



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 172 of the 131st G.A. **Date:** December 8, 2016

Status: As Passed by the Senate **Sponsor:** Rep. Barnes

Local Impact Statement Procedure Required: No

Contents: Publishing of criminal record information, records expungement, intervention in lieu of conviction, Casino Control Law prohibition, Perry County Municipal Court

State Fiscal Highlights

- **Misuse of criminal record information.** Violations of the bill's criminal prohibition against the "misuse of criminal information" may generate a minimal at most annual gain in revenue in the form of locally collected state court costs distributed between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- **Human trafficking expungement.** An expected small increase in the number of persons eligible to apply for records expungement each year may generate, at most, a minimal amount of related application fee revenue for deposit in the state's General Revenue Fund (GRF).
- **Perry County Municipal Court judgeship.** Beginning January 2018, the creation of a full-time municipal court judgeship will increase the amount of GRF funding that the Supreme Court of Ohio disburses in the form of state support for a judgeship by between \$34,000 and \$39,000 annually.

Local Fiscal Highlights

- **Misuse of criminal record information.** As a result of violations of the bill's criminal prohibition against the "misuse of criminal information," there may be a relatively small increase in the number of misdemeanor cases handled by county and municipal criminal justice systems. Any additional cost to resolve such cases will be minimal at most annually, and may be offset to some degree by court costs, fees, and fines collected from offenders. Courts of common pleas, municipal courts, and county courts are expected to absorb any additional civil actions filed alleging a violation of the bill's prohibition with little, if any, discernible effect on their daily cost of operations.

- **Human trafficking expungement.** The records expungement provision will have a minimal annual fiscal effect on local criminal and juvenile justice systems, as there will be some gain in application fee revenues and a minimal increase in time and effort for courts to expunge additional delinquency and criminal records.
 - **Intervention in lieu of conviction.** There may be a relatively small increase in the number of persons granted intervention in lieu of conviction, the cost of which for any given county or municipality is likely to be no more than minimal annually.
 - **Perry County Municipal Court.** Beginning January 2018, (1) the creation of a full-time municipal court judgeship will increase judicial compensation-related expenditures for Perry County by an estimated \$34,768 annually, and (2) the Clerk of the Perry County Court of Common Pleas will assume the duties of the clerk for the Perry County Municipal Court resulting in an increase in compensation and related benefits paid by the county estimated at \$14,751 annually. Perry County will incur approximately \$5,000 in the first year to make administrative changes as a result of the name change for the court (e.g., letterhead, signage, and other localized products). Perry County is not expected to add staff, offices, or courtroom space to change from a county court to a municipal court.
 - **Perry County Prosecuting Attorney.** The bill requires the Perry County Prosecuting Attorney to prosecute all violations of state law in the Perry County Municipal Court. The Perry County Prosecuting Attorney expects that this increased caseload can be absorbed and not require additional staff to be hired. The magnitude of any resulting annual savings effect for municipal prosecutors that would likely see their caseloads decrease is uncertain. The bill permits the Perry County Prosecuting Attorney to enter into an agreement (including a fee) with any municipal corporation in Perry County to prosecute nonstate law violations. Whether the affected local prosecuting attorneys will make such agreements is uncertain. Thus, any changes in annual revenues and expenditures that might result from such arrangements for Perry County and its municipal corporations are uncertain as well.
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Detailed Fiscal Analysis

Misuse of criminal record information

Criminal offense

The bill creates the offense of "misuse of criminal record information." Under the bill, a person engaged in publishing or otherwise disseminating criminal record information is prohibited from soliciting or accepting payment from the subject individual to remove, correct, modify, or refrain from publishing or otherwise disseminating criminal record information. Whoever violates the prohibition is guilty of a first degree misdemeanor. Each payment solicited or accepted constitutes a separate violation. A conviction for a first degree misdemeanor carries a possible jail sentence of not more than 180 days, a \$1,000 maximum fine, or both.

Entities affected by the bill generally are: (1) newspapers who do nothing but download and print peoples' mug shots from sheriffs' office websites, and whose business model often involves owning several newspapers under different names so that a person has to pay several times to get a mug shot removed from several separate newspapers, and (2) legitimate background check websites that do not necessarily know that a record has been expunged and may charge a person to have the data removed. The number of entities/persons that will be affected by the bill is uncertain.

It is likely that, as entities/persons gain awareness of the bill's prohibition, most will comply and that violations will become relatively infrequent. In the context of any given county and municipal criminal justice system's overall caseload, the number of additional misdemeanor cases generated will be relatively small. This means that any increase in their annual expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders will be minimal. There may also be a minimal at most annual gain in: (1) local revenue from court costs, fees, and fines, and (2) state revenue from locally collected state court costs. The state amount is \$29 and divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to the Victims of Crime/Reparations Fund (Fund 4020).

