Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 103 of the 128th G.A. **Date**: May 6, 2009

Status: As Introduced **Sponsor**: Sen. Schuler

Local Impact Statement Procedure Required: No — Minimal cost

Contents: Sexting prohibition

State Fiscal Highlights

STATE FUND	FY 2010 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Potential minimal annual effect on locally collected state court costs
Expenditures	Potential minimal annual effect on juvenile correctional facility operating costs
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential minimal annual effect on locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- It is possible that 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, with minimal meaning an annual savings estimated at less than $100,000
- From the perspective of state revenues, the bill may result in contrasting outcomes (i.e., additional court cost revenues being collected from certain cases and less court cost revenues from certain other cases). The net of these two outcomes on revenues is likely to be no more than negligible for the two affected state funds: the General Revenue Fund (GRF) and the Victims of Crime/Reparations Fund (Fund 4020). Negligible means a net gain or loss estimated at less than $1,000 per year for either state fund.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 – FUTURE YEARS
Counties	
Revenues	Potential minimal annual effect on court costs and fines
Expenditures	Potential minimal annual effect on juvenile 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.

- 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 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, which means an increase or decrease in annual costs estimated at no more than $5,000 for any affected county.
- From the perspective of local revenues, the contrasting outcomes noted in the immediately preceding dot point suggest that counties could both collect additional court cost and fine revenues from certain cases and reduce court cost and fine revenues from certain other cases. The net of these two outcomes on revenues is likely to be no more than minimal for counties (estimated at no more than a $5,000 net gain or loss per county per year).

Detailed Fiscal Analysis

Overview

The bill: (1) prohibits a minor, by use of a telecommunications device, from recklessly creating, receiving, exchanging, sending, or possessing a photograph or other material showing a minor in a state of nudity, and (2) specifies that a violation of the prohibition is a delinquent act that would be a misdemeanor of the first degree if committed by an adult. The conduct prohibited by the bill is intended to address a practice termed "sexting."

"Sexting" conduct prohibitions

As noted in the LSC bill analysis, there are existing prohibitions for certain sex and family offenses that could apply to this type of conduct. Those prohibitions, and the degree of the offense if violated, are summarized in the table below.

Certain Existing Prohibitions 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. This appears to reflect the concern of some that, although the circumstances present may fit the definition of felonious conduct, it is generally more appropriate to adjudicate as a misdemeanor given it involves juveniles exchanging material between one another.

That said, as a result of enacting the bill's prohibition, 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

Herein, we assume that the charging and sanctioning of juveniles for "sexting" in any given local jurisdiction will be relatively infrequent.

As noted, 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 potentially nets counties additional court cost and fine revenues; the state also potentially gains locally collected court costs that are credited to the General Revenue Fund (GRF) and the Victims of Crime/Reparations Fund (Fund 4020). The second outcome 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 revenues is likely to be no more than minimal for counties (estimated at no more than a $5,000 net gain or loss per county per year) and negligible for the state (estimated at less than a $1,000 net gain or loss for either state fund per year).

Expenditures

The first outcome, in theory, creates costs for a county's juvenile justice system to charge, adjudicate, and sanction additional juveniles. The second outcome, 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, which means an increase or decrease in annual costs estimated at no more than $5,000 for any affected county.

From the state's perspective, 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, with minimal meaning an annual savings estimated at less than $100,000.