

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
Counties	
Revenues	Potential, minimal at most, annual gain in court costs and fines
Expenditures	Factors potentially increasing and decreasing criminal justice system operating costs, with net minimal annual effect
Municipalities	
Revenues	Potential, minimal at most, annual gain in court costs and fines
Expenditures	Potential, minimal at most, increase in criminal justice system operating costs

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 operating costs.** It appears that the bill will trigger factors that may simultaneously increase and decrease the annual operating costs of any affected county criminal justice system. Although LSC fiscal staff is unable to quantify those factors, their net fiscal effect may be no more than minimal. For the purposes of this analysis, "minimal effect" means that whether the bill results in a net increase or decrease in the amount of time and money expended by any affected county criminal justice system on such matters is uncertain, but the magnitude of that change, whatever its direction, would be no more than minimal. In this case, "minimal" means an estimated cost or savings of no more than \$5,000 per year for any affected county criminal justice systems.

- **Municipal criminal justice system operating costs.** The costs incurred by municipal criminal justice systems in relation to processing compelling prostitution cases generally may increase, but the magnitude of any such increase is unlikely to exceed minimal in any given local jurisdiction.

- **County and municipal revenues.** A minimal at most, if that, amount of additional revenue in court costs and fines may be collected by county and municipal criminal justice systems per year.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- I. Provides mandatory prison terms for persons who plead guilty to or are convicted of importuning if previously convicted of a sexually oriented offense or child-victim oriented offense.
- II. Modifies the definition of "adult cabaret" as used in connection with the operation of a sexually oriented business.
- III. Applies the offense of compelling prostitution to an offender who *believes* the person solicited is a minor.

I. Mandatory prison terms for importuning

Existing criminal law contains a series of prohibitions that relate, in a variety of circumstances, to a person's solicitation of another to engage in sexual activity. A violation of any of the prohibitions is the offense of "importuning," and the penalty for the offense varies, depending upon the prohibition violated. The bill provides mandatory prison terms for persons who plead guilty to or are convicted of importuning if previously convicted of a sexually oriented offense or child-victim oriented offense. Table 1 located at the end of this analysis illustrates the proposed penalty enhancements.

Local fiscal effects: county criminal justice systems

Case processing costs. The bill will not create any additional felony cases to be processed by county criminal justice systems, but may change how importuning charges are resolved in the future from how those matters may have otherwise been resolved (i.e., bargain versus trial, prison versus jail and/or probation). For example:

- The threat of a mandatory prison term may affect importuning cases by expediting some through the bargaining process (potentially saving adjudication, prosecution, and indigent defense expenditures).
- The threat of a mandatory prison term may slow the resolution of importuning cases down, if there is an increased desire for offenders to pursue criminal trials to fight the prospect of facing a mandatory prison term (potentially increasing adjudication, prosecution, and indigent defense expenditures).

Sanctioning costs. It also seems likely that certain counties may realize some cost savings if a court that would otherwise have imposed community sanctions on certain offenders convicted of or pleading guilty to the offense of importuning under current law instead imposes the required mandatory prison term. Such a sentencing outcome shifts the sanctioning costs from the county to the state.

Net cost effect. In sum, it appears that the bill will trigger factors that may simultaneously increase and decrease the annual operating costs of any affected county criminal justice system. Although LSC fiscal staff is unable to quantify those factors, their net fiscal effect may be no more than minimal. For the purposes of this analysis, "minimal effect" means that whether the bill results in a net increase or decrease in the amount of time and money expended by any affected county criminal justice system on such matters is uncertain, but the magnitude of that change, whatever its direction, would be no more than minimal. In this case, "minimal" means an estimated cost or savings of no more than \$5,000 per year for any affected county criminal justice systems.

Revenues. It seems unlikely that the bill's importuning provisions will have any readily discernible effect on county revenues.

State fiscal effects

Expenditures. Data obtained from the Department of Rehabilitation and Correction (DRC) indicates that the number of offenders sentenced to prison annually for the primary offense of importuning has, in recent years, been increasing. In FY 2002, the number of offenders sentenced to prison for the offense of importuning totaled seven. In FY 2007, the number of offenders sentenced to prison for the offense of importuning totaled 43. Also of note is the fact that more local jurisdictions in Ohio appear to be trained in, and conducting, clandestine investigative operations in an effort to expand their enforcement of Internet-based sex crimes.

The bill will likely have two effects on the offender population sentenced to prison each year. First, some offenders will be sentenced to a prison term that would otherwise have been sanctioned locally. Second, some offenders who would have been sentenced to a prison term under current law and sentencing practices could be incarcerated for a longer period of time. However, LSC fiscal staff does not have the data at hand that would permit one to estimate the bill's effect on: (1) the number of offenders sentenced to prison annually for violating various importuning prohibitions, or (2) the average time served for violating those importuning prohibitions.

