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S.B. 357
(1_134_0455-7)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 357's Bill Analysis](#)

Version: In Senate Finance

Primary Sponsor: Sen. Dolan

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill will likely have an impact on adult and juvenile weapons control cases arising under current law, possibly generating additional cases. The magnitude of such effects is unknown, but to the extent that new cases are created or that existing cases are further complicated, local criminal and juvenile justice systems and the state's departments of Rehabilitation and Correction and Youth Services will be impacted.
- The bill's "seller's protection certificate" provisions will create both one-time and ongoing costs for county sheriffs and the Department of Public Safety (DPS). The amount of work and costs will depend on the number of persons choosing to file a petition for the issuance of such a certificate.
- The amount of work and associated costs created by the bill's protection order provisions for courts (common pleas, municipal, and county), clerks of courts, and law enforcement agencies, including the Ohio State Highway Patrol, will depend on the degree to which their respective current practices comply with the bill's requirements.
- The bill requires DPS to perform miscellaneous other duties that will increase its workload and create varying degrees of one-time and ongoing operating costs. These costs are not readily quantifiable. The bill does not generate any revenue that potentially offsets those costs.
- The bill makes changes to the law regarding court-ordered mental health treatment and emergency mental health custody and evaluation processes. As a result, it is possible that there might be additional administration or treatment costs to state or local entities that administer these functions or provide treatment.

- The bill states that it is the General Assembly’s intent to appropriate a total of \$175 million in federal American Rescue Plan Act (ARPA) funds for behavioral health services (\$85 million) and crisis infrastructure (\$90 million).

Detailed Analysis

This analysis addresses the bill’s provisions as follows:

- Weapons control violations;
- Seller’s protection certificates, including background checks;
- Protection order entry into databases;
- Department of Public Safety (DPS) duties and responsibilities;
- Involuntary mental health treatment mechanisms;
- General Assembly intent statement to appropriate \$178 million in federal funding for behavioral health services and crisis infrastructure.

Weapons control

Behavioral risk assessment

The bill adds a “behavioral risk assessment” as an element of: (1) a weapons disability, (2) an unlawful transactions in weapons offense, and (3) a person purchasing or transferring a firearm from a federally licensed firearms dealer (FLFD). The bill does not require a behavioral risk assessment to be or to have been conducted. However, LBO staff presume that there could be some indirect impact in the manner that such assessments are generated, utilized, or challenged as a result of including this criteria in the list of possible considerations for a weapons disability. For instance, it is possible that certain entities (schools, institutions of higher education, or employers) may request one as a method of ensuring that certain additional checks are performed on an individual who may be suspected of acquiring certain firearms. It is unclear who would pay for any requested behavioral risk assessments. It is possible that the requestor would pay, or the individual could pay either privately or via the individual’s insurance if the assessment is deemed medically necessary. If any state or local entities, such as a county alcohol, drug addiction, and mental health services (ADAMHS) board, paid for any assessments then costs would increase.

The bill defines a “behavioral risk assessment” as meaning an evaluation of a person’s risk of engaging in violence against self or others. Depending on the R.C. section of the bill, the applicable conditions generally include:

- A behavioral risk assessment of the person has been scheduled but has not been conducted or a behavioral risk assessment of the person has been conducted but the results of the assessment have not been determined and remain pending;
- A behavioral risk assessment of the person has been conducted and the assessment determined that the person evidenced a behavioral risk of engaging in violence against self or others;
- A behavioral risk applicable to the person is not in effect.

Firearm offenses

The bill modifies certain procedures and criminal offenses related to weapons control, as described below. The number of persons (adults and juveniles) charged, prosecuted, and sanctioned statewide for violations of these weapons control offenses is not known.

The bill's effect on adult and juvenile weapons control cases arising under current law or the possibility of additional cases being generated is unclear. Thus, estimating the fiscal effects on local criminal and juvenile justice systems and the state's departments of Rehabilitation and Correction and Youth Services cannot be done reliably.

