

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
Counties			
Revenues	Potential gain in court costs and fines, likely to be minimal at most	Potential gain in court costs and fines, likely to be minimal at most	Potential gain in court costs and fines, likely to be minimal at most
Expenditures	Potential criminal justice system cost increase, likely to be minimal at most	Potential criminal justice system cost increase, likely to be minimal at most	Potential criminal justice system cost increase, likely to be minimal at most
Municipalities			
Revenues	Potential loss in court costs and fines, likely to be minimal at most	Potential loss in court costs and fines, likely to be minimal at most	Potential loss in court costs and fines, likely to be minimal at most
Expenditures	Potential criminal justice system cost decrease, likely to be minimal at most	Potential criminal justice system cost decrease, likely to be minimal at most	Potential criminal justice system cost decrease, likely to be minimal at most

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.

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.

The bill modifies the elements of voyeurism for the purpose of sexual gratification or arousal when the victim is a minor in a state of nudity so that it prohibits a person, for the purpose of sexually arousing or gratifying the person's self, from trespassing or otherwise surreptitiously invading the privacy of a minor person to spy or eavesdrop upon (instead of current law's *videotape, film, photograph, or otherwise record*) the minor person in a state of nudity. Under the bill, the penalty for a violation of this prohibition will be increased from a misdemeanor of the first degree to a felony of the third degree.

The bill removes the penalty enhancement that exists in current law under certain circumstances, which states that violators of division (D) of section 2907.08 of the Revised Code¹ have committed a felony of the fifth degree. The circumstances being removed are listed below. Essentially, the bill makes the penalty for the offense of voyeurism a felony of the third degree in all cases if the person, for the purpose of sexually arousing or gratifying the person's self, commits trespass or otherwise surreptitiously invades the privacy of a minor person to videotape, film, photograph, or otherwise record the minor person in a state of nudity.

- (1) The offender is the minor's natural or adoptive parent, stepparent, guardian, or custodian, or person in loco parentis of the minor.
- (2) The minor is in custody of law or is a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the minor.
- (3) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards, the minor is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.
- (4) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the minor is enrolled in or attends that institution.
- (5) The offender is a caregiver, administrator, or other person in authority employed by or serving in a child day-care center, type A family day-care home, or type B family day-care home, and the minor is enrolled in or attends that center or home.

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.

- (6) The offender is the minor's athletic or other type of coach, is the minor's instructor, is the leader of a scouting troop of which the minor is a member, provides babysitting care for the minor, or is a person with temporary or occasional disciplinary control over the minor.

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 third 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 third degree.

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	Not more than 180 days	Not more than \$1,000	Yes, unless otherwise provided	Yes	
Felony 5th degree	Definite prison term of 6-12 months	Not more than \$2,500	Yes, unless a mandatory prison sentence is imposed.	Yes	PRC required
Felony 3rd degree	Definite prison term of 1-5 years	Not more than \$10,000	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 any new cases of voyeurism. 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 caseloads.

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 more than 49,000 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.

LSC fiscal staff: Jamie L. Duskocil, Senior Budget Analyst

HB0074IN.doc/th