



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** Sub. H.B. 473 of the 128th G.A.

**Date:** June 10, 2010

**Status:** As Passed by the House

**Sponsor:** Rep. Pillich

**Local Impact Statement Procedure Required:** No — Minimal cost

**Contents:** Sexting prohibitions

### State Fiscal Highlights

| STATE FUND   | FY 2011 – FUTURE YEARS  |
|--|---|
| <b>General Revenue Fund (GRF)</b>                    |   |
| Revenues   | - 0 -   |
| Expenditures   | Potential minimal annual savings effect on juvenile correctional facility operating costs |
| <b>Victims of Crime/Reparations Fund (Fund 4020)</b> |   |
| Revenues   | Potential negligible annual effect on locally collected state court costs                 |
| Expenditures   | - 0 -   |
| <b>Indigent Defense Support Fund (Fund 5DY0)</b>     |   |
| Revenues   | Potential negligible annual effect on locally collected state court costs                 |
| Expenditures   | - 0 -   |

Note: The state fiscal year is July 1 through June 30. For example, FY 2011 is July 1, 2010 – June 30, 2011.

- It is possible that there may be a minimal annual decrease in the Department of Youth Services' institutional operating costs if certain juveniles are sanctioned locally rather than sentenced to a state juvenile correctional facility.
- There will be negligible annual effect on the locally collected state court cost revenues deposited in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

# Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2010 – FUTURE YEARS

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Counties

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Revenues

Potential minimal annual effect on court costs and fines

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Expenditures

Potential minimal annual effect on juvenile justice system operating costs

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

- The bill may: (1) create costs for a county's juvenile justice system to charge, adjudicate, and sanction additional juveniles and (2) reduce a county's juvenile justice system's costs, as it is generally less expensive to process cases involving a misdemeanor as opposed to felonious conduct. The net of these two outcomes on county expenditures is likely to be no more than minimal annually.
- Counties could both collect additional court cost and fine revenues from certain cases and less court cost and fine revenues from certain other cases. The net of these two outcomes on county revenues is likely to be no more than minimal annually.

# Detailed Fiscal Analysis

## "Sexting" conduct prohibitions

Under current law, juveniles could be charged for conduct that under the bill would be regarded as "sexting." However, these offenses generally carry strong penalties and fines, including possible Sex Offender Registration and Notification (SORN) Law registration requirements. Some of these existing offenses are noted in the table below.

| Certain Existing Offenses Potentially Applicable to "Sexting"     |   |
|---|---|
| Offense   | Degree of Offense                               |
| Disseminating matter harmful to juveniles                         | Misdemeanor 1st degree/Felony 5th or 4th degree |
| Pandering obscenity involving a minor                             | Felony of the 4th, 3rd, or 2nd degree           |
| Pandering sexually oriented matter involving a minor              | Felony of the 4th, 3rd, or 2nd degree           |
| Illegal use of a minor in nudity-oriented material or performance | Felony of the 5th, 4th, or 2nd degree           |
| Contributing to the unruliness or delinquency of a minor          | Misdemeanor of the 1st degree                   |
| Endangering children  | Felony of the 2nd degree                        |

The degree to which such conduct would be punishable under current law would be dependent upon a variety of circumstances, including, but not limited to, the age of the parties involved in the act (either willing or unwilling participants), the subject matter of the image, the circumstances under which the image was exchanged, and the number of times the offender has been convicted of such conduct.

In addition, because such behavior seems to be a relatively new manifestation among juveniles, there appears to be anecdotal evidence suggesting that some local prosecutors and law enforcement officials are struggling with determining an appropriate charge and disposition under circumstances involving "sexting" conduct.

That said, as a result of enacting the bill's prohibitions, at least three outcomes seem plausible. First, it is possible that some local jurisdictions may find the prohibition more appropriate to the conduct, and as a result, may be more likely to charge and sanction juveniles in certain situations. Second, there could be situations wherein a juvenile might have been charged and sanctioned for felonious conduct under current law and practice, but may be more likely to be charged and sanctioned for the misdemeanor conduct specified by the bill. Third, if a local jurisdiction aggressively enforces the prohibitions that could apply to "sexting" conduct, it could have a chilling effect that reduces the frequency with which juveniles engage in such behavior.

## State and local fiscal effects

As noted, two of the possible outcomes of the bill's enactment include:

- (1) Additional juveniles being charged and sanctioned; and
- (2) Some juveniles being charged and sanctioned for a less serious offense than might otherwise have been the case under current law and practice.

## **Revenues**

The first outcome (more juveniles prosecuted) potentially nets counties additional court cost and fine revenues; the state also potentially gains locally collected court costs that are credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). This is because the bill may make it easier and more likely for a local prosecutor to pursue a criminal charge than what otherwise would have been possible under current law and practice.

The second outcome (some juveniles prosecuted for a less serious offense) potentially has the opposite effect in that it could reduce court cost and fine revenues, as those financial sanctions are generally less for a misdemeanor than a felony. The net of these two outcomes on annual revenues is likely to be no more than minimal for counties and negligible for the state.

## **Expenditures**

The first outcome (more juveniles prosecuted), in theory, creates costs for a county's juvenile justice system to charge, adjudicate, and sanction additional juveniles. The second outcome (some juveniles prosecuted for a less serious offense), in theory, reduces a county's juvenile justice systems costs, as it is generally less expensive to process cases involving a misdemeanor as opposed to felonious conduct. The net of these two outcomes on county expenditures is likely to be no more than minimal annually.

From the perspective of state expenditures, it is possible that, as a result of the bill, a juvenile that might otherwise have been sentenced into the custody of a state juvenile correctional facility will instead be sanctioned locally. Such an outcome, in theory, reduces the Department of Youth Services' institutional operating costs, with the magnitude likely to be minimal at most annually.