“Weapons under disability”

Under existing law, unless relieved from disability under operation of law or legal process, a person is prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance in five specified circumstances. A violation of this prohibition is a third degree felony. The bill adds a new weapons disability regarding a person's behavioral risk of engaging in violence against self or others.

LBO has collected information with regard to the weapons under disability violations from annual charge filing and commitment reports of the Franklin County Municipal Court and the Department of Rehabilitation and Correction (DRC), respectively. Franklin County reported an average of 357 weapons under disability charges filed annually for calendar years 2017-2021. DRC reported an average of 825 offenders committed to prison for the primary offense of weapons under disability for FYs 2017-2022. It appears likely that these numbers would increase, by some unknown amount, due to the addition of a further criteria for having a weapon under disability.

“Unlawful transactions in weapons”

The bill modifies two existing prohibitions and related penalties under the offense of “unlawful transactions in weapons” and enacts two new prohibitions under the offense and penalties for violations of the prohibitions, as described below:

- Modifies one of the current prohibitions under the offense to prohibit a person from recklessly selling, lending, giving, or furnishing any firearm to any person prohibited by Ohio or federal law from acquiring, possessing, receiving, or using any firearm or recklessly selling, lending, giving, or furnishing any dangerous ordnance to any person prohibited by certain specified sections of the Revised Code from acquiring, possessing, receiving, or using any dangerous ordnance. The current prohibition does not include any reference to the federal firearms prohibitions or to a potential recipient of a firearm or dangerous ordnance being prohibited from possessing or receiving a firearm or dangerous ordnance. A violation of the existing prohibition is a fourth degree felony, which the bill increases to a second degree felony carrying a mandatory prison term.
- Increases, from a fourth degree felony to a second degree felony carrying a mandatory prison term, the penalty for violating the current prohibition that prohibits a person from possessing any firearm or dangerous ordnance with purpose to dispose of it in violation of the modified prohibition described above.
- Enacts a prohibition that prohibits a person from knowingly selling, lending, giving, or furnishing any firearm to any person if the transferor knows that the results of seller's

protection certificate background checks found that, at the time of that transfer, the transferee was prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, receiving, or using any firearm. A violation of this new prohibition is a third degree felony.

- Enacts a prohibition that prohibits a person, if the person is “engaged in the business” of selling firearms, from knowingly selling, lending, giving, or furnishing any firearm to another unless all following apply: (1) the person is an FLFD, (2) the person complies with the applicable requirements of 18 United States Code (U.S.C.) 922, which pertain to criminal record background checks, and (3) the transferee provides the person with a signed and dated copy of the DPS-prescribed firearm purchasing/transaction form that is to include information on whether the transferee is the subject of a behavioral risk assessment. A violation of this new prohibition is a third degree felony.

Based on data from the National Instant Criminal Background Check System (NICS), it appears that the bill’s purchasing/transaction form requirement will affect hundreds of thousands of FLFD transactions in Ohio. NICS is a national namecheck system for federal firearms licensees (FFL). FFLs, such as gun shop owners, pawn shop dealers, and retailers use NICS to determine whether a person can legally buy or own a firearm. The extent to which violations will occur, and subsequent criminal investigations and prosecutions are initiated is unknown.

“Improperly furnishing firearms to an underage person”

The bill expands one of the prohibitions under the offense of “improperly furnishing firearms to a minor,” enacts three new prohibitions under the offense, and renames the offense “improperly furnishing firearms to an underage person,” as described below:

- Expands the existing prohibition that prohibits a person from furnishing a firearm to a person who is under age 18 or, subject to certain specified exceptions, furnishing a handgun to a person who is under age 21, except for lawful hunting, sporting, or educational purposes, so that it also prohibits a person, subject to certain specified exceptions, from furnishing any “restricted-access firearm”¹ to a person age 18, 19, or 20, except for lawful hunting, sporting, or educational purposes. A violation of the prohibition, both under current law and as expanded by the bill, is a fifth degree felony.
- Enacts a prohibition that prohibits a person, subject to certain specified exceptions, from knowingly selling a firearm to a person age 18, 19, or 20, a violation of which is a fifth degree felony.
- Enacts new “straw person” prohibitions under the offense that prohibit a person from: (1) selling or furnishing a firearm to a person age 21 or older, if the seller or furnisher knows, or has reason to know, that the person is purchasing the firearm for the purpose of selling or furnishing it in violation of the improper furnishing prohibitions under the

