Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL:	**Sub. S.B. 97**	DATE:	**May 23, 2007**
STATUS:	**As Passed by the Senate**	SPONSOR:	**Sen. Stivers**

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

CONTENTS: **Penalties for violations of the Sexual Offender Registration and Notification (SORN) Law and declares an emergency**

State Fiscal Highlights

STATE FUND	FY 2008* – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Up to $5.52 million or more annual increase in incarceration costs
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	- 0 -
Office of the Attorney General and Department of Public Safety**	
Revenues	- 0 -
Expenditures	Potential increase, minimal at most annually

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.
* The changes in the bill take effect January 1, 2008.
** The source of the moneys that the Attorney General or Public Safety's Division of Criminal Justice Services might use to cover any costs associated with performing its duties under the bill is uncertain as of this writing.

- ***Incarceration expenditures.*** To provide an initial estimate of the impact of the bill's penalty changes on the future size of the Department of Rehabilitation and Correction's (DRC) inmate population, LSC fiscal staff worked from an analysis provided by the Department's Bureau of Research. To summarize, the DRC analysis noted that, relative to the size of the inmate population, when the resulting stacking effect stabilizes, the Department will need a "conservatively" estimated 225 additional beds to house both affected felony registration offenders (an estimated 175 beds) and felony-enhanced misdemeanor offenders (an estimated 50 beds). According to DRC's web site, the annual incarceration cost per inmate is currently $24,554. If DRC's research is a reasonable approximation of the bill's impact on its future inmate population, then the increase in its annual incarceration costs when the stacking effect peaks could conceivably total around $5.52 million or more. The Department's research also noted that this stacking effect would probably start to occur in the first year following the bill's effective date and peak within five years.

- ***Court cost revenues.*** The bill creates the possibility that the state may also gain some locally collected court cost revenue for the Victims of Crime/Reparations Fund (Fund 402). The amount of money that Fund 402 may gain

annually, however, is likely to be negligible, as DRC's research suggests that the number of affected offenders will be relatively small annually statewide. For the purposes of this fiscal analysis, negligible means an estimated revenue gain of less than $1,000 for Fund 402 per year.

- ***Attorney General and Criminal Justice Services.*** As of this writing, it appears unlikely that the duties imposed on the Office of the Attorney General's Bureau of Criminal Identification and Investigation (BCII) and the Department of Public Safety's Division of Criminal Justice Services relative to information contained on the state's Internet Sex Offender and Child-victim Offender Database will create more than a minimal ongoing cost for either state entity.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2007	FY 2008	FUTURE YEARS
Counties			
Revenues	Potential minimal gain in court costs and fines	Potential minimal gain in court costs and fines	Potential minimal gain in court costs and fines
Expenditures	Potential minimal increase in criminal justice system operating expenses	Potential minimal increase in criminal justice system operating expenses	Potential minimal increase in criminal justice system operating expenses
Municipalities			
Revenues	Potential minimal loss in court costs and fines	Potential minimal loss in court costs and fines	Potential minimal loss in court costs and fines
Expenditures	Potential minimal decrease in criminal justice system operating expenses	Potential minimal decrease in criminal justice system operating expenses	Potential minimal decrease in criminal justice system operating expenses

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

- ***County criminal justice system expenditures.*** It is possible that the threat of a prison term or a longer prison term may affect individual criminal felony cases by speeding some through the bargaining process (potentially saving expenditures). Other felony cases may slow down, by increasing an offender's desire to pursue a criminal trial to avoid having to face the prison term or reducing the potential length of stay (potentially increasing expenditures). As these potential expenditure savings and increases may offset one another and the number of cases that might be affected in either manner in any given county is likely to be relatively small in the context of the overall criminal caseload, it appears that the net fiscal effect would be, in the worst case scenario, at most a minimal increase in the annual operating costs of any given county's criminal justice system. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated annual cost of no more than $5,000 for any affected county criminal justice system.

- ***County criminal justice system revenues.*** The bill creates the potential for additional court cost and fine revenues to be collected by county criminal justice systems statewide. Given the likelihood that a court rarely imposes, or if imposed rarely collects, the maximum possible fine for a felony offense, a given county seems unlikely to gain more than a minimal amount of additional court cost and fine revenue annually, if that, from offenders convicted of one of the bill's enhanced penalties. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated annual increase of no more than $5,000 for any affected county.

