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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

S.B. 199
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 199's Bill Analysis](#)

Version: As Reported by House Civil Justice

Primary Sponsor: Sen. Blessing

Local Impact Statement Procedure Required: No

Jamie Duskocil, Division Chief, and other LBO staff

Highlights

- Changes to guardianship, trust, and estate laws are not expected to create significant expenses, revenues, or savings for the probate divisions of the courts of common pleas or locally operated social service agencies that are involved in guardianship proceedings.
- Related to the involuntary treatment for certain individuals, there could be additional hospitalization or treatment costs depending on a number of factors including whether the bill (1) identifies individuals earlier who would have eventually received treatment under current law or (2) generates new cases. If new cases are generated, state and local public health entities could realize costs.
- The probate divisions of the courts of common pleas should be able to utilize existing staffing levels and appropriated funds to absorb any work and costs created by additional hearings related to involuntary treatment for mental illness.
- Compensation changes for the current judge of the Fulton County County Court, in January 2023, will result in a \$26,250 net increase in compensation expenses for Fulton County, and for the state, \$36,883.
- Conservancy districts and the Ohio Department of Natural Resources (ODNR) will likely realize some efficiencies from the authority granted by the bill to dispose of certain abandoned or forfeited vehicles in their jurisdictions, including being able to recoup some of their disposal and storage costs from the sale of such vehicles.
- The bill eliminates the current 12-year period of limitation for an action for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse, or an action brought by such victim asserting any claim resulting from childhood sexual abuse, only for purposes of making claims against a bankruptcy estate. The bill may

increase taxable income of Ohio claimants, but the prospective state revenue gain, if any, would depend on the details of settlements arising from lawsuits against the Boy Scouts of America.

- Priority of property assessed clean energy (PACE) liens may result in local governments losing foreclosure proceeds that they might otherwise receive.

Detailed Analysis

The bill addresses: (1) guardianships, trusts, and estates, (2) involuntary treatment for certain individuals, (3) the Fulton County County Court, (4) vehicle disposal, (5) voluntary surrender of children in temporary custody, (6) limitations period for claims of childhood sexual abuse, (7) Medicaid prior authorization requirements, and (8) residential property assessed clean energy (PACE) loans.

Guardianship, trust, and estate law changes

Guardianships

The bill makes several changes to the Guardianship Law. Judges and the Ohio Judicial Conference expect these changes will be fiscally neutral for the courts: causing neither significant expenses, revenues, nor savings for the probate courts with subject matter jurisdiction in such matters. Likewise, locally operated social service agencies that are involved in guardianship proceedings are not expected to experience more than minimal additional costs because of the bill. The changes include definitions, guardianship of a minor or incompetent, petitions for conservatorship, notice of hearing on an application for guardianship in general, guardianship of wards in general, transactions dealing with a ward's property, termination of a guardianship, and guardians for nonresidents.

Trusts and estates

The bill makes various changes related to the laws regarding trust and estate cases generally under the subject matter jurisdiction of the probate divisions of the state's 88 courts of common pleas. The bill specifically amends the laws regarding disinterment of bodies buried in cemeteries, conclusion of irrevocable trusts, methods for tangible personal property to transfer on death, records disclosures relating to settlement of claims for minors, and options a creditor has to present a claim against an estate. Collectively, these provisions will have a minimal fiscal impact on the probate courts, with any additional work and related operating expenses absorbed with existing staff and appropriated resources.

Involuntary treatment for certain individuals

Definition of “mentally ill person subject to court order” and risk of harm

Existing Ohio law establishes a process under which certain health professionals or law enforcement officers may initiate an individual's involuntary treatment for mental illness when an emergency exists. The bill changes the definition of a “mentally ill person subject to a court order” by expanding the definition to include a person who represents a substantial risk of harm to self or others as manifested by evidence that indicates:

- That the person’s judgement is impaired by a lack of understanding of having an illness or need for treatment;
- The person refuses or is not adhering to prescribed treatments;
- The person has been diagnosed with certain conditions, including schizophrenia, bipolar disorder, or major depressive disorder; and
- The person is reasonably expected to suffer mental deterioration based on prior history, and, as a result, is expected to then meet the standards under the current law definition.

In addition to being considered a “mentally ill person subject to a court order,” to be eligible for emergency involuntary hospitalization, an individual also must currently represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The bill removes the requirement that the substantial risk of harm be a risk of “physical” harm.

General hospitals

With regard to the written statement required to be given to a hospital by an individual authorized to transport a mentally ill person subject to a court order under existing law, the bill specifies that the statement is not invalid if the statement identifies a general hospital as the hospital receiving the person. The bill requires a general hospital that receives a written statement to transmit the statement to an Ohio Department of Mental Health and Addiction Services (OhioMHAS)-licensed hospital when the general hospital transfers the person about whom the statement was made to such a hospital. In addition, the bill adds a requirement that when transporting a person under the new category established by the bill, an individual authorized to transport the person must specify certain relevant information.

