



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 34 of the 129th G.A.

Date: May 24, 2011

Status: As Introduced

Sponsor: Rep. Snitchler

Local Impact Statement Procedure Required: Yes

Contents: Penalty enhancements for certain sex offenses

State Fiscal Highlights

STATE FUND

FY 2012 – FUTURE YEARS

General Revenue Fund (GRF) – Department of Rehabilitation and Correction

Revenues

- 0 -

Expenditures

Incarceration cost increase, peaking at \$5 million or more annually starting three years after effective date

Note: The state fiscal year is July 1 through June 30. For example, FY 2012 is July 1, 2012 – June 30, 2013.

- The Department of Rehabilitation and Correction (DRC) estimates that, within three years of its effective date, the bill will add 200 or more inmates to the state prison system. The annual cost for DRC to incarcerate those additional 200 inmates will be at least \$5 million (200 inmates x \$25,097, the annual cost to incarcerate an inmate in the state prison system as of May 2011).

Local Fiscal Highlights

- **County and municipal criminal justice systems generally.** The net local fiscal effects can be as follows: (1) for municipalities annually, a potential minimal expenditure decrease and a potential minimal revenue loss (court costs and fines), as a relatively small number of cases elevate from misdemeanors to felonies and (2) for counties annually, a potential minimal expenditure increase and a potential minimal revenue gain (court costs and fines), due to the imposition of more serious sanctions.
- **Sanctioning costs.** The bill will have a mix of effects on county and municipal sanctioning costs, the net of which is uncertain. First, there may be some savings in municipal sanctioning costs, as certain cases are enhanced to felonies. Second, with the potential imposition of mandatory jail terms on certain misdemeanor offenses, it is likely that counties and municipalities will incur additional jail costs to sanction those offenders who may not have otherwise been sentenced to jail. The average cost of a day in jail is approximately \$60 per day, or \$21,900 per year. Third, counties may realize some savings in sanctioning costs, as certain offenders rather

than being punished locally will be sentenced to prison, where they become a cost for the state.

Detailed Fiscal Analysis

The bill provides for penalty enhancements and mandatory prison terms for certain sex offenses including, but not limited to, acts of sexual battery, sexual imposition, and unlawful sexual conduct with a minor. Generally speaking, these penalty changes will not create any new cases for county and municipal criminal justice systems to process. Rather, penalties for existing crimes are being enhanced with the addition of mandatory prison terms for certain acts within those existing offenses. The narrative below discusses the resulting state and local fiscal effects and then concludes with a summary of the bill's various sex offense penalty provisions.

Local fiscal effects

County and municipal criminal justice systems generally

The bill's mandatory penalty enhancements will not create any additional cases for county and municipal criminal justice systems to process. It may, however, change the manner in which some criminal cases are resolved in the future from how those matters may have otherwise been resolved. In addition, it is possible that some cases may be elevated from what would have been a misdemeanor under current law to what will be a felony under the bill. However, the number of cases that could be affected in this manner is likely to be relatively small in the context of any given local jurisdiction's criminal caseload. The net local fiscal effects can be as follows:

- For municipalities annually, a potential minimal expenditure decrease and a potential minimal revenue loss (court costs and fines), as a relatively small number of cases elevate from misdemeanors to felonies; and
- For counties annually, a potential minimal expenditure increase and a potential minimal revenue gain (court costs and fines), due to the imposition of more serious sanctions.

For those cases that are elevated from a misdemeanor to a felony, the bill will effectively shift criminal cases that would have been handled by municipal courts and county courts to courts of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may: (1) shed some of their criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders who commit these assaults and (2) lose related revenues in the form of court costs and fines. Conversely, counties could: (1) experience an increase in their criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well and (2) gain revenues in the form of court costs and fines.

Another possible manner in which case-processing dynamics may change is that their resolution may take more time and effort, as the offender tries to avoid the imposition of the mandatory penalty enhancement. Whether the bargaining process between the prosecutor, defense attorney, and court will become more or less problematic, however, is uncertain. That said, if one could quantify the additional time and effort that might be expended on certain cases, the cost appears unlikely to exceed minimal for any affected county criminal justice system.

