



# Ohio Legislative Service Commission

Jamie L. Doskocil

## Fiscal Note & Local Impact Statement

**Bill:** Sub. H.B. 13 of the 128th G.A.

**Date:** June 2, 2010

**Status:** As Passed by the House

**Sponsor:** Reps. Garrison and Harris

**Local Impact Statement Procedure Required:** No — Minimal cost

**Contents:** SORN Law revisions

### State Fiscal Highlights

STATE FUND	FY 2011 – FUTURE YEARS
<b>General Revenue Fund (GRF)</b>	
Revenues	- 0 -
Expenditures	Potential, likely no more than minimal, annual incarceration cost increase
<b>Funds of the Office of the Attorney General</b>	
Revenues	- 0 -
Expenditures	Potential significant one-time increase to gather and enter SORN data, with annual magnitude of subsequent ongoing costs, if any, uncertain
<b>Indigent Defense Support Fund (Fund 5DY0)</b>	
Revenues	Potential negligible annual gain in locally collected court costs
Expenditures	- 0 -
<b>Victims of Crime/Reparations Fund (Fund 4020)</b>	
Revenues	Potential negligible annual gain in locally collected court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2011 is July 1, 2010 – June 30, 2011.

- **Office of the Attorney General.** There may be a significant one-time cost for the Office of the Attorney General to identify offenders subject to the bill's Tier III prohibition. Whether there may be subsequent ongoing annual costs in the future to collect and retain that information is uncertain.
- **Incarceration expenditures.** There may be a minimal annual increase in the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs, as the result of a few additional offenders being sentenced to prison.
- **Locally collected state court costs.** Violations of the bill's various prohibitions may generate a negligible amount of locally collected state court cost revenue annually for deposit in the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

# Local Fiscal Highlights

**LOCAL GOVERNMENT**

**FY 2010 – FUTURE YEARS**

**Counties and Municipalities**

Revenues	Potential minimal annual gain in court costs and fines
Expenditures	Potential minimal annual increase in criminal justice system operating costs (arrest, detention, prosecution, adjudication, indigent defense, and sanctioning)

**County Sheriffs**

Revenues	- 0 -
Expenditures	Potential minimal annual increase to provide certain notices

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Local criminal justice system expenditures.** County and municipal criminal justice systems may incur minimal annual costs to process and sanction offenders committing certain sexual imposition offenses or violating premises limitations applicable to certain SORN Law registrants.
- **County court cost and fine revenues.** Violations of the bill's various prohibitions may generate a minimal amount of court cost and fine revenues annually for deposit in the appropriate county or municipal treasury.
- **County sheriffs.** The bill's requirement that a county sheriff provide notice, at certain specified times, of the new Tier III prohibition to certain SORN Law offenders is expected to create minimal additional administrative costs for each county annually.

## Detailed Fiscal Analysis

The bill increases the penalties associated with sexual imposition and makes changes to the state's existing Sex Offender Registration and Notification (SORN) Law.

### Sexual imposition penalty changes

#### Local expenditures and revenues

<b>Table 1. Sentences and Fines for Sexual Imposition Offenses</b>		
<b>Circumstances of Sexual Imposition</b>	<b>Current Law Penalty</b>	<b>Bill's Penalty</b>
The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard		Same as current law
The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired		Same as current law
The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact	<b>M3 (first offense)</b> <i>Maximum jail term: 60 days;</i> <i>Maximum fine \$500</i>	Same as current law
The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person	<b>M1 (subsequent qualifying offense)</b> <i>Maximum jail term: 6 months;</i> <i>Maximum fine \$1,000</i>	<b>M1 (first offense)</b> <i>Maximum jail term: 6 months;</i> <i>Maximum fine \$1,000</i>
The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes		<b>M1(first offense)</b> <i>Maximum jail term: 6 months;</i> <i>Maximum fine \$1,000</i>

As a result of the penalty changes to the offense of sexual imposition, certain offenders could be sentenced to longer jail sentences and subjected to higher fines. An affected offender could face, at most, an additional four months in jail and an additional \$500 in fines. Since judges have discretion in sentencing terms and fines, it is difficult to quantify the fiscal impact for any one county or municipality in terms of the potential for increased case processing and sanctioning costs and court cost and fine revenues gained. That said, in the context of a county or municipal criminal justice system's total caseload, the number of affected cases is likely to be relatively small, which suggests that any increased costs and related gain in court cost and fine revenues is likely to be minimal annually.

Under current law, offenses related to the activity of sexual imposition are generally classified as a misdemeanor of the third degree on the first offense and a misdemeanor of the first degree if the offender has been previously convicted of this or

certain other sex offenses. The bill modifies these penalties, as summarized in Table 1 below.