- ***County sheriffs.*** As of this writing, it appears unlikely that the duties imposed on county sheriffs relative to information contained on their Internet sex offender and child-victim offender database will create more than a minimal ongoing cost.

- ***Municipal criminal justice system revenues and expenditures.*** The bill will elevate existing misdemeanor registration offenses to felony registration offenses. As a result, these elevated cases would then be adjudicated under the subject matter jurisdiction of a court of common pleas instead of under the jurisdiction of a municipal court or a county court. If, as DRC's research suggests, the number of cases that will be elevated in this manner in any given local jurisdiction is likely to be relatively small, then any revenue loss and expenditure increase for any affected municipality would be minimal. For the purposes of this fiscal analysis, a minimal revenue loss or expenditure increase means an estimated change of no more than $5,000 for any affected municipal criminal justice system.

Detailed Fiscal Analysis

The bill makes changes to various aspects of the Sex Offender Registration and Notification (SORN) Law, including several provisions that states are required to implement under the federal Adam Walsh Child Protection and Safety Act. For the purposes of this fiscal analysis, the bill contains three notable components as follows:

I. Enhances the penalties for failure to comply with SORN Law duties.

II. Requires the Sex Offender and Child-victim Offender Database operated by the Bureau of Criminal Identification and Investigation (BCII) to include a link to educational information for the public and to provide notice to offenders and juvenile registrants regarding incorrect information.

III. Requires the Internet sex offender and child-victim offender database established and maintained by a county sheriff to include a link to educational information on certain current research and to provide notice to offenders and juvenile registrants regarding incorrect information.

For background purposes, a brief summary of the Adam Walsh act is as follows:

> The stated purpose of the Adam Walsh Child Protection and Safety Act of 2006 is to protect the public, in particular children, from violent sex offenders via a more comprehensive, nationalized system for registration of sex offenders.
>
> The act states that the [U.S.] attorney general will issue guidelines and regulations in interpretation and implementation of the legislation.
>
> The act calls for state conformity to various aspects of sex offender registration, including information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. The act states that failure of a jurisdiction to comply with the federal requirements within three years of the implementation of the act will result in a 10 percent reduction to Byrne law enforcement assistance grants.
>
> A number of new grant programs are authorized to assist states in improving sex offender registration and related requirements of the act.[1]

[1] Quoted from the National Conference of State Legislatures (NCSL).

I. Penalty structure for failure to comply with SORN Law duty

The bill essentially enhances the penalties for a violation of any prohibition in the SORN Law that prohibits a person from failing to comply with the Law's address registration, notice of intent to reside, change of address, and address verification duties (hereinafter referred to as "registration offenses"). Table 1 attached summarizes current law's penalty structure for registration offenses and the bill's proposed enhancements to that penalty structure.

Under current law, a registration violation is generally an offense of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration requirement. If, however, (1) the offender has prior registration violations, and (2) the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration requirement is either a felony of the fourth or fifth degree, or a misdemeanor of the first, second, third, or fourth degree, then a registration violation is an offense of the next highest degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration requirement.

The bill enhances the penalties for these registration offenses such that each first time violation is a felony of the fourth degree or higher and any subsequent violation is a felony of the third degree or higher. In addition, in the case of an offender who commits a subsequent registration violation, the court is required to impose a definite prison term of no less than three years.

