Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
77 South High Street, 9th Floor, Columbus, OH 43215-6136 ✧ Phone: (614) 466-3615
✧ *Internet Web Site:* http://www.lsc.state.oh.us/

BILL:	**Sub. H.B. 209**	DATE:	**December 16, 2008**
STATUS:	**As Reported by Senate Judiciary--Criminal Justice**	SPONSOR:	**Rep. Core**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Sexual battery**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	Potential, likely to be no more than minimal, annual increase in incarceration costs
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, it is possible that additional offenders will be sentenced to prison or sentenced to prison for longer terms than would otherwise have been the case under current law and sentencing practices. The fiscal effect of this scenario may be to increase the Department of Rehabilitation and Correction's annual GRF-funded incarceration and post-release control costs. However, as the number of peace officers that would be so sentenced annually is likely to be extremely small, especially in the context of a prison currently housing in excess of 51,000 inmates, any increase in the Department's incarceration costs would be minimal at most. For the purposes of this fiscal analysis, in the context of state GRF expenditures, minimal means an annual cost increase estimated at less than $100,000.

- ***Court cost revenues*.** As a result of violations of the bill's prohibition, additional court cost revenues may be generated for the state. As it appears that the number of affected cases will be relatively small, the amount of additional locally collected state court cost revenues that might be collected and deposited annually to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020) is likely to be no more than negligible. For the purposes of this fiscal analysis, a negligible revenue gain means a total increase in court cost moneys estimated at less than $1,000 per year for either state fund.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties	
Revenues	Potential, likely to be no more than minimal, annual gain in court costs and fines
Expenditures	Potential, likely to be no more than minimal, annual increase in criminal justice system expenditures

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

- ***Criminal justice system expenditures*.** To the degree that the bill's prohibition affects local criminal justice system expenditures, it is possible that the annual costs that a county incurs in prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning felony offenders may increase. If the criminal justice system expenditures of these local governments do in fact increase, one would think that any such rise would be no more than minimal annually given the likelihood that the number of cases that could be affected or created by the bill's prohibition in any given jurisdiction will be relatively small. For the purposes of this fiscal analysis, a minimal cost means an increase in expenditures estimated at no more than $5,000 per year for any affected local jurisdiction.

- ***Court cost and fine revenues*.** Subsequent to a conviction or guilty plea, the sentencing court generally imposes a fine and local court costs on the offender. As it appears that the number of new or enhanced convictions or guilty pleas will be relatively small in any given local jurisdiction, the amount of court cost and fine revenues that actually may be collected by a county is likely to be no more than minimal. For the purposes of this fiscal analysis, a minimal revenue gain means a total increase in fine and court cost moneys estimated at no more than $5,000 per year for any affected local jurisdiction.

Detailed Fiscal Analysis

Overview

The bill expands the definition of "sexual battery" to specifically prohibit a peace officer from engaging in sexual conduct with a minor who is not the officer's spouse and the relationship between the officer and the minor arose while the officer was performing his/her official duties as a peace officer. Under current law, unchanged by the bill, a violation of the sexual battery prohibition is generally a felony of the third degree or, if the minor is less than 13 years of age, a felony of the second degree with a mandatory prison term. The existing sentences and fines for the offense of sexual battery are visually summarized in Table 1 below.

Table 1
Existing Sentences and Fines for Sexual Battery

Circumstances Present	Degree of Offense	Term of Incarceration	Possible Fine
Sexual battery generally	Felony 3rd degree	Possible definite prison term of 1, 2, 3, 4, or 5 years	Not more than $10,000
Victim less than 13 years of age	Felony 2nd degree	Mandatory definite prison term of 2, 3, 4, 5, 6, 7, or 8 years	Not more than $15,000

Criminal caseloads

Under current law, if a peace officer were to engage in sexual conduct with a minor, a charge of "unlawful sexual conduct with minor" may only be filed if the officer knew at the time of the offense that the other person was 13 years of age or older but less than 16 years of age, or was reckless in that regard. The prohibition cannot be applied to instances where the victim is between the ages of 16 and 18 (typically considered the age of consent). Table 2 below illustrates the current penalty structure for the offense of "unlawful sexual conduct with minor."