### **Tier III sex offender/child-victim offender limitations**

According to the Office of the Attorney General, there are currently 28,963<sup>1</sup> sex offenders registered in the eSORN database.<sup>2</sup> Of that number, 14,047 are classified as adult Tier III offenders. After analyzing the data provided by the Office of the Attorney General, LSC fiscal staff has ascertained that approximately half of those adult Tier III offenders, or roughly 7,000, are currently incarcerated. The bill's Tier III prohibition would be applicable to a subset of those adult Tier III offenders who are not currently incarcerated and were convicted of or pled guilty to a sex/child-victim offense where the victim was of a certain age. The size of this population subset is unknown, but appears that it would be relatively small in each county, varying according to the demographic makeup of each jurisdiction. This would suggest that the number of likely violations of the Tier III prohibition that might be generated for any given county or municipal criminal justice system to adjudicate will be relatively few in number, and that any related case processing and sanctioning costs and court cost and fine revenues gained will be minimal annually.

The bill generally prohibits an adult Tier III sex offender/child victim offender from knowingly being present on school premises or preschool or child day-care center premises if the offender has been convicted of or pleaded guilty to a specified offense against a victim under the age of 16 or a specified violation of gross sexual imposition against a child under 12 years of age. The bill also provides for an affirmative defense if certain criteria are met. The penalties associated with violating this new prohibition (R.C. 2950.035) are outlined in Table 2 below.

<b>Table 2. Sentences and Fines for Violating ORC 2950.035</b>			
<b>Offense</b>	<b>Degree of Offense*</b>	<b>Prison/Jail Term</b>	<b>Fine</b>
First offense	M2	Not more than 90 days in jail	Up to \$750
Second offense	M1	Not more than 6 months in jail	Up to \$1,000
Third and subsequent offenses	F5	6, 7, 8, 9, 10, 11, or 12 months in prison	Up to \$2,500

\*For an F5, the sentencing guidelines state a general preference against a prison term.

### **Attorney General**

The duty to identify offenders affected by the bill's Tier III prohibition will be the responsibility of the Bureau of Criminal Identification and Investigation (BCI). Once

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<sup>1</sup> As of March 16, 2009.

<sup>2</sup> eSORN stands for Ohio's Electronic Sex Offender Registration and Notification database, which is linked to all 88 county sheriffs and the records office of all of the Department of Rehabilitation and Correction's 32 correctional facilities.

identified, BCI will include this information in the public eSORN database. According to staff of the Office of the Attorney General, this task will likely be difficult to complete. Much of the required information is already included in the eSORN database, but for those offenders that, for some reason, did not have this data entered or included, staff will need to research the original indictments and pre-sentencing reports. The exact amount of additional staff time and resources that would be required is unknown, but has been characterized as potentially significant. Presumably, this is a one-time cost that could be minimized in the future if data collection and entering procedures are modified to record the required victim information when the offender is initially registered under the SORN Law.

### **Department of Rehabilitation and Correction**

As a result of violations of the bill's Tier III prohibition, it is possible that additional offenders could be sentenced to prison. In theory, the fiscal effect of such an outcome would be an increase in the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs. It appears, however, that the number of new felony convictions that may result from violations of the bill's Tier III prohibition is likely to be relatively small, and any related potential increase in DRC's annual incarceration costs would be no more than minimal.

### **Local criminal justice system revenues and expenditures generally**

As noted, it appears unlikely that the bill's Tier III prohibition will create many cases for county and municipal criminal justice systems to process. That said, any new criminal case that is created as a result of violating the bill's prohibition, in theory, carries the potential to increase costs related to investigating, prosecuting, adjudicating, and sanctioning the offender, as well as paying for defense counsel if the offender is indigent. Any resulting increase in an affected county or municipal criminal justice system's expenditures is likely to be no more than minimal annually, as it seems likely that the number of violations will be relatively small. This would suggest that the amount of additional annual revenue that a county or municipality might collect from such offenders would be minimal as well, especially as many are unwilling or unable to pay.

### **State court cost revenues**

As the number of violations of the bill's Tier III prohibition is expected to be relatively small, any gain in related state court costs will be negligible annually. "State court costs" are statutorily-specified amounts collected by local courts and forwarded for deposit in the state treasury. For a non-moving traffic violation, the court is generally required to impose state court costs totaling \$29 for a misdemeanor and \$60 for a felony. The \$29 misdemeanor amount is divided as follows: \$20 to the Indigent Defense Support Fund (Fund 5DY0) and \$9 to 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.

### **County sheriff expenditures**

The bill requires a county sheriff to provide notice, at certain specified times, of the Tier III prohibition to an affected offender. Presumably, the sheriff will have a list of those offenders requiring the notification, as BCI will have made these notations in the public eSORN database. Since the bill does not require the sheriff to make any additional notifications, the additional administrative cost to perform these duties should be no more than minimal annually for each county.

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