Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 143 of the 130th G.A. **Date**: June 4, 2014

Status: As Reported by House Judiciary **Sponsor**: Sens. Seitz and Smith

Local Impact Statement Procedure Required: Yes

Contents: Criminal, juvenile, and motor vehicle law changes

State Fiscal Highlights

- **Office of the Attorney General**. The Attorney General may experience a cost increase to release information processed by the Bureau of Criminal Identification and Investigation relating to certain arrests and delinquent child adjudications pursuant to a request for a criminal records check.
- **Department of Rehabilitation and Correction**. The bill's provisions pertaining to transitional control may increase the number of prisoners transferred from prison and into transitional control, as well as the length of time some offenders on transitional control that commit a new felony may be sentenced to serve. The resulting net fiscal impact on the annual institutional operating costs of the Department of Rehabilitation and Correction are uncertain.
- **State agencies as grant recipients**. The bill makes changes to HIV testing requirements and brings Ohio into compliance with federal grant specifications set forth by the U.S. Department of Justice pertaining to certain grants awarded by the Office of Violence Against Women so that a portion of the funds awarded are not withheld.
- **Department of Youth Services**. The provision clarifying a court's authority to commit a delinquent child to the Department of Youth Services and increasing the length of stay for a supervised release violation may increase the Department's annual care and custody costs.
- **GRF revenues**. The bill's provision permitting an applicant to request the sealing of the records of more than one case on a single application may result in the loss of $30 in filing fee revenue that is collected and deposited into the state treasury to the credit of the General Revenue Fund (GRF) for each such record sealing application filed.

Local Fiscal Highlights

- **Clerks of court**. The bill makes changes to the records sealing law by expanding the cases eligible for sealing. It appears that clerks of courts generally will be able to handle the likely increase in record sealing activity with no more than a minimal annual increase in staff time and related operating costs.
- **County and municipal general revenue funds**. The bill's provision permitting an applicant to request the sealing of the records of more than one case on a single application may result in the loss of $20 of the filing fee revenue that is collected and deposited into a county or municipal general revenue fund for each such record sealing application filed.
- **County and municipal courts.** The bill's provisions eliminating certain notice requirements pertaining to record sealing and blocked motor vehicle registration will result in a savings for courts, as less expensive methods of delivery may be utilized instead or no notice would be required at all. The magnitude of any savings will depend on the number of these types of notices sent annually by a given court.
- **Boards of county commissioners**. The bill makes various changes to the authority of boards of county commissioners to establish and operate community alternative sentencing centers. Most notably, eligibility for the program would be expanded and the potential length of stay extended, resulting in some combination of expenditure savings and cost increases, with net effect uncertain, for the board of county commissioners where a community alternative sentencing center is in existence.
- **Municipal corporations**. The bill's provision authorizing a municipal corporation to establish a community alternative sentencing center may result in additional costs to establish and operate such centers. If a municipal corporation elects to establish and operate a community alternative sentencing center, some long-term savings in correctional expenditures may be realized.
- **Counties and municipalities**. The bill modifies requirements regarding HIV testing which could result in the requirement for additional tests. It is possible that municipalities and counties may experience some increase in costs if the accused is found to be indigent and ordered to undergo additional tests.
- **Juvenile courts**. The bill creates a potential savings effect by broadening a judge's discretion as to who may be placed in an adult detention facility and eliminating the six-month waiting period for making a motion or application for the sealing of a juvenile court record.
- **Court-ordered restitution**. The bill authorizes a court to order restitution for certain motor vehicle offenses where the offender failed to provide proof of financial responsibility. A court may spend some additional time on these cases, making determinations as to whether or not to award restitution and if so, how much to award but that amount of time is not expected to exceed minimal for any given case.

Detailed Fiscal Analysis

For the purposes of this fiscal analysis, the bill has been organized by changes to current law in the following three areas: (1) criminal justice system, (2) juvenile justice system, and (3) motor vehicles.

Criminal justice system

Criminal records

Criminal records checks

The bill permits the Attorney General to authorize the release of information possessed by the Bureau of Criminal Identification and Investigation (BCII) relating to certain arrests and delinquent child adjudications pursuant to a request for a criminal records check. This provision is intended to remedy issues that came to light after the enactment of S.B. 337 of the 129th General Assembly pertaining to collateral sanctions. There may be additional costs for the Attorney General to release this information.

