for at least two state agencies: the Department of Mental Health (DMH) and the Department of Rehabilitation and Correction (DRC). It is also possible that the annual operating costs of the Public Defender Commission may be affected in a similar manner, but the likelihood and magnitude are uncertain. These state cost effects are discussed in the paragraphs immediately below.

Department of Mental Health

The Department of Mental Health fiscal issues associated with implementing this civil commitment law include most notably: the cost of housing and treatment, the potential effect of population stacking on cost escalation, the cost of annual examinations, the cost of transitional release and conditional release programs, and the potential need to undertake capital improvements.

Housing and treatment costs. From DMH's perspective, the bill's most significant ongoing fiscal effect will likely be the costs associated with the housing and treatment of civilly committed persons. According to DMH, the annual cost per patient in FY 2006 at its maximum security unit was \$223,491. The bill also permits DMH to contract with DRC to house these civilly committed persons, the fiscal effect of which is uncertain as of this writing.

Stacking effect and cost escalation. As noted above, DMH's annual housing and treatment costs will likely experience a notable increase as a result of what is termed a "stacking effect." This term refers to the increase in DMH's civilly committed SVP population that occurs as offenders remain confined over an extended period of time and the number of SVPs civilly committed to the Department's custody does not decrease. The result would be a continuous increase related to stacking in DMH's annual housing and treatment costs. Theoretically, the effect of stacking on DMH's annual housing and treatment costs stabilizes at the point where the same number of civilly committed persons are entering and leaving confinement in a secure facility annually. According to research conducted by DMH, based on the experience of other states, civil commitment rates vary from 3% to 7%.

Examination and court review. Under the bill, an examination of each civilly committed person's mental condition must be performed by DMH one year after commitment and every three years thereafter. The civilly committed person may retain, or if indigent, the court may appoint, a qualified expert or professional person to examine the person, and DMH must provide a copy of the examination to the court. The Department is also required to provide the committed person with a

notice of the person's right to petition the court for discharge over the Department's objection and a form waiving those rights, and to forward the notice and waiver form to the court.

From DMH's perspective, the most costly feature of this examination and court review process is likely to be the evaluation of the person's mental condition. According to the most recent data LSC fiscal staff was able to collect at the time of this writing, the cost of such an examination is currently around \$1,200. For the purposes of this fiscal analysis, LSC fiscal staff has assumed that: (1) each person will receive at least two evaluations: one performed by DMH and one performed by a qualified expert or professional person, the latter most likely being court-appointed as virtually all of these civilly committed persons will be determined indigent, and (2) DMH will be responsible for the costs of both evaluations (a total of at least \$2,400 per person).

Transitional release and conditional release. Under the bill, DMH will be responsible for all costs related to administering the transitional release program and the conditional release program, either of which the court may order a person be placed subsequent to determining that it is safe to do so.

As previously noted, the average annual outpatient community treatment costs of other states vary greatly from jurisdiction to jurisdiction. Based on the experiences of other jurisdictions with a similar civil commitment law, LSC fiscal staff assume that, for the purposes of this fiscal analysis, extremely few, if any, persons will be placed in the transitional release program or conditional release program in the first five years or so following the bill's effective date.

Capital improvements. As of this writing, it appears that DMH may not have adequate and appropriate space to house and treat the SVPs (as defined by the bill) that would be civilly committed to its custody. It is also uncertain as to whether, when, or at what cost DMH might need to purchase, lease, build, or renovate a facility or facilities to house and treat such persons. Typically, DMH's facility improvements are financed through proceeds from special obligation debt issuances; the obligations incurred as a result of issuing bonds are then covered by DMH's GRF line item 333-415, Lease Rental Payments. It seems probable, however, that DMH would contract with DRC to fulfill a portion, if not all, of its facility needs. The cost of the required capital improvements for either or both state agencies is uncertain.

