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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

S.B. 36
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Enacted

Primary Sponsors: Sens. Manning and S. Huffman

Local Impact Statement Procedure Required: No

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Highlights

- The bill will increase the number of claims filed and the amount disbursed as reparations under the state's Victims of Crime Compensation Program, operated by the Attorney General's Office. There will be at least several hundred newly eligible claims annually, and potentially thousands more in the short-term, as the bill allows certain claims denied under current law to be refiled. The additional amount expended annually in the form of reparations payment may be in the millions of dollars.
- The bill will increase the annual operating expenses of the Attorney General's Crime Victim Section to manage the reparations award process.
- The bill will have no direct fiscal effect on the state's political subdivisions.

Detailed Analysis

The bill revises the eligibility standards and procedures for awarding reparations to crime victims. The Ohio Attorney General's Office handles the reparations award process as part of its responsibility to administer the state's Victims of Crime Compensation Program. The Attorney General pays for the awards with money primarily appropriated from the Reparations Fund (Fund 4020) and secondarily from the federal Crime Victim Assistance Fund (Fund 3FV0).

In addition to reparations, the Attorney General uses the money appropriated from Fund 4020 for administrative costs of the victim compensation program; the Sexual Assault Forensic Exam (SAFE) Program; grants to victim assistance programs; DNA specimen collection,

analysis, and database entry; and attorney fees.¹ The year ending cash balance for Fund 4020 was \$11.2 million in FY 2018, \$6.3 million in FY 2019, \$7.4 million in FY 2020, and \$9.5 million in FY 2021.

Eligibility for an award of reparations

Ohio's Attorney General is required to make awards of reparations for "economic loss" arising from criminally injurious conduct if the Attorney General is satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

There are a number of factors, including criminal history and contributory misconduct, which constrain eligibility by either prohibiting an award or allowing an award to be denied or reduced. The bill's elimination or modification of these factors, as well as additional types of victims and various other changes, will increase the number of claims filed and the amount disbursed as reparations under the state's Victims of Crime Compensation Program.

Criminal history

Under current law, a victim or claimant who was convicted of a felony or specified crimes, or who engaged in certain criminal conduct within ten years prior to the criminally injurious conduct that gave rise to their claim is not eligible to receive an award of reparations (compensation for economic losses) under the state's Victims of Crime Compensation Program. The bill eliminates the lookback period for disqualifying criminal history.

Eliminating eligibility restrictions based on conviction status and alleged criminal activity will increase the number of successful applications and awards for victims disqualified under current law. The Attorney General's Office estimates that the number of application denials based on criminal history were 460 and 376 for FY 2019 and FY 2020, respectively. Absent the lookback period, those applications may have been eligible for compensation. There would also likely be new applications from crime victims with a criminal past that, under current law, chose not to apply due to the ten-year lookback period.

The number of additional successful applications stemming from the bill's elimination of the criminal history lookback is uncertain, but LBO estimates it could be up to 500 or 600 per year. The average award is between \$2,000 and \$3,000. Using this higher estimate of 600 additional claims received and an average crime victim's award of \$3,000, then the bill could create up to an additional \$1.8 million in these types of disbursements annually.

Contributory misconduct

Under current law, reparations payable to the victim and all other claimants sustaining economic loss because of injury to or the death of the victim is limited to a total of \$50,000. There are specific reasons for which an award may be reduced or a claim denied because of contributory misconduct. These include, but are not limited to: (1) the victim was convicted of a felony within ten years prior to the criminally injurious conduct that gave rise to the claim or is

¹ GRF line item 055441, Victims of Crime, with a \$2.5 million appropriation in FY 2022 will be used by the Attorney General's Office to help pay for certain expenses that are typically paid from Fund 4020. These expenses are expected to be primarily those associated with the Sexual Assault Forensic Exam (SAFE) Program.

convicted of a felony during the pendency of the claim, or (2) there is evidence the victim engaged in an ongoing course of criminal conduct within five years of the criminally injurious conduct that is the subject of the claim. If a claim is denied based on contributory misconduct on the grounds of either of the two above-noted circumstances, the burden of proof is on the claimant to show the requirements for an award have been met. The bill eliminates this legal duty and specifies that a deceased victim's conduct cannot be used as grounds for denial of any claim that results in the victim's death.

The degree to which these changes to existing contributory conduct language will affect the number or outcome requests for reconsideration or appeals filed is unclear. However, the Attorney General anticipates a significant increase in attorney fees paid from Fund 4020, assuming an increase in appeals.