¹ The bill defines “restricted-access firearm” as any firearm other than one of the following: (1) a rifle or shotgun that holds only a single round of ammunition, that must be manually reloaded after every shot, and that is not dangerous ordnance, or (2) a double-barrel shotgun that holds only a single round of ammunition in each barrel, that must have each barrel that is shot manually reloaded after it is shot, and that is not dangerous ordnance.

bill, as described above, to a person age 18, 19, or 20, or (2) purchasing or attempting to purchase a firearm with the intent to sell or furnish it in violation of the improper furnishing prohibitions under the bill, as described above, to a person age 18, 19, or 20. A violation of these new prohibitions is a fifth degree felony.

The extent to which violations will occur, and subsequent criminal investigations and prosecutions are initiated is unknown.

“Underage purchase of a handgun or restricted-access firearm”

The bill enacts a new prohibition under the offense of underage purchase of a firearm and names a violation of the prohibition the offense of “underage purchase of a handgun or restricted-access firearm.” A violation of the current prohibition that prohibits a person under age 21 from purchasing or attempting to purchase a handgun, unchanged by the bill, also is included under the new name. A violation of either prohibition under the offense is a second degree misdemeanor.

The new prohibition prohibits a person age 18, 19, or 20, subject to certain specified exceptions, at any time after DPS has taken certain specified actions related to the bill’s potential liability form from knowingly purchasing or attempting to purchase a “restricted-access firearm.” The extent to which violations will occur, and subsequent criminal investigations and prosecutions are initiated is unknown.

Sale of restricted-access firearm – civil actions

The bill creates a civil action specifying that if a person age 18, 19, or 20 is sold a restricted-access firearm and, while under age 21, commits a felony offense and uses or brandishes the firearm in the commission of the offense, anyone who suffers injury proximately caused by, or during, the offense may recover damages in a civil action against the cosigner, with respect to the firearm, of the person who committed the offense. Such an action is separate from, and in addition to, any action under a specified provision of existing law that provides for a civil action based on the commission of a criminal offense or as otherwise authorized by law.

The resulting number of new civil actions that may be filed are unpredictable. It is possible that, under current law, a civil remedy in such circumstances is already possible, and that the bill provides additional grounds for filing a civil action. Depending on the amount of damages sought, civil actions fall under the subject matter jurisdiction of common pleas, municipal, or county courts. Filing fees and assessed court costs will likely partially offset any additional costs if new cases are generated.

Seller’s protection certificates

The bill’s “seller’s protection certificate” provisions described below will create work and costs, both one-time and ongoing, for county sheriffs and the Department of Public Safety (DPS). The amount of work and costs will depend on the number of persons choosing to file a petition for the issuance of such a certificate.

The bill permits a person who is not an FLFD and wishes to transfer a firearm to another person that is not an FLFD to require the prospective transferee to provide a seller’s protection certificate, and enacts a background check mechanism for the issuance of such a certificate by the state. Under the bill, a prospective transferee may petition the sheriff of any county on a form to be prescribed by DPS. The sheriff is required to immediately verify the identity of the

prospective transferee, and then, having done so, immediately provide DPS with the form and a set of fingerprints. The bill authorizes a sheriff to charge a fee not to exceed \$10. The bill does not clearly authorize a county sheriff to collect existing background check fees totaling \$47.25, as described below. Thus, it is unclear as to whether a county sheriff will be responsible for paying those costs.

DPS is required to immediately conduct background checks of the prospective transferee, and upon completion of the checks, immediately report to the requesting sheriff as to whether it is issuing or denying a certificate. The sheriff is required to: (1) contact the prospective transferee and transmit the certificate to the prospective transferee, either electronically, in person, or by mail, at the option of the prospective transferee, or (2) notify the prospective transferee of the denial of the seller's protection certificate. If DPS denies the issuance of a certificate, the prospective transferee may challenge the background check results.

