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S.B. 353
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Sens. S. Huffman and Manning

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill's nonmonetary bail, risk assessment, and cite-and-release provisions are likely to: (1) reduce the amount of bail money and associated fees collected by the courts annually, and (2) reduce the pretrial jail stay of certain accused persons. The annual net of revenue reduction and jail expenditure savings is indeterminate.
- Common pleas, municipal, and county courts generally will incur significant annual costs related to data collection, use of risk assessment tools, adoption of a continuum of pretrial services, and generally to conform to the bill's provisions. These costs include the potential need to hire additional staff. Increased expenses may be offset somewhat by a reduction in bail hearings due to cite-and-release policies or other pretrial diversion.
- Local law enforcement agencies, when implementing cite-and-release policies, may, to varying degrees, see an annual decrease in expenditures related to arrest of certain offenders. In contrast, there would likely be a related increase in expenses for policymaking, training, and warrants, the latter being the issuance, serving, and enforcement of warrants for offenders who miss court appearances. The net of these annual expenditure changes is indeterminate.
- The Ohio Supreme Court will see increased expenditures: (1) to collect and maintain data collected from criminal courts, (2) to convene and maintain a committee to review risk assessment tools, and (3) to make available additional training through the Judicial College.

Detailed Analysis

The bill makes several significant changes to the procedure for setting bail as follows:

- Requires the use of validated risk assessment tools;
- Reduces the authorized use of predetermined schedules for fixing the amount of bail;
- Requires courts to consider imposing conditions instead of requiring monetary security;
- Makes other changes regarding bail and offense-charging decisions, including requiring law enforcement agencies to adopt a policy encouraging the agency's officers to use cite-and-release for the commission of a fifth degree felony that is not an offense of violence;
- Requires courts to report data regarding defendants released on bail to the Ohio Supreme Court for analysis and use in recommending risk assessment tools; and
- Requests the Ohio Supreme Court to amend certain rules to conform to the bill's provisions.

Local criminal justice systems

The bill is likely to be costly for local criminal justice systems (law enforcement agencies, prosecutors, and courts) to implement with some offsetting savings from a reduction in pretrial incarceration costs. Because savings are dependent upon the magnitude to which these new processes are utilized, costs and savings to any specific entity will vary and costs may outweigh savings, if any are realized.

The 2019 Report and Recommendations of The Supreme Court of Ohio Task Force to Examine the Ohio Bail System reports that, according to research, "jail in Ohio is far more expensive than supervised release, with the average jail bed costing almost \$65 per day [for pretrial detention], compared to \$5 per day for maximum supervised release." The research referenced is from the Buckeye Institute, which also reports, "Ohio could see an annual cost savings of \$67,136,121 if it reforms its cash bail system and gives judges greater flexibility to use proven, evidence-based, risk-assessment tools."¹ Additional savings may come from the implementation of cite-and-release policies. According to a report by the International Association of the Chiefs of Police, a Charlotte, North Carolina-based study showed a cost savings of 83.5% or "\$100.96 (from \$120.96 for an arrest to \$20 to issue a citation) per citation in lieu of arrest."²

Local law enforcement agencies

The bill's impact on local law enforcement agencies will be: (1) a potential cost savings in work hours saved from citations issued as compared to the arrest, transport, and booking process, (2) potential additional expenditures related to issuing, serving, and enforcing warrants

¹ <https://www.buckeyeinstitute.org/research/detail/new-buckeye-institute-research-finds-bail-reform-could-save-ohio-communities-67-million>.

² <https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20Lieu%20of%20Arrest%20Literature%20Review.pdf>.

for missed court appearances, and (3) increased one-time expenses to write the required policy. The potential costs and savings resulting from the bill will likely vary widely from agency to agency depending on current practices and local implementation of the bill's provisions.

Counties and municipalities

The bill's impact will be a potentially significant reduction in inmate bed days and a resulting potentially significant reduction in annual expenses. This cost will be offset somewhat by the additional cost – likely much lower – to supervise alleged offenders pretrial outside of the jail facility.

The bill's provision allowing nonmonetary bail to be set is likely to result in some accused persons being released from jail sooner than otherwise might have been the case under current law and practice, and presumably produces a marginal savings in jail expenditures. The annual magnitude of this possible expenditure savings for any given county or municipal jail is indeterminate.

The Department of Rehabilitation and Correction (DRC) reported that the average cost of an inmate in Ohio's jails in 2019 was \$64.35 per bed per day for full-service jails and \$72.49 for 12-day facilities.³ For calendar year (CY) 2016, the most recent year for which data is available, DRC reports that the daily statewide full-service jail population was 19,209, with 57.9%, or 11,123, of those inmates awaiting trial, and a daily statewide 12-day facility population at 341, with 45.7%, or 156, of those inmates awaiting trial.⁴ Based on the above numbers, the average daily cost of pretrial incarceration (population x cost) is estimated at \$727,073 for a statewide annual cost of \$265 million ($\$727,073 \times 365$).