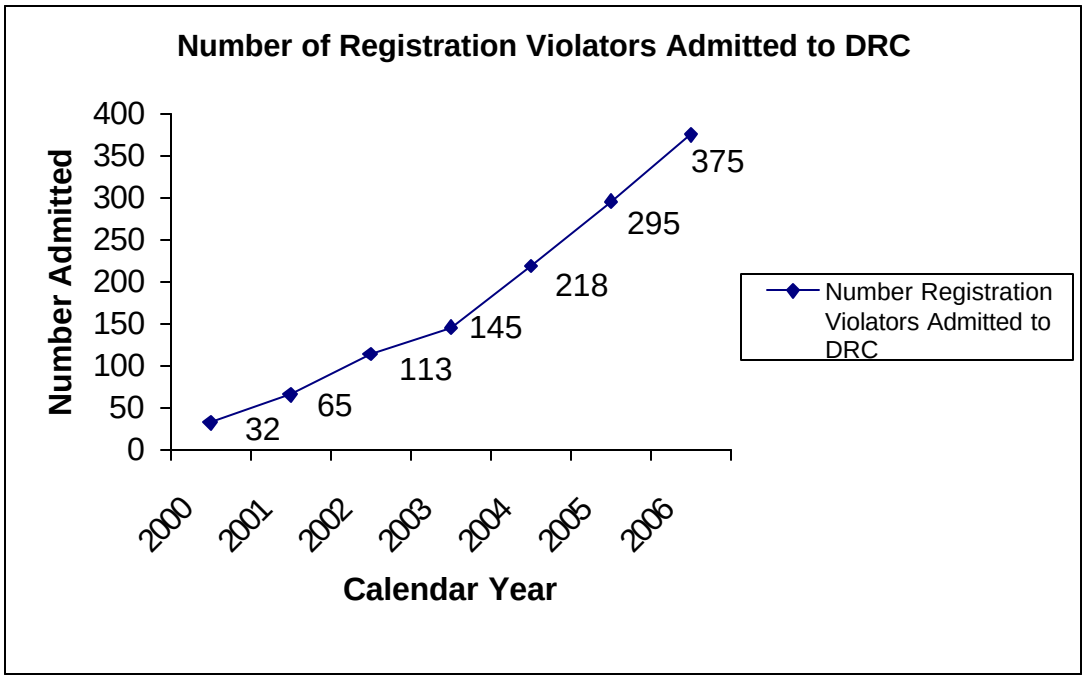
From the perspective of the state and local criminal justice systems, the practical effect of the bill's penalty enhancements is likely to be twofold. First, some offenders who would have been convicted of a misdemeanor registration violation and sanctioned locally will, under similar circumstances in the future subsequent to the bill's enactment, be convicted of a felony registration offense and likely sentenced to prison. Second, a larger number of offenders who would have been convicted of a felony registration offense and sentenced to a term in prison will, under similar circumstances in the future subsequent to the bill's enactment, be convicted of a more serious felony offense and sentenced to a longer prison term.

State fiscal effects

Elevated misdemeanants. Based on research performed by the Department of Rehabilitation and Correction's (DRC) Bureau of Research, it does not appear that misdemeanor offenders comprise a significant portion of the overall population of SORN Law registrants in any single county. From the Bureau's research, it appears that the misdemeanant portion of such registrants represents less than 5% of the total population.[2] The Bureau's research also noted that, "even if several of those [misdemeanor offenders] were to be shifted to the prison system, it is unlikely to be the single greatest factor having an impact as a result of the bill."[3] It is also important to keep in mind that an even smaller subset of these misdemeanant registrants is likely to actually commit a registration offense.

[2] At the time of this writing, LSC fiscal staff has not had an opportunity to independently verify these estimates.
[3] DRC Bureau of Research internal memorandum dated March 23, 2007.

***Prison population stacking effect*.** From DRC's perspective, the majority of costs created by the bill will be attributed to the longer prison stays for felony registration offenders that are already being sentenced to prison under current law. The chart below illustrates the increase in the number of felony registration offenders that have been admitted to DRC over the last six years. As can be seen in the graph, the number of offenders admitted to prison continued to rise from one year to the next.



By extending prison stays beyond what the amount of time served would have been under current law, the bill will trigger a "stacking effect," which refers to the increase in the inmate population that occurs as certain offenders stay in prison longer and the number of offenders entering the prison system does not decrease. Estimating the likely increase in DRC's annual incarceration costs is complicated by the fact that the stacking effect triggered by the bill will reflect numerous underlying changes in the length of prison sentences served by offenders committing different registration offenses.

To provide an initial estimate of the impact of the bill's penalty changes on the future size of DRC's inmate population, LSC fiscal staff again worked from an analysis provided by the Department's Bureau of Research. To summarize, the DRC analysis noted that, relative to the size of the inmate population, when the resulting stacking effect stabilizes, the Department will need a "conservatively" estimated 225 additional beds to house both affected felony registration offenders (an estimated 175 beds) and felony-enhanced misdemeanor offenders (an estimated 50 beds).