Department of Rehabilitation and Correction

Multidisciplinary team. The bill requires: (1) DRC to establish a multidisciplinary team that may include individuals from other state agencies, (2) DRC to send a notice containing certain information with respect to the offender who meets the criteria of an SVP (as defined by the bill) to the appropriate county prosecutor and the Department's multidisciplinary team at least 90 days prior to their scheduled release from imprisonment, and (3) the multidisciplinary team to determine, within 30 days of receiving such a notice, or a similar notice sent by a county prosecutor if certain persons are adjudicated incompetent to stand trial or not guilty by reason of insanity, if the offender who is the subject of the notice is an SVP (as defined by the bill) and to notify the appropriate county prosecutor of its determination. The prosecutor is authorized to proceed to the hearing regardless of the multidisciplinary team's recommendation.

According to DRC personnel, the multidisciplinary team would be made up of three psychologists at a cost of \$110,000 per person per year in terms of salary and fringe benefits for a total annual cost in salary and fringe benefits of \$330,000.

Monitoring of sexually violent predators during post-release control. The bill requires that, in all cases in which an offender is sentenced under the Sexually Violent Predator Sentencing Law and in which the offender's prison term is modified or terminated, the Adult Parole Authority (APA) must supervise the offender via an active global positioning system (GPS) device. At the time of this writing, it is unclear how many offenders would be subject to GPS monitoring. The cost of monitoring by the APA is approximately \$6 to \$8 a day, or \$2,200 to \$3,000 a year. The APA is permitted to charge the offender for the cost of monitoring, but it seems likely that most would be considered indigent and would not be able to reimburse the APA.

Public Defender

Under current law, the Ohio Public Defender Commission provides, supervises, and coordinates legal representation for persons who cannot afford to hire an attorney to represent them in criminal court, the largest component of which is a subsidy program that reimburses counties for up to 50% of their indigent defense expenditures related to the operation of local public defender offices or the use of appointed counsel.

As currently drafted, the bill appears unlikely to have a direct and immediate fiscal impact on the Commission for two reasons. First, the bill requires the court to appoint counsel to assist indigent offenders at certain stages in the commitment process and subsequent annual court reviews. This would appear to place the burden of paying those defense counsel costs (public defenders and appointed counsel) on the affected county. Second, the Commission's existing reimbursement system for county indigent defense services is provided in the context of a criminal action, not legal services provided in a civil commitment case.

Immunity from civil liability

Under the bill, two of its provisions potentially reduce state legal costs and limit the exposure of the state to having to pay court-ordered judgments or settlements as follows:

- (1) The Department of Rehabilitation and Correction, its employees and officials, and members of the multidisciplinary team are immune from civil liability in damages for any injury, death, or loss allegedly caused by any actions or omissions made in good faith related to determining whether or not a person who is the subject of the notice issued prior to their release from imprisonment is an SVP.
- (2) The failure of DMH to notify a victim or victims of a person prior to that person's release from civil commitment does not create a cause of action against the state or an employee of the state who is acting within the scope of the employee's employment.

State revenues

The bill permits DMH to obtain reimbursement for the cost of their evaluation and treatment costs. As of this writing, the source and magnitude of that potential reimbursement stream is uncertain.

Local costs

The bill's civil commitment proceedings and related duties and responsibilities will likely generate significant additional work for certain officials and associated costs for various operating budget components of county government, including the following: the general division of the common pleas court (judge(s), court-affiliated personnel), the county prosecutor, the county sheriff, indigent defense services, and expert evaluations and testimony (for the prosecution and defense). Although the costs associated with these proceedings for any given county are difficult to quantify, the experience of other states with implementing similar civil commitment laws suggests the total cost for each commitment proceeding could easily range anywhere from \$30,000 to \$80,000 or more for any affected county.

Counties: rural versus urban

The effect and related annual local cost of the bill's civil commitment proceeding will almost certainly vary depending upon whether the county is: (1) located in a rural area with a relatively small population, or (2) located in an urban area with a relatively large population. Arguably, a rural county would lack some of the skills and resources necessary to adequately handle civil commitment proceedings, in particular money and expertise, but, in any given year, would not make many, if any, civil commitment decisions. Conversely, an urban county would most likely possess more of the experience and resources necessary to adequately handle civil commitment proceedings, but, in any given year, would make a considerably larger number of civil commitment decisions.

