



Ohio Legislative Service Commission

Matthew L. Stiffler

Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 10 of the 128th G.A. **Date:** March 1, 2010

Status: As Re-referred to Senate Judiciary Civil Justice **Sponsor:** Rep. Brown

Local Impact Statement Procedure Required: Yes

Contents: Protection order for a child, fees collected by courts

State Fiscal Highlights

STATE GOVERNMENT

FY 2010 – FUTURE YEARS

General Revenue Fund (GRF)

Revenues Potential, not likely to exceed minimal, annual incarceration cost increase

Expenditures - 0 -

Certain Funds of the Office of the Attorney General

Revenues - 0 -

Expenditures Potential, not likely to exceed minimal, annual increase in legal representation costs

Indigent Defense Support Fund (Fund 5DY0)

Revenues Potential negligible annual gain in locally collected state court costs

Expenditures - 0 -

Victims of Crime/Reparations Fund (Fund 4020)

Revenues Potential negligible annual gain in locally collected state court costs

Expenditures Potential annual increase of up to \$300,000 to reimburse certain county electronic monitoring costs

Civil Legal Aid Fund (Fund 5740)

Revenues Potential gain of up to \$3.23 million or more annually

Expenditures Potential increase, commensurate with annual revenue gain

Civil Filing Fee Fund (Fund 5CX0)

Revenues Potential loss of up to \$71,000 or more annually

Expenditures Potential decrease, commensurate with annual revenue loss

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- **Incarceration expenditures.** If, as assumed herein, unauthorized use of the Ohio Law Enforcement Gateway (OHLEG) is relatively infrequent, then the number of persons that might be convicted of such use and sentenced to a prison term annually is likely to be extremely small, with, at most, a minimal increase in the Department of Rehabilitation and Correction's annual incarceration expenditures. Minimal for the state means an estimated cost of less than \$100,000 per year.

- **Attorney General.** The requirement that the Attorney General provide representation in a civil action brought against a judge of a court of appeals or a person employed by a court of appeals is not anticipated to generate more than a minimal increase in the Attorney General's workload and related annual operating expenses.
- **Court cost revenues.** As the number of assumed violators of the OHLEG prohibition in any given year will be relatively small statewide, it seems likely that the additional amount of court cost revenues generated annually for either the Indigent Defense Support Fund (Fund 5DY0) or the Victims of Crime/Reparations Fund (Fund 4020) would be, at most, negligible. Negligible for the state herein means a revenue gain estimated at less than \$1,000 per year.
- **Victims of Crime/Reparations Fund (Fund 4020).** The bill caps the total amount that can be paid from the fund for certain local electronic monitoring costs at \$300,000 per year.
- **Civil filing fee revenues.** The bill increases, from \$26 to \$31, the filing fees collected by municipal courts, county courts, and courts of common pleas in each civil action or proceeding, subject to exceptions on certain matters filed in the probate division of the court of common pleas, and changes the distribution of fees from 96%/4% to the Civil Legal Aid Fund (Fund 5740) and Civil Filing Fee Fund (Fund 5CX0), respectively, to 97%/3%. As a result, LSC fiscal staff estimates that the state's Legal Aid Fund (Fund 5740) will gain up to \$3.23 million annually or more and the state's Civil Case Filing Fee Fund (Fund 5CX0) will lose up to \$71,000 or more annually.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010 – FUTURE YEARS

Courts of Common Pleas (protection orders)

Revenues Potential negligible annual gain in court costs

Expenditures Factors increasing and decreasing court operating costs, with net annual fiscal effect uncertain, but potentially resulting in more than minimal annual increase in jurisdictions with relatively large caseloads

County Sheriffs (protection order monitoring)

Revenues Potential state reimbursement of monitoring costs, annual magnitude uncertain

Expenditures Potential increase to electronically monitor respondents, annual magnitude uncertain

County Criminal Justice Systems Generally (OHLEG violations)

Revenues Potential minimal annual gain in court costs and fines

Expenditures Potential minimal annual increase to prosecute, adjudicate, and sanction unauthorized use of the Ohio Law Enforcement Gateway (OHLEG)

County and Municipal General Funds (court fees)

Revenues (1) Gain from certain court fee increases, annual magnitude uncertain;
(2) Potential gain of up to \$32,000 or more statewide from civil filing fees

Expenditures Potential annual increase, up to available revenue

County Indigent Guardianship Fund (court fees)

