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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 338  
133<sup>rd</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 338's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsor:** Rep. Greenspan

**Local Impact Statement Procedure Required:** Yes

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### Highlights

- Law enforcement agencies across the state will incur one-time and ongoing costs to develop policies and procedures that provide an official guide outlining the way officers are to handle potential risk protection order (PRPO) incidents, to ensure that officers are properly trained, and for their involvement in court hearings.
- The bill's required hearings will create additional work for the courts of common pleas, the associated costs of which will depend upon the number of petitions filed and their complexity.
- The bill modifies existing law regarding emergency mental health evaluations to apply them to the potential issuance of a PRPO. As a result, it is possible that treatment and evaluation costs could increase for various public entities. The amount will depend on a number of factors including the number of persons impacted and insurance coverage.
- The bill's expansion of the offense of "having weapons while under disability" will increase to some degree the number of felony cases adjudicated by county criminal justice systems, the number of offenders sentenced to a prison term, and the amount of fine and court cost and fee revenue apportioned between the county and the state. The associated annual costs and revenue will depend on the number of cases and their disposition.
- Any costs generated for the Ohio State Highway Patrol will be a function of the frequency and number of deadly weapons transferred by law enforcement agencies, and the amount of time such weapons must be held.
- It is likely that courts and law enforcement agencies generally will be able to use current staff and available resources to absorb any costs related to the bill's protection order data entry requirements.

- There will be relatively few new criminal and civil matters related to filing a false petition for local criminal and civil justice systems to adjudicate, and there will be no discernible ongoing fiscal effects on their annual operating costs and related revenue generated.

## Detailed Analysis

### Potential risk protection orders

The bill creates a mechanism for the issuance of a potential risk protection order (PRPO). The mechanism allows for a law enforcement officer or agency to apply for a PRPO in the probate division of a court of common pleas when it is alleged that the respondent poses a significant danger of causing personal injury to themselves or others by controlling, purchasing, possessing, or receiving a deadly weapon and has been arrested for a specified offense.<sup>1</sup>

Several other states have enacted generally similar provisions. In 2018, the state of California issued 424 gun violence restraining orders, up from 104 in 2017. Between 1999 and 2013, the state of Connecticut issued 54 similar protection orders. Florida reports the issuance of 2,654 similar protection orders between April 2018 and August 2019. Ohio's gun ownership rate (19.6%) is substantially similar to the rates in California (20.1%) and Connecticut (16.6%) and lower than Florida's (32.5%).

The California and Florida experiences suggest that, subsequent to the bill's enactment, a plausible range in the number of PRPOs filed in Ohio's common pleas courts statewide could be up to between 400 and 1,000 or more annually.

### Common pleas court

Upon the filing of a PRPO, the court is required to hold a hearing within three days, and to issue a copy of the petition and notice of the hearing to the respondent. If the court finds that the respondent poses a significant danger, the court is required to issue a PRPO for the period of no longer than 180 days. A petitioner may petition to have a PRPO extended for an additional 180 days; a hearing on the petition is required. The bill's required hearings will create additional work for the courts, the associated costs of which will depend upon the number of petitions filed and their complexity.

### Law enforcement agencies

#### Policy development and implementation

Law enforcement agencies will incur costs to develop policies and procedures that provide an official guide outlining the way officers are to handle potential PRPO incidents, including on-scene conduct, the filing of a petition, and involvement in related court hearings. The one-time and ongoing costs that any given law enforcement agency may incur are uncertain.

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<sup>1</sup> Specified offenses are aggravated menacing, menacing by stalking, menacing, making a terroristic threat, terrorism, aggravated burglary, aggravated trespass, telecommunications harassment, inducing panic, and making false alarms.

## **Retrieval, storage, and return of deadly weapons**

When a PRPO is issued, the court is required to issue a warrant for the retrieval of any deadly weapons from the respondent by law enforcement within 48 hours. The agency is required to provide a report to the court detailing the weapons retrieved. At termination of the PRPO, law enforcement must return the weapons.

All law enforcement agencies will need to develop policies and procedures regarding acceptance, storage, possible insurance, and the return of deadly weapons that have been surrendered or seized. The annual costs for a local law enforcement agency to perform these duties will depend upon the number of PRPOs issued, the number of deadly weapons retrieved, and the length of time such weapons are in their possession. Those costs may be offset to some degree, as the bill establishes a procedure for the transfer or sale of such weapons being held by law enforcement, as described below.