Courts of common pleas

Specifically in the matter of the general division of the common pleas courts, based on information provided by the Judicial Conference of Ohio, the bill's impact could be quite profound (more cases, more fact finding, more hearings, complex matters).

With regard to a petition filed by the county prosecutor, the judge is required to determine if probable cause exists, and if the judge finds that probable cause exists, the court is required to schedule a probable cause hearing. Subsequent to that hearing, the court could be involved in numerous related decision points over a period of years as follows: initial commitment trial, review of a civilly committed person's mental condition, transitional release hearing(s), transitional release violation hearing(s), conditional release hearing(s), conditional release violation hearing(s), and final discharge hearing(s).

County prosecutor

At a minimum, the county prosecutor will expend time and resources related to reviewing the records of certain persons in order to determine whether those persons meet the definition of an SVP, as defined by the bill. If the county prosecutor determines a person meets the definition, then additional time and resources could be expended as follows: (1) preparing and filing the petition (including sufficient facts to support the allegation), (2) presenting evidence (including expert testimony) and cross-examining witnesses at a probable cause hearing, and (3) presenting evidence (including expert testimony) and cross-examining witnesses at a trial to determine whether the person who was the subject of the probable cause hearing will be committed to a secure DMH facility. Relative to a person

committed to a secure DMH facility, the county prosecutor has an ongoing role in the court's review of the person's mental condition, as well as the court's decisions on transitional release, conditional release, release violations, and final discharge.

Indigent defense counsel

A person subject to civil commitment will be entitled to be represented by counsel in numerous related decision points over a period of years as follows: probable cause hearing, initial commitment trial, review of a civilly committed person's mental condition, transitional release hearing(s), transitional release violation hearing(s), conditional release hearing(s), conditional release violation hearing(s), and final discharge hearing(s). If the person is determined to be indigent by the court, then the judge of the court is required to appoint counsel to represent the person. It seems reasonable to conclude that many, if not all, persons subject to a civil commitment proceeding would be unable to afford counsel and require the services of a public defender or appointed counsel.

County sheriff

The county sheriff will likely incur costs related to the following: (1) transporting a person between a secure DMH facility, a county jail, and the courtroom, (2) intermittent housing of a person in a hearing or trial phase, and (3) possible security enhancements given the risk that a person may represent while being housed or moved.

Decision points affecting county government

Between the required review of the records of certain persons by the county prosecutor and the final discharge of a person from the custody of DMH, the bill's civil commitment process contains numerous decision points that affect the duties and responsibilities of certain county-affiliated entities and create related costs at each of these decision points, the magnitude of which is difficult to estimate. A general outline of those decision points follows.

Record review by county prosecutor

With regard to the review of the records of certain persons, the bill requires the county prosecutor to promptly send certain information to DRC's multidisciplinary team for any person charged with a sexually violent offense and subsequently adjudicated incompetent to stand trial or not guilty by reason of insanity.

Decision made by county prosecutor to file a petition

The bill permits the county prosecutor to file a petition in the common pleas court alleging that a person is an SVP for purposes of civil commitment.

Probable cause determination by judge

Upon the filing of a petition, the judge of the probate court is required to determine whether probable cause exists to believe that the person named in the petition is a sexually violent person, and, if so, that person is to be taken into custody.

Probable cause hearing

Subject to a person being taken into custody, the bill:

- Requires the common pleas court, within 72 hours of finding that probable cause exists, to provide the alleged SVP with an opportunity to appear in person at a hearing to contest probable cause.
- Provides the alleged SVP with certain rights at the hearing, including the right to: (1) be represented by counsel, (2) present evidence, (3) cross-examine witnesses, and (4) view and copy all petitions and reports.

