

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 74** DATE: **December 17, 2008**
STATUS: **As Enacted – Effective April 7, 2009** SPONSOR: **Rep. Schlichter**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Voyeurism**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential, most likely minimal, annual incarceration cost increase
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Incarceration costs.** As a result of the bill's modifications to the offense of voyeurism, it is possible that some individuals that might not otherwise have been sentenced to prison will be so sentenced and that some individuals may receive a longer prison term than might otherwise have been the case under current law and sentencing practices. Either outcome, theoretically, increases the Department of Rehabilitation and Correction's GRF-funded incarceration costs. It appears, however, that the number of individuals that might be so affected is likely to be relatively small, especially in the context of a prison system currently housing over 51,000 inmates. This would suggest that any additional incarceration costs associated with the likely number of affected individuals would be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated expenditure increase of less than \$100,000 per year for the state.
- **Court cost revenues.** As a result of a person being convicted of or pleading guilty to the penalty enhanced conduct, the state may gain an additional \$21 in locally collected state court costs for each such instance for deposit in the Victims of Crime/Reparations Fund (Fund 4020). However, as noted, the number of occasions in which such an outcome may occur in any given year is likely to be relatively small, which, if true, means that any resulting gain in Fund 4020's annual revenues would be negligible. For the purposes of this fiscal analysis, negligible means an estimated revenue gain of less than \$1,000 for Fund 4020 per year.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties	
Revenues	Potential gain in court costs and fines, likely to be minimal at most annually
Expenditures	Potential criminal justice system cost increase, likely to be minimal at most annually
Municipalities	
Revenues	Potential loss in court costs and fines, likely to be minimal at most annually
Expenditures	Potential criminal justice system cost decrease, likely to be minimal at most annually

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

- **Local revenue and expenditure effects generally.** The bill's modifications to the offense of voyeurism carry the potential to elevate a criminal case that, based on current law, would most likely be adjudicated as a misdemeanor under the subject matter jurisdiction of a municipal court or a county court to a felony under the subject matter jurisdiction of a court of common pleas. From the fiscal perspective of local governments, such an outcome could simultaneously: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues. Assuming that certain voyeurism offenses that are the subject of the bill continue to be relatively infrequent acts, any related variation in annual county and municipal criminal justice system expenditures and revenues for any given local jurisdiction is likely to be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated change in annual revenues or expenditures that is no more than \$5,000 for any affected county or municipality.

Detailed Fiscal Analysis

Overview

The bill essentially modifies the elements of, and penalty associated with, the offense of voyeurism as discussed in more detail immediately below.

Voyeurism involving minors as victims generally

Under current law, a person, for the purpose of sexually arousing or gratifying the person's self, is prohibited from trespassing or otherwise surreptitiously invading the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity if the other is a minor, a violation of which is a misdemeanor of the first degree. The bill: (1) adds to the above-noted prohibition the acts of spying or eavesdropping, and (2) increases the penalty for a violation to a felony of the fifth degree.

Voyeurism involving minors as victims and positions of trust or authority

Current law contains a special prohibition (division (D) of section 2907.08 of the Revised Code¹) wherein if the person spying upon a minor in a state of nudity for the purpose of sexual gratification or arousal is in what might be termed a position of trust or authority, the violation constitutes a felony of the fifth degree. The bill removes this special prohibition and makes any violation where the victim is a minor a felony of the fifth degree.

Continuum of sanctions

Under current law, a violation of the offense of voyeurism is generally a misdemeanor of the first degree if the victim is a minor and rises to a felony of the fifth degree under certain circumstances. The bill essentially makes the offense of voyeurism a felony of the fifth degree whenever the conduct involves spying upon a minor in a state of nudity for the purpose of sexual gratification or arousal. The table below summarizes the existing continuum of sanctions for committing a misdemeanor of the first degree and a felony of the fifth degree.