Criminal records sealing

Under current law, a person with not more than one felony conviction, not more than two misdemeanor convictions that are not of the same offense, or not more than one felony conviction and one misdemeanor conviction may be eligible to have their conviction records sealed under the Conviction Record Sealing Law. The bill broadens the definition of "eligible offender" to include a person with not more than two misdemeanor convictions that are of the same offense. As a result, clerks of court may experience some increase in applications for record sealing, as additional people may become eligible to have their records sealed under the bill. The potential magnitude of any increase is uncertain.

Under current law, a person charged with two or more offenses in connection with the same act and resulting in at least one different disposition may not apply to the court to have a record in any of those cases sealed until all of the records in all of the cases are eligible for sealing under the state's record sealing law. The bill creates an exception to this and authorizes a person charged with multiple offenses in connection with the same act to apply for the sealing of the entire record if one, and only one, of the charges resulted in a traffic-related conviction, other than a conviction under R.C. 4511.19 or 4511.194, and the records pertaining to all of the other charges would be eligible for sealing under the Conviction Record Sealing Law in the absence of that conviction.

The practical impact of this provision is that some records will become eligible for sealing that would otherwise not have been under current law due to their association with traffic-related offenses, which are not sealable under the Conviction Record Sealing Law. As a result, applications for sealing received by clerks of court may increase slightly, as new cases would become eligible for sealing. There may also be an

increase in the amount of time and effort expended, as each record that is sealed has multiple documents that need to be modified. In some courts, this can be done electronically but for others, the redaction of information must be done manually. It appears that clerks of courts generally will be able to handle the likely increase in record sealing activity with no more than a minimal annual increase in staff time and related operating costs.

Criminal record sealing applications

The bill permits an applicant to request the sealing of the records of more than one case using a single application. While current law does not prohibit this, common practice is to require a separate application and filing fee for each case to be sealed. Under current law, unchanged by the bill, a filing fee of $50 is required to accompany each application for record sealing, with $30 of that being forwarded for deposit in the state treasury to the credit of the GRF, and the remaining $20 being deposited into the county or municipal general fund, depending on whether the sealed conviction or bail forfeiture was pursuant to a state statute or a municipal ordinance. As a result, common pleas, municipal, and county courts could experience some decrease in the number of applications for record sealing and corresponding revenues from filing fees received, as requests for the sealing of records of multiple cases could be done on a single application. The amount of filing fee revenue that the state, counties, and municipalities could forego annually is uncertain.

Notice of an order to seal official records

Under current law, a court is required to send notice of any order to seal official records, issued pursuant to R.C. 2953.52(B)(3) or (B)(4), to BCII and any public office or agency that has any record of the case by certified mail, return receipt requested. The bill maintains the court's requirement to send the notice but eliminates the requirement that it be sent by certified mail, return receipt requested. As a result, courts would have the option to send these notices via ordinary mail at a cost of $0.49 each, a savings of $4.16 or $5.51 apiece, depending on whether the method of return receipt used by the court is electronic or physical delivery. The magnitude of any savings will depend on the number of notices to seal official records sent annually by a given court.

Divulging confidential information

Under current law, an officer or employee of the state or a political subdivision of the state who releases information concerning records that have been sealed is guilty of divulging confidential information, a misdemeanor of the fourth degree. The bill creates an exception to the violation as long as certain conditions are met. As a result, there might be some slight reduction in the number of charges filed for divulging confidential information. To the extent that this may happen, municipal courts and county courts may experience a negligible annual savings resulting from a decrease in judicial dockets and in the related workload of other court personnel.

Community service block grants

The bill includes language to regulate the confidentiality of personal information related to community service block grants. This language was largely enacted in H.B. 59 of the 130th General Assembly except that the bill adds an additional requirement to release information regarding an individual assistance recipient to any appropriate person in compliance with a search warrant, subpoena, or other court order. This provision will have no fiscal impact on the Development Services Agency.