County and municipal sanctioning costs

The bill will have a mix of effects on county and municipal sanctioning costs. First, as certain sex offense cases will be elevated into the felony jurisdiction of counties, county costs will likely rise to sanction offenders and presumably there is some savings in municipal sanctioning costs. Second, with the potential imposition of mandatory jail terms on certain misdemeanor offenses, it is likely that counties and municipalities will incur additional jail costs to sanction those offenders who may not have otherwise been sentenced to jail. The average cost of a day in jail is approximately \$60 per day, or \$21,900 per year. Third, counties may realize some savings in sanctioning costs, as certain offenders rather than being punished locally will be sentenced to prison, where they become a cost for the state.

State fiscal effects

Incarceration

Based on an analysis performed by the Department of Rehabilitation and Correction (DRC), the bill's primary fiscal effect will likely be the imposition of prison terms for offenders who in the past would have been subjected to community punishment. Additionally, for those that are already being sentenced to prison, under the bill these offenders may be subjected to longer terms. After examining current incarceration data, as well as data contained in the eSORN database administered by the Office of the Attorney General, DRC estimates that the bill would increase the inmate population by a total of at least 200 inmates. The impact would be felt soon after enactment and is predicted to surpass 200 additional inmates within three years. DRC emphasizes that this figure is conservative and could likely be higher. The annual cost for DRC to incarcerate those additional 200 or so inmates will be at least \$5 million (200 inmates x \$25,097, the annual cost to incarcerate an inmate in the state prison system as of May 2011).

Sex offense penalty enhancements

Sexual battery

The bill provides a mandatory prison term of 3, 4, or 5 years if the offense of sexual battery involves an element of "supervisory control," as defined by the bill, and the victim is categorized into one of two possible age categories. Table 1 below illustrates these penalty enhancements.

Table 1. Sexual Battery Penalty Enhancements		
Sexual Battery Penalties	Current Law Penalty/Punishment	Bill's Proposed Penalty/Punishment
Sexual battery generally	F3/Prison term of 1, 2, 3, 4, or 5 years (fine of not more than \$10,000)	No change
If victim is less than 13 years of age	F2/Mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years (fine of not more than \$15,000)	No change, except as noted below
If victim is older than 13 years of age and offender in supervisory control	No provision	F3/Mandatory prison term of 3, 4, or 5 years (fine of not more than \$10,000)
If victim is less than 13 years of age and the offender is in supervisory control	No provision	F2/Mandatory prison term of 3, 4, 5, 6, 7, or 8 years (fine of not more than \$15,000)

Sexual imposition

The bill adds additional prohibitions to the offense of sexual imposition, generally involving acts perpetrated by an individual who has "supervisory control," as defined by the bill, and provides for a mandatory prison term of three years.

Table 2. Sexual Imposition Penalty Enhancements		
Specification	Current Law Penalty/Punishment	Bill's Proposed Penalty/Punishment
General acts of sexual imposition	M3/Jail term of maximum 60 days (fine of not more than \$500)	No change
If offender was previously convicted of rape, sexual battery, sexual imposition, unlawful sexual contact with a minor, gross sexual imposition, or the former offense of felonious sexual penetration	M1/Jail term of maximum 6 months (fine of not more than \$1,000)	No change, except as noted below
If the offender is in supervisory control	No provision	F4/Mandatory prison term of 3 years (fine of not more than \$5,000)

Penalty enhancements for other sex offenses

The bill also enacts a specification for use in sentencing an offender for the following offenses: unlawful sexual conduct with a minor, gross sexual imposition, importuning, or endangering children. If the offender pleads or is found guilty of one of these offenses and also pleads or is found guilty of the specification, a mandatory prison or jail term of three years is imposed. As a result of the penalty enhancement, prison and jail sentences will be lengthened, thus increasing incarceration costs.