Clinical evaluation

If the court determines that probable cause exists, the bill directs the court to:

- Transfer the person to a secure facility for an evaluation to be conducted by a qualified person.
- Assist the alleged SVP, if that person so wishes, in obtaining an expert or professional person of their choice to perform an evaluation or participate in the trial on that person's behalf.
- Approve payment for the services provided by the expert or professional person.

Pre-trial evaluation

Before a court hearing on the issue, the bill adds an additional review of a committed person by the local forensic center if the Department of Mental Health or the treatment center that is treating the person determines that the committed person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if released or discharged. Presumably, these costs would be comparable to the annual mental examination costs: \$2,400 annually per offender.

Trial

Within 60 days after completion of the probable cause hearing, subject to certain exceptions, the bill requires the court to conduct a trial to determine whether the person who is the subject of the probable cause hearing is an SVP as follows:

- At all stages of these proceedings the alleged SVP is entitled to the assistance of counsel, to be appointed by the court if the alleged SVP is indigent.
- If the alleged SVP has been found incompetent to stand trial, the court has to first hear evidence and then enter an order (a "final order" that may be appealed) containing a specific finding, including "by clear and convincing evidence" that the person did commit the act or acts charged.
- At the trial, the court is required to determine "by clear and convincing evidence" that the person is an SVP as defined by the bill.
- The determination is a final order that may be appealed.
- At the conclusion of the trial, the court is required to either: (a) if adjudicated an SVP, civilly commit the person to DMH for control, care, and treatment or return the person to DRC to complete their prison term prior to being civilly committed to DMH, (b) if not adjudicated an SVP, return the person to DRC to complete any time remaining on their prison term prior to being released from imprisonment, or (c) if not adjudicated an SVP, release the person.

Examinations

Under the bill, once a person is civilly committed to DMH, the following occurs:

- An examination of the person's mental condition must be performed after one year and every three years thereafter.
- The civilly committed person may retain, or if indigent, the court may appoint, a qualified expert or professional person to examine the person.
- The Department of Mental Health must provide a copy of the examination to the court.

Reviews

Under the bill, the court is required to conduct a review of the status of the civilly committed person after one year and every three years thereafter with the following conditions:

- The person may petition the court for discharge.
- The Department of Mental Health (DMH) is required to: (a) provide the committed person with a notice of the person's right to so petition over the Department's objection and a form waiving those rights, and (b) forward the notice and waiver form to the court.
- The committed person has the right to have an attorney present at the review, but is not entitled to be present.
- If the court determines that the person's mental condition has so changed that the person is safe to be placed in transitional release, then the court is required to set a hearing on the issue.

- If DMH determines that the person's mental condition has so changed that the person is safe to be placed in transitional release, then the Department is required to authorize the person to petition the court for transitional release.

Transitional release

- If, after being authorized by DMH, a civilly committed person files a petition for transitional release, the petition is to be served upon the court, and the court must schedule a hearing to be held within 30 days of the filing.
- At a transitional release hearing, the committed person is entitled to be present and entitled to certain constitutional protections, the county prosecutor represents the state, both parties have a right to a trial, both parties have a right to have the committed person evaluated by experts chosen by the state, the committed person has the right to have experts or professional persons evaluate the person on the person's behalf, and if requested, the court is required to appoint an expert if the person is indigent.
- The state has the burden of proving "by clear and convincing evidence" that the person, if released, is likely to engage in acts of sexual violence.
- At the conclusion of the hearing, the court is required to either: (a) order the person to remain with DMH in a secure facility, or (b) transfer the person to the transitional release program.
- At least annually, treatment staff is required to examine the civilly committed person to determine if the person's mental condition has so changed as to warrant being considered for the conditional release program and to forward a report of the examination to the court.