¹ This section of the Revised Code currently states that no person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise photograph, or otherwise record the other person in a state of nudity if the other person is a minor.

Continuum of Sanctions for Certain Offenses

Degree of Offense	Possible Incarceration Term	Possible Conventional Fine	Community Residential or Nonresidential Sanctions	Financial Sanctions	Parole or Post-release Control (PRC)
Misdemeanor 1st degree (M1)	Not more than 180-day jail stay	Not more than \$1,000	Yes, unless otherwise provided	Yes	N/A
Felony 5th degree (F5)	Definite prison term of 6-12 months	Not more than \$2,500	Yes, unless a mandatory prison sentence is imposed	Yes	PRC required

Voyeurism cases

The bill is not expected to generate many, if any, new cases of voyeurism per year. Even by adjusting the nuances of the specific offense, it seems reasonable to assume that such behavior could already violate existing sex offense prohibitions, specifically section 2907.08 of the Revised Code. However, these adjustments may make it easier to charge and subsequently adjudicate such cases. Based on discussions with personnel familiar with criminal justice and court operations in Hamilton County and Franklin County, it appears that the number of voyeurism cases that are adjudicated each year in those jurisdictions is less than ten, a relatively small percentage of their overall caseload.

State fiscal effects

Incarceration costs

The bill's penalty enhancement carries the potential to elevate a criminal case that, based on current law, would most likely be adjudicated as a misdemeanor under the subject matter jurisdiction of a municipal court or a county court to a felony under the subject matter jurisdiction of a court of common pleas. This would create the possibility that a person, who would not otherwise have been sentenced to a prison term under current law, can, theoretically at least, be sentenced to a prison term in the future. It appears that the number of additional offenders that might be sentenced to prison annually is likely to be relatively small, especially in the context of a prison system currently housing over 51,000 inmates. The costs associated with the likely number of affected offenders would be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated expenditure increase of less than \$100,000 per year for the state.

Court cost revenues

In addition to any local fines and court costs, offenders can be ordered to pay locally collected state court costs. State court costs for a felony conviction total \$45, with \$30 of that amount being credited to the Victims of Crime/Reparations Fund (Fund 4020) and the remainder, or \$15, being credited to the GRF. State court costs for a misdemeanor conviction total \$24, with \$9 of that amount being credited to the Victims of Crime/Reparations Fund and the remainder, or \$15, being credited to the GRF. Thus, the GRF gains \$15 irrespective of whether an offender is convicted of or pleads guilty to a misdemeanor or a felony. In the case of

a felony, the Victims of Crime/Reparations Fund could collect an additional \$21 compared to its potential take from a misdemeanor.

Thus, as a result of a person being convicted of or pleading guilty to the penalty enhanced conduct, the state may gain an additional \$21 in locally collected state court costs for each such instance for deposit in Fund 4020. However, as noted, the number of occasions in which such an outcome may occur in any given year is likely to be extremely small, which, if true, means that any resulting gain in Fund 4020's annual revenues would be negligible. For the purposes of this fiscal analysis, negligible means an estimated revenue gain of less than \$1,000 for Fund 4020 per year. It is also important to note that collecting court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unwilling or unable to pay.

Local fiscal effects

The bill's penalty enhancement carries the potential to elevate a criminal case that, based on current law, would most likely be adjudicated as a misdemeanor under the subject matter jurisdiction of a municipal court or a county court to a felony under the subject matter jurisdiction of a court of common pleas. Relative to a misdemeanor, a felony is generally a more expensive criminal matter to resolve.

From the fiscal perspective of local governments, such an outcome could simultaneously: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues. Assuming that certain voyeurism offenses that are the subject of the bill continue to be relatively infrequent acts, any related variation in annual county and municipal criminal justice system expenditures and revenues for any given local jurisdiction is likely to be no more than minimal. For the purposes of this fiscal analysis, minimal means an estimated change in annual revenues or expenditures that is no more than \$5,000 for any affected county or municipality.

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