



## ***Local Fiscal Highlights***

| <b>LOCAL GOVERNMENT</b> | <b>FY 2008 – FUTURE YEARS</b>  |
|-------------------------|--|
| <b>Counties</b>         |  |
| 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 |
| <b>Municipalities</b>   |  |
| 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 a relatively infrequent act, any related variations 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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## ***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 fourth 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 Code<sup>1</sup>) 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 by doing so, in effect elevates the penalty associated to a felony of the fourth 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 fourth 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, a felony of the fifth degree, or a felony of the fourth degree.

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<sup>1</sup> 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   |
| Felony 4th degree (F4)      | Definite prison term of 6-18 months | Not more than \$5,000      | Yes, unless a mandatory prison sentence is imposed | Yes                 | PRC required for sex offenses and certain violent F3 offenses; PRC optional for other offenses |

#### 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 fall within the list of prohibitions included in existing law, 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 criminal 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 around 50,000 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 402) 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 402. 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 402'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 402 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 a relatively infrequent act, any related variations 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.

## ***Synopsis of Fiscal Changes***

For the purposes of this fiscal analysis, the most notable differences between the As Introduced version of the bill and the accepted substitute version (LSC 127 0391-2) are that the latter adds the term "eavesdropping" and reduces the proposed penalty enhancement, as noted immediately below.

- By adding the term "eavesdropping," it is possible that new cases of voyeurism could be generated. However, these language adjustments may in fact make it easier to charge and subsequently adjudicate existing criminal cases involving the general act of voyeurism.
- By changing the proposed penalty enhancement from a felony of the third degree to a felony of the fourth degree, an offender would potentially face less serious sanctions under the accepted substitute version of the bill than might otherwise have been the case under the As Introduced version. Some of those sanctioning differences are summarized in the table below.

**Continuum of Sanctions for Certain Offenses**

| <b>Degree of Offense</b> | <b>Possible Incarceration Term</b>  | <b>Possible Conventional Fine</b> |
|--------------------------|-------------------------------------|-----------------------------------|
| Felony 4th degree (F4)   | Definite prison term of 6-18 months | Not more than \$5,000             |
| Felony 3rd degree (F3)   | Definite prison term of 1-5 years   | Not more than \$10,000            |

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