New state background check mechanism

The bill requires the Department to search all federal and state databases necessary to complete the required background check, which likely includes assistance from the Attorney General's Bureau of Criminal Investigation (BCI) electronically through Webcheck. For background checks, BCI charges a \$22 fee for a state background check and an additional \$25.25 fee for an FBI background check. The entirety of the state check fee and \$14 of the FBI check fee are credited to the Attorney General Reimbursement Fund (Fund 1060). It is likely that BCI's costs to perform such background checks will be offset by the fees collected.

LEADS and NCIC inclusion of protection orders

The bill requires that, if a court issues any of five existing types of protection orders, the court file the order with the clerk of court. The clerk is required to transmit the order to the appropriate law enforcement agency for entry into the Protection Order Database of the National Crime Information Center (NCIC), which is maintained by the FBI, and for entry by the close of the next business day after the day of the order's issuance into the state's Law Enforcement Automated Data System (LEADS), which is administered by the Ohio State Highway Patrol (OSHP).

If a court terminates or cancels an order, the clerk of court is required to deliver notice of the termination or cancellation to the same persons and entities that were delivered the original order. The court is required to order the appropriate law enforcement agencies to remove the order from LEADS and ensure that it is terminated, cleared, or canceled in the NCIC Protection Order Database.

The amount of work and associated costs created for courts (common pleas, municipal, and county), clerks of courts, and law enforcement agencies, including OSHP, will depend on the degree to which their respective current practices comply with the bill's requirements.

For some background on protection orders in Ohio, LBO notes:

- There appears to be no single source containing statewide data on the number of protection orders requested, issued, cancelled, and terminated each year. Information extracted from the Ohio Supreme Court's Data Dashboard suggests that the number of requests filed statewide for domestic violence protection orders alone averaged over 21,600 annually for calendar years 2017-2021.

- Rule 10 of the Ohio Supreme Court’s Rules of Superintendence for the Courts of Ohio requires a common pleas, municipal, or county court issuing criminal or civil protection orders to send a form and related documents to the local law enforcement agency for entry into the NCIC Protection Order Database.
- In partnership with DPS and the Department of Administrative Services, InnovateOhio is developing and implementing eWarrants, a free, centralized, web-based system for entering protection orders and warrants for law enforcement, courts, and clerks across all 88 counties.
- Protection orders are currently being entered into LEADS, but it is unclear as to what percentage those orders represent of all protection orders issued in Ohio each year.

Department of Public Safety

The bill requires DPS to perform duties that, as described below, will increase its workload and create varying degrees of one-time and ongoing operating costs. These costs are not readily quantifiable. The bill does not generate any revenue that potentially offsets those costs.

Protection orders

The bill requires a clerk of court to transmit any of five existing types of protection orders for entry by the close of the next business day after the day of the order’s issuance into LEADS. Protection orders are currently being entered into LEADS, but it is unclear as to what percentage those orders represent of all protection orders issued in Ohio each year.

Seller’s protection certificates

The bill requires DPS to establish a mechanism for the conduct of background checks requested by a person who wishes to be issued a seller’s protection certificate and to prescribe by rule a form to be used by such a person. Upon completion of the background checks, DPS is required to notify the county sheriff who submitted the request as to whether the certificate has been issued or denied. DPS is required to prescribe a challenge and review procedure for persons denied such a certificate.

Probate court and mental illness treatment

The bill requires DPS:

- To develop an educational pamphlet regarding probate court procedures with respect to treatment for mental illness, make it available at all offices of the Department, and provide copies to each probate court, law enforcement agency, and hospital; and
- To develop a public media advisory that summarizes the pamphlet and provide a copy to each daily newspaper published in the state and each television station that broadcasts in the state. (Permits the advisory to be provided in a tangible form, in an electronic form, or in both.)