Civil remedy

The bill specifies that, in a civil action for damages for a criminal act, an individual who suffers loss or harm as result of violation of the bill's prohibition may be awarded \$10,000 in actual and punitive damages, whichever is greater, and reasonable attorney's fees, court costs, and any other remedies provided under current law.

Depending on the amount of money involved, a civil action would be filed in a court of common pleas, municipal court, or county court. A court of common pleas has jurisdiction where the amount is more than \$15,000. A municipal or county court may hear an action where the amount of money does not exceed \$15,000. Although the number of resulting civil actions that will be or could be filed is uncertain, it is expected that the common pleas, municipal, and county courts will be able to absorb any additional filings into their respective caseloads with little, if any, discernible effect on annual operating expenses.

Human trafficking and compelling prostitution

The bill: (1) allows for expungement of certain conviction records if a person is convicted of specific sex offenses resulting from being a human trafficking victim, (2) provides for the expungement of any human trafficking-related offense that did not result in conviction and establishes a procedure to approve or deny expungement, and (3) authorizes intervention in lieu of conviction for certain offenses committed while a victim of compelling prostitution. Due to the relatively small population of identified victims of human trafficking, the fiscal effect on state and local criminal and juvenile justice systems is likely to be minimal at most annually.

Expungement of delinquency and criminal records

For an offender convicted of six specified offenses, including soliciting and prostitution, the bill expands the list of criminal offenses the records of which may be expunged to include any offense other than aggravated murder, murder, or rape, the person's participation in which resulted from the offender being a victim of human trafficking. In addition, the bill authorizes the expungement of records related to a finding of not guilty or to a dismissed criminal charge, if the finding or charge was the result of the person having been a victim of human trafficking. According to the 2015 Ohio Attorney General's Human Trafficking Annual Report, 203 potential victims of human trafficking were identified in 2015.

Under the bill, a small number of additional persons will be eligible to apply for expungement. Expungement applicants, unless indigent, are required to pay a \$50 fee. The \$50 application fee is divided between the state GRF (\$30) and the county or municipality (\$20). The annual costs for local criminal and juvenile justice systems to handle a potential increase in expungement requests will be minimal at most, with the application fee likely to offset all, or some portion, of those costs.

The bill also establishes a procedure to approve or deny an application to expunge the aforementioned records, including notice to the prosecutor, a hearing, and a determination by the court. Given the relatively small number of new records eligible for expungement under the bill, any additional costs for local sentencing courts will be minimal at most annually.

Intervention in lieu of conviction

The bill allows a victim of compelling prostitution to request intervention in lieu of conviction (ILC) when charged with certain offenses¹ in the same manner as current law provides when certain factors may have led to the offense: alcohol or drug usage, mental illness, intellectual disability, or the offender was a victim of human trafficking. LSC conversations with subject matter experts suggest that victims of compelling prostitution may already commonly be granted ILC at the judge's discretion, indicating the bill is widely codifying current practice in this regard. This suggests that any cost for a given municipality or county will be minimal annually, as the likely number of additional persons granted ILC would be relatively small.

Casino Control Law prohibition

Under the Casino Control Law, a casino operator or employee is prohibited from purposely or knowingly participating in casino gaming other than as part of operation or employment. A person who violates the prohibition commits a first degree misdemeanor on the first offense and a fifth degree felony for a subsequent offense. The bill modifies the prohibition by stating that it applies with respect to casino gaming at

¹ These offenses include: theft, unauthorized use of a motor vehicle, passing bad checks, misuse of credit cards, forgery, and/or nonsupport or contributing to nonsupport of dependents.

the casino facility at which the casino operator or employee has an interest or is employed at an affiliated casino facility in Ohio.²

Since the Casino Control Law was enacted in September 2010, no casino operator or employee has been charged with a violation of this prohibited conduct. The bill makes it even less likely that such a violation may occur in the future by narrowing the locations in which the conduct is prohibited. Given the extremely low likelihood of such violations, the bill will have no direct fiscal effect on the state or any of its political subdivisions.

Creation of Perry County Municipal Court and judgeship

Effective January 1, 2018, the bill eliminates the Perry County County Court, eliminates the part-time judgeship in that court, establishes the Perry County Municipal Court, and establishes one full-time judgeship in the Perry County Municipal Court. The resulting increases in judicial compensation-related costs are described in more detail below.

Judicial compensation-related costs

Base salary

County court judgeship. The state and Perry County currently have expenses to support a part-time county court judgeship. The annual salary for a part-time county court judge is estimated at \$72,400 for calendar year (CY) 2017, and consists of a local and state share determined by statute as follows:

- The *local share* is \$35,500 per year.
- The *state share* is equal to the annual salary minus the local share, or \$36,900 annually.

