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H.B. 610
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Rep. Cupp

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill increases the duties and responsibilities of local criminal and juvenile justice systems with regard to certain notifications to victims and their representatives and the latter's participation in various proceedings. The one-time and ongoing costs that local law enforcement, prosecutors, courts, clerks, and probation departments will incur to comply with the bill's requirements are indeterminate.
- Although the bill will generate one-time costs for the state, any ongoing annual costs appear unlikely to be significant.

Detailed Analysis

Victim's rights

The bill makes comprehensive changes to the Victim's Rights Law and Criminal Code. Most notably, for the purposes of this fiscal note, these changes increase opportunities for the victim and victim's representative to participate at a greater capacity, if so desired, at more stages of a case for a crime committed against them. For this purpose, the bill provides early information regarding their rights, increased notification, and increased access to information pertaining to their case.

The bill also expands the list of persons who may exercise the rights of a victim under the Victim's Rights Law as the victim's representative. As such, a representative, where designated, is allowed to receive the same notice and standing as a victim.

Finally, the bill creates an enforcement mechanism for a violation of victim rights. One option to enforce a violation is an interlocutory appeal. According to the Ohio Prosecuting Attorneys Association, this provision has the potential to generate significantly additional

litigation, as well as delays in the prosecution of a case. The extent of any such delay is uncertain, as the bill provides that such an appeal shall proceed on an expedited basis.

Timely information to the victim

The bill modifies procedures for law enforcement agencies who are responsible, in investigating a criminal offense or delinquent act, for providing materials and information to the victim. One notable change is the provision of a victim's rights request/waiver form or a substantially similar form in place of other information that must be provided under current law. There should be no significant impact on law enforcement agencies, as the required form will be printed and distributed to law enforcement agencies by the Attorney General.

The bill adds several items, including the victim's rights request/waiver form, to the information that the prosecutor or designee must provide to the victim and victim's representative, and specifies that all of the information, including that required under continuing law, must be provided within 14 days after prosecution commences. Whether prosecutors can comply with the 14-day requirement without incurring additional costs is uncertain.

In addition to these changes, the bill makes specifications regarding the timing of various notices that must be provided to victims of crime under continuing law. For certain notices that are only required to be provided upon request, such as acquittal, conviction, and judicial release, the bill provides a seven-day timeframe.

Increased notification

The bill increases the number of circumstances under which certain state and local governmental agencies are required to notify the victim and the victim's representative. The affected entities include law enforcement, prosecutors, courts, clerks, probation departments, the Governor, and the departments of Rehabilitation and Correction and Youth Services. The additional annual operating costs that the state and local governments will incur to comply with these expanded notification duties are indeterminate.

Other additional rights

The bill provides that a victim and their representative are entitled to certain information at no cost, including a copy of all documents filed with the court in the victim's case and any public records related to the victim's case. The degree to which such information is currently being provided and the cost is unknown. For the state and local governments (clerks, courts, prosecutors, and law enforcement), the bill is likely to increase the amount of information requested and provided, as well as the cost to copy and provide. The amount of money that the state or local governments will forego that otherwise would have been collected from the requestor is uncertain. If copies are provided in electronic format, as permitted under the bill, the cost may be reduced to some degree. The bill's provisions related to providing previously prepared video and audio recordings of court proceedings at cost appear to reflect requirements established in Ohio's Public Records Law.

The bill entitles a victim with a disability, a non-English speaking victim, or a victim with limited English proficiency to a qualified or certified interpreter at all court proceedings, meetings with the prosecutor, and investigative contacts, at no cost to the victim. The costs

local courts, prosecutors, and law enforcement are likely to incur to comply with this requirement are uncertain.

Continuing law provides specific times at which the prosecutor in a case must confer with the victim. In addition to these times, the bill extends this requirement to when requested by the victim or their representative, to the extent practicable. The court is required to monitor prosecutor compliance with these requirements. The costs for prosecutors and courts to establish and maintain a compliance monitoring system is indeterminate.

Current law states that a prosecutor's failure to confer with a victim, and a court's failure to provide notice, under certain circumstances, does not affect the validity of an agreement between the prosecutor and the defendant or alleged juvenile offender in the case; a pretrial diversion of the defendant or alleged juvenile offender; an amendment or dismissal of an indictment, information, or complaint filed against the defendant or alleged juvenile offender; a plea entered by the defendant or alleged juvenile offender; an admission entered by the defendant or alleged juvenile offender; or any other disposition in the case. The effects of repealing this provision presumably would be minimized to the degree that prosecutors and courts comply with their duties and responsibilities with regard to victims.

Victim's bill of rights

The bill modifies the contents of the victim's bill of rights document that the Attorney General is required to produce and distribute under continuing law, and requires the Attorney General to create a victim's rights request/waiver form to be printed and distributed to local law enforcement, legal agencies, and other victim service organizations and then provided along with the victim's bill of rights to a victim or specified others generally upon first contact. The mostly one-time costs that the Attorney General is likely to incur are uncertain.