That said, it seems more or less certain, all other conditions remaining the same, that the bill's mandatory prison terms for importuning will increase the size of DRC's annual inmate population and that the fiscal consequences of that increase will likely exceed minimal. A more than minimal increase for the state herein means an additional expenditure estimated at in excess of \$100,000 per year. According to DRC's web site, the average incarceration cost per inmate is \$25,174.05 a year. Thus, it would only take four additional inmates serving at least one year in prison to increase DRC's annual expenditures by more than \$100,000.

The effects of the bill on the state's prison system will also be a function of: (1) the frequency with which individuals continue to violate existing importuning prohibitions, (2) the degree to which local law enforcement proactively enforce certain aspects of the state's Sex Offense Law, and (3) the local bargaining processes that have developed to manage criminal caseloads.

Revenues. It seems unlikely that the bill's importuning provisions will have any readily discernible effect on state revenues.

II. Definition of "adult cabaret"

Section 2907.40 of the Revised Code was enacted by Sub. S.B. 16 of the 127th General Assembly in September of 2007. That bill primarily dealt with the regulation of sexually oriented businesses and included various restrictions and prohibitions on the conduct of employees and patrons of such establishments. It also restricted their hours of operation. Under current law, several classifications of businesses are considered to be "sexually oriented" in nature, one of which includes those known as "adult cabarets." However, Sub. S.B. 16 utilized a different definition of "adult cabaret," thus creating two distinct variations of the term in the Revised Code (sections 2907.39 and 2907.40 of the Revised Code).

In Sub. S.B. 16, "adult cabaret" included only certain businesses that regularly feature individuals who appear in a state of nudity or seminudity. However, section 2907.39 of the Revised Code includes not only this criterion in order for a business to be categorized as an "adult cabaret," but also the following:

- Live performances that are characterized by the exposure of "specified anatomical areas" or "specified sexual activities" or
- Films, motion pictures, videocassettes, slides, or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas."

This bill (Sub. S.B. 183) amends the definition in section 2907.40 of the Revised Code to mirror the definition in section 2907.39 of the Revised Code so that both sections now utilize identical definitions of "adult cabaret." As a result of utilizing this broader, more inclusive definition, businesses that may not have been subjected to the regulations set forth in section 2907.40 of the Revised Code, including the restriction on hours of operation (as enacted by Sub. S.B. 16), will now be subject to such regulation, as well as possible criminal prosecution, upon the effective date of this bill. These businesses would now be subject to two possible criminal charges: (1) illegally operating a sexually oriented business and (2) illegal sexually oriented activity in a sexually oriented business. Table 2 below illustrates the penalties associated with these two offenses.

**Table 2
Existing Sentences and Fines for Prohibitions Related to Sexually Oriented Businesses**

Criminal Offense (Circumstances Present)	Degree of Offense	Fine	Term of Incarceration
<i>(1) Illegally operating a sexually oriented business (hours of operation)</i>			
• Open for business outside of specified hours	Misdemeanor 1st degree	Up to \$1,000	Possible jail term of not more than 6 months
<i>(2) Illegal sexually oriented activity in a sexually oriented business ("no-touch" rule)</i>			
• Knowingly touch specified anatomical area of patron or employee	Misdemeanor 1st degree	Up to \$1,000	Possible jail term of not more than 6 months
• Knowingly touch patron or employee in other than specified anatomical area	Misdemeanor 4th degree	Up to \$250	Possible jail term of not more than 30 days

Theoretically, by expanding the scope of existing prohibitions related to sexually oriented businesses, the expenditures of certain local criminal justice systems may increase, reflecting the additional costs to investigate, prosecute, adjudicate, and sanction additional individuals that violate those prohibitions. The magnitude of those potential costs on any given local jurisdiction is likely to be a function of the number of affected businesses and the degree to which those businesses violate the prohibitions related to sexually oriented businesses. The combination of those factors is rather problematic to determine. By creating the possibility for new criminal cases, the bill also creates the potential for additional court cost and fine revenues to be collected by local criminal justice systems statewide. The magnitude of the bill's potential relative to increasing local criminal justice system revenues is uncertain.

III. Compelling prostitution

Under current law, the act of compelling prostitution is generally a felony of the third degree. If the offender compels another to engage in sexual activity for hire and the person compelled to engage in sexual activity for hire is less than 16 years of age, compelling prostitution is a felony of the second degree. The bill broadens the current definition of compelling prostitution by further stating that the above-noted activity is applicable to alleged offenders who believe the other person is a minor.

Based on anecdotal evidence and prior conversations with members of the law enforcement and criminal justice communities, it seems logical to surmise that this provision will allow certain cases of compelling prostitution to be more easily adjudicated and may create some additional cases if charges are filed under the revised statute. As such, local criminal justice systems may experience an increase in the number of such cases.

Local fiscal effects

Criminal justice system expenditures. Presumably, additional violators of the bill's expanded compelling prostitution prohibition could be arrested, prosecuted, and sanctioned. While it is difficult to ascertain the number of new compelling prostitution cases that could be generated once the bill is enacted, LSC fiscal staff believes that any increase in caseloads should be relatively small for any affected jurisdiction. As such, any resultant fiscal effect would likely be no more than minimal. 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 local criminal justice system.