According to DRC's web site, the annual incarceration cost per inmate is currently $24,554. If DRC's research is a reasonable approximation of the bill's impact on its future inmate population, then the increase in its annual incarceration costs when the stacking effect peaks could conceivably total around $5.52 million or more. The Department's research also noted that this stacking effect would probably start to occur in the first year following the bill's effective date and peak within five years.

Two caveats are important to note: (1) the estimate is based on DRC's current incarceration cost per inmate per year (presumably the cost will continue to rise over time), and (2) the estimate

assumes all other conditions that could affect the size and cost of running the state's prison system will remain the same over time, which seems highly unlikely.

Court cost revenues. As noted, it is possible that some individuals that might have been arrested, successfully prosecuted, and sanctioned for committing certain misdemeanor registration offenses would, under similar circumstances in the future subsequent to the bill's enactment, be committing a felony registration offense.

Such an outcome creates the possibility that the state may also gain some locally collected court cost revenue for the Victims of Crime/Reparations Fund (Fund 402). This is because the state court cost imposed on an offender and deposited to the credit of Fund 402 is slightly higher for a felony than it is for a misdemeanor: $30 versus $9. The amount of money that Fund 402 may gain annually, however, is likely to be negligible, as DRC's research suggests that the number of affected offenders will be relatively small annually statewide. 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

As previously stated, the bill will elevate existing misdemeanor registration offenses to felony registration offenses. As a result, these elevated cases would then be adjudicated under the subject matter jurisdiction of a court of common pleas instead of under the jurisdiction of a municipal court or a county court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter to resolve, as the potential sanctions faced by an individual are more serious, including the possibility of a prison term.

From the fiscal perspective of local governments, elevating such cases 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. If, as DRC's research suggests, the number of cases that will be elevated in this manner in any given local jurisdiction is likely to be relatively small, then any revenue loss and expenditure increase for any affected municipality would be minimal. For the purposes of this fiscal analysis, a minimal revenue loss or expenditure increase means an estimated change of no more than $5,000 for any affected municipal criminal justice system.

It is also possible that the threat of a prison term or a longer prison term may affect individual criminal cases by speeding some through the bargaining process (potentially saving expenditures). Other cases may slow down, by increasing an offender's desire to pursue a criminal trial to avoid having to face the prison term or reducing the potential length of stay (potentially increasing expenditures). As these potential expenditure savings and increases may offset one another and the number of cases that might be affected in either manner in any given county is likely to be relatively small in the context of the overall criminal caseload, it appears that the net fiscal effect would be, in the worst case scenario, at

most a minimal increase in the annual operating costs of any given county's criminal justice system. For the purposes of this fiscal analysis, a minimal expenditure increase means an estimated annual cost of no more than $5,000 for any affected county criminal justice system.

The bill creates the potential for additional court cost and fine revenues to be collected by county criminal justice systems statewide. Given the likelihood that a court rarely imposes, or if imposed rarely collects, the maximum possible fine for a felony offense, a given county seems unlikely to gain more than a minimal amount of additional court cost and fine revenue annually, if that, from offenders convicted of one of the bill's enhanced penalties. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated annual increase of no more than $5,000 for any affected county.

II. Link to educational information

The bill provides that, by January 1, 2008, BCII, with the assistance of the Office of Criminal Justice Services,[4] must include on the Internet Sex Offender and Child-victim Offender Database (known as eSORN) a link to educational information for the public on current research about sex offenders and child-victim offenders. The bill also states that each sheriff who has established on the Internet a sex offender and child-victim offender database must include on the database a link of that nature.

State fiscal effects

At the time of this writing, the Office of the Attorney General has not completed its assessment of the potential fiscal impact of this provision of the bill. However, according to the testimony offered by Attorney General Marc Dann before the Senate Committee on Criminal Justice, the office is already working on an educational link of this nature. Therefore, it is arguable that, when enacted, the bill may in fact be codifying current practice, and that any costs generated for BCII and Criminal Justice Services would be no more than minimal.