Transitional release violations

- If a violation of the transitional program is determined to have occurred, the treatment staff may request either verbally or by telephone the court to issue an emergency ex parte order directing any law enforcement officer to take a person in the transitional program into custody and return the person to the secure commitment facility.
- Upon a person's return, DMH is required to give notice of the return to the court.
- The court is required to schedule the matter for a hearing within ten working days of the receipt of the notice and give notice to the county prosecutor, the person, and DMH.
- The county prosecutor has the burden of proof to show by clear and convincing evidence that the person violated any conditions of the transitional release program.
- The hearing is before the court.
- At the conclusion of the hearing, the court is required to either: (a) order the person to remain with DMH in a secure facility, or (b) transfer the person to the transitional release program (further conditions may be ordered by the court).

Conditional release

- Upon receiving a report of the examination of a civilly committed person in the transitional release program forwarded by the treatment staff, the court is required to review the report, and if the court determines that probable cause exists to believe that the person's mental condition has so changed that the person is safe to be placed in conditional release, the court is required to set a hearing on the issue.
- At a conditional release hearing, the committed person is entitled to be present and entitled to certain constitutional protections, the county prosecutor represents the state, both parties have a right to have the committed person evaluated by experts chosen by the state, the committed person has the right to have experts or professional persons evaluate the person on the person's behalf, and if requested, the court is required to appoint an expert if the person is indigent.
- The state has the burden of proving "by clear and convincing evidence" that the person, if released, is likely to engage in acts of sexual violence.
- Subsequent to either a review or a hearing, the court is required to issue an appropriate order with findings of fact.
- The order is required to be provided to the county prosecutor, the person, and DMH.
- At the conclusion of the hearing, the court is required to either: (a) order the person to remain in the custody of DMH in the transitional program or a secure facility, or (b) order the person to be placed in the conditional release program.
- Based upon the recommendation of the treatment staff, the court is required to establish a plan of treatment that the civilly committed person is required to accept and is prepared to follow.
- The civilly committed person retains the right to annual reviews if not finally discharged by the court.

Conditional release violations

- If a violation of the conditional release program has been determined to have occurred, the professional person designated by the court to monitor the person's compliance may request either verbally or by telephone the court to issue an emergency ex parte order directing any law enforcement officer to take a person in the conditional release program into custody and return the person to the secure commitment facility.
- Upon a person's return, DMH is required to give notice of the return to the court.
- The court is required to schedule the matter for a hearing within ten working days of the receipt of the notice and give notice to the county prosecutor, the person, and DMH.
- The county prosecutor has the burden of proof to show by clear and convincing evidence that the person violated any conditions of the conditional release program.
- The hearing is before the court.
- At the conclusion of the hearing, the court is required to either: (a) order the person to remain with DMH in the secure commitment facility, or (b) transfer the person to the

transitional release program or the conditional release program (further conditions may be ordered by the court).

Final discharge

- Subsequent to reviewing a report on a civilly committed person placed in the conditional release program, if the court determines that probable cause exists to believe the person is safe to be entitled to final discharge, the court is required to schedule a hearing on the issue.
- At a final discharge hearing, the committed person is entitled to be present and entitled to certain constitutional protections, the county prosecutor represents the state, both parties have a right to a trial, both parties have a right to have the committed person evaluated by experts chosen by the state, the committed person has the right to have experts or professional persons evaluate the person on the person's behalf, and if requested, the court is required to appoint an expert if the person is indigent.
- The state has the burden of proving "by clear and convincing evidence" that the person, if released, is likely to engage in acts of sexual violence.
- At the conclusion of the hearing, the court is required to either: (a) order the person to remain in the custody of DMH in the transitional release program, the conditional release program, or a secure facility, or (b) order the person finally discharged.

Petitions from a civilly committed person, generally

- Nothing prohibits a civilly committed person from filing a petition for transitional release, conditional release, or final discharge.
- Upon receipt of a petition from a civilly committed person, submitted without DMH approval, the court is: (a) required whenever possible to review the petition and deny the petition without a hearing if the court determines it to be frivolous, and (2) deny subsequent petitions from a civilly committed person if certain conditions are not met.

Local revenues

As of this writing, it does not appear that revenue will be generated or lost for local governments, in particular counties, as a result of the bill's civil commitment provisions.

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