Community alternative sentencing centers

Under current law, any court within a county served by a board of county commissioners that establishes and operates a community alternative sentencing center may sentence eligible misdemeanor offenders pursuant to a community residential sanction or OVI term of confinement to the center for a term of not more than 30 or 60 days, respectively. Under the bill, the 30-day and 60-day limits would be extended to 90 days. As a result, more offenders could be eligible for placement in these facilities, where the costs of confinement are typically less than those of jails. As such, to the extent that these facilities are available and utilized as an alternative to jail, counties with community alternative sentencing centers may realize some long-term savings in correctional expenditures.

Any savings that may be experienced by the possibility of more offenders being eligible for placement in these facilities may be at least partially offset by the fact that these offenders may be serving longer periods of commitment. It is possible that the extended length of stay could result in less frequent turnover of a limited number of beds in these facilities. The turnover of these beds allows for more offenders to cycle through the less expensive community alternative treatment center as opposed to serving time in a more expensive local jail. If fewer offenders are able to cycle through these facilities, it is possible that any savings experienced may be less than it otherwise would have been absent the extended length of stay.

The bill also makes various changes that clarify the authority of boards of county commissioners to establish a community alternative sentencing center, modify sentencing and admission procedures for eligible offenders, and clarify that eligible offenders must successfully complete any term in a center as a condition of a community residential sanction. As these provisions are largely clarifying in nature, they are not expected to have much, if any, fiscal impact.

The bill further authorizes a municipal corporation to establish a community alternative sentencing center for the purpose of confining eligible misdemeanants sentenced directly to the center by a court located in any county pursuant to a community residential sanction of not more than 90 days. The cost that a municipal corporation might incur in order to establish and operate a community alternative sentencing center is uncertain. Also uncertain is whether a municipal corporation would need to undertake capital improvements. That said, to the extent that these

misdemeanant beds replace more expensive full-service jail beds, then a municipal corporation may realize some long-term savings in correctional expenditures.

HIV testing

The bill modifies the requirements regarding HIV testing by: (1) clarifying that the accused shall submit to the test within 48 hours after the indictment, information, or complaint is presented, as opposed to when it is filed or served, (2) specifying that notification of test results be made as soon as practicable to the victim, parent and guardian of the victim, and the defendant, and (3) requiring the court to order follow-up tests as medically appropriate. As a result, the accused may be required to submit to an HIV test sooner than would have otherwise been the case under current law and in some cases, additional testing may be required. Under current law, the accused is required to pay for the costs associated with these tests however, in the case that the accused is found to be indigent, testing is paid for by the municipality or county in which the offense was allegedly committed. As a result, it is possible that municipalities and counties may experience some increase in costs if the accused is found to be indigent and ordered to undergo additional tests.

These provisions are generally intended to comply with federal grant requirements to ensure that the full amount of funding that was allocated is received. The Ohio Attorney General's Office was previously the recipient of a $174,335 discretionary Arrest Program grant awarded by the U.S. Department of Justice's Office on Violence Against Women. The Department of Justice withheld 5% of that grant, or $8,717, as a result of certain requirements set forth by the Department not being clearly defined in current Ohio law. While that particular grant ended September 30, 2013, the enactment of these provisions would make it possible for any future Arrest Program grant recipient to receive the full amount allocated.

Prison nursery program

The bill increases the sentence of imprisonment that disqualifies an inmate from participating in the prison nursery program operated by the Department of Rehabilitation and Correction from 18 months to three years. As a result, the bill will expand the number of inmates eligible for participation in the program with the intent to increase the number of inmates who utilize those services. According to the Department, the program is currently underutilized, serving only four or five inmates but having the capacity to serve about 20. As program costs are fixed, increasing the number of participants is expected to make the program more cost effective per participant.

Transitional control

The bill precludes a court from disapproving transitional control of a prisoner who is serving a sentence of more than two years. As a result, there may be an increase in the number of offenders transferred from prison and into transitional control. The transitional control costs associated with such an offender would be $3.26 more per day

than what the Department of Rehabilitation and Correction would otherwise have incurred to keep that offender in prison, however, that increase may be offset to the degree that the length of stay in transitional control is noticeably less than the remainder of the offender's prison time would have been. According to the Department of Rehabilitation and Correction, there were 498 offenders serving sentences of more than two years that were disapproved by the court for transitional control in FY 2013.

