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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 35
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 35's Bill Analysis](#)

Version: As Passed by the Senate

Primary Sponsors: Reps. Seitz and Miranda

Local Impact Statement Procedure Required: No

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Highlights

- **Civil action based on a claim of childhood sexual abuse.** 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 narrowly applies to organizations that are classified under a specific subsection of federal law.
 - 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 filed against an estate meeting the criteria set forth by the bill.
 - The bill implements a sunset date of five years; as such, all fiscal effects will be relatively short-term.
 - The bill's emergency clause means that the described elimination of the limitations period becomes effective immediately.
- **Reclassification of certain sex offenders.** The bill creates a mechanism for resentencing certain sex offenders for purposes of sex offender registration requirements. The reclassification will apply primarily to offenders who had been sentenced between 2008 and 2011. The number of additional court hearings the bill may trigger is uncertain but the affected population of offenders is anticipated to be small relative to the sex offender population as a whole. Any increase in workload and related costs for sentencing courts generally should be limited to the one-year window provided to file a motion for classification or reclassification.

Detailed Analysis

Civil action based on a claim of childhood sexual abuse

The bill eliminates the period of limitation, currently 12 years after the age of majority,¹ for a civil action based on a claim of childhood sexual abuse for the purposes of making claims against a bankruptcy estate of an organization chartered under federal law. The bill includes an emergency clause for the elimination to go into immediate effect and implements a sunset provision to remove the elimination after five years.

The elimination would allow an action in this very limited circumstance to be brought. If enacted, the bill will likely have an immediate impact 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.² 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.³ 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 local Ohio civil justice systems, given the restructuring plan allows victims to opt out of the trust distribution

¹ The age of majority is 18 years of age, or 21 years of age for a person with a developmental disability or physical impairment.

² 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: tccbsa.com.

³ See the [Proposed Statute of Limitation Scaling Factor](#), also available on the TCC website: tccbsa.com.

procedures to pursue claims against certain parties in state court.⁴ 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 the courts' 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.⁵ 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 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 (LGF, 1.70% of the revenue), and the Public Library Fund (PLF, 1.70%).⁶

SORN Law reclassification mechanism

S.B. 10 of the 127th General Assembly, replaced the state's sex offender classification system (Megan's Law) with an "offense-based" system that classifies offenders into three tiers based upon the severity of the committed offense with increasingly strict registration, notification, and verification requirements. Megan's Law was a "risk-based" system that classified offenders based on their likelihood of committing a future sex offense. The new classification system went into effect on January 1, 2008.

On July 13, 2011, the Ohio Supreme Court ruled in *State v. Williams*⁷ that the retroactive application of the new classification system is punitive because it imposes additional burdens or obligations on individuals who committed an offense before the passage of the law. To remedy this issue, many courts treated these wrongly classified offenders as a "void sentence" problem

⁴ 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.

⁵ Refer to the Internal Revenue Service website for [Tax Implications of Settlements and Judgments](#), which can be found on irs.gov.

⁶ An uncodified provision of H.B. 33 increases to 1.70% the respective shares allocated to the PLF and LGF for the current biennium. The provision expires on July 1, 2025, and the shares will revert to 1.66%, under current law.

⁷ *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374.

that could be addressed through a post-conviction motion for resentencing – up until 2020 when further Supreme Court decisions brought this practice into question. According to the Ohio Prosecuting Attorneys Association, courts can no longer use the void sentence doctrine to correct these errors and defendants can claim that, while they might not have challenged the wrong classification at trial or on appeal, the classification still does not apply because it was held unconstitutional.

The bill creates a mechanism for resentencing on the registration issue for one year and after that date the classification is deemed valid. The mechanism may alleviate some litigation because there is currently no mechanism to address this issue. It allows proceedings to be initiated, by the filing of a motion by a wrongly classified Tier offender or the state, or by the court's own initiative, within a one-year timeframe, to reclassify the offender in accordance with the SORN Law as it existed under Megan's Law (pre-January 1, 2008). If proceedings are not initiated within one year, the offender's tier classification thereafter will be considered valid and subject to enforcement. Additionally, after the effective date of the bill, a sentencing court must impose a Megan's Law classification if the offense was committed prior to January 1, 2008.

The bill's mechanism for reclassification will apply primarily to offenders who had been sentenced between 2008 and 2011. The number of additional hearings it may trigger is uncertain. Any increase in workload and related costs for sentencing courts generally should be limited to the one-year window provided to file a motion for classifying or reclassification.