Ohio Legislative Service Commission

Maggie Wolniewicz

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 143 of the 130th G.A. **Date**: December 11, 2013

Status: As Passed by the Senate **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.
- **Development Services Agency**. The bill includes language to regulate the confidentiality of personal information related to community service block grants and will have no fiscal impact on the Development Services Agency.
- **Department of Rehabilitation and Correction**. The bill increases eligibility for participation in the Department's prison nursery program. As a result, program participation may increase. Since program costs are fixed, increasing the number of participants is expected to make the program more cost effective per participant.
- **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 may minimally increase the Department's annual care and custody costs.

Local Fiscal Highlights

- **Clerks of court**. The bill makes changes to the records sealing law by expanding the cases eligible for sealing. As a result, clerks of court may experience an increase in applications for and expenses related to record sealing. Courts that use electronic systems may incur one-time costs potentially ranging from $1,000 to $5,000 to update computer systems. The aggregate (statewide) cost of these updates could reach $100,000 for all affected clerks of courts.
- **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.
- **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 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 records pertaining to any charge regardless of whether the other charges are or are not eligible for sealing under the Conviction Record Sealing Law as long as the charges were dismissed or the person was found not guilty.

The practical impact of this provision will be that some records will become eligible for sealing earlier than would be the case under current law, while other records that may not have been eligible for sealing under current law due to their association with an offense that is not sealable under the Conviction Record Sealing Law will become eligible for sealing. As a result, applications for sealing received by clerks of court will generally be impacted in two ways: (1) some applications for record sealing

will be received earlier than would be the case under current law, and (2) there may be an increase in applications for record sealing, as new cases would become eligible for sealing. The potential magnitude of the latter is uncertain.

These record sealing law changes may generate costs for clerks of courts as it involves a process that can be labor intensive and time consuming, and may require information technology upgrades. For each record that is sealed, there are 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. For those courts with electronic systems, one-time costs potentially ranging from $1,000 to $5,000 may be incurred to update computer systems as necessary. This suggests that the aggregated one-time statewide cost could reach $100,000 for all of the affected county and municipal clerks of courts.

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. It should also be noted that since the authority for these facilities was established under H.B. 86 of the 129th General Assembly, no board of county commissioners has elected to establish a community alternative sentencing center.

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 municipal corporation or county in which the offense was allegedly committed. As a result, it is possible that municipal corporations 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 under utilized, 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.

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. If the bill were to become 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. Under the bill, the juvenile court would explicitly have the authority to commit a delinquent child to DYS for a supervised release violation until the age of 21. 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.[1]

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 court or county court, or court of common pleas if the offender is a juvenile, 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.

SB0143SP.docx / lb

[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.