The bill also authorizes an additional prison term of up to 12 months for having been found guilty of, or pleading guilty to, a felony level offense that was committed while the offender was on transitional control, and specifies that the additional term, if imposed, is to be served consecutively to any prison term imposed for the new felony. As a result, the bill could increase the amount of prison time served for certain offenders convicted of a felony while on transitional control by as much as 12 months, if a court chooses to impose the additional penalty. The average annual cost per inmate is currently $22,836, or around $63 per day. The magnitude of any annual increase in the institutional operating costs of the Department of Rehabilitation and Correction will depend on the number of offenders on transitional control that commit a new felony and are sentenced to serve additional time.

Juvenile justice system

The bill includes the best interests of the person as a reason for which an alleged or adjudicated delinquent child who is at least 18 but younger than 21 may be held in an adult detention facility and specifies that the admission and confinement of such a child is generally confidential. This provision essentially broadens a judge's discretion as to who may be placed in an adult detention facility. If the bill's provisions result in a youth's placement in such a facility, it is possible that some savings effect may be experienced, as adult detention facilities generally cost less per person per day than facilities designed specifically for juveniles.

The bill also eliminates the six-month waiting period for making a motion or application for the sealing of a juvenile court record if the person requesting the sealing is 18 years of age or older and otherwise eligible. As a result, some juvenile court records are able to be sealed earlier under the bill than they are under current law. This may cause some shift in workload for juvenile courts as it is possible that the court, upon its own motion, or that some individuals, upon application, may seek to have a juvenile court record sealed as much as six months earlier than would be allowed under current law. As such, the bill is not expected to result in any additional cases or increased workload for juvenile courts.

Department of Youth Services

Current law states that a delinquent child may be committed to the Department of Youth Services (DYS) for a supervised release violation for a minimum period of 30 days. The bill increases this period of confinement to a minimum of 90 days. In calendar year 2013, the average length of stay for such a violation was 114 days, with 17

(20%) of the 84 admissions in that year serving the current 30-day minimum sentence. As a result, additional costs could be incurred, as some delinquent children may be required to serve as many as 60 additional days in the care and custody of DYS for a supervised release violation. Had the bill been in effect in 2013, the total number of bed days used would have increased by 1,020.[1] The magnitude of any increase experienced in the future would depend on the number of youth who would have served fewer than 90 days under current law. Given the average length of stay in 2013, it is likely that the majority of youth are currently exceeding the bill's 90-day minimum.

Furthermore, under the bill, the juvenile court would explicitly have the authority to reinstate the delinquent child's original order of commitment for a supervised release revocation. It is unclear as to whether this change might result in longer periods of confinement or additional costs for DYS, as there has been some confusion as to the authority of the juvenile court with respect to length of commitment for a supervised release violation under current law. It is possible that some juvenile courts may impose longer sentences for such violations under the bill than they otherwise would have under current law, which could result in an increase in care and custody costs for DYS. Any additional DYS costs will be minimal annually, as only a few juveniles statewide are expected to be sentenced to a longer term of confinement.

Motor vehicle law

The bill authorizes a court to order restitution of up to $5,000 for any economic loss arising from an accident or collision that occurred before, during, or after an offense for which the offender was convicted of driving under suspension or driving under financial-responsibility-law suspension or cancellation and failed to provide proof of financial responsibility. The bill specifies that restitution may be ordered in addition to any other penalties as provided by law. The decision of a municipal, county, or juvenile court to order restitution is not likely to significantly impact the workload of the ordering court. It is possible that a court may spend some additional time on these cases, making determinations as to whether or not to award restitution and if so, how much to award but that amount of time is not expected to exceed minimal for any given case.

The bill also eliminates the requirement that a court send a warning notice by ordinary mail to an individual whose motor vehicle registration may be blocked for failure to appear in court or pay a fine. The bill will result in a savings of $0.49 for each warning notice that a court does not have to send by ordinary mail that would otherwise have to be sent under current law. The magnitude of any savings will depend on the number of such letters that are sent by a given court annually.

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[1] The average annual cost of incarcerating a juvenile in a Department of Youth Services facility is currently around $202,502 (or $554.80 per day), with the marginal annual cost of adding a juvenile estimated at $10,000.