The bill adds the following exceptions to the existing law requirement that a mentally ill person subject to a court order who is taken into custody and transferred to a general hospital be transferred to an OhioMHAS-licensed hospital within 24 hours: the treating physician determines the individual is not medically stable to be transferred, and the general hospital is unable to identify an OhioMHAS-licensed hospital willing to treat the individual. If specified professionals examine a person transported to a general hospital determine that the person is not a mentally ill person subject to a court order, the general hospital may release or discharge the person if the person is medically stable unless the court has issued a temporary order of detention applicable to the person. The bill specifies that the above provision is not to be construed as requiring a general hospital to have the resources for or provide the staff identified to make such a determination.

Treatment costs

The bill could result in additional emergency hospitalization and treatment costs. When contacted, both OhioMHAS and the Ohio Association of County Behavioral Health Authorities (OACBHA) were uncertain of the bill’s impact at this time. However, OACBHA stated that the impact will primarily depend on if the bill (1) generates new cases or (2) identifies individuals, who would have eventually received involuntary treatment under current law, earlier. If cases are identified and treatments are rendered earlier, it is possible that some stabilization and treatment costs might actually be reduced. If there are new cases generated, the costs will depend on the number of such cases, the scope of treatments rendered, and insurance

reimbursements or patient contributions received. OhioMHAS regional psychiatric hospitals (RPH) could realize an increase in costs, as could any public hospitals that provide care. Additionally, if a public hospital kept an individual for longer than 24 hours due to an exception established by the bill, the public hospital could realize costs to provide care. These costs would depend on any insurance reimbursements or patient contributions received.¹ Private insurance, Medicare, and Medicaid could reimburse for medically necessary treatment or hospitalizations. In cases in which insurance was unavailable, patients could be charged. In addition, some county alcohol, drug addiction, and mental health services (ADAMHS) boards may pay some emergency hospitalization costs, if funds are available, for indigent patients in certain circumstances. ADAMHS boards could also realize costs to establish emergency and crisis care plans for residents impacted by the bill or to reimburse for any additional assessments required.

Probate courts

Because of the bill, there may be an increase in the number of probate court hearings involving an individual's involuntary treatment for mental illness when an emergency exists. For the ten-year period covering calendar years 2011 through 2020, probate courts reported an average of 85,980 incoming cases statewide per year, of which 6,129, or 7.1%, involved civil commitments.² The increase in hearings is not expected to be significant; some cases may be heard earlier under the bill than they otherwise would have been under current law. The courts will likely be able to utilize existing staffing levels and appropriated funds to absorb any additional work and related costs.

Fulton County County Court

The bill requires that, effective January 1, 2023, the part-time judgeship of the Fulton County County Court (originally elected in 1982) be converted to a full-time judgeship of that court until the court is abolished on January 1, 2024, pursuant to enacted Sub. H.B. 518 of the 134th General Assembly. On January 1, 2023, that full-time judge of the Fulton County County Court will receive the compensation of a full-time judge of a municipal court until the court is effectively abolished.

In January 2023, a part-time judge elected to a county court will be paid \$85,642 annually, with compensation being split between the county (\$35,500) and the state (\$50,142). A full-time municipal court judge earns \$148,775 annually, with compensation being split between the local jurisdiction (\$61,750) and the state (\$87,025). The net increase for Fulton County will be \$26,250; and for the state, \$36,883.

¹ There are currently six OhioMHAS regional psychiatric hospitals. The inpatient daily rate in CY 2021 for all payors ranged from about \$537 to \$804. See the "[OhioMHAS Hospital Rates](#)" (PDF), which is available on OhioMHAS's website: mha.ohio.gov/supporting-providers/regional-psychiatric-hospitals.

² Civil commitment data reported by the Supreme Court includes all commitments under R.C. Chapter 5122 of which emergency commitments are a subset.

Qualification of judges

The bill modifies the qualifications for office for judges of municipal courts, county courts, courts of common pleas, courts of appeals, and justices of the Supreme Court. This provision is not expected to create any direct fiscal effect on the state or political subdivisions.

Vehicle disposal by conservancy districts and ODNR

Conservancy districts

The bill generally allows conservancy district law enforcement officials to dispose of and, in certain circumstances, take title to motor vehicles abandoned on public or private property within their jurisdiction in the same manner that county, municipal, township, and port authority law enforcement officials are authorized to do so under current law. This could create certain efficiencies for entities that function as a conservancy district. To the extent that such vehicles may be auctioned, some costs for disposal could be recouped.

