



Ohio Judicial Conference

The Voice of Ohio Judges

Senate Judiciary Committee
SB 158, 132nd General Assembly
September 19, 2018

Interested Party testimony

Chairman Bacon and Members of the Committee:

Revised Code section 105.91 creating the Ohio Judicial Conference directs the Conference to encourage uniformity in the application of the law, rules, and practice throughout the state, and to consider the business and problems pertaining to the administration of justice and to make recommendations for its improvement. The Criminal Law and Procedure Committee of the Ohio Judicial Conference has reviewed Senate Bill 158, which would require a court to order both restitution and a fine of up to \$50,000 (to be directed to the Department of Job and Family Services) when an offender commits a certain theft or fraud offense and the victim is an elderly person.

As an initial matter, the Judicial Conference disfavors mandatory sentences generally. Whether it be mandatory prison terms, or in this case, mandatory fines and restitution, one-size-fits-all approaches to sentencing are not effective in furthering the overriding purposes of felony sentencing that the legislature has established in R.C. 2929.11. (“The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender *using the minimum sanctions that the court determines accomplish those purposes* without imposing an unnecessary burden on state or local government resources.”) (emphasis added). Rather than a one-size-fits-all approach to sentencing, judges are uniquely positioned through their legal training, experience with and knowledge of the defendant, and familiarity with the facts of each particular case that comes before them to render sentences that are appropriate for the crime committed and the circumstances of each case. Judicial discretion is fundamental to our democratic system of government, which separates power among the three branches of government. Mandatory sentences enacted by the legislative branch hinder the independence of the judicial branch, putting at risk the separation of powers on which our democracy is based.

S.B. 158 requires courts to order restitution and a fine of up to \$50,000. However, judges sentencing an offender for a felony already have the authority to order restitution to a victim or a victim’s family, in an amount based on the victim’s economic loss. R.C. 2929.18 (A)(1). In situations such as those contemplated in S.B. 158, judges already can, and often do, order full restitution when an amount can be determined. Mandatory restitution and fines ignore the fact that many offenders simply lack the means to pay. Existing law requires courts to consider an offender’s present and future ability to pay before imposing any financial sanctions. R.C. 2929.19 (B)(5). S.B. 158 is thus in conflict with current public policy in that it requires a court to order restitution, regardless of the offender’s ability to pay. Additionally, requiring a judge to order restitution when the offender has no ability to pay gives victims false hope regarding amounts they may never recover. By keeping this option discretionary, rather than

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mandatory, judges are able to determine what amount, if any, a victim can realistically expect to recover.

Finally, judges are concerned that under S.B. 158, a mandatory fine is used to fund operations of a separate state agency. Under existing law, fines are generally collected and distributed to the assessing county's general fund. This allows local officials to disburse funds according to the needs of the individual county and community, which may include law enforcement investigations of elder abuse or county agencies that provide services to the elder population. Judges would prefer that criminal fines continue to be collected and disbursed in the manner currently being used, rather than using the criminal justice system as a funding authority for various state programs and managing local funds remotely and without the benefit of understanding unique local needs.

Thank you for the opportunity to provide this Interested Party testimony. We are happy to work with you and the sponsor of this bill to achieve the intended goals, while maintaining judicial discretion.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul E Pfeifer". The signature is written in a cursive style with a large, stylized initial "P".

Paul E. Pfeifer
Executive Director