Fiscal Note & Local Impact Statement

124 th General Assembly of Ohio

Ohio Legislative Service Commission
77 South High Street, 9th Floor, Columbus, OH 43266-0342 ✧ Phone: (614) 466-3615
✧ *Internet Web Site:* http://www.lsc.state.oh.us/

BILL: **Am. Sub. S.B. 175** DATE: **April 23, 2002**

STATUS: **As Enacted – Effective May 7, 2002** SPONSOR: **Sen. Jacobson**

LOCAL IMPACT STATEMENT REQUIRED: **No — Introduced version had minimal local cost; Enacted version could create costs for certain county sheriffs exceeding minimal**

CONTENTS: **Revises the law regarding sexual predator hearings for offenders convicted of a sexually oriented offense but acquitted of a sexually violent predator specification, revises the law regarding Department of Rehabilitation and Correction employees' immunity for acts under the Sex Offender Registration and Notification Law, makes certain importuning violations a sexually oriented offense, expands the sex offender community notification provisions to give more neighbors notice and earlier notice, changes the law regarding sexual predators and certain habitual sex offenders providing a notice to sheriffs of an intent to reside at a premise, increases the amount of prior notice sex offenders must provide relative to changing residence, changes the relevant age of the victim and offender for the offense of importuning, and declares an emergency**

State Fiscal Highlights

STATE FUND	FY 2002	FY 2003	FUTURE YEARS
General Revenue Fund			
Revenues	Potential negligible effect	Potential negligible effect	Potential negligible annual effect
Expenditures	Factors potentially increasing and decreasing costs with net fiscal effect uncertain, but any increase would likely be no more than negligible	Factors potentially increasing and decreasing costs with net fiscal effect uncertain, but any increase would likely be no more than negligible	Factors potentially increasing and decreasing costs with net annual fiscal effect uncertain, but any increase would likely be no more than negligible
Victims of Crime/Reparations Fund (Fund 402)			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible annual gain
Expenditures	- 0 -	- 0 -	- 0 -
Other State Funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential decrease	Potential decrease	Potential annual decrease

Note: The state fiscal year is July 1 through June 30. For example, FY 2003 is July 1, 2002 – June 30, 2003.

- ***Sexual predator hearings.*** The provisions of the bill as they relate to the conduct of sexual predator hearings should not affect state revenues and expenditures.

- ***Civil action immunity.*** The state may realize a reduction in its annual expenditures on legal services and judicial operations, as it could find itself defending fewer civil actions in the Court of Claims, which has original, exclusive jurisdiction over all civil actions filed against the State of Ohio and its agencies and departments. The bill may also reduce the amount that the state would otherwise have to payout annually from the General Revenue Fund (GRF) and various other state funds to settle such matters. The size of the potential decrease in annual state expenditures related to adjudicating, defending, and settling civil matters pursued by certain individuals is difficult to predict.

- ***Filing fee revenues.*** The state may lose some annual filing fee revenues, as fewer civil cases are initiated or move into the trial phase. Although it is extremely problematic to estimate the number of civil matters that could be affected by the bill, it appears that the number will be relatively small and that the potential loss in annual filing fee revenues that would otherwise be collected and deposited in the GRF should be negligible.

- ***Importuning violations.*** The bill's provision making certain importuning violations a sexually oriented offense will in all likelihood increase the number of adult offenders and adjudicated delinquent children that will have to register with county sheriffs and thus add to the workload of the Office of the Attorney General's Bureau of Criminal Identification and Investigation, the Department of Rehabilitation and Correction, and the Department of Youth Services. However, as LSC fiscal staff have not collected any information suggesting that this increase in the number of sex offender registrants would be very large, it seems likely that any cost associated with this additional work for any of these three state entities would be negligible annually.