Revenues Gain from certain court fee increases, annual magnitude uncertain

Expenditures Potential annual increase, up to available revenue

Court Computerization Fees (courts of common pleas and municipal courts)

Revenues Potential gain for computerization projects, annual magnitude uncertain

Expenditures Potential annual increase, up to available revenue

Butler County Court of Common Pleas

Revenues - 0 -

Expenditures Potential minimal annual savings effect

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

- **Juvenile division of courts of common pleas.** The bill's provisions related to a protection order for a child will, in all likelihood, increase the number of matters to be disposed of by the juvenile division of the court of common pleas. However, LSC fiscal staff cannot estimate with much certainty the fiscal effect of these child protection order provisions on the juvenile division of any given court of common pleas other than to assert the possibility that certain courts, most likely those with jurisdictions carrying relatively large caseloads, could require a more than minimal increase in resources. For the purposes of this fiscal analysis, a more than minimal increase means a cost estimated in excess of \$5,000 per year for any affected court.
- **General division of courts of common pleas.** Relative to the general divisions of courts of common pleas, the bill's child protection order provisions create a potential savings effect that may or may not manifest itself in terms of an actual reduction in the annual operating expenses of any given general division. It seems more likely that, given the magnitude and increase in the caseloads of courts generally and the tight budgetary environment, the general divisions of courts of common pleas

would be able to reallocate existing resources in order to more efficiently and effectively perform other duties and responsibilities.

- **County sheriffs.** Presumably, in many, if not all, instances, the duty to electronically monitor certain respondents will be performed by another county-affiliated entity, possibly the county sheriff or a unit of the court, which would incur the cost to install and monitor the electronic device placed on an indigent respondent. The annual magnitude of the additional installation and monitoring costs that any given county might incur is uncertain. Also uncertain is the degree to which the combination of respondent payments and state Fund 4020 moneys will offset the costs any given county entity incurs to establish and maintain its electronic monitoring system.
- **County criminal justice system generally.** If, as assumed herein, unauthorized use of the Ohio Law Enforcement Gateway (OHLEG) is relatively infrequent, then the number of related criminal matters that any given county criminal justice system might have to process annually is likely to be extremely small. Any resulting cost increase, if any, to prosecute, adjudicate, and sanction violators is likely to be minimal at most annually. The amount of related annual revenues in the form of court costs and fines collected from violators is also likely to be minimal at most.
- **Civil filing fees.** The bill increases, from \$26 to \$31, the filing fees collected by municipal courts, county courts, and courts of common pleas in each civil action or proceeding, subject to exceptions on certain matters filed in the probate division of the court of common pleas. Under current law, unchanged by the bill, the court is permitted to retain up to 1% of the collected civil filing fee to cover administrative costs. As a result of the fee increase, courts statewide will retain up to \$32,000 or more annually.
- **County general fund.** Because data on the current collection of court of common pleas service fees is not readily available, the magnitude of the additional moneys that will be collected in the form of certain court fees for deposit in any given county's general fund annually is uncertain.
- **County indigent guardianship fund.** Information on all of the fees currently being collected by the court of common pleas, particularly the probate division, of the state's 88 courts is not stored in a readily available centralized database. This makes the task of calculating the magnitude of the bill's revenue effects on any given county indigent guardianship fund problematic. It is highly certain that each such county fund will collect additional moneys, but the annual magnitude is uncertain.
- **Court computerization fees.** Because the authority of the court of common pleas or a municipal court to charge computerization fees is permissive, and data on the current collection of such fees is not readily available, the magnitude of the additional moneys that any given court might collect and expend annually for computerization purposes is uncertain.

- **Butler County Court of Common Pleas.** The bill permits certain cases that would, under current law, be adjudicated by the Court's Juvenile Division to be adjudicated by the Court's Domestic Relations Division. It is LSC fiscal staff's understanding that the intended result is to permit the Butler County Court of Common Pleas, generally, to more efficiently and effectively manage its caseload.
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Detailed Fiscal Analysis

