

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. S.B. 183** DATE: **February 13, 2008**
STATUS: **As Passed by the Senate** SPONSOR: **Sen. Schaffer**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**
CONTENTS: **Mandatory prison term for the offense of importuning**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund (GRF)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	Likely incarceration cost increase, magnitude uncertain but more than minimal	Likely incarceration cost increase, magnitude uncertain but more than minimal

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- **Incarceration expenditures.** It seems relatively certain, all other conditions remaining the same, that the bill will increase the size of the Department of Rehabilitation and Correction's (DRC) annual inmate population and that the fiscal consequences of that increase will exceed minimal. A minimal increase for the state herein means an expenditure in excess of \$100,000 per year.
- **Revenues.** It seems unlikely that the bill will have any readily discernible effect on state revenues.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008	FY 2009	FUTURE YEARS
Counties			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Factors potentially increasing and decreasing criminal justice system operating costs, with net minimal effect	Factors potentially increasing and decreasing criminal justice system operating costs, with net minimal effect	Factors potentially increasing and decreasing criminal justice system operating costs, with net minimal effect

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.
- **County revenues.** It seems unlikely that the bill will have any readily discernible effect on county revenues.

Detailed Fiscal Analysis

Overview of the bill

The bill amends current law to require the sentencing court to impose a mandatory prison term for the offense of importuning.

Mandatory prison terms

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.

As Table 1 located at the end of this analysis indicates, importuning under current law could either be a felony of the third degree (F3) or a felony of the fifth degree (F5) on a first offense, depending on the circumstances present. On each subsequent offense, a violation is elevated by one degree to a felony of the second degree (F2) or a felony of the fourth degree (F4), respectively. Under the bill, these felonies remain the same degree as under existing law.

Under existing law, there is a presumption that a prison term must be imposed for an F3 or F2 described above. Relative to an F5 or F4 described above, current sentencing guidance provisions state a general preference against the imposition of a prison term unless certain factors are present and the offender is not amenable to other sanctions. The bill changes the sentencing guidance and presumptions relative to the above described felony importuning prohibitions to require the imposition of a mandatory prison term.

The practical effect on the sanctioning of such offenders appears likely to be twofold. First, presumably, there will be offenders sentenced to a prison term who would otherwise have been sentenced to community sanctioning under current law and sentencing practices. Generally, community sanctioning is a less expensive sentencing alternative than prison. Second, offenders who would have been sentenced to a prison term under current law and sentencing practices may, under similar circumstances in the future subsequent to the bill's enactment, serve longer stays in prison.

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, as of this writing, 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 will have any readily discernible effect on county revenues.

State fiscal effects

Expenditures

Preliminary 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. As of this writing, 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 will increase the size of DRC's annual inmate population and that the fiscal consequences of that increase will likely exceed minimal. A minimal increase for the state herein means an expenditure in excess of \$100,000 per year. According to DRC's web site, the average incarceration cost per inmate is \$25,258 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 will have any readily discernible effect on state revenues.

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

Importuning Prohibitions	Penalties			
	1st Offense Current Law	1st Offense Sub. S.B. 183	Subsequent Offense Current Law	Subsequent Offense Sub. S.B. 183
(A) No person shall solicit a person who is less than 13 years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.	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	F3; Mandatory prison term of 1, 2, 3, 4, or 5 years; Community sanctions unavailable if prison term imposed	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	F2; Mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years; Community sanctions unavailable if prison term imposed
(B) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the 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.	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	F5; Mandatory prison term of 6, 7, 8, 9, 10, 11, or 12 months; Community sanctions unavailable if prison term imposed	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	F4; Mandatory prison term of 12, 13, 14, 15, 16, 17, or 18 months, but not less than 12 months; Community sanctions unavailable if prison term imposed
(C) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is 18 years of age or older and either of the following applies: (1) The other person is 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. (2) The other person is 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.	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	F3; Mandatory prison term of 1, 2, 3, 4, or 5 years; Community sanctions unavailable if prison term imposed	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	F2; Mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years; Community sanctions unavailable if prison term imposed
(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is 18 years of age or older and either of the following applies: (1) The other person is 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. (2) The other person is 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	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	F5; Mandatory prison term of 6, 7, 8, 9, 10, 11 or 12, months; Community sanctions unavailable if prison term imposed	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	F4; Mandatory prison term of 12, 13, 14, 15, 16, 17, or 18 months, but not less than 12 months; Community sanctions unavailable if prison term imposed

<p>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>				
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