- ***Court cost revenues.*** There may be at most a negligible annual gain in locally collected state court costs that are generated for the GRF and the Victims of Crime/Reparations Fund (Fund 402) because some adult offenders and adjudicated delinquent children or their parents or legal guardian will be found by a criminal or juvenile court to have failed to comply with the registration requirements imposed under the state's Sex Offender Registration and Notification Law.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2002	FY 2003	FUTURE YEARS
Counties			
Revenues	Potential gain, no more than minimal	Potential gain, no more than minimal	Potential gain, no more than minimal annually
Expenditures	Factors increasing and decreasing costs with net fiscal effect uncertain, but more than a minimal increase in some counties possible	Factors increasing and decreasing costs with net fiscal effect uncertain, but more than a minimal increase in some counties possible	Factors increasing and decreasing costs with net annual fiscal effect uncertain, but more than a minimal increase in some counties possible

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

- ***Sexual predator hearings.*** Although the net fiscal effect of the bill's sexual predator hearing provisions on county criminal justice systems is uncertain, it appears that, if these political subdivisions would experience an increase in annual expenditures related to sexual predator hearings, it would be at most minimal.

- ***Community notification.*** The bill expands the category of "neighbors" who must be notified of a sexual predator's or certain habitual sex offender's registration. The Buckeye State Sheriffs' Association has indicated that this expansion of the category of "neighbors" could create significant costs in the state's more urban jurisdictions. As county sheriffs are generally only notifying neighbors directly adjacent to a sex offender's residence, in a densely packed urban area, the Buckeye Sheriffs' Association believes that the number of neighbors that would have to be notified could triple or quadruple.

- ***Prior notice of intent to reside.*** The bill increases from "at least seven" to "at least twenty" the number of days prior to changing or taking up residence that sex offenders must provide a written notice and register with a county sheriff. This provision of the bill should not place any additional registration and notification burdens on county sheriffs, as it will not result in an increase in the number or types of registered sex offenders from what would have occurred under current law.

- ***Civil action immunity.*** As the state's Court of Claims has original, exclusive jurisdiction over all civil actions filed against the State of Ohio and its agencies and departments, it appears unlikely that the bill's civil immunity provision will produce any direct fiscal effect on the annual revenues and expenditures of local governments.

- ***Importuning violations.*** Under the bill, persons found to have committed certain importuning violations are subject to registration and other requirements under the state's Sex Offender Registration and Notification (SORN) Law. The effect of this provision will in all likelihood be to increase the number of adult offenders and adjudicated delinquent children that will have to register with county sheriffs around the state. Under current law, courts are already required and permitted to take certain actions relative to the classification of an adult offender or an adjudicated delinquent child as a person subject to the SORN Law, and county sheriffs already bear the burden of operating a sex offender registration and notification system. However, as LSC fiscal staff have not collected any information suggesting that this increase in the number of adult offenders and adjudicated delinquent children registering as sex offenders would be very large in any given county, it seems unlikely that the cost of this additional work for either a court or a county sheriff would exceed minimal annually.

- ***Failure to comply.*** It is possible that additional cases may be prosecuted in criminal court and additional cases will be adjudicated in juvenile court because adult offenders and adjudicated delinquent children or their parents or legal guardian fail to comply with the state's registration requirements. These new cases could increase annual county expenditures related to investigating, prosecuting, adjudicating, defending (if indigent), and sanctioning these adult offenders and adjudicated delinquent children, their parents or legal guardian. It appears, however, that, on an annual basis, the number of these possible new criminal prosecutions or adjudications in a given jurisdiction would be relatively small. Thus, any such increases in county expenditures related to these new criminal prosecutions and adjudications would likely be no more than minimal.

- ***Revenues.*** Court cost and fine revenues generated for counties may also be affected by the bill as a result of the existing law that criminalizes the failure of adult offenders and adjudicated delinquent children, their parents or legal guardian to comply with registration requirements. At this time, it appears that a relatively small number of these cases may actually be prosecuted in criminal court or adjudicated in juvenile court, and thus, at most, a minimal amount of additional court cost and fine revenues may be collected by