Operation of the bill

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

- Gives the juvenile court jurisdiction to hear, determine, and enforce matters involving protection orders against a child.
- Permits any person on behalf of that person, any parent or adult household member on behalf of any other family or household member, or anyone who is determined by the juvenile court in its discretion as an appropriate person to seek such relief on behalf of any child.
- Specifies, in the context of issuing a protection order, the circumstances when the court may order that the respondent be electronically monitored for a period of time.
- Caps the amount of money able to be spent from the state's Victims of Crime/Reparations Fund for certain local electronic monitoring costs at \$300,000 annually.
- Allows the juvenile court to determine if the respondent is entitled to court-appointed counsel.
- Requires the juvenile court, when certain specified circumstances are met, to expunge all of the records in a proceeding.
- Includes a foster parent in the definition of "family or household member" in the criminal and civil domestic violence laws.
- Prohibits the unauthorized use of the Ohio Law Enforcement Gateway (OHLEG), a violation of which is a felony of the fifth degree.
- Requires the Attorney General to provide representation in a civil action brought against a judge of a court of appeals or a person employed by a court of appeals.
- Gives the judges of the Butler County Court of Common Pleas concurrent jurisdiction with judges of the Juvenile Division of the Butler County Court of Common Pleas with respect to certain custody and support cases.
- Increases the additional filing fees in municipal and county courts and courts of common pleas, makes changes in their distribution, and restricts the use of

any portion of those fees received by the Ohio Legal Assistance Foundation or any recipient of financial assistance from the Foundation.

- Increases the amounts of selected probate fees that must be deposited in a county indigent guardianship fund.
- Allows a municipal court or a court of common pleas court to increase, by rule, the fees charged and deposited in their computerization fund.
- Allows a court of common pleas to increase, by rule, the fees charged for certain proceedings.

Protection orders for a child

One of the more pronounced local fiscal effects produced by the bill will likely be experienced by courts of common pleas, which, under current law, have jurisdiction over matters involving protection orders against a child. Based on LSC fiscal staff's conversations with various court personnel, including juvenile court judges, it appears that the bill's provisions regarding the giving of jurisdiction involving protection orders against a child to the juvenile division raise some potential workload and cost concerns. Additionally, other components of county government, specifically sheriffs or probation departments, may experience a related increase in their workload and associated annual operating expenses.

Juvenile division of courts of common pleas

As noted, the provisions of the bill related to a protection order for a child will, in all likelihood, increase the number of matters to be disposed of by the juvenile division of the court of common pleas. This increase will be a function of at least three variables: (1) the number of protection order-related matters where the juvenile division would have jurisdiction, (2) the number of new matters generated by permitting certain persons to file for a motion for a protection order on behalf of a child, and (3) the number of additional hearings, or increased complexity, to dispose of these matters involving questions of electronic monitoring, court-appointed counsel, or expungement of a respondent's record.

The data necessary for LSC fiscal staff to reliably estimate the potential increase in juvenile court caseloads statewide, or for the juvenile division of any given court of common pleas, is not readily available; however, we have collected the following information that is suggestive of the dynamic that the bill may trigger:

- Surveys of younger persons (teens, students, girls) indicate anywhere from one-quarter to one-half of the respondents have experienced, or know someone who has experienced, a violent relationship.
- An increase in the number or complexity of hearings for protection orders involving jurisdiction, electronic monitoring, the appointment of counsel, and expungement of the order.

- In conversations with LSC fiscal staff, some judges, who more or less exclusively handle juvenile matters, expressed concern over how large the increase in their annual caseloads could be and the likely expenditure effect. From their perspective, court resources are already generally strained and the adding of new matters to that situation creates more pressure, especially in light of the fact that hearings and determinations have to be done in a timely manner when involving a protection order.

Unfortunately, LSC fiscal staff cannot project the fiscal effect of these child protection order provisions on the juvenile division of any given court of common pleas other than to assert the possibility that certain courts, most likely those with jurisdictions carrying relatively large caseloads, could require a more than minimal increase in resources. For the purposes of this fiscal analysis, a more than minimal increase means a cost estimated in excess of \$5,000 per year for any affected court.

General division of courts of common pleas

As a result of the bill's child protection order provisions, some number of matters that would have been under the jurisdiction of the general division of a court of common pleas will be assumed by the court's juvenile division, sometimes referred to as the juvenile court. Presumably, this creates a potential savings effect that may or may not manifest itself in terms of an actual reduction in the annual operating expenses of any given general division. It seems more likely that, given the magnitude and increase in the caseloads of courts generally and the tight budgetary environment, the general divisions of courts of common pleas would be able to reallocate existing resources in order to more efficiently and effectively perform other duties and responsibilities.

