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Office

H.B. 354
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Plummer and Swearingen

Local Impact Statement Procedure Required: Yes

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Highlights

- For the costs associated with the Weapons Disability Data Portal (Portal), the bill appropriates GRF of \$2.4 million in each of FY 2020 and FY 2021, to be used by the Department of Public Safety (DPS) for personnel and training costs, and \$10 million in FY 2020, to be used by the Department of Administrative Services, in conjunction with DPS, to create the Portal. It is unclear as to whether these appropriated amounts will be sufficient to cover the costs of establishing and maintaining the Portal over the course of the FY 2020-FY 2021 biennium.
- County criminal justice systems generally are likely to see increased expenditures, as a result of having additional persons to prosecute, adjudicate, and sanction for weapons disability violations, the annual magnitude of which is uncertain. The state will also realize an indeterminate annual increase in GRF-funded incarceration costs, as a result of an increase in the number of offenders being sentenced to prison for having a weapon while under disability.
- The bill's weapons disability data entry requirements will likely increase administrative costs for the courts and certain state and local agencies, including law enforcement, to add staff and equipment and to train new and existing staff. The increase in expenses is indeterminate.
- The Ohio Department of Mental Health and Addiction Services (OhioMHAS), county behavioral health boards, and local court systems might incur costs if there are additional involuntary commitments resulting from the bill.
- The bill requires the Auditor of State to conduct quarterly compliance audits of the Portal. Under current practice, these costs could either be billed to audited entities or covered by GRF appropriations under the Auditor of State's budget. Any charges to the

audited entities would be deposited into either the Public Audit Expense-Intrastate Fund (Fund 1090) or the Public Audit Expense-Local Government Fund (Fund 4220).

- An indeterminate amount of civil penalty money may be generated annually from persons or entities that fail to input a record or information into the Portal within the required timeframe. The distribution of the money is unclear, but could be to the credit of the state's GRF.
- Extending automated expungement for sealed juvenile records by five years will temporarily reduce the workload of the courts, which may be offset to some degree by persons who opt to file for a sealing order prior to the mandatory expungement date.

Detailed Analysis

Weapons disability

The bill expands the list of persons who are prohibited from knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance. 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. As a result of this expansion, there will be an 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.

County criminal justice systems generally are likely to see increased expenditures, as a result of having additional persons to prosecute, adjudicate, and sanction for weapons disability violations, the annual magnitude of which is uncertain. The state will also realize 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 a weapon while under disability. Based on the Department of Rehabilitation and Correction's commitment reports for calendar years (CYs) 2016-2018, an average of 853 offenders were sentenced to prison annually for having a weapon while under disability as either a felony of the third, fourth, or fifth degree. 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).¹

¹ 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.

Weapons Disability Data Portal

The bill requires the Director of Public Safety to establish and maintain the “Weapons Disability Data Portal,” an electronic portal that utilizes the platform established by the Office of InnovateOhio within the Office of the Governor to allow for the collection and distribution of data relevant to state and federal firearms disability status. The Portal is to be created by the Department of Administrative Services (DAS) in conjunction with the Department of Public Safety (DPS). The Director of DPS is required to: (1) appoint an unspecified number of regional information officers to monitor and facilitate the submission of information to the Portal, and (2) provide to the Auditor any information the Auditor determines is necessary to perform a quarterly compliance audit of the Portal and the degree to which law enforcement agencies, courts, and state agencies have complied with the bill’s Portal reporting requirements.

For the associated costs, the bill: (1) creates GRF line item 761409, Weapons Disability Data Portal, with an appropriation of \$2.4 million in each of FY 2020 and FY 2021, to be used by DPS for personnel and training costs associated with the Portal, and (2) creates GRF line item 100462, Weapons Disability Data Portal, with an appropriation of \$10 million in FY 2020, to be used by DAS, in conjunction with DPS, to create the Portal. It is unclear as to whether these appropriated amounts will be sufficient to cover the costs of establishing and maintaining the Portal over the course of the FY 2020-FY 2021 biennium.

Data entry requirement

Under the bill, government entities are required to enter data as described below into the Portal within one business day:

- Courts are required to enter certain records of charges, indictments, convictions, pleas, adjudications, issuances, commitments, dismissals, and service of warrants.
- The Ohio Department of Mental Health and Addiction Services (OhioMHAS), and any other state or local agency that receives a person as an involuntary patient in a mental institution or releases that involuntary patient from the mental institution is required to enter a record of intake and release.
- Local law enforcement agencies are required to enter a record of conviction for an offense of violence when a mental health evaluation or treatment is ordered by a court and to enter approvals for conditional release.