Victim's representative and victim's attorney

The bill clarifies that both the victim and the victim's representative, if applicable, must be notified by the prosecutor if the court schedules a hearing or grants a motion for a sentence reduction through judicial release. Further, the bill clarifies that a victim's attorney is able to present oral or written information relevant to a motion for judicial release. Similar to the opportunity afforded to the offender and the offender's attorney, the prosecuting attorney, the victim, the victim's representative, and any other person the court determines is likely to present additional relevant information may already do so under current law. These clarifying changes are unlikely to have any direct fiscal impact on local criminal justice systems.

The bill also makes changes to eliminate ambiguity in provisions related to misdemeanor sentencing determination to ensure that all relevant information is considered. These changes largely safeguard the rights of the victim and have no direct fiscal effect.

Ohio's Public Records Law

Current law provides for a process that allows a crime victim to file a motion to make information regarding their case confidential. This may include pleadings, motions, exhibits, transcripts, orders, and judgments, or any documentation prepared by a court, clerk of court, or law enforcement agency or officer. The bill modifies the process to make these confidential in all cases, absent a request, unless the victim otherwise consents or the court finds that there is a compelling need for disclosure.

In addition, the bill specifies that these confidential records are exempt from disclosure under Ohio's Public Records Law. It is unclear as to whether these records under certain circumstances may be exempt under current law. The bill will affect state and local criminal justice agencies (police departments, prosecutors, public defenders, and law enforcement agencies) in responding to public records requests and may increase, to some degree, the cost that such an agency incurs to ensure that exempted portions of a record are not disclosed.

Record sealing and expungement

The bill changes the timeline for a court to provide the prosecutor with notice of a proceeding to seal and expunge criminal records and juvenile records from "promptly" to "not less than 60 days prior to the hearing," requires the prosecutor provide timely notice to the victim and victim's representative, and permits the victim, victim's representative, and victim's attorney to be present at the proceedings and to be heard. These provisions will not change the number of record sealing and expungement requests, but may increase the time and effort that the court and prosecutor otherwise may have expended on such proceedings. The additional annual operating costs, if any, are indeterminate.

Financial sanctions

The bill modifies the financial sanctions that a court may impose on a misdemeanor offender. Under continuing law, an offender may be required to pay a combination of restitution and fines, or to reimburse all or any of their sanctioning costs including community control sanction. The bill specifies that global positioning system (GPS) device monitoring costs are a part of community control sanctioning and thus are reimbursable. The amount of state and local revenues that might be gained annually is problematic to calculate for a variety of reasons, including the permissive nature of the provision, the likelihood that, to some degree, the costs are already viewed as reimbursable, and the difficulty of collecting financial sanctions from unwilling or indigent offenders.

The bill's various changes to the laws governing restitution for misdemeanor and felony offenses generally enable a victim to recover a larger portion of the total amount of restitution ordered to be paid by the offender. The purpose of these changes are to conform to the requirement set forth in the "Marsy's Law" amendment to Article I, Section 10a of the Ohio Constitution that restitution to a victim be mandatory, "full, and timely." However, it does not appear that the bill affects the current order in which an offender's payments are assigned (i.e., court costs, state fines/costs, restitution, fines, and reimbursements).

The bill requires the clerk of a sentencing court, upon request, to make the payment history of an offender sentenced to pay restitution for a felony or misdemeanor available to the prosecutor, victim, victim's representative, probation department, and the court without cost. As a result, the clerk's administrative responsibilities will minimally increase to respond to these requests, the extent of which will depend on the volume requests made and the format in which the information will be provided.

Under the bill, the Ohio Supreme Court will experience a one-time minimal increase in costs to create a standardized, publicly available form for victims and their representatives. The form will provide guidance regarding the compilation of evidence to demonstrate losses for the purpose of restitution.

Testimony of certain victims

The bill makes changes to current law as it relates to the taking of testimony of a child-victim or victim with a developmental disability in a juvenile case, in a preliminary hearing involving an alleged violation of certain felony offenses, and in a trial involving a specified criminal offense or an offense of violence. The bill allows for circumstances under which such testimony may be taken by deposition, taken remotely and televised by closed circuit equipment, or presented as recorded video. The bill also changes the age for which a child-victim is able to provide testimony other than in open court from under 13 to under 16 in certain juvenile and criminal proceedings. It is unclear as to how these provisions will affect local criminal and juvenile justice systems relative to the manner in which the testimony of these victims is currently being handled by local trial courts statewide. It would not be surprising if there were considerable variation from local jurisdiction to jurisdiction. The additional operating costs that any given local criminal or juvenile justice system will incur related to the bill's testimony provisions is indeterminate.

Evidence

Ohio's Rape Shield Law generally prohibits the introduction of evidence of the victim's sexual history in rape and gross sexual imposition cases. The law provides limited exceptions to allow evidence of a certain type, including when it involves the origin of disease generally. The bill narrows this to the more limited circumstance when the evidence involves the origin of sexually transmitted disease or infection. The bill also expands the list of those prohibited from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination to include a defendant or juvenile offender. These provisions of the bill are not expected to have a direct fiscal effect on the state or local governments.