In CY 2018, the base salary of a part-time county court judge will increase by approximately 5% to \$76,050, and in CY 2019, it will increase by another approximately 5% to \$79,900. The state share will increase to \$40,550 and \$44,400 in each year respectively as the total base salary increases. The local share will remain constant at \$35,500. Absent a statutory change, the annual salary and related state and local shares will not change after CY 2019.

Municipal court judgeship. The annual salary of a full-time municipal court judge is estimated at \$125,850 in CY 2017, and consists of a local and state share determined by statute as follows:

- The *local share* is \$61,750 per year.
- The *state share* is equal to the annual salary minus the local share, or \$64,100 annually.

In CY 2018, the base salary of a full-time municipal court judge will increase by approximately 5% to \$132,150, and in CY 2019, it will increase by another

² "Casino facility" means the Cleveland, Franklin County, Cincinnati, and Toledo casino facilities.

approximately 5% to \$138,850. The state share will increase to \$70,400 and \$77,100 in each year respectively as the total base salary increases. The local share will remain constant at \$61,750. Absent a statutory change, the annual salary and related state and local shares will not change after CY 2019.

To summarize, the result of replacing a part-time county court judgeship with a full-time municipal court judgeship in terms of the state and local shares of their base salaries is as follows:

- The state's share of the base salary will increase each year as the base pay increases from part- to full-time and the salaries for all judges increase by approximately 5% in each of CY 2018 and CY 2019. The state's share of base pay increases by \$29,850 in CY 2018, and by an additional \$2,850 in CY 2019.
- Perry County's share of the base annual salary will increase by \$26,250, from \$35,500 per year to \$61,750 per year.

Retirement

State and local elected officials are exempt from membership in the Public Employees Retirement System (PERS), unless they choose to become members. As most elected officials do accept membership in PERS, this analysis includes PERS payments.

The state and Perry County contribute at the rate of 14% of their share amounts, respectively. Under that PERS contribution formula, Perry County will expend an additional \$3,675 annually, while the state will expend an additional \$4,179 in CY 2018 and \$4,578 in subsequent years.

Payroll-related charges

The state and Perry County also pay for other payroll-related charges, as detailed below.

The state pays for a total of 3.52% in payroll-related charges as follows: 1.45% of gross salary for Medicare for all employees hired after April 1986, 0.10% for workers' compensation, 0.30% for the Department of Administrative Services' payroll services, 0.27% for Office of Budget and Management services, 0.01% to the Equal Employment Opportunity Commission, 0.69% for Office of Information Technology services, 0.46% to the Ohio Administrative Knowledge System, and 0.24% for group life insurance. These miscellaneous annual contributions will increase state expenses by \$1,051 in CY 2018 and \$1,151 in subsequent years.

Perry County pays 1.45% of gross salary for Medicare, 3.0% for workers' compensation, and approximately \$24,000 for health insurance. The increase of these miscellaneous contributions will cost the county an additional \$4,843 annually.

Other costs

Perry County will incur approximately \$5,000 in the first year to make administrative changes as a result of the name change for the court (e.g., letterhead, signage, and other localized products). Perry County is not expected to add staff, offices, or courtroom space as a result of the bill.

Clerk of courts

The Clerk of the Court of Perry County will assume the role of the clerk of the Perry County Municipal Court. By assuming these duties, the clerk is statutorily entitled to additional compensation equal to $\frac{1}{4}$ the rate set forth under continuing law. This increase, before benefits are calculated, brings the base salary to \$62,266 annually from \$49,813, an increase of \$12,453. The total additional annual cost to Perry County, including retirement, workers' compensation, and Medicare, is estimated at \$14,751.

The replacement of the existing county court with a municipal court is not expected to result in any staffing changes or related operating expenses.

Local prosecuting attorneys

Violations of state law

Under current law, municipal prosecutors prosecute violations of state law in the Perry County Court. The bill requires the Perry County Prosecuting Attorney to prosecute all violations of state law in the Perry County Municipal Court. This means that the volume of cases prosecuted by the county prosecutor will increase, but the likely magnitude of that increase is unknown. The Perry County Prosecuting Attorney expects that this increased caseload can be absorbed and not require additional staff to be hired. The magnitude of any resulting annual savings effect for municipal prosecutors that would likely see their caseloads decrease is uncertain.

Violations other than state law

The bill permits the Perry County Prosecuting Attorney to enter into an agreement with any municipal corporation in Perry County by which the Prosecuting Attorney prosecutes all cases brought in the Perry County Municipal Court for violations of the municipal corporation's ordinances or for offenses other than violations of state law occurring within the municipal corporation. For prosecuting these cases under such an agreement, the Prosecuting Attorney is permitted to agree upon a fee to be paid by the municipal corporation.

Whether the affected local prosecuting attorneys will make such agreements is uncertain. Thus, any changes in annual revenues and expenditures that might result from such arrangements for Perry County and its municipal corporations are uncertain as well.