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Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Click and Santucci

Local Impact Statement Procedure Required: Yes

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Highlights

Unlawful presence in Ohio

- State and local juvenile justice systems may experience an increase in adjudication and sanctioning costs for individuals who are unlawfully present in the U.S. while in Ohio. Any resulting impact will depend on the number of such charges and subsequent adjudications, as well as the type of any sanction.
- The Department of Rehabilitation and Correction and the Department of Youth Services may experience an increase in the number of offenders sentenced to a term of incarceration or supervision at one of the state's correctional facilities.
- Annually, the Attorney General will incur indeterminate costs to receive and investigate complaints in accordance with the bill.

Cooperation with federal immigration authorities

- State and local law enforcement agencies will experience an increase in costs to report and detain certain offenders for longer periods who are subject to U.S. Immigration and Customs Enforcement (ICE) detainers.

Local Government Fund penalty

- Local Government Fund (LGF) payments would be withheld from any county, municipal corporation, and township under which their qualifying law enforcement agencies were found to be in noncompliance with the bill's provisions by the Attorney General. Thus, decreasing funding from the LGF to applicable local governments by an undetermined amount. Correspondingly, it would have the effect of increasing GRF revenue by the same

amount as the bill requires all LGF payments withheld under the bill to be deposited into the state GRF.

- The bill may increase the Department of Taxation's administrative expenses related to LGF distributions. If there is any increase in such costs, it would likely be minimal.

Detailed Analysis

Unlawful presence in Ohio

The bill prohibits any person who is unlawfully present in the U.S. from knowingly entering, attempting to enter, or being present in Ohio. A violation of this provision is generally a fifth degree felony but elevates to a fourth degree felony if certain conditions are present (i.e., the person has previously been convicted of unlawful presence in Ohio or the person is inadmissible to the U.S. under federal law). Violations are subject to a mandatory 12-month prison term, regardless of offense level, however, the court may permit the offender to be remanded into federal custody before the conclusion of that period. The bill specifies that such offenders are not eligible for community control, residential, or nonresidential sanctions. Additionally, the court is required to impose a fine of at least \$500 (up to the continuing maximum fine of \$2,500) for a fifth degree felony violation and at least \$1,000 (up to the continuing maximum fine of \$5,000) for a fourth degree felony. Fine revenue generated as a result of a violation of state law is generally retained by the county in which the violation occurred.

Department of Rehabilitation and Correction and Department of Youth Services

As a result of the bill's unlawful presence in Ohio offense, the Department of Rehabilitation and Correction (DRC) and the Department of Youth Services (DYS) may experience an increase in the number of offenders sentenced to a term of incarceration or supervision at one of the state's correctional facilities. The magnitude of impact to DRC and DYS will depend on the number of individuals ultimately sanctioned. According to DRC's FY 2025 Annual Report, the institutional cost to house an offender was \$109.57 per day (about \$40,000 per year) and the marginal cost was \$13.47 per day (about \$4,900 per year). Marginal costs are costs that increase or decrease directly on a per-person basis with changes in prison population (i.e., medical services, food, clothing, bedsheets, and mental health services). Typically, if a relatively modest number of individuals are incarcerated annually, DRC presumes that a marginal cost scenario is applicable.

To the extent that a child is adjudicated delinquent for unlawful presence in Ohio, the bill's 12-month mandatory prison term would not apply. Instead, continuing law permits, but does not require, a court to take specified other measures, including committing a child to DYS for an indefinite period of six months, not to exceed the child's 21st birthday. For FY 2024, the average cost for DYS to house a child ranged from \$44.55 per day, or about \$16,300 per year (marginal cost), to \$610.42 per day, or just over \$222,800 per year (institutional cost).

LBO expects that a number of offenders will likely be remanded to federal custody at some point during the term of incarceration or supervision, thus reducing the potential fiscal impact to DRC and DYS.

State and local criminal justice systems

The bill could potentially result in additional costs to the state and local criminal justice systems to adjudicate and sanction individuals, including certain children, who are unlawfully present in the U.S. and knowingly present in Ohio. The magnitude of impact on state and local criminal justice systems will ultimately depend on how many individuals are charged under bill.

Cooperation with federal immigration authorities

The bill requires every law enforcement agency in Ohio to take certain actions to cooperate with federal officials in enforcing federal immigration laws, including reporting to the appropriate U.S. immigration officials the identity of any arrestee whom a peace officer has reasonable cause to believe is unlawfully present in the U.S., and compliance with all U.S. Immigration and Customs Enforcement (ICE) detainer requests. As a result, certain offenders may spend up to an additional 48 hours in the custody of a locally operated jail than they otherwise would have under current law.¹ The impact of extending the incarceration period of individuals suspected of being in the U.S. unlawfully by up to 48 hours will depend on the number of ICE detainer requests received by a law enforcement agency, the number of ICE detainer requests that would otherwise have been denied under current law, and how quickly the individuals are taken into federal custody.

For background, under federal law and current administrative policies, when a law enforcement agency arrests a person and submits their fingerprints to the Federal Bureau of Investigation (FBI) during the booking process, the FBI notifies ICE of the person's identity. If ICE determines that the person appears to be in the U.S. unlawfully and decides to pursue their removal, ICE submits a detainer request to the local law enforcement agency, asking them to maintain the person in custody for up to 48 hours after their scheduled release from local custody, so that ICE can arrange to take them into federal custody. The bill requires compliance with these detainer requests. It is uncertain how many law enforcement agencies are not currently complying with these requests. For those already in compliance, there would likely be no fiscal impact to their current operations. For those agencies not already in compliance, detention costs could increase.

DRC reports that the 2024 average cost for an inmate in Ohio's jails was \$93.70 per bed per day for full-service jails.² This number is based on an average of the self-reported cost per bed provided to DRC by the jails and there is no statewide standard for what each jail may or may not include in these cost estimates. The bill does not provide for local incarceration expenses or any cost-sharing agreement that may already be in place.

In the event that a court later finds that a detainer was not constitutionally valid, the local officials, not ICE, may be held liable for wrongfully imprisoning the person.

¹ DRC is currently statutorily required to comply with ICE detainer requests for individuals released from state custody after serving a felony prison term.

² As reported in the DRC daily snapshot taken on June 30, 2024, which is the most recently available.

Detention facility notification

Under existing law, DRC is required to report specified information regarding individuals who are unlawfully in the state and serving a prison term to ICE for the agency to determine whether it wants to take custody. The bill further requires detention facilities not operated by DRC to notify ICE not later than 24 hours after admitting an individual into custody if the admitting officer believes the individual to be in the U.S. unlawfully and to comply with ICE detainer requests. Such facilities include: (1) privately operated and managed state correctional institutions, (2) state facilities under the management and control of DYS or a private entity with which DYS contracts for the institutional care and custody of felony delinquents, (3) county correctional facilities, and (4) municipal correctional facilities.

The bill's notification requirements are not expected to have a discernible impact on these facilities, as they already generally notify ICE of a person's unlawful presence in the state. Other facilities may not be impacted because they do not accept non-U.S. citizens. To the extent that a facility does accept non-U.S. citizens and is not already notifying ICE, that facility would need to absorb any additional time and effort required to do so.

Attorney General

The bill allows any person who believes that a county, township, or municipal law enforcement agency is not complying with the bill's requirements to file a complaint with the Attorney General. The Attorney General will incur additional costs to receive and investigate these complaints. In the event that a political subdivision or law enforcement agency is not found to be compliant and becomes ineligible to receive homeland security funding and any Local Government Fund (LGF) distributions from the state, the Attorney General will need to establish a process to verify and certify compliance once it is achieved so funding can resume. The frequency with which the Attorney General may receive complaints of noncompliance and the resources necessary for the Attorney General to carry out its duties under the bill is uncertain. The bill does not appropriate any funding for this purpose. As such, it is unclear as to what extent the Attorney General's existing resources, staff, and funding would be, or could be, reallocated to pay for the bill's additional required duties.

LGF penalty

The bill requires the Attorney General to report instances of noncompliance to the Tax Commissioner by listing each such instance and ascribing the law enforcement agency's noncompliance to the applicable county, township, or municipal corporation that created the agency or that is a member of and is served by the agency. The Attorney General must not send more than one report per month to the Tax Commissioner.

Beginning after the bill's effective date, the Commissioner, on or before the tenth day of each month, is required to compute an immigration adjustment for each local government (e.g., county, municipal corporation, or township) included in the report and reduce the immigration adjustment from the applicable local government's next LGF payment. An immigration adjustment equals the number of instances of noncompliance multiplied by \$500. If the immigration adjustment exceeds the amount of LGF money that a political subdivision receives in a given month, the balance will be recouped from future LGF payments. Beginning with the second month that begins after the bill's effective date, the Commissioner, on or before the tenth day of each month, must compute a residual immigration adjustment (i.e., the original

immigration adjustment less the LGF amounts that were already reduced for this purpose) for an applicable local government and reduce the local government's LGF payment for that month. The bill also prescribes LGF reduction procedures. All LGF revenues withheld under the bill must be allocated to the state GRF.

Under codified law, 1.75% of total GRF tax revenue is credited to the LGF in each month. The state allocates monthly distributions from the LGF through three channels. First, money in the LGF is distributed to each county undivided local government fund (CULGF). Subsequently, money in the CULGF is distributed to each political subdivision in the county, including county government itself, by the county and based on the county's own determination. Second, a portion of LGF revenues is distributed directly by the state to eligible municipalities based on a population formula. Lastly, in each month, \$1 million of the LGF is set aside for supplemental payments to villages with a population of less than 1,000 and to townships; supplemental payments to applicable small villages and townships are determined by the Tax Commissioner but allocated through the CULGF. LGF distributions to each county and municipality are currently made by the Department of Taxation through an electronic funds transfer (EFT).

The estimated amount of LGF funding that would be withheld from counties, townships, and municipal corporations associated with this bill is undetermined. Actual amounts would depend on the number of instances of noncompliance with the bill's provisions as determined by the Attorney General that are attributable to counties, townships, or municipal corporations multiplied by \$500, as well as their associated LGF allocations. Any decrease in LGF funding would have the effect of increasing GRF revenue by the same amount. In calendar year 2025, the state distributed a total of \$521.6 million from the LGF to counties, townships, and municipal corporations. LGF allocations to a county, township, or municipal corporation range between several thousand dollars per year to a number of small villages and townships, to well over \$10 million per year for each of Cincinnati, Cleveland, Columbus, and Cuyahoga, Franklin, and Hamilton counties. The bill may also increase the Department of Taxation's administrative expenses related to LGF distributions. If there were any increase in such costs, it would likely be minimal.