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H.B. 234
(1_135_0426-4)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 234's Bill Analysis](#)

Version: In Senate Judiciary

Primary Sponsors: Reps. Williams and Rogers

Local Impact Statement Procedure Required: No

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Highlights

- The bill's criminal records sealing and expungement provisions are unlikely to significantly increase the annual workload or operating costs of courts, clerks of courts, prosecutors, probation authorities involved in the court's determination regarding an application, or public offices and agencies in possession of records subject to a sealing/expungement order.
- The following have no direct effect on the state or political subdivisions: (1) prohibiting courts from considering offender remorse when sentencing defendants who have entered an Alford plea and (2) clarifying the existing process for suspending local elected officials.

Detailed Analysis

Alford pleas

The bill prohibits a court from considering whether an offender who entered an Alford plea¹ for a felony or misdemeanor shows genuine remorse for the offense when imposing a sentence. This prohibition has no direct fiscal effect on the state or political subdivisions.

Under existing law, genuine remorse is a factor that a court must consider in felony sentencing when determining whether an offender is likely or not likely to commit future crimes.

¹ An Alford plea is a guilty plea entered by a criminal defendant who does not admit guilt but nevertheless pleads guilty as part of a plea bargain. The types of cases that a defendant might consider an Alford plea are generally those involving high level charges, particularly those where they would face a significant sentence if they were to lose at trial.

Misdemeanor sentencing also requires the consideration of certain factors, including if there is a substantial risk that the offender will commit another offense, but genuine remorse is not required as part of that determination.

According to the Ohio Judicial Conference's Criminal Law and Procedure Committee, Alford pleas are rare in Ohio. Some judges reported that they see several each year, and others more infrequently. Most judges on the Committee indicated that they already do not consider remorse when sentencing on an Alford plea, recognizing that the defendant is still asserting their innocence, and thus there might not be any remorse shown.

Conversations with the Ohio Prosecuting Attorneys Association similarly suggest that Alford pleas are not common across the state. According to the Association, most counties rarely use them, if ever, because they often result in more post-conviction litigation. It is possible the bill may lead to more defendants requesting Alford pleas, which potentially could increase post-conviction litigation. However, as with all plea bargains, an Alford plea is not a right and it is ultimately up to the prosecutor and judge to decide if they will offer or accept it. While it is possible that the bill may induce more defendants to enter into an Alford plea because they are rare, any increase is not expected to be significant.

Sealing and expungement

This bill makes several changes to Ohio's sealing and expungement laws. It expands eligibility for sealing domestic violence convictions to include third degree misdemeanors, in addition to the current fourth degree misdemeanors. However, domestic violence convictions, regardless of offense level, cannot be expunged under continuing law.²

The bill also allows an offender to seal a conviction record for violating a protection order. Furthermore, it eliminates the eligibility for sealing or expungement of a conviction for theft in office. Additionally, for purposes of seeking sealing or expungement of a third degree felony, the bill allows for multiple third degree felonies to be treated as a single conviction in certain circumstances.

These changes are unlikely to significantly increase the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, or public offices and agencies in possession of records subject to a sealing/expungement order.

Upon the application to seal or expunge a record under current law, the applicant, unless indigent, must pay a \$50 fee. The \$50 application fee is divided between the state GRF (\$30) and the county or municipality (\$20). Given the relatively small number of new records eligible for sealing under the bill, any additional costs for local sentencing courts and agencies required to expunge such records will be minimal at most annually, with the application fee likely to offset at least a portion of those costs. There are no new expungements under the bill.

² For background, though the terms are often used interchangeably, the process of expungement is separate from the process for sealing a record under Ohio law. A record that is sealed is removed from public record, but still maintained so that it may be accessed by statutorily enumerated persons or agencies. A record that is expunged is destroyed, deleted, or erased, as appropriate, so that the record is permanently irretrievable.

Suspension of local officials

The bill makes clarifying technical changes to the process for suspending local elected officials (other than judges) who are charged with a felony, in a state or federal court, related to their official duties. These changes have no fiscal effect.