This requirement has the potential to create significant administrative burdens on state and local agencies because they would be required to enter data into a system that they are not currently using in a compressed timeframe. In addition, it is possible that there could be costs for rule promulgation, as well as the implementation of procedures to ensure that agencies remain compliant with this provision. This could result in the need for additional staff and equipment and additional training for new and existing staff. The annual cost of that data entry work for any given entity is not readily quantifiable, thus it is indeterminate.

The bill requires any entity that fails to input a record or information into the Portal within one business day to be assessed a civil penalty of \$500 for each such failure. The bill does not specify who is to collect the civil penalty, or how it is to be distributed. That said, it appears that the Director of Public Safety would assess and collect the civil penalty and absent any special distribution language, any penalty revenue would be credited to the state’s GRF.

Weapons Disability Data Portal compliance audits

The bill requires the Auditor of State to conduct quarterly compliance audits of the Portal to ensure that state agencies and political subdivisions which are required to use the system, including courts, are updating weapons disability records promptly as required by the bill. This could potentially increase costs for state agencies that use the system, specifically DPS and political subdivisions. Any state agency or other entity that receives persons as an involuntary patient in a mental institution would also be affected.

Under current guidelines for covering the cost of audits, the Auditor of State sets an hourly rate determined by rule and then allocates these charges to the entities being audited. Because the bill broadly grants rulemaking authority to the Auditor for these compliance audits, it is not entirely certain how the charges would be assessed. Charges collected from state agencies are deposited into the Public Audit-Intrastate Fund (Fund 1090). Charges collected from political subdivisions are deposited into the Public Audit Expense-Local Government Fund (Fund 4220). The Statewide Cost Allocation Plan (SWCAP) billing rate for state agencies is \$68 per hour, and the billable hourly rate for local governments is \$41 per hour. Costs that cannot be allocated to any specific entity are covered by GRF line item 070401, Audit Management and Services, or GRF line item 070412, Local Government Audit Support. The bill further requires the Auditor of State to publish a quarterly list of law enforcement agencies, courts, and state agencies that the Auditor of State determines to be out of compliance with the requirements of the bill.

Noncompliance penalties

The bill specifies that if the Auditor determines that an entity is habitually out of compliance with the bill's requirements for entering information into the Portal within one business day, those entities are ineligible to apply for grants administered by DPS and must be assessed a civil penalty of \$1,000 for each time the entity fails to input a record or information into the Portal. The bill determines that these entities are habitually out of compliance when 10% or more of the entity's data submissions exceed the one business day input requirement under the bill.

The bill does not specify who is to collect the civil penalty, or how it is to be distributed. That said, it appears that either the Auditor or the Director of Public Safety would assess and collect the civil penalty, and absent any special distribution language, any penalty revenue would be credited to the state's GRF.

Juvenile record expungement

The bill extends the date on which a juvenile court must expunge all records sealed under the Juvenile Sealing Law to require the expungement upon the 28th birthday of the person who is the subject of the sealing order, rather than requiring expungement on the earlier of five years after the sealing order or the 23rd birthday of the person who is the subject of the order under current law. This will likely result in a short-term reduction in expungement actions taken by the juvenile courts, however a person who has had a juvenile court record sealed may still apply for expungement prior to the automatic expungement date under continuing law.

The bill will reduce in the short term the number of cases which the juvenile courts must expunge following a sealing order for five years following the effective date of the bill. This

reduction will be offset to some degree by additional filings for expungement when a person who would have otherwise allowed a record to be expunged on his or her 23rd birthday is unwilling to wait until his or her 28th birthday. In such a case, the court is required to notify the prosecuting attorney of any proceedings and may cause an investigation to be made to determine if the person has been satisfactorily rehabilitated. The fiscal effect on the juvenile divisions of the courts of common pleas is uncertain.

Involuntary commitment

The bill specifies that a mental illness for purposes of the law governing involuntary commitment of the mentally ill includes a moderate or severe substance use disorder (SUD). Thus, an individual with moderate or severe SUD could be subject to involuntary mental health treatment through judicial hospitalization or emergency hospitalization. As a result, it is possible that there could be additional involuntary commitments which could increase costs for OhioMHAS, county behavioral health boards, and/or local court systems. These costs would depend on the number of additional commitments and the scope of services required. However, it is possible that some of these costs may be offset if any reimbursements from an individual's insurance or Medicaid coverage were received.