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H.B. 460
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Hillyer and Seitz

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill's sealing provisions are likely to result in a significant increase in the workloads and administrative costs of courts, clerks of courts, prosecutors, and any local agency/department/office that holds a criminal record subject to a sealing order.
- Clerks of courts will likely incur increased administrative and information technology costs to establish procedures to implement the bill's automatic criminal record sealing process. Costs will vary based on the number of records impacted and the court's current case management system capability.
- The Bureau of Criminal Investigation (BCI) will likely experience a significant increase in administrative costs to identify criminal records that are eligible for automatic sealing under the bill. While costs to BCI are not readily quantifiable, they are likely to be significant and require several full-time employees as well as costly software upgrades.
- Local prosecutors and BCI will also incur investigation costs related to the objection phase of the automatic sealing process.
- To the extent that current applications for sealing are impacted, fee revenues for those applications will be forgone. Those \$50 application fees, when collected are credited as follows: (1) three-fifths of the fee is credited to the state treasury, with half of that amount credited to the Attorney General Reimbursement Fund (Fund 1060) and the General Revenue Fund (GRF), respectively, and (2) two-fifths of the fee is retained by the county general or municipality depending on the record that was sealed.

Detailed Analysis

The bill allows for and creates a process for certain criminal records to be automatically sealed. Under the bill, at least once every calendar month, beginning three years after the effective date, the Bureau of Criminal Investigation (BCI) is required to identify records that are eligible for sealing and provide to each prosecuting attorney and each court a list of those cases over which they have jurisdiction. Eligibility standards are set forth in the bill and certain objections may be made. If an objection is not made after 45 days of the record's identification, the court shall seal the record. If an objection is made, the record is not sealed. The individual who is the subject of the criminal record may still file an application for sealing or expungement at a later date (the process for which is described below).

Sealing versus expungement

There is a difference between sealing a record and expungement of a record. "Sealing" a court record means that the criminal record is removed from all public records and the public no longer has access to the records of the criminal case, including employers generally. However, a sealed record is still maintained by the holder of the record for access for limited purposes. "Expungement" usually means that the criminal record is completely destroyed, erased, or obliterated from all locations, both paper and electronic, making it permanently irretrievable.

Current sealing process – application fee

Under current law, in order to seal a record, an individual must apply and is charged a fee of generally not more than \$50 (unless it is waived). When an application to seal a record is filed, the court sets a hearing date within 45 to 90 days of the filing 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 fee, if collected is credited as follows: (1) three-fifths of the fee is credited to the state treasury, with half of that amount credited to the Attorney General Reimbursement Fund (Fund 1060) and the GRF, respectively, and (2) two-fifths of the fee is retained by the county general or municipality depending on the record that was sealed.

As a result of the bill, some number of individuals may benefit from the bill's automatic sealing provisions and will no longer need to apply to have their records sealed. To the extent that individuals will no longer need to apply and pay an application fee, local and state funds will realize a potential revenue loss.

BCI costs

BCI serves as the state's central repository for more than six million criminal records, including biometric information such as fingerprints, palm prints, and photographs. According to data collected by the Ohio Criminal Sentencing Commission, BCI received approximately 38,000 sealing/expungement orders annually from calendar year (CY) 2016 through 2018. The actual number of applications was higher, as the BCI data does not reflect applications denied or withdrawn.

Because the bill does not require an application for sealing, the number of records that may be subject to sealing will likely be greatly higher than those considered under the current process. The annual magnitude will depend on the number of records identified as eligible for automatic sealing and not objected to by authorized parties. Additionally, at least once each calendar year, beginning the year that is three years after the bill, BCI must submit a report to the General Assembly identifying every case for which a record included on a list for automatic sealing was not sealed because of an objection by the prosecutor or BCI. This will be a new process that according to BCI, will be challenging due to the lack of a centralized law enforcement database. Reviewing cases for eligibility would require cases to be received by each county and likely processed by hand. While costs to BCI are not readily quantifiable, they are likely to be significant and require several full-time employees as well as costly software upgrades.

Local criminal justice systems and holders of records

The bill's sealing provisions are likely to result in a significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and any local agency/department/office that holds a criminal record subject to a sealing order. The cost for some of these entities will likely be significant in terms of workloads and staff time. The magnitude of these increases will depend on the number of records that may be impacted in each jurisdiction. Additionally, it is uncertain if improvements will be needed for current information technology systems.

Based on conversations with court professionals, the bill has the potential to create a potentially significant administrative burden on the courts to establish procedures to automatically seal records. This would include redacting and sequestering certain records that must remain available for law enforcement and other limited purposes. The annual cost of that redaction work for any given court is not readily quantifiable, but will vary based on the number of records impacted, caseload, and the court's current case management system capability.

Additionally, the bill would require increased investigative work on behalf of law enforcement and prosecutors in order to adequately object to the automatic sealing of a record. According to the Ohio Prosecuting Attorneys Association (OPAA), additional resources and staff would be needed to monitor and investigate if an individual is still engaged in criminal activity post sentencing or if one of the other disqualifying criteria is met.

Liability for negligent hiring or supervision

The bill limits liability in negligent hiring or supervision cases if a criminal record has been sealed or expunged. In a civil action or administrative proceeding alleging negligence or other fault: (1) no criminal record that has been sealed or expunged can be considered as evidence against an employer for negligent hiring or negligent supervision and (2) the sealing or expungement provides immunity for the employer to the extent that a sealed or expunged record is the basis of a claim against the employer for negligent hiring or negligent supervision. The net effect of these two qualifiers is that certain civil cases alleging misconduct by an employer may not be filed, or if filed, will be dismissed at an early stage in the proceeding, thus resulting in certain savings for civil courts.