A law enforcement agency with possession of a respondent's deadly weapons pursuant to a PRPO is permitted to transfer the weapons to the Ohio State Highway Patrol for the duration of the order. The Patrol is required: (1) to accept the weapons, (2) to issue the law enforcement agency a proof of transfer containing certain specified information, and (3) to notify the court, the petitioner, and the respondent that the Patrol is in possession of the weapons. Any costs generated for the Patrol will be a function of the frequency and number of such weapons transferred by law enforcement agencies, and the amount of time that those weapons must be held by the Patrol.

The bill also establishes a procedure for the sale of deadly weapons being held by law enforcement, upon the request of the respondent. From the proceeds of the sale, the law enforcement agency may retain not more than 3% of the sale price to cover costs related to the sale. The remainder must be returned to the respondent.

## **Prohibition against filing false petition and sanction**

The bill prohibits a person from filing a petition requesting a PRPO if the person knows the petition's allegation regarding the respondent's danger to self or another is false, makes a violation a fifth degree felony, and provides that an individual injured by the violation has a civil action. Violations of this prohibition by law enforcement are likely to be rare and infrequent. This suggests that there will be relatively few, if any, new criminal and civil matters generated for local criminal and civil justice systems to adjudicate, and there will be no discernible ongoing fiscal effects on their annual operating costs and related revenue generated.

## **Emergency mental health evaluation**

The bill extends the existing provisions regarding emergency mental health evaluations to also authorize a law enforcement officer to take a person into custody for such an evaluation if the officer files a petition for a PRPO against the person. Under the bill, upon the filing of a petition requesting the issuance of a PRPO with respect to the person, the law enforcement officer may take the person into custody and immediately transport the person to a hospital or to a general hospital not licensed by the Department of Mental Health and Addiction Services, where the person may be held for specified periods.

Because of this provision, it is possible that mental health evaluation and treatment costs could increase. The amount of any increase will depend on the following factors: the

number of individuals affected, whether the individual has health insurance, and whether the services rendered are reimbursable by the individual's health insurance. If an individual is enrolled onto Medicaid, it is possible that Medicaid will realize an increase in treatment costs. If the individual is uninsured or it is determined that the individual is not a mentally ill person subject to the court order, it is possible that costs could increase for local alcohol, drug addiction, and mental health services boards (ADAMHS boards); courts; local jails; or hospitals.

## **Protection order reporting requirements**

The bill largely codifies court and law enforcement practices as it relates to the entry and removal of protection orders to and from the Law Enforcement Automated Data System (LEADS). One area of note is that the bill requires local law enforcement agencies to enter records of protection orders into LEADS within 24 hours of receipt, rather than 72 hours under current administrative rules. This requirement has the potential to create an additional administrative burden on law enforcement agencies that are not currently in compliance. It is likely that courts and law enforcement agencies generally will be able to absorb any related costs using current staff and available resources.

## **Offense of “having weapons while under disability”**

The bill expands the list of persons who are prohibited from knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance to include a person convicted of the offense of domestic violence or a person subject to a PRPO. A violation of this prohibition is a third degree felony punishable by a definite prison term of one to five years, a fine of up to \$10,000, or both.

Because of this expansion, there will be some increase in the number of people who may be subject to arrest and prosecution and subsequently sanctioned, including the potential imposition of a prison term. The number of persons that may be so affected is unknown, which makes the annual magnitude of any related increase in a county criminal justice system's operating costs uncertain.

There is also likely to be some increase in GRF-funded incarceration costs, as a result of a possible increase in the number of offenders being sentenced to prison for having weapons while under disability. Based on the Department of Rehabilitation and Correction's (DRC) commitment reports for FY 2015-FY 2019, an average of 835 offenders were sentenced to prison annually for having weapons while under disability. The average time served for those committing a third degree felony and released in CY 2016 was 1.67 years. For FY 2018, the average annual cost per inmate was \$27,835 (\$76.26 per day). The annual marginal cost for adding an additional offender to the prison system is \$3,000 to \$4,000.

The state and counties may gain annual revenue from violators pursuant to the order of the sentencing court, the latter of which would receive fines and court costs and fees. Of note is that the court rarely imposes the maximum permissible fine, and in the particular case of felonies, collecting the fine can be problematic. This is because offenders can be financially unable or unwilling to pay. The state's potential gain will be in the form of court costs that, if

collected, are then forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).<sup>2</sup>

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<sup>2</sup> The court is generally required to impose state court costs totaling \$60 for a felony divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020.