Court cost and fine revenues. By creating the possibility for new compelling prostitution cases, the bill also creates the potential for additional court cost and fine revenues to be collected by local criminal justice systems statewide. The magnitude of that potential revenue gain is uncertain, but likely to be minimal at most. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated annual gain of no more than \$5,000 for any affected local jurisdiction.

State fiscal effects

Incarceration costs. Since it is possible that the bill's compelling prostitution provision may result in additional offenders being adjudicated guilty of committing the act of compelling

prostitution, additional offenders could be sentenced to prison. An offender found guilty of a felony of the third degree could face one, two, three, four, or five years in prison. An offender found guilty of a felony of the second degree could face two, three, four, five, six, seven, or eight years in prison. However, 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. The bill's compelling prostitution provision may produce a revenue gain to the state's GRF and the Victims of Crime/Reparations Fund (Fund 402) from increased local collection of state court costs, as individuals may be convicted of violating the bill's misdemeanor prohibitions. For a misdemeanor offense, the state court cost totals \$24, with \$15 of that amount being credited to the GRF and the remaining \$9 being credited to Fund 402. It does not appear that the potential gain in state court revenues would exceed minimal. For the purposes of this fiscal analysis, a minimal revenue gain means an estimated increase of less than \$100,000 per year for either state fund.

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**Table 1
Importuning Prohibitions: Penalty Comparison of Current Law to Sub. S.B. 183**

Importuning Prohibitions*	Penalties	
Circumstances	Current Law (First and Subsequent Offense)	Sub. S.B. 183 (First and Subsequent Offense**)
(1) Other person is less than 13 years of age, whether or not the offender knows the age of such person	<p><u>First offense:</u> F3; Presumption for a prison term; Possible prison term of 1, 2, 3, 4, or 5 years; Community sanctions available if prison term not imposed</p> <p><u>Subsequent offense:</u> F2; Presumption for a prison term; Possible prison term of 2, 3, 4, 5, 6, 7, or 8 years; Community sanctions available if prison term not imposed</p>	<p><u>First offense:</u> Same as current law</p> <p><u>Subsequent offense:</u> F2; Mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years</p>
(2) Offender is 18 years of age or older and four or more years older than the other person, and the other person is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the other person	<p><u>First offense:</u> F5; Preference against a prison term; Possible prison term of 6, 7, 8, 9, 10, 11, or 12 months; Community sanctions available if prison term not imposed</p> <p><u>Subsequent offense:</u> F4; Preference against a prison term; Possible prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months; Community sanctions available if prison term not imposed</p>	<p><u>First offense:</u> Same as current law</p> <p><u>Subsequent offense:</u> F4; Mandatory prison term of 12, 13, 14, 15, 16, 17, or 18 months</p>
(3) Solicit by means of a telecommunications device when the offender is 18 years of age or older and the other person is either: (a) less than 13 years of age, and the offender knows that the other person is less than 13 years of age or is reckless in that regard, or (b) a law enforcement officer posing as a person who is less than 13 years of age, and the offender believes that the other person is less than 13 years of age or is reckless in that regard	<p><u>First offense:</u> F3; Presumption for a prison term; Possible prison term of 1, 2, 3, 4, or 5 years; Community sanctions available if prison term not imposed</p> <p><u>Subsequent offense:</u> F2; Presumption for a prison term; Possible prison term of 2, 3, 4, 5, 6, 7 or 8 years; Community sanctions available if prison term not imposed</p>	<p><u>First offense:</u> Same as current law</p> <p><u>Subsequent offense:</u> F2; Mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years</p>
(4) Solicit by means of a telecommunications device when the offender is 18 years of age or older and the other person is either: (a) 13 years of age or older but less than 16 years of age, the offender knows that the other person is 13 years of age or older but less than 16 years of age or is reckless in that regard, and the offender is four or more years older than the other person, or (b) a law enforcement officer posing as a person who is 13 years of age or older but less than 16 years of age, the offender believes that the other person is 13 years of age or older but less than 16 years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is 13 years of age or older but less than 16 years of age	<p><u>First offense:</u> F5; Preference against a prison term; Possible prison term of 6, 7, 8, 9, 10, 11, or 12 months; Community sanctions available if prison term not imposed</p> <p><u>Subsequent offense:</u> F4; Preference against a prison term; Possible prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months; Community sanctions available if prison term not imposed</p>	<p><u>First offense:</u> Same as current law</p> <p><u>Subsequent offense:</u> F4; Mandatory prison term of 12, 13, 14, 15, 16, 17, or 18 months</p>

* Series of prohibitions that relate, in a variety of circumstances, to a person's solicitation of another to engage in sexual activity.

** Bill: (1) removes current law's increased penalty for each subsequent importuning offense and (2) requires instead the imposition of a mandatory prison term for the offense of importuning if an offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense.