



# OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 66 of the 132nd G.A.

**Status:** As Passed by the House

**Sponsor:** Sens. Eklund and Tavares

**Local Impact Statement Procedure Required:** Yes

**Subject:** Sentencing, corrections, conviction record sealing, and land conveyances

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### State Fiscal Highlights

- The bill's felony sentencing provisions likely generate an indeterminate annual savings effect on the GRF-funded incarceration costs of the Department of Rehabilitation and Correction (DRC) by diverting offenders from being sent to prison or reducing their lengths of stay.
- The conviction record sealing expansion will likely generate a minimal at most annual gain in application fees credited to the GRF.
- The bill authorizes the conveyance of state-owned real estate (including wastewater and/or water treatment plants) in Madison and Scioto counties currently under the jurisdiction of DRC to the Madison County Board of County Commissioners and Scioto County Board of County Commissioners, respectively, through a negotiated real estate purchase agreement for \$1 each.
- With the sale of these plants noted in the preceding dot point, DRC would become a customer for these sanitary effluent and/or potable water services in Madison and Scioto counties, which means the Department will have to pay a yet to be determined annual amount from the General Revenue Fund (GRF) for those services.

### Local Fiscal Highlights

- The bill generates a mix of expenditure savings and increases for county criminal justice systems, the net of which could be a significant annual cost increase driven by the provision expanding the offenders eligible for conviction record sealing.
- The conviction record sealing expansion will likely generate for counties generally a minimal at most annual gain in application fee revenues.
- With the acquisition of wastewater and/or water treatment plants from DRC, Madison and Scioto counties would incur ongoing costs to operate and maintain those plants and any related infrastructure, as well as costs to undertake any necessary capital improvements. Revenue to cover those costs could conceivably

consist of user charges, including money paid by the state, a tax levy, or capital improvement bond proceeds. The net annual fiscal effect on either county is unclear, as the magnitude of the possible revenues and expenditures is indeterminate.

## **Detailed Fiscal Analysis**

The bill: (1) modifies numerous aspects of the law governing sentencing, corrections, and conviction record sealing, and (2) authorizes the conveyance of state-owned real estate in Madison and Scioto counties currently under the jurisdiction of the Department of Rehabilitation and Correction (DRC).

### **Community control sanctions**

The bill removes the one-year minimum that currently applies when a court sentences an offender to a community control sanction for a fourth or fifth degree felony under the existing presumption for community control sanctions and expressly authorizes the court to impose a combination of community control sanctions. This change may reduce the costs that a county otherwise may have incurred when community control sanctions are imposed on certain felony offenders by: (1) permitting the use of less expensive sanctions, and/or (2) reducing their duration.

The bill permits a court to impose a new term of up to six months in a community-based correctional facility (CBCF), a halfway house, or a local jail as a penalty for a felony offender who violates a community control sanction condition. Currently, if a felony offender who is sentenced to a community control sanction commits a violation, the sentencing court may impose one or more of three specified penalties: longer time under the same sanction, a more restrictive community control sanction, or a prison term. The placement of such offenders in a CBCF or halfway house for up to six months, rather than a prison, will help DRC restrain the growth of institutional operating expenditures, although the magnitude of any spending reductions is uncertain. CBCFs and halfway houses are a less expensive alternative because the beds turn over faster. The average stay is approximately four months in a CBCF and three months in a halfway house.

### **Intervention in lieu of conviction (ILC)**

The bill provides the court with an additional sanction that it may impose when it has determined that a person who has already been granted ILC has failed to comply with an ILC term or condition. Under current law, upon determining that such a compliance failure has occurred, the court's only option is to enter a finding of guilty and impose a sentence in accordance with the Felony Sentencing Law, which may include the imposition of a prison term. The bill provides the court with the option of allowing the person to continue participating in ILC.

This provision may divert offenders that have failed to comply with a term or condition of their ILC plan from being sent to prison and allow them to continue on ILC. The diversion of these offenders from prison may reduce DRC's incarceration

expenditures, and there would be a corresponding increase in county expenditures for the assessment and continued treatment of offenders that failed to comply with a term or condition of their ILC plan.

### **Eligibility for conviction record sealing**

The bill expands the definition of offenders who are eligible to apply to the court for the sealing of the offender's record of conviction. Currently, for purposes of the Conviction Record Sealing Law, "eligible offenders" includes only a person who has been convicted of an offense in Ohio or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in Ohio or any other jurisdiction. Under the bill, the term "eligible offenders" also includes anyone who has been convicted of one or more offenses, but not more than five felonies, that are fourth or fifth degree felonies and none of those offenses are an "offense of violence" (a defined term) or a felony sex offense.

