



Ohio Legislative Service Commission

Jamie L. Doskocil

Fiscal Note & Local Impact Statement

Bill: [H.B. 53 of the 129th G.A.](#)

Date: March 8, 2011

Status: As Introduced

Sponsor: Rep. Maag

Local Impact Statement Procedure Required: No

Contents: Illegal use of a telecommunications device involving a minor in a state of nudity

State Fiscal Highlights

- The bill could produce a minimal annual savings effect on the Department of Youth Services' institutional operating costs, as it is possible that a juvenile that might otherwise have been sentenced into the custody of a state juvenile correctional facility will instead be sanctioned locally.
- The bill may result in additional state court cost revenue being collected from certain cases and less state court cost revenue being collected from certain other cases, the annual net of which will be negligible on two state funds: the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

- The bill may: (1) create costs for a county's juvenile justice system to charge, adjudicate, and sanction additional juveniles, and (2) reduce a county's juvenile justice system's costs, as it is generally less expensive to process cases involving a misdemeanor as opposed to a felony. The net of these two outcomes on county expenditures is likely to be no more than minimal annually.
- From the perspective of local revenues, the contrasting outcomes noted in the immediately preceding dot point suggest that counties could both collect additional court cost and fine revenues from certain cases and less court cost and fine revenues from certain other cases. The net of these two outcomes on revenues is likely to be no more than minimal annually for counties.

Detailed Fiscal Analysis

"Sexting" conduct prohibition

The bill prohibits a minor from knowingly creating, receiving, exchanging, sending, or possessing a photograph or other material showing a minor, who is not the actor's child or ward, in a state of nudity by use of a telecommunications device or other means. Such conduct is generally known as "sexting." A violation of the prohibition would result in an unruly child adjudication on the first offense, with the court permitted to order any disposition that is appropriate under R.C. Chapter 2151. A second or subsequent offense would be a delinquent act and treated as a misdemeanor of the first degree.

Under current law, such conduct could be subject to existing prohibitions for certain sex and family offenses. Some of these prohibitions, and the degree of the offense if violated, are summarized in the table below.

Certain Existing Prohibitions Potentially Applicable to "Sexting"	
Offense	Degree of Offense
Disseminating matter harmful to juveniles	Misdemeanor 1st degree/Felony 5th or 4th degree
Pandering obscenity involving a minor	Felony of the 4th, 3rd, or 2nd degree
Pandering sexually oriented matter involving a minor	Felony of the 4th, 3rd, or 2nd degree
Illegal use of a minor in nudity oriented material or performance	Felony of the 5th, 4th, or 2nd degree
Contributing to the unruliness or delinquency of a minor	Misdemeanor of the 1st degree
Endangering children	Felony of the 2nd degree

Because the behavior prohibited by the bill involves a juvenile sending material electronically to another juvenile or other juveniles, there appears to be anecdotal evidence suggesting that some local prosecutors and law enforcement officials are struggling with determining an appropriate charge and disposition under circumstances involving "sexting" conduct. This reflects the concern of some that, although the circumstances present may fit the definition of felonious conduct, it is generally more appropriate to adjudicate as a misdemeanor given it involves juveniles exchanging material between one another. The bill does allow prosecutors to pursue felony level charges if circumstances warrant it.

State and local fiscal effects

As a result of enacting the bill's prohibition, at least three outcomes seem plausible as follows:

1. It is possible that some local jurisdictions may find the new prohibition more appropriate to the conduct, and as a result, may be more likely to charge and sanction juveniles in certain situations.

2. There could be situations wherein a juvenile might have been charged and sanctioned for felonious conduct under current law and practice, but may be more likely to be charged and sanctioned for the misdemeanor conduct specified by the bill.
3. If a local jurisdiction aggressively enforces the prohibitions that could apply to "sexting," it could have a chilling effect that reduces the frequency with which juveniles engage in such behavior.

Expenditures. The possibility that some new misdemeanor cases will be created means that costs for county juvenile justice systems to charge, adjudicate, and sanction additional juveniles could increase. However, it is also possible that some cases that could have previously been tried at the felony level, and ultimately resulted in a juvenile being sentenced to the custody of a state juvenile correctional facility will instead be tried as a misdemeanor and sanctioned locally. Such an outcome could result in a cost reduction for counties (in that misdemeanors are generally less expensive to adjudicate and sanction than felonies). The net effect of these possibilities on any given county juvenile justice system's annual expenditures would be minimal at most. The state's Department of Youth Services could also realize a minimal annual savings in institutional operating costs, if a juvenile is not sentenced to a term of detention in a state juvenile correctional facility.

Revenues. Counties and the state could gain additional court cost and fine revenues if additional cases are created as a result of violations of the bill's prohibition. However, the opposite could occur (revenue lost) if cases that may have previously been tried as felonies are tried as misdemeanors instead. This is because fines are generally less for misdemeanors than felonies. The net of these two outcomes on court cost and fine revenues is likely to be no more than minimal for counties and negligible for the state. Fines are generally credited to a county's general fund, while local court costs can be deposited for a mix of general and special purposes. State court costs are collected by local jurisdictions and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).