Monitoring costs

As a result of the bill, it is possible that the court will order additional respondents be subject to electronic monitoring by the appropriate law enforcement agency, the cost of which is generally the responsibility of the respondent. Under current law, if the court determines that the respondent is indigent, then the cost to install and monitor the electronic monitoring device is to be paid out of funds drawn from the state's Victims of Crime/Reparations Fund (Fund 4020). The bill: (1) caps the total amount that can be paid from the fund for certain local electronic monitoring costs at \$300,000 per year and (2) prohibits the court from ordering the electronic monitoring of a respondent who is an indigent minor when the state has equaled or exceeded the \$300,000 cap noted in (1).

Presumably, in many, if not all, instances, this monitoring duty will be performed by another county-affiliated entity, possibly the sheriff or a unit of the court, that would incur the cost to install and monitor the electronic device placed on an indigent respondent. The annual magnitude of the additional installation and monitoring costs that any given county might incur is uncertain. Also uncertain is the

degree to which the combination of respondent payments and Fund 4020 moneys will offset the costs any given county entity will incur to establish and maintain its electronic monitoring system.

Foster parents as domestic violence victims

By expanding the definition of "family or household member" in the criminal and civil domestic violence laws to include a foster parent, the bill provides an additional class of persons access to a wider array of civil and criminal protection orders and potentially subjects certain offenders to enhanced penalties. Based on LSC fiscal staff's research into the fiscal implications, it does not appear that this definitional expansion will generate any noticeable fiscal effect on the caseloads of local criminal or civil justice systems, nor for the state in terms of locally collected state court cost revenues or incarceration costs.

Butler County Court of Common Pleas

The bill gives the judges of the Butler County Court of Common Pleas concurrent jurisdiction with judges of the Juvenile Division of the Butler County Court of Common Pleas with respect to certain custody and support cases.

As a result of this provision, certain matters that would have been under the jurisdiction of the Juvenile Division of the Butler County Court of Common Pleas will be adjudicated by the Court's Domestic Relations Division. Presumably, this creates a potential savings effect that may or may not manifest itself in terms of an actual reduction in the annual operating expenses of the Court's Juvenile Division. It seems more likely that, given the magnitude and increase in the caseloads of courts generally and the tight budgetary environment, the Juvenile Division would be able to reallocate existing resources in order to more efficiently and effectively perform other duties and responsibilities. It is expected that the Domestic Relations Division will be able to absorb these additional cases and related operating costs.

Ohio Law Enforcement Gateway

The bill prohibits the unauthorized use of the Ohio Law Enforcement Gateway (OHLEG), a violation of which is a felony of the fifth degree. If convicted of a violation, a person faces a possible definite prison term of six to twelve months and/or a possible fine of up to \$2,500. Herein, we assume that OHLEG will generally be used for appropriate law enforcement purposes and thus violations of the prohibition will be relatively infrequent.

Local fiscal effects

If, as assumed violations are relatively infrequent, then the number of related criminal matters that any given county criminal justice system might have to process annually is likely to be extremely small. Any resulting cost increase, if any, to prosecute, adjudicate, and sanction violators is likely to be minimal at most annually.

The amount of related annual revenues in the form of court costs and fines collected from violators is also likely to be minimal at most.

State fiscal effects

Incarceration expenditures

As a result of violating the prohibition, a violator may be sentenced to a prison term. In theory, such an outcome increases the Department of Rehabilitation and Correction's incarceration expenditures, as additional moneys would have to be expended to house and service those persons. If, as assumed, violations are relatively infrequent, then the number of persons that might be sentenced to a prison term annually is likely to be extremely small. Any resulting increase in the Department's annual incarceration expenditures is likely to be minimal at most. Minimal for the state means an estimated cost of less than \$100,000 per year.

Court cost revenues

In the case of a felony conviction, the court generally must impose locally collected state court costs totaling \$60. Half of that amount, or \$30, is deposited in the Indigent Defense Support Fund (Fund 5DY0). The other half, or \$30, is deposited in the Victims of Crime/Reparations Fund (Fund 4020). As the number of assumed violators in any given year will be relatively small statewide, it seems likely that the additional amount of court cost revenues generated for either state fund annually would be, at most, negligible. Negligible for the state herein means a revenue gain estimated at less than \$1,000 per year.

Attorney General

The bill requires the Attorney General to provide representation in a civil action brought against a judge of a court of appeals or a person employed by a court of appeals. The requirement that the Attorney General provide this legal representation is not anticipated to generate more than a minimal increase in the Attorney General's workload and related annual operating expenses.

