



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 477 of the 129th G.A.

**Date:** November 13, 2012

**Status:** As Introduced

**Sponsor:** Reps. Slaby and Bubp

**Local Impact Statement Procedure Required:** Yes

**Contents:** Prosecution right to appeal

### State Fiscal Highlights

#### STATE FUND

#### FY 2013 – FUTURE YEARS

##### General Revenue Fund (GRF)

Revenues - 0 -

Expenditures Potential increase for courts of appeals to adjudicate additional appeals; Likely negligible annual cost for Attorney General to make certain appeals

##### Indigent Defense Support Fund (Fund 5DY0)

Revenues - 0 -

Expenditures Potential annual increase for indigent defense reimbursement

Note: The state fiscal year is July 1 through June 30. For example, FY 2013 is July 1, 2012 – June 30, 2013.

- **Courts of appeals.** The potential cost for the state's 12 district courts of appeals to adjudicating additional appeals is uncertain, as it is unclear as to whether the increased filings in any given district will be a couple of dozen or run into the hundreds. If the increase noticeably adds to a court of appeals' pending caseload, then there may be a need to add staff, in particular law clerks.
- **Attorney General.** The Attorney General's Office may experience a negligible increase in workload if the Special Prosecutions Unit chooses to file additional appeals. Any increase in workload would largely result in time being devoted to the additional appeals that might have otherwise been expended on other matters.
- **Public Defender.** The Office of the Ohio Public Defender may incur additional costs to reimburse counties for indigent representation provided in additional appeals. Whether that increase could be in the tens or hundreds of thousands of dollars annually will be subject to available appropriations.

# Local Fiscal Highlights

## LOCAL GOVERNMENT

FY 2013 – FUTURE YEARS

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### Indigent Defense

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Revenues - 0 -

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Expenditures Potential increase, possibly in the tens of thousands of dollars annually for larger counties and municipalities

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### Prosecutors

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Revenues - 0 -

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Expenditures Potential increase to prosecute additional appeals, possibly in the tens of thousands of dollars annually for larger counties and municipalities

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

- As a result of the bill, some local prosecutors will continue to expend time and effort on matters that might not otherwise have been appealed. Whether the number of additional appeals filed by any given local prosecutor will be a couple of dozen or run into the hundreds is uncertain. If the number of appeals puts a strain on existing prosecutorial staff and adjustments cannot be made elsewhere in office operations, then additional staff may need to be hired.
- Local indigent defense systems may experience an increase in costs to provide indigent representation in cases that might otherwise have not been appealed, with their magnitude increasing as the number of appeals increases. It is estimated that each appeal will generate additional defense costs in the \$1,000 to \$1,500 range.

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## Detailed Fiscal Analysis

### Overview

The bill permits the prosecution in a criminal or juvenile case to appeal a trial court's decision, order, or judgment as a matter of right, including a final order or judgment. Under existing law, decisions granting certain motions may already be appealed by right and others may be appealed by leave of court. Existing law does not permit the appeal of the final verdict by the prosecution. The frequency with which an appeal is made by leave of court under current law is unclear. Conversations with interested parties have revealed that motions to appeal by leave of court are not tracked and such data is not readily available. Anecdotally, it appears that these motions are not overly common and generally do not exceed a couple of dozen annually in the larger counties. The bill is expected to increase the number of prosecutorial appeals, but whether its magnitude will be in the hundreds or thousands annually statewide is uncertain.

Permitting the appeal of a court's action as a matter of right basically removes the appeal by leave of court requirement and expands the number of motions and cases where an appeal as a matter of right is possible. As a result, there will be an increase in workload for the courts of appeals, local prosecutors (including county prosecuting attorneys, village solicitors, city law directors, and similar chief legal officers of municipal corporations), defense counsel, and possibly the Office of the Attorney General.

### Courts of appeals

If the bill were to become law, the state's 12 district courts of appeals will experience some increase in the number of new criminal and juvenile filings appealing matters from common pleas, municipal, and county courts. The potential cost of adjudicating these additional appeals is uncertain, as it is unclear as to whether the increased filings in any given district will be a couple of dozen or run into the hundreds. If the increase noticeably adds to a court of appeals' pending caseload, then there may be a need to add staff, in particular law clerks.