Local fiscal effects

According to a representative of the Buckeye State Sheriffs' Association, a county sheriff should be able to comply with little to no cost. In order to comply with this provision of the bill, a county sheriff could simply install an Internet link that would redirect the user to the eSORN web site operated by the Office of the Attorney General. Since the Office of the Attorney General already offers and provides support for constructing these web sites, installing links to the Attorney General's eSORN web site is already in place on most, if not all, county sheriff-operated sex offender databases. The bill would not require a county sheriff to implement an Internet-based sex offender database if one has not already been established.

[4] The Bureau of Criminal Identification and Investigation is operated by the Office of the Attorney General. The Office of Criminal Justice Services is a division of the Ohio Department of Public Safety.

III. Notice to offenders and juvenile registrants

The bill provides that, by January 1, 2008, BCII and county sheriffs that operate any Internet-based sex offender databases are required to inform offenders and "tier III juvenile offender registrants"[5] via their web sites that they may contact the sheriff of the county in which the offender or delinquent child registered an address if the offender or delinquent child believes that information contained on the Internet Sex Offender and Child-victim Offender Database or sheriff's Internet sex offender and child-victim offender database is incorrect.

State and local fiscal effects

As a result of this provision of the bill, the Office of the Attorney General and county sheriffs may experience some increase in workload in order to process additional inquiries regarding the accuracy of the information contained in these databases, but it seems likely that such inquiries are, or could be, made under current law. That said, as of this writing, it would not appear that the administrative burden and related cost that might be generated by this notification requirement would exceed minimal.

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[5] Tier III offenses, not defined in this bill, are sex offenses punishable by imprisonment for more than one year and comparable to or more severe than the following federal offenses: sexual abuse or aggravated sexual abuse; abusive sexual contact against a minor less than 13 years old; offense involving kidnapping of a minor (parent or guardian excepted); or any offense that occurs after one has been designated a tier II sex offender.

Table 1
Proposed Penalty Structure for Registration Offenses

Qualifying Offense Level	Current Law First Registration Offense Conviction	S.B. 97 Proposal First Registration Offense Conviction	Current Law Subsequent Registration Offense Conviction	S.B. 97 Proposal Subsequent Registration Offense Conviction
Aggravated Murder	F3 1 to 5 years prison	Same Degree as Qualifying Offense (i.e., Aggravated Murder)	F3 1 to 5 years prison	Same Degree as Qualifying Offense (i.e., Aggravated Murder); Definite prison term of no less than 3 years
Murder	F3 1 to 5 years prison	Same Degree as Qualifying Offense (i.e., Murder)	F3 1 to 5 years prison	Same Degree as Qualifying Offense (i.e., Aggravated Murder); Definite prison term of no less than 3 years
Felony 1 (F1)	F3 1 to 5 years prison	F1 3 to 10 years prison	F3 1 to 5 years prison	F1 3 to 10 years prison; Definite prison term of no less than 3 years
Felony 2 (F2)	F3 1 to 5 years prison	F2 2 to 8 years prison	F3 1 to 5 years prison	F2 2 to 8 years prison; Definite prison term of no less than 3 years
Felony 3 (F3)	F3 1 to 5 years prison	F3 1 to 5 years prison	F3 1 to 5 years prison	F3 1 to 5 years prison; Definite prison term of no less than 3 years
Felony 4 (F4)	F4 6 to 18 months prison	F4 6 to 18 months prison	F3 1 to 5 years prison	F3 1 to 5 years prison; Definite prison term of no less than 3 years
Felony 5 (F5)	F5 6 to 12 months prison	F4 6 to 18 months prison	F4 6 to 18 months prison	F3 1 to 5 years prison; Definite prison term of no less than 3 years
Misdemeanor 1 (M1)	M1 6 months jail	F4 6 to 18 months prison	F5 6 to 12 months prison	F3 1 to 5 years prison; Definite prison term of no less than 3 years
Misdemeanor 2 (M2)	M2 90 days jail	F4 6 to 18 months prison	M1 6 months jail	F3 1 to 5 years prison; Definite prison term of no less than 3 years
Misdemeanor 3 (M3)	M3 60 days jail	F4 6 to 18 months prison	M2 90 days jail	F3 1 to 5 years prison; Definite prison term of no less than 3 years

	M4	F4	M3	F3
Misdemeanor 4 (M4)	30 days jail	6 to 18 months prison	60 days jail	1 to 5 years prison; Definite prison term of no less than 3 years