Civil filing fees

The bill: (1) increases, from \$26 to \$31, the filing fees collected by municipal courts, county courts, and courts of common pleas in each civil action or proceeding, subject to exceptions on certain matters filed in the probate division of the court of common pleas, (2) makes changes in their distribution, and (3) restricts the use of any portion of those fees received by the Ohio Legal Assistance Foundation or any recipient of financial assistance from the Foundation.

Under current law, unchanged by the bill, the court is permitted to retain up to 1% of the collected filing fees to cover administrative costs, and the remainder is forwarded to the state treasury for distribution between the Legal Aid Fund (96% of the forwarded amount) and the Civil Case Filing Fee Fund (4% of the forwarded amount). The bill changes the distribution of the total amount forwarded to the state treasury so

that the Legal Aid Fund receives 97% rather than 96% and the Civil Case Filing Fee Fund receives 3% rather than 4%.

LSC fiscal staff estimates the filing fee increase will generate up to \$3.19 million or more annually statewide. If this was true, then courts statewide will retain up to \$32,000 or more annually. As a result of the filing fee increase, and the change in the disposition of the amounts forwarded for deposit in the state treasury, the state's Legal Aid Fund (Fund 5740) will gain up to \$3.23 million or more annually and the state's Civil Case Filing Fee Fund (Fund 5CX0) will lose up to \$71,000 or more annually.

Court fees

Local fiscal effects

The bill, in effect, permits the court of common pleas, primarily the probate division, to increase certain fees that the court is currently required or permitted to charge for the provision of various services. As a result, all of the state's 88 counties will be in a position to collect additional moneys to be used for various general and specified purposes. As information on all of the fees currently being collected by the state's 88 courts of common pleas is not stored in a readily available centralized database, the magnitude of the additional moneys that each county could collect annually is uncertain, but would likely exceed minimal in more populous jurisdictions. A more than minimal gain in county revenue herein means an estimated increase in excess of \$5,000 annually.

County general fund

The bill increases numerous fees that the courts of common pleas, primarily the probate division, charges for services that, under current law and unchanged by the bill, are directed for deposit in the county's general fund. Because data on the current collection of such fees is not readily available, the magnitude of the additional moneys that will be collected for deposit in any given county's general fund annually is uncertain.

County indigent guardianship fund

The bill will generate additional moneys for deposit in each county's existing indigent guardianship fund as follows:

- Increases the fee charged for docketing and indexing proceedings by \$15, from \$15 to \$30, and directs the additional \$15 for deposit in the county indigent guardianship fund.
- Increases the fee charged for the appointment of a fiduciary by \$20, from \$35 to \$55, and directs \$50 for deposit in the county indigent guardianship fund.
- Increases the fee charged for a marriage license by \$10, from \$10 to \$20, and directs the additional \$10 for deposit in the county indigent guardianship fund.

- Leaves unchanged the current \$60 fee charged for relieving an estate from administration or granting a summary release from administration, but increases the portion of that fee directed for deposit in the county indigent guardianship fund by \$10, from \$20 to \$30, and decreases the portion of that fee directed for deposit in the county general fund by \$10, from \$40 to \$30.

Information on all of the fees currently being collected by the probate divisions of the state's 88 courts of common pleas is not stored in a readily available centralized database. This makes the task of calculating the magnitude of the bill's revenue effects on any given county indigent guardianship fund problematic. It is highly certain that each such county fund will collect additional moneys, but the annual magnitude is uncertain.

Current law generally limits expenditures from the county indigent guardianship fund for payment of any cost, fee, charge, or expense associated with the establishment, opening, maintenance, or termination of a guardianship for an indigent ward. If the amount of moneys credited to the fund annually in any given county rise, as expected, then the amount expended from that fund may increase as well, but the likelihood of an expenditure increase and its magnitude are uncertain.

County computerization fees

The bill allows a municipal court or a court of common pleas to, by rule, increase to \$6, from \$3, the maximum amount of the additional fees that the court may charge to computerize the court, make available computerized legal research services, or computerize the offices of the court division's clerk. Because the authority to charge such fees is permissive, and data on the current collection of such fees is not readily available, the magnitude of the additional moneys that any given court or division of a court of common pleas might collect and expend annually for computerization purposes is uncertain.