Potential liability form

The bill requires DPS to prescribe, by rule, a potential liability form that a person who is age 25 or older may use to be a co-signer for the sale of a restricted-access firearm to a person age 18, 19, or 20, including a printable version on the Department’s website. DPS is required to accept and retain dated copies of forms sent to it by sellers.

Firearm purchasing/transaction form

The bill requires DPS to prescribe, by rule, a form for use by a person who is purchasing or otherwise being transferred a firearm from an FLFD, including a printable version on the Department's website. The form, which is to be completed, signed, dated, and provided to an FLFD, is required to include information on whether the person is the subject of a behavioral risk assessment.

Court-ordered mental health treatment mechanism

The bill modifies an existing mechanism pursuant to which a probate court may order involuntary treatment in a number of ways. The bill modifies this mechanism by requiring an affidavit of mental illness to be accompanied by a certificate of a psychiatrist or a certificate signed by a licensed clinical psychologist and a certificate signed by a licensed physician. Currently, the certificate may be, but is not required, to be provided. This modification might result in additional administrative and evaluation costs depending on how many certificates are currently included with the affidavit. The bill also requires an ADAMHS board or designed service provider that reviews an affidavit of mental illness to also review law enforcement records, related affidavits, all medical records, and any toxicology or other lab results and notes of hospital nurses or medical treatment team. ADAMHS boards may realize administrative costs to review additional information. Any impact will depend on how much of this information is currently reviewed. The bill also changes the time within which the hearing must be conducted if the respondent was taken into custody under an emergency mental health custody and evaluation to four court days from the day on which the respondent was taken into custody instead of five days from which the respondent is detained or an affidavit is filed, whichever occurs first. If this reduces the amount of time that individual is receiving treatment, this could reduce associated costs.

Additionally, the bill allows the prosecuting attorney to present the case demonstrating that the respondent is a mentally ill person subject to court order if the affiant is a law enforcement officer or prosecuting attorney. Any impact will depend on how such cases are currently handled and if a prosecuting attorney chooses to present such cases. The bill prohibits a person from providing false information on an affidavit of mental illness or a certificate signed by a psychiatrist, licensed clinical psychologist, or licensed physician. Any violation of this prohibition is a misdemeanor of the first degree. This could result in court costs and possible court fine revenues if there are any related violations. However, any impact should be minimal as the number of cases is anticipated to be few.

Emergency mental health custody and evaluation

The bill modifies an existing mechanism for emergency mental health custody and evaluation of a person. Currently, if a person who is taken into custody is transported to a general hospital, the general hospital may admit the person, or provide care and treatment, or both. However, at the end of 24 hours after arrival, the person is to be transferred to a hospital.² The

² Under R.C. 5122.01, "hospital" means a hospital or inpatient unit licensed by the Department of Mental Health and Addiction Services, and any institution, hospital, or other place established, controlled, or supervised by the Department.

bill specifies that other time frames applicable to other hospitals apply to a general hospital. If this provision increases the number of days that a person is receiving treatment in a general hospital then treatment costs could increase. The amount of any potential increase will depend on the following factors: the number of individuals impacted and the amount of additional treatment provided, whether the individual has health insurance, and whether the services rendered are reimbursable by the person's health insurance.

Statement of General Assembly's intent to appropriate specified sums of federal ARPA funding

The bill states that it is the General Assembly's intent to appropriate \$85.0 million in federal American Rescue Plan Act (ARPA) funds to the Ohio Department of Mental Health and Addiction Services (OhioMHAS), which will be used in conjunction with the Ohio Department of Higher Education, to recruit, train, and retain a robust behavioral health workforce. Additionally, the bill states that it is the General Assembly's intent to appropriate \$90.0 million to OhioMHAS in federal ARPA funds to support the expansion of crisis infrastructure, such as stabilization units, short-term crisis residential services, mobile crisis response, and behavioral health urgent care centers. The funding will allow: for the development of a mental health rehabilitation center in each of the six regional psychiatric hospital catchment areas and to pay for renovation, construction, operations, and technology upgrades for crisis services.