Although potentially offset, costs to provide pretrial supervision will not be insignificant. An expansion of pretrial supervision, depending on the number of alleged offenders supervised, could require additional staffing, office space, and equipment. This will vary by jurisdiction.

Criminal courts

For common pleas, municipal, and county courts the implementation of new procedures and data collection (described below) will likely increase expenses. Additionally, there will also likely be a decrease in revenues in the form of collected bail and fees, which will be offset somewhat by a reduction in hearings for offenders cited and released. Savings to the courts will depend upon the implementation of cite-and-release policies by law enforcement agencies operating in the court's jurisdiction.

Under current law, a \$25 surcharge is paid by any person who posts bail. If the person is convicted, pleads guilty, or forfeits bail, this surcharge is forwarded to the Treasurer of State and credited to the Indigent Defense Support Fund (Fund 5DY0). The fund is used, in concert with other money appropriated for use by the Public Defender Commission, to reimburse counties for their costs in providing legal counsel to indigent persons in criminal and juvenile matters, and to fund operating expenses of the Commission.

³ These numbers are based on an average of the self-reported cost per bed provided to DRC by the jails; there is no statewide standard for what each jail may or may not include in these cost estimates.

⁴ These numbers are based on an average of the self-reported populations reported by the jails to DRC.

The bill specifies that this surcharge is not to be assessed to any person for whom nonmonetary bail is set. An increase in the number of individuals for whom conditions, rather than monetary bail, are imposed will result in a decrease in the amount of surcharges credited to Fund 5DY0.

Local prosecutors

The bill requires prosecutors to screen cases to determine the appropriate charge, the suitability of diversion, and whether any alternative disposition is appropriate and available. It also generally requires prosecutors to determine the feasibility of expanding or increasing the availability of diversion programs. The bill's impact will be increased annual expenses to review cases for diversion, and to review diversion programming. The magnitude of this increase depends on what the prosecutor's office is doing as current practice.

Data collection

The bill requires common pleas, municipal, and county courts to collect certain specific information about each criminal case handled by the court in a form specified by the Supreme Court of Ohio. The costs expected to result from the requirement to collect and report data could be significant. Depending on a court's existing data collection methods and tools, the additional expenses may range from relatively minor to significant. For instance, some courts may only have to add fields to an existing database, while other courts will need to build a database and hire additional staff. The magnitude of the expense increases to the courts will be variable, but is likely that every court will see some increase in local expenditures to meet the data collection requirement.

Supreme Court of Ohio

Risk assessment committee

The bill requires the Supreme Court of Ohio to form a committee to review and evaluate available qualifying risk assessment tools and, upon completion, to prepare a list of recommended "qualifying risk assessment tools" for use in the setting of bail, and to publish the committee's list of recommended qualifying risk assessment tools on its website. The committee is required to periodically review and update the list of such tools. The work of the committee is likely to result in additional administrative expenses for the Court, including the need to hire additional staff.

The bill designates the committee as a "criminal justice agency" to access databases administered by state and local entities for the administration of criminal justice and the maintenance of the centralized database described above, and authorizes the Supreme Court to apply for access to such databases for the same limited purposes.

Data collection

The Supreme Court is required to collect and maintain the data reported by criminal courts as described above in a centralized database. As current practice, the Supreme Court collects, maintains, and reports certain aggregate data from all courts through the Case Management Section of the Supreme Court of Ohio in accordance with Rule 37 of the Rules of Superintendence for the Courts of Ohio. The Supreme Court does not collect information on individual cases. The bill's requirements are substantially different enough from current data

collections as to require additional technology, including the creation of a new database and reporting system, and additional staff or diverted staff hours.

Ohio Judicial College

The bill requires the Ohio Judicial College to:

- Expand training for judges and magistrates on proven best practices, including the use of validated risk assessment tools, and innovative ideas for alternatives to pretrial detention of alleged offenders, through webinars, in-person training, and written materials; and
- Make the training described above available to clerks of court, prosecutors, criminal defense counsel, and other stakeholders in the criminal justice system, through webinars, in-person training, and written materials.

Expanding the training offered by the College and the number of potential trainees served will likely require additional administrative expenses for the Court, including the need to hire additional staff. The actual increase will be dependent on the number of trainings offered and the number of participants. Although not addressed in the bill, the College may be able to offset increases expenses by charging fees for training.

Request for modification of Supreme Court rules of procedure

The bill requests the Supreme Court to amend certain Rules of Superintendence for the Courts of Ohio and Criminal Rules to conform to the bill's provisions, and in other specified manners. The Court may incur minimal one-time costs to modify rules as requested.

Compliance by courts

The bill requires that courts be compliant with the provisions amended or enacted by the bill and any resulting changes to the Rules of Superintendence and Rules of Criminal Procedure, not later than six months after the bill's effective date. While the courts are expected to make a good faith effort to comply with this requirement, it is unclear whether all courts have the ability or capacity to do so by the deadline. The bill contains no readily apparent enforcement mechanism for the failure to comply.