The definition expansion potentially makes thousands of offenders with multiple convictions for qualifying offenses eligible for conviction record sealing. Many of these offenders are likely to apply, as presumably it may remove an employment barrier.

When an application to seal a record is filed, the court sets a hearing date and notifies the county prosecutor's office. The prosecutor may object to the application by filing a formal objection with the court prior to the hearing date. The court also directs the relevant probation department providing services to that particular county to investigate and submit reports concerning the applicant.

The combined annual cost for the clerks of courts, sentencing courts, county prosecutors, and probation departments to perform the required work generated by this provision is indeterminate. Given the potential number of new applications, however, that cost could be significant, in particular for the state's larger more populous urban counties.

Upon filing an application with a court, the applicant, unless deemed to be indigent, pays a \$50 fee, of which \$30 is forwarded to the state treasury for crediting to the General Revenue Fund, and \$20 is paid to the county general fund. Thus, under the bill, the state and counties generally are likely to gain, at most, minimal annual revenue.

### **Northeast Ohio Correctional Center**

The bill extends the Ohio State Highway Patrol's legal authority to enforce criminal laws to apply to the Northeast Ohio Correctional Center, a privately owned and operated prison that contracts with DRC to house certain state prisoners. The Patrol already has a memorandum of understanding (MOU) with the facility that permits the same access as they have in any of the state-owned prisons. This provision has no fiscal effect, as it codifies the current practice as defined in the MOU.

## **Remittance of state income taxes**

Under current law, the failure of employers to remit state income taxes withheld from employees is a felony of the fifth degree. The bill reduces the penalty to an unclassified misdemeanor with a jail term of up to 60 days and a fine of up to \$1,000. If the offender has a prior conviction, the offense becomes a felony of the fifth degree.

The number of criminal cases in which employers fail to remit taxes is uncertain. There is no data indicating the number entering prison for such an offense, suggesting that it would be a rare occurrence. Since this offense is more of a regulatory offense, those convicted are more likely to pay fines, court costs, and fees. With the first offense being reduced to the misdemeanor level, some counties may experience a very small reduction in fine revenues collected. The maximum fine for a felony of the fifth degree is \$2,500. The bill reduces the maximum fine to \$1,000. It is unlikely that anyone would receive jail time under the new sentencing structure, given the current state of jail crowding and the nonviolent nature of the offense.

## **DRC land conveyances**

The bill authorizes the conveyance of state-owned real estate in Madison and Scioto counties currently under the jurisdiction of DRC to the Madison County Board of County Commissioners and Scioto County Board of County Commissioners, respectively, through a negotiated real estate purchase agreement for \$1 each.<sup>1</sup>

The state-owned real estate in Madison County contains a plant that services sanitary effluent and potable water from and to the London Correctional Institution, the London Correctional Training and Education Center, the Madison Correctional Institution, and Bureau of Criminal Investigation facilities. The purchase agreement requires the Madison County plants to continue to provide those services, so long as DRC or the Attorney General consider it necessary, and that the state be charged reasonable, negotiated user rates.

The state-owned real estate in Scioto County contains a plant that services sanitary effluent from and to the Southern Ohio Correctional Facility. The purchase agreement requires the Madison County plant to continue to provide those services so long as DRC considers it necessary, and that the state be charged reasonable, negotiated user rates.

Under current law, payments for institutional usage of water and/or sewage treatment plants at six DRC correctional institutions, including money generated by contracts with other users, e.g., political subdivisions, is credited to the Correctional Institution Water and Sewage Treatment Facility Services Fund (Fund 4B00). From DRC's perspective, the land conveyance provision will not have a significant net annual

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<sup>1</sup> The \$1 will be credited to the Adult and Juvenile Correctional Facilities Bond Retirement Fund (Fund 7097). The authority to convey this state-owned real estate expires three years after the bill's effective date.

fiscal effect on Fund 4B00, as the revenue foregone will be more or less offset by the reduction in plant operating costs.

With the sale of these plants, DRC will become a customer for these sanitary effluent and/or potable services in Madison and Scioto counties, which means the Department would have to pay a yet to be determined annual amount from the GRF for those services.

With the acquisition of wastewater and/or water treatment plants from DRC, Madison and Scioto counties would incur ongoing costs to operate and maintain those plants and any related infrastructure, as well as costs to undertake any necessary capital improvements. Revenue to cover those costs could conceivably consist of user charges, including money paid by the state, a tax levy, or capital improvement bond proceeds. The net annual fiscal effect on either county is unclear, as the magnitude of the possible revenues and expenditures is indeterminate.