The net result of changes regarding contributory misconduct is expected to be significant factoring in the potential for dependent's economic loss arising from death claims. Dependent's economic loss is essentially the work loss of the decedent, over a lifetime, paid to the decedent's dependents, which are commonly denied for contributory misconduct.

The Attorney General's Office estimates that the number of application denials based on all circumstances of contributory misconduct were 99 and 88 for FY 2019 and FY 2020, respectively. A subset of these denials are those specific to death claims. Under the bill, it is likely that a number of death claims that otherwise might have been denied because of contributory misconduct would be ultimately approved. As work loss is included in economic loss for a dependent in this circumstance, each additional award has the potential to exceed the average award amount of between \$2,000 and \$3,000 per award. The net increase in annual distributions cannot be quantified.

Additional types of victims

The bill includes two additional types of victims who may receive an award of reparations: (1) an immediate family member of a victim of specified criminally injurious conduct, who requires psychiatric care or counseling as a result of that conduct, and (2) a family member or immediate family member of a victim of specified criminally injurious conduct, who suffers trauma so severe that it impedes or prohibits them from participating in normal daily activities when conditions are met.²

Under current law, an immediate family member of a victim who requires psychiatric care or counseling as a result of the same conduct described by the bill may be reimbursed for that care or counseling through the victim's reparation application for up to \$2,500 per family member, not exceeding \$7,500 total.³ Designation as a victim allows these family members to obtain a reparation award of up to \$5,000 for care or counseling. This designation for the second

² Immediate family member is an individual who resided in the same permanent household as a victim at the time of the criminally injurious conduct and who is related to the victim by affinity (marriage) or consanguinity (shared ancestry). Family member is an individual who is related to a victim by affinity or consanguinity.

³ Reparations payable to a victim and to all other claimants is capped at \$50,000 in the aggregate.

type of victim allows those persons suffering severe trauma to receive a reparations award of up to \$15,000 to cover work loss and care or counseling.

According to the Attorney General's Office, these provisions will likely have very little fiscal impact, as it is rare for compensation for care or counseling to reach the current \$7,500 cap. Additionally, the Office expects a small number of additional persons each year would qualify as a victim under the expanded definition. The designation currently exists in case law and referred to as a "victim in their own right" (VIOR). It is apparently difficult to meet the eligibility criteria established in case law and only two or three VIORs receive reparations each year. Defining this type of victim in statute may make it easier to be granted such a reparations award. The overall annual number is still likely to remain small, and the fiscal impact would be minimal annually.

Time limitation for award of reparations

The bill prohibits an award of reparations to a claimant if the claim was filed more than three years after the date on which the criminally injurious conduct occurred or if the claim was previously denied except (1) at the discretion of the Attorney General for good cause shown, (2) if the criminally injurious conduct occurred when the claimant was under 21 and the claim was filed by the claimant's 24th birthday, or (3) if the claim was denied under the law as it existed prior to the effective date of the bill and is refiled within three years after the date on which the criminally injurious conduct occurred. Although there is no time limit for the application of reparations under current law, the vast majority of claims are filed within a three-year period. For instance, of the 4,475 claims received in FY 2020, roughly 260 (6%) were older than three years.

Because the bill modifies the eligibility criteria for an award of reparations, the bill allows claims that were previously denied to be refiled, under the third exception described above. As mentioned, these claims would have to be refiled within three years of the conduct that is the basis for the claim and therefore would be generally claims denied between the three years leading up to the effective date of the bill. Over CYs 2018 through 2020, the Attorney General's Office denied approximately 6,800 claims. In the scenario that half (3,400) of the claimants denied over that period were denied due to criteria changing under the bill, the one-time fiscal impact of the exception would be \$5.1 million if only half of those claimants refiled (1,700 claimants x \$3,000 average award). Although a precise estimate is not possible, it would plausibly be in the millions of dollars.

Reparation payments while incarcerated

The bill specifies that an award of reparations otherwise payable to a victim is not payable to the victim during any period that the victim is incarcerated. This means that should someone be deemed eligible but then be incarcerated before the payment was made, the payment would be paused/suspended until the person was no longer incarcerated. This provision relates to the timing of the payment of a small number of awards and has no significant fiscal effect.

Attorney General's Crime Victim Section

The bill: (1) increases the number of claims for an award of reparations that will be filed annually with the Attorney General, as well as the number of award decision appeals, and (2) modifies the information that the Attorney General is required to include in the finding of fact

and decision when making or denying of award of reparations. The result will be some increase in the annual operating expenses of the Attorney General's Crime Victim Section, which manages the reparations award process.