Ohio Department of Natural Resources

The bill generally allows natural resource officers and wildlife officers employed by the Department to order the towing and storage of various types of vehicles under certain conditions. This includes: (1) an abandoned junk motor vehicle, (2) a motor vehicle that has come into the Department's possession as a result of law enforcement duties, (3) a motor vehicle that has been left on public streets or other public property under the Department's jurisdiction for more than 48 hours, and (4) a vehicle that has been in an accident.

Any money accrued by the Department from the disposal of an unclaimed motor vehicle or an abandoned junk motor vehicle would be credited as follows: (1) to the Wildlife Fund (Fund 7015), if the vehicle was removed from property under the control or jurisdiction of the Division of Wildlife, or (2) to the State Park Fund (Fund 5120), if the vehicle was removed from property under the control or jurisdiction of the Department other than property under the control or jurisdiction of the Division of Wildlife. The extent to which the Department will recoup its costs to remove and store such vehicles is unknown.

Voluntary surrender of child in temporary custody

The bill permits a public children services agency or private child placing agency to accept the voluntary permanent surrender of a child by the child's parents while the child is in the agency's temporary custody. It is possible that some agencies currently do this. If any do not and accept such a placement, then their placement and administrative costs could increase.

Limitations period for childhood sexual abuse

The bill eliminates the period of limitation, currently 12 years after the age of majority, for a civil action based on a claim of childhood sexual abuse for the purposes of making claims against a bankruptcy estate.³ This provision would allow an action in this very limited circumstance to be brought at any time. If enacted, the bill will likely have an immediate impact

³ The age of majority is 18 years of age, or 21 years of age for a person with a developmental disability or physical impairment.

on claims made by certain Ohio claimants in the pending bankruptcy settlement for Boy Scouts of America (BSA), Chapter 11 Plan of Reorganization.

With respect to the BSA restructuring plan, eliminating the period of limitation enables those electing a Trust Claim Submission to receive more money under the Trust Distribution procedures. For these claims, the proposed settlement establishes a claims matrix and delineates six possible tiers to which an allowed abuse claim can be assigned depending on the nature of the abuse. A base value is assigned as a default amount for each tier prior to the application of scaling factors. The scaling factors increase or decrease that default amount. If the claim could be dismissed or denied in the tort system due to the passage of a statute of limitations or repose, the settlement's statute of limitations scaling factor would be applied to scale down the claim amount.⁴ Based on Ohio's current statute of limitation for childhood sexual abuse, 30% to 45% of victims' claims value are allowed under the proposed settlement agreement that is still pending final court action.⁵ If the bill is enacted, and if the agreement is finalized by the court, Ohio claimants in the BSA will no longer be subjected to the scaling reduction, thus potentially increasing the amount ultimately received by each claimant.

Fiscal effect on local civil justice systems

As mentioned, the most likely and immediate outcome of the bill is that Ohio claimants may receive more money under the BSA settlement if the current proposal is accepted and finalized by the U.S. Bankruptcy Court for the District of Delaware. At the time of the Trust Claim Submission, Direct Abuse Claimants may elect claim determination deferral for a period of 12 months from the restructuring plan's effective date to see if statute of legislation revival legislation occurs in their respective states. The bill could have an impact on Ohio's local civil justice systems, given the restructuring plan allows victims to opt out of the trust distribution procedures to pursue claims against certain parties in state court.⁶ The number of potential claims that would instead be settled by trust distribution or litigated in state courts is unknown; however, it is not expected to have a significant impact on civil caseloads for any individual Ohio court. Any additional civil cases that may be filed presumably would be relatively small, with a court's existing staff and resources absorbing the work and related costs.

Indirect fiscal effect on state and local income tax revenue

Internal Revenue Code (IRC) Section 104 provides an exclusion from taxable income with respect to lawsuits, settlements, and awards.⁷ However, the facts and circumstances surrounding each settlement payment must be considered to determine the purpose for which the money was received because not all amounts received from a settlement are exempt from taxes. The IRC permits a taxpayer to exclude from federal adjusted gross income (FAGI) "the amount of any

⁴ See Exhibit A: Trust Distribution Procedures, Article VIII: Claims Matrix and Scaling Factors of the [Third Modified Fifth Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC \(PDF\)](#), which is available on the Tort Claimants' Committee (TCC) website: tcbsa.com.

⁵ See the [Proposed Statute of Limitation Scaling Factor](#), also available on the TCC website.

⁶ A civil action falls under the jurisdiction of common pleas, municipal, and county courts, with the latter two permitted to hear civil cases in which the amount of money in dispute does not exceed \$15,000.

