



Ohio Legislative Service Commission

Matthew L. Stiffler

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 63 of the 130th G.A.
(LSC 130 0501-2)

Date: April 10, 2013

Status: In Senate Criminal Justice

Sponsor: Sen. Hughes

Local Impact Statement Procedure Required: No

Contents: Theft of a computer or telecommunications device, theft of information, unlawful use of intercepted information

State Fiscal Highlights

STATE FUND	FY 2014 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential incarceration cost increase, annual magnitude uncertain
Indigent Defense Support Fund (Fund 5DY0)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential negligible annual gain in locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2014 is July 1, 2013 – June 30, 2014.

- **Incarceration expenditures.** As a result of the bill's mix of penalty enhancements and new felony prohibitions, additional offenders/juveniles could be sentenced to a state prison/juvenile correctional facility for a felony offense or offenders/juveniles could receive longer sentences than would have been the case under current law. The resulting increase in annual state incarceration costs for either the Department of Rehabilitation and Correction or the Department of Youth Services is uncertain.
- **Court cost revenues.** There may be a negligible annual increase in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020), as a small number of additional offenders/juveniles may be found to have committed a felony, rather than a misdemeanor, theft offense. The state court costs generally imposed on an offender are higher in the case of a felony (\$60) than in the case of a misdemeanor (\$29).

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2013 – FUTURE YEARS

Counties

Revenues

Potential minimal annual gain in court costs and fines

Expenditures

Potential minimal annual increase in criminal and/or juvenile justice system operating costs

Municipalities

Revenues

Potential minimal annual loss in court costs and fines

Expenditures

Potential minimal annual decrease 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.

- **Local expenditures generally.** The bill will: (1) shift, in all likelihood, a certain number of what would have been misdemeanor/petty theft cases from a municipal court or a county court to a felony theft case under the jurisdiction of a court of common pleas, (2) raise the possibility of more serious sanctions being imposed in certain felony theft cases, and (3) create a few additional felony theft cases requiring resolution. As a result, municipalities may realize some savings in their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, counties may experience an increase in their annual criminal and juvenile justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.
- **Local court cost and fine revenues generally.** The felony penalty enhancement may cause municipalities to lose court cost and fine revenue that might otherwise have been collected while counties may gain court cost and fine revenue from petty theft cases that might otherwise not have been under their subject matter jurisdiction. The amount of revenue that could be lost by municipalities or gained by counties will be minimal at most annually.

Detailed Fiscal Analysis

Overview

The bill, with respect to computer and telecommunications devices: (1) enhances the offense of theft from a first degree misdemeanor generally to a fourth degree felony, and (2) creates a prohibition, generally a fourth degree felony, against the theft of information or unlawful use of intercepted information from a computer or telecommunication device. These new prohibitions appear to address specific conduct for which a person can typically be charged and prosecuted under current theft and fraud law. This suggests that the bill may have at least two distinct effects relative to how these matters would have been handled under current law and practice. First, in certain cases, a person may face a more serious criminal charge or set of charges resulting from the bill's enhanced felony penalty structure. Second, it may become easier for law enforcement and prosecutors to charge and successfully prosecute certain cases that may have been problematic under current law. In any given local criminal justice system, the number of criminal cases that will or could be influenced by either or both of these effects is likely to be relatively small.

State expenditures

Penalty enhancement. As a result of the bill's penalty enhancement to the general theft statute (R.C. 2913.02): (1) additional adult offenders could be sentenced to prison, which would increase the Department of Rehabilitation and Correction's (DRC) annual incarceration costs, and (2) additional juvenile offenders could be committed to the state, increasing the Department of Youth Services' (DYS) annual care and custody costs. It is also possible that certain offenders or juveniles could be sentenced to a longer term of incarceration that might otherwise have been the case under current law and practice. The annual magnitude of the increase in incarceration costs for DRC and DYS is uncertain.¹

New prohibitions. The bill's new felony prohibitions pertaining to theft of information or the unlawful use of intercepted information (R.C. 2913.08) may result in a minimal annual increase in GRF incarceration expenditures of either DRC or DYS. The minimal increase is due to the bill's new prohibitions creating few new criminal felony cases as the behavior prohibited under the bill can likely be charged under existing felony statutes, though perhaps less successfully or less severely than under the bill.

¹ The average annual cost for DRC to incarcerate an offender in prison is currently around \$23,824 (or \$65.27 per day), with the marginal annual cost of adding an offender estimated at \$3,600. The daily cost of incarcerating a juvenile in a DYS facility averages over \$500.

Local expenditures

Penalty enhancement. The bill could generate a minimal savings for certain municipal criminal justice systems and a related expenditure increase in county criminal and juvenile justice operating costs, as certain petty theft cases may shift from the former to the latter and potential sanctions elevate. The number of cases that could be affected in this manner in any given local jurisdiction is likely to be relatively small in the context of the total criminal case workload.

The bill's penalty enhancement will affect local expenditures on certain criminal and juvenile cases in two ways. First, certain criminal cases that would have been handled by a municipal court or a county court as misdemeanors under existing law will shift to a court of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may realize some savings in their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, counties could experience an increase in their annual criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well. Second, offenders who are young enough to be processed through the juvenile courts would also face the possibility of more serious penalties and sentencing. As a result, the annual costs to county juvenile justice systems to resolve these cases and appropriately sanction the offending juveniles may rise.

New prohibitions. The bill's new felony prohibitions pertaining to theft of information or the unlawful use of intercepted information (R.C. 2913.08) may have at least two distinct effects on county criminal and juvenile justice systems. First, it may make it easier to charge and successfully prosecute certain conduct the circumstances of which make it difficult to prosecute under current law. Second, it may elevate the sanctions certain persons receive for felonious conduct, including the place (jail versus prison) and length of incarceration and fine amount. The number of cases likely to be affected in either manner in any given county system will be relatively small, which means any associated additional costs to resolve such cases will be minimal at most annually.

State and local revenues

The felony theft penalty enhancement for violations involving a computer or telecommunications device could create a potential loss of court cost and fine revenue for municipalities while increasing court cost and fine revenue for counties. The amount of court cost and fine revenue shifting in this manner is likely to be minimal annually.

The bill's penalty enhancement and new prohibitions may lead to a negligible annual gain for the state in the amount of locally collected court cost revenue that would be divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). This is because the total amount of state court costs imposed on an offender/juvenile and deposited to the credit of

Fund 5DY0 and Fund 4020 is higher for a felony (\$60) than it is for a misdemeanor (\$29) and a few new cases may be prosecuted as compared to current law.

Prohibitions and penalties generally

Under the bill, generally, the penalty for: (1) a theft-based offense involving a computer or telecommunications device is a fourth degree felony, (2) theft of information is a fourth degree felony, and (3) unlawful use of intercepted information is a fifth degree felony. In the case of (1) and (3) above, the felony penalty elevates under certain circumstances. The table below summarizes current law's penalty structure relative to the possible fine and term of incarceration for certain offense levels.

Sentences and Fines for Certain Criminal Offenses Generally		
Offense Level	Possible Fine	Possible Term of Incarceration
1st Degree Misdemeanor	Up to \$1,000	Up to 6 months jail stay
5th Degree Felony	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison
4th Degree Felony	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison
3rd Degree Felony	Up to \$10,000	1, 2, 3, 4, or 5 years definite prison
2nd Degree Felony	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years definite prison
1st Degree Felony	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years definite prison