Funding for courts of appeals is a mixture of state and county funds. The state pays 100% of the judges' salaries and certain court appointees, including official shorthand reporters, law clerks, secretaries, and other necessary employees. The clerk of the court of common pleas in each county serves as the clerk for the court of appeals for that county. The operating expenses of the court of appeals are apportioned among the counties within its district, including the provision of a court room in each county.

The table below shows the courts of appeals caseload by new types of filings for calendar years 2007-2011. As can be seen in the table, criminal appeals comprise close to 50% of the overall number of new filings statewide. There are 68 courts of appeals judges. Cases at the appellate level are heard by three-judge panels.

<b>Courts of Appeals Caseloads, CYs 2007-2011</b>					
<b>New Filing Categories</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Criminal	4,807	5,157	4,670	4,714	4,209
Civil	3,335	3,521	3,277	3,050	2,955
Miscellaneous	832	857	909	973	914
Family Law	1,538	1,580	1,577	1,490	1,430
<b>All Case Types</b>	<b>10,512</b>	<b>11,115</b>	<b>10,433</b>	<b>10,227</b>	<b>9,508</b>

### **Office of the Attorney General**

The Office of the Attorney General's Special Prosecutions Unit prosecutes, at the request of a county prosecutor, serious felony crimes. The bill is expected to have a fairly limited impact on this unit's workload and related annual operating expenses, as it does not handle a large number of original jurisdiction criminal cases and rarely appeals by leave of court. In the event that the Attorney General chose to appeal additional cases as a matter of right, the number is anticipated to be relatively small and incorporated into daily business at little or no extra costs.

### **Office of the Ohio Public Defender**

To the extent that counties incur additional costs to provide indigent defense as a result of additional appellate work, the Office of the Ohio Public Defender may also incur additional costs to reimburse counties for a portion of that appellate work. Whether that potential increase in county reimbursement will be in the tens or hundreds of thousands of dollars annually is uncertain.

Under current law, the Office of the Ohio Public Defender reimburses counties up to 50% of their indigent defense costs. If the amount appropriated for reimbursement is insufficient to pay the full 50%, whatever funds are available are prorated and distributed to the counties. In FY 2012, the state reimbursement rate was 35%.

### **Local prosecutors**

Under the bill, prosecuting attorneys, village solicitors, city law directors, and similar chief legal officers of municipal corporations will have the ability to appeal a trial court decision, order, or judgment, including a final order or judgment, as a matter of right. It is anticipated that the largest increase in cases will likely be appeals of final decisions, orders, or judgments, as they are not appealable under current law.

As a result of the bill, some local prosecutors will continue to expend time and effort on matters that might not otherwise have been appealed. Whether the number of additional appeals filed by any given local prosecutor will be a couple of dozen or run into the hundreds is uncertain. It would not be surprising if most local prosecutors will, for a variety of reasons, be somewhat selective in the cases to be appealed and thus be able to absorb the additional cost. If, however, the number of appeals puts a strain on existing prosecutorial staff and adjustments cannot be made elsewhere in office operations, then additional staff may need to be hired. Also uncertain is the degree to which the right to appeal might affect any bargaining that might transpire between the prosecutor, defense counsel, and the court.

### Local indigent defense

Under current law, county public defender systems are required to provide and pay for legal counsel if a person is indigent. Although the maximum fee allowed for indigent defense counsel varies by county, the Office of the Ohio Public Defender has set maximum fees for reimbursement by offense and level of proceeding. The table below shows the maximum fee reimbursement for each offense or proceeding for indigent representation at the appellate level. As seen in the table, the maximum fee reimbursement ranges from \$1,000 to \$25,000 depending on the type of case. In 2011, indigent representation was provided at the appellate level in 2,444 cases with the average cost per case coming in at around \$1,000. That said, it is estimated that most cases affected by the bill are likely to fall in the \$1,000 to \$1,500 range and involve felonies, misdemeanors, and juvenile/other cases. This suggests that the potential additional indigent defense costs, in particular for larger and more urban counties and municipalities, could be in the tens of thousands of dollars annually.

Reimbursement for Indigent Representation at the Appellate Level	
Offense/Proceeding	Fee Maximum
Aggravated Murder (Death Specification)	\$25,000
Aggravated Murder	\$5,000
Murder*	\$3,000
Felony	\$1,500
Misdemeanor	\$1,000
Other/Juvenile	\$1,000
* Life Sentence/Repeat Violent Offender/Major Drug Offender/Sexually Violent Predator	