⁷ Refer to the Internal Revenue Service website for [Tax Implications of Settlements and Judgments](#), which can be found on irs.gov.

damages (other than punitive damages) received . . . on account of personal injuries or physical sickness.” That section further provides that “emotional distress shall not be treated as a physical injury or physical sickness.” The IRS website summarizes the law as follows: “mental and emotional distress arising from nonphysical injuries are . . . excludible from gross income under IRC Section 104(a)(2) only if received on account of physical injury or physical sickness.”

Since FAGI is the starting point for Ohio’s personal income tax (PIT), the bill could create additional tax revenue under the state income tax. However, the additional receipts, if any, are predicated on the nature of the settlement agreements between Ohio claimants and the BSA. Any revenue gains that might result from the bill would be deposited into the GRF, with subsequent transfers of such revenue to the Local Government Fund (1.66% of the revenue), and the Public Library Fund (1.66%).⁸

Medicaid prior authorization requirements

The bill makes several changes to prior authorization requirements Medicaid managed care organizations (MCOs) are permitted to impose for drugs used in the treatment of certain behavioral health disorders, medication-assisted addiction treatment, or in withdrawal management and detoxification, under specific prescribing conditions. Ohio’s Medicaid Unified Preferred Drug List (UPDL) was introduced in 2020. The UPDL standardized prior authorization processes across all managed care plans. Some of the drugs specified in the bill may already not be subject to prior authorization under the UPDL. For any drugs which are currently subject to prior authorization and for which prior authorization will be eliminated under the bill’s provisions, cost increases could occur for the Department of Medicaid (ODM). The magnitude of any increases would depend on the price of the impacted prescriptions, and the number of prescriptions Medicaid recipients receive. The result may be an increase in the capitation rates that ODM pays to MCOs for their services provided to Medicaid enrollees.

Residential PACE loan program

Residential property assessed clean energy (PACE) loans are extensions of financing offered to pay for the installation of cost-effective energy improvements on homeowners’ qualifying residential real property and repayable by homeowners through special assessments. Such improvements may include installing and implementing solar, geothermal, or other alternative energy and energy efficiency technologies. Currently, only commercial PACE programs are offered in the state. It appears that there are over 130 commercial PACE programs managed by 20 known entities in the state.⁹ Nationally, there are active residential PACE

⁸ An uncodified provision of H.B. 110 increases the share allocated to the Public Library Fund to 1.70% for the current biennium. The provision would expire and the share decrease to 1.66% on July 1, 2023, under current law.

⁹ See the [Interactive Map: Ohio PACE Programs](#), which is available on the Bricker & Eckler Attorneys at Law website: bricker.com/home.

financing programs available in California (10), Florida (4), and Missouri (3).¹⁰ In California, there is one local government that operates its own PACE program in that state.¹¹

The bill provides for repayment of a residential PACE loan by a homeowner through a special assessment as part of a municipal low-cost alternative energy revolving loan program (R.C. 717.25) or a special improvement district of a municipal corporation, township, or combination thereof (R.C. Chapter 1710). A municipal low-cost alternative energy revolving loan program assists property owners with installing and implementing specified alternative energy technologies or energy efficiency technologies, products, and activities. A special improvement district may develop and implement plans for various public improvements and services that benefit the district in addition to the energy efficiency improvements through the residential PACE program.

Possible fiscal consequence of priority of liens

The bill provides that a PACE lien is subordinate to all previously recorded liens on the property and any first mortgage, regardless of when it is recorded. A PACE lien is superior to any lien on the property, other than a first mortgage, that is recorded after the PACE lien. The bill's lien-priority provision applies notwithstanding any other provision of law. Current law provides that the state's property tax lien is generally superior to all other liens. The bill creates a new exception to this general superiority for PACE liens. Consequently, PACE liens appear to be superior to any tax lien recorded after the PACE lien, even though the PACE lien could be enforced in the same manner as tax liens, through tax foreclosure. So local governments may lose some foreclosure proceeds that they might otherwise receive. The amount of any such losses appears indeterminate.

These lien provisions appear to create a situation in which the disposition of foreclosure proceeds is unclear. As indicated above, the bill makes a PACE lien subordinate to an after-recorded first mortgage on the property. A first mortgage lien is generally subordinate to a tax lien. Under the bill, an after-recorded tax lien would be subordinate to a PACE lien, since the bill says that a PACE lien is superior to any lien, other than a first mortgage lien, recorded after the PACE lien is recorded.

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¹⁰ See the [Property Assessed Clean Energy Programs](#), which is available on the U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy website: energy.gov/eere/office-energy-efficiency-renewable-energy.

¹¹ See the [List of Enrolled PACE Programs](#), which is available on the California State Treasurer website: treasure.ca.gov/index.asp.