Table 2
Existing Sentences and Fines for Unlawful Sexual Conduct with Minor

Circumstances Present	Degree of Offense	Term	Possible Fine
Offender is less than four years older than the victim	Misdemeanor 1st degree	Possible jail term of up to 6 months	Not more than $1,000
Unlawful sexual conduct with minor generally	Felony 4th degree	Possible definite prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	Not more than $5,000
Offender is ten or more years older than the victim	Felony 3rd degree	Possible definite prison term of 1, 2, 3, 4, or 5 years	Not more than $10,000
Offender previously has been convicted of or pleaded guilty to certain prior sex offenses	Felony 2nd degree	Mandatory definite prison term of 2, 3, 4, 5, 6, 7, or 8 years	Not more than $15,000

The bill not only enhances the penalties associated with this type of behavior, specifically by making such an offense "sexual battery" if committed by a peace officer, but also will essentially remove the age gap in instances where the offender is a peace officer. For purposes of "sexual battery," a minor is defined as a person under 18 years of age.

The impact of the bill's prohibition on local criminal justice systems will likely be twofold. First, a peace officer that would have been prosecuted and sanctioned under current law could face a more serious penalty. Second, a peace officer that might not have been punished under current law could be arrested, prosecuted, convicted, and sanctioned (i.e., sexual conduct between a peace officer and a person between the ages of 16 and 18). Thus, the bill's prohibition will in all likelihood affect existing criminal cases (to the extent that there are any) and may create additional cases.

Subsequent to the bill's enactment, it is uncertain how many cases could be affected (cases that are currently charged under R.C. 2907.04, unlawful sexual conduct with minor) or how many cases could be created because existing law does not currently criminalize such behavior (sexual conduct between a peace officer and a person between the ages of 16 and 18). However, based on the supposition that peace officers are generally law abiding, and are generally held to their own profession's ethical standards, it seems reasonable to assume that the number of criminal cases that could be affected or created by the bill's prohibition will be relatively small in any given local criminal justice system.

State and local expenditures

Local expenditures

Counties. To the degree that the bill's prohibition affects local criminal justice system expenditures, it is possible that the annual costs that a county incurs in prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning felony offenders may increase. If the criminal justice system expenditures of these local governments do in fact increase, one would think that any such rise would be no more than minimal annually given the likelihood that the number of cases that could be affected or created by a violation of the bill's prohibition in any given jurisdiction will be relatively small. For the purposes of this fiscal analysis, a minimal cost means an increase in expenditures estimated at no more than $5,000 per year for any affected local jurisdiction.

State expenditures

As a result of the bill, it is also possible that additional peace officers will be sentenced to prison or sentenced to prison for longer stays than would otherwise have been the case under current law and sentencing practices, the fiscal effect of which could be to increase the Department of Rehabilitation and Correction's GRF-funded annual incarceration costs. However, as the number of peace officers that would be so sentenced annually is likely to be extremely small, especially in the context of a prison currently housing in excess of 51,000 inmates, any increase in the Department's incarceration costs would be minimal at most. For the purposes of this fiscal analysis, in the context of state GRF expenditures, minimal means an annual cost increase estimated at less than $100,000.

State and local revenues

If, as a result of violating the bill's prohibition, new or enhanced convictions or guilty pleas are secured, then additional revenues may be generated for local governments, specifically counties, and the state, as noted below.

Local revenues

Counties. Subsequent to a conviction or guilty plea, the sentencing court generally imposes a fine and local court costs on the offender. As it appears that the number of new or enhanced convictions or guilty pleas will be relatively small in any given local jurisdiction, the amount of court cost and fine revenues that actually may be collected by a county is likely to be no more than minimal. For the purposes of this fiscal analysis, a minimal revenue gain means a total increase in fine and court cost moneys estimated at no more than $5,000 per year for any affected local jurisdiction.

State revenues

Subsequent to a conviction or guilty pleas, the sentencing court is required generally to impose and collect state court costs that are forwarded for deposit in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020). As it appears that the number of new or enhanced convictions or guilty pleas will be relatively small annually statewide, the amount of court cost revenue that actually may be collected is likely to be negligible. For the purposes of this fiscal analysis, a negligible revenue gain means a total increase in court cost moneys estimated at less than $1,000 per year for either state fund.

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

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