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H.B. 295
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Rep. Young

Local Impact Statement Procedure Required: No

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Highlights

- The bill's creation of an expedited nonjudicial process for the removal of unauthorized occupants from residential real property may increase the workload for county sheriffs who will be required to respond to complaints and restore possession of the property. However, this increase in expenditures will likely be offset by the fee the sheriff is authorized to charge under the bill.
- The bill broadens the offense of "criminal mischief" and creates the offense of "title fraud" which could result in more cases for local criminal justice systems to investigate and adjudicate. Although such a cost increase is not readily quantifiable, it should be relatively small for any given local criminal justice system and more or less absorbed by utilizing existing staff and resources. Some of these costs may be partially offset by fine and court cost revenue, if collected.
- The bill may slightly increase the number of felony offenders being sentenced to prison for criminal mischief or title fraud.
- The bill's creation of a new civil cause of action for the wrongful removal from real property appears unlikely to generate any discernible ongoing fiscal effects on local civil courts, the costs of which would likely be partially offset by filing fees.

Detailed Analysis

The bill: (1) creates an expedited nonjudicial process for the removal of unauthorized occupants from residential real property, (2) expands the current definition of criminal mischief to include a prohibition on unlawfully detaining, occupying, or trespassing upon a residential dwelling and intentionally causing damage, (3) establishes the new criminal offense of title fraud,

and (4) creates a new civil cause of action for wrongful removal from real property. The bill also declares an emergency.

Removal of unauthorized occupants

Under current law, a property owner seeking a civil court order for removal of an unlawful occupant from the owner's property may file an action for possession in court. Without an order from the court, law enforcement is not necessarily required to remove unwanted persons from an owner's property unless other criminal factors are present that may elicit an arrest.

The bill creates a nonjudicial process for the removal of unauthorized persons from residential real property. If all conditions of the bill are met, the property owner or their agent may submit a verified form to the sheriff of the county in which the property is located. If the sheriff verifies the identity of the owner or agent and it appears that such person is entitled to relief, the sheriff must, without delay, serve a notice to immediately vacate upon each unlawful occupant and put the owner in possession of the real property.

According to the Buckeye State Sheriffs' Association (BSSA), the bill will increase workloads to comply with the bill. However, this increase in expenditures will likely be offset by the fee the sheriff is authorized to charge under the bill for such services. The sheriff is entitled to a $60 service fee, to be paid by the record owner or agent that made the complaint. Additionally, the sheriff may charge the owner or their agent a reasonable hourly rate to stay and keep the peace. The bill provides immunity from liability to the sheriff for any loss, destruction, or damage to property. The net fiscal effect of these new duties will depend on the number of complaints filed in each county and the amount of fees charged by the sheriff.

Criminal offenses

Criminal mischief

Under current law, criminal mischief prohibits a broad range of conduct that generally involves knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with the property of another. The bill expands the definition of criminal mischief to include a prohibition on unlawfully detaining, occupying, or trespassing upon a residential dwelling and intentionally causing at least $1,000 in damage. A person in violation of this prohibition is guilty of a fifth degree felony punishable by up to 6, 7, 8, 9, 10, 11, or 12-month definite prison term, a fine of up to $2,500, or both. For each subsequent offense a person is guilty of a fourth degree felony punishable by up to a 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month definite prison term, a fine of up to $5,000, or both.

Available data suggests that the number of criminal mischief cases filed statewide under R.C. 2909.07 range from roughly 600 to 700 per year.

Title fraud

The bill establishes the new criminal offense of title fraud. A person is guilty of title fraud by knowingly: (1) presenting to another person a false document purporting to be a valid lease, agreement, deed, or other instrument conveying real property rights with the purpose to detain or remain upon real property, (2) listing or advertising residential real property that the purported seller has no legal title or authority to sell, or (3) renting or leasing residential real property that the purported owner has no lawful ownership in to another person. A violation of the first condition noted above is a fifth degree felony punishable by up to 6, 7, 8, 9, 10, 11, or

12-month definite prison term, a fine of up to $2,500, or both. A person who violates either of the remaining two title fraud prohibitions is guilty of a fourth degree felony punishable by up to a 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month definite prison term, a fine of up to $5,000, or both.

Criminal justice system fiscal effects

The number of new criminal cases stemming from the prohibited behaviors in the bill is difficult to estimate. The bill will likely affect a relatively small number of cases under the jurisdiction of any given county and municipal criminal justice system. As such, the costs associated with adjudication, prosecution, indigent defense (if applicable), and sanctioning, including a residential sanction such as jail, will likely be minimal annually for any single jurisdiction.

To the extent that new cases are successfully prosecuted, counties may gain minimal additional revenue collected from violators pursuant to the order of the sentencing court. In addition, a court generally imposes state court costs that are credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The $60 felony amount is divided as follows: $30 to Fund 5DY0 and $30 to Fund 4020. The annual revenue gain to the state will be minimal at most annually. Of note is that courts rarely impose the maximum permissible fine, and collecting the fine and court costs and fees can be problematic. This is because offenders can be financially unable or unwilling to pay.

Some number of additional offenders could be sentenced to a state prison for a felony offense. The resulting increase in annual state incarceration costs for the Department of Rehabilitation and Correction (DRC) is uncertain, but likely to be minimal annually. Generally, fourth and fifth degree felony offenses may receive a community control sanction rather than a term of incarceration in the custody of DRC. Over time however, due to the possible lengthy prison term that could be imposed by the courts (up to 11 years is the maximum sentence that could be imposed for the offense of title fraud), over time, a potential stacking effect on bed counts may be realized. The marginal cost for DRC to add a relatively small number of offenders to its total inmate population is estimated at around $5,000 per offender per year.

Civil actions

The bill provides for a civil remedy to a person who was wrongfully removed from real property. A court may restore possession of the real property to the person wrongfully removed, award actual damages, statutory damages of triple the fair market rent of the residential premises, court costs, and attorney's fees.

The effect on the daily operations and related operating expenses of the courts will depend on the monetary amount being sought by the victim, the frequency of civil actions being filed, and the matter's legal complexity. Costs would likely be partially offset by filing fees charged by the court. Municipal and county courts have limited civil jurisdiction, and may only hear cases in which the amount of money in dispute does not exceed $15,000. Common pleas courts hear all cases in which the amount of money in dispute is more than $15,000. The number of new civil cases that may result is uncertain but likely will be minimal for any single jurisdiction and court.

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