

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: Am. H.B. 537 DATE: March 11, 1998
STATUS: As Reported by House Criminal Justice SPONSOR: Rep. Perz
LOCAL IMPACT STATEMENT REQUIRED: No — Minimal cost
CONTENTS: Increases penalty for public indecency and defines urination in public as disorderly conduct

State Fiscal Highlights

STATE FUND	FY 1998*	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	-0-	-0-
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase

* If enacted, the bill would not likely take effect until after June 30, 1998 and would thus have no impact in fiscal year 1998.

- Through the creation of more serious misdemeanor cases, the bill could generate a potential increase in state GRF expenditures related to increased demand for indigent defense. However, considering the current treatment of the offense of public indecency in the misdemeanor courts any such increase should be minimal.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998*	FY 1999	FUTURE YEARS
Counties			
Revenues	- 0 -	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase
Municipalities			
Revenues	- 0 -	-0-	-0-
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase

* If enacted, the bill would not likely take effect until after June 30, 1998 and would thus have impact in fiscal year 1998.

- As a result of upgrading cases within the misdemeanor framework, the bill could generate a potential minimal gain in county revenues resulting from the collection of additional fines.
- Through the creation of more serious misdemeanor cases, the bill could generate a potential minimal increase in county expenditures related to increased prosecution, adjudication, indigent defense, and incarceration.
- As a result of elevating the seriousness of certain offenses within the misdemeanor framework, municipalities could experience a potential minimal increase in prosecution, adjudication, and indigent defense expenditures.



Detailed Fiscal Analysis

Provisions of the Bill

Currently the offense of public indecency is a fourth degree misdemeanor (M-4) on a first offense and an M-3, M-2, and M-1 on the second, third, and fourth offenses respectively. The bill would increase the penalty for a first offense of public indecency to an M-3, with all subsequent offenses treated as an M-1. The bill further specifies that exposure of a person's private parts solely for the purpose of urinating is an offense of disorderly conduct and not public indecency. Disorderly conduct is a minor misdemeanor (M-M) punishable by a fine of up to \$100.

Fiscal Impact of the Bill

While no statewide database exists in order to identify the number of public indecency offenses, anecdotal evidence collected from local prosecutors and law enforcement agencies suggest that the number of cases affected statewide could be in the range of 5,000. While this number is considerable, it must be noted that the same anecdotal evidence indicates the actual impact of increasing the seriousness of the offense may be reduced as a result of treatment of the offense under existing law.

According to representatives of both prosecuting attorneys and law enforcement agencies, it appears that in the vast majority of cases, offenses involving only urinating in public are generally treated as disorderly conduct violations and thus that provision of the bill would probably generate no more than a negligible impact. Further acting to potentially reduce the impact of the bill in terms of seriousness of public indecency prosecutions is the current treatment of the offense in the state's misdemeanor courts. Specifically, according to survey data conducted by the Ohio Criminal Sentencing Commission, despite the classification of public indecency as an M-4, the offense is on average, sanctioned similarly to a violation of pandering obscenity, an M-1. As a result of this seemingly inconsistent practice, the extent to which misdemeanor courts will actually increase the severity of sanctions in such cases is difficult to accurately determine.

Penalty Enhancement Provisions

The primary fiscal impact of the bill at both the state and local level is tied to the penalty enhancement provisions and the extent to which increasing the severity of sanctions in an estimated 5,000 cases will actually occur. Specifically, state expenditures could experience a potential increase related to additional indigent defense and incarceration costs in more serious misdemeanor cases. Meanwhile, at the local level, counties could experience a potential increase in both revenues and expenditures related to the collection of additional fine revenue, as well as increased expenditures for prosecution, adjudication, indigent defense, and incarceration. Municipalities meantime, could experience increased expenditures in the prosecution and adjudication of more serious misdemeanor cases.

State Justice System Impact

By increasing the seriousness of offenses within the misdemeanor framework, the bill could generate a potential increase in state indigent defense expenditures. Specifically, by upgrading the seriousness of the offense of public indecency within the misdemeanor range, the bill could increase the length and complexity of prosecutions and thus the demand for resources devoted to indigent defense. According to estimates provided by the United States Department of Justice, indigent defense is required in approximately 37 percent of misdemeanor cases with an average cost of \$175. Currently, the state funds 47 percent of indigent defense costs, with the remainder absorbed by the localities.

Local Justice System Impact

As a result of upgrading the seriousness of affected misdemeanor offenses, the bill could generate a potential gain to counties in the form of fine revenues. Revenues generated in the form of fines in state misdemeanor cases are retained entirely by the county. As a result of the provisions of the bill, the current maximum fine for an initial public indecency offense would increase from \$250 to \$500 and to \$1,000 for all subsequent offenses. Since an accurate estimate of the number of cases affected by the bill and the extent to which upgrading their seriousness would actually result in harsher penalties is questionable in light of current sentencing practices discussed above, any such gain in county revenues should be minimal.

As a result of enhancing the penalties for existing offenses, the bill could generate additional county expenditures related to increased demand for prosecution, adjudication, indigent defense, and incarceration. While additional expenditures in the prosecution, adjudication, indigent defense, and incarceration of more serious misdemeanor cases would be absorbed primarily by the counties, municipal courts could also encounter more serious and thus more expensive prosecutions of higher level misdemeanors. However, considering the current treatment of public indecency offenses within the misdemeanor framework and the fact that an indeterminate number of subsequent offenses will still be prosecuted as M-1's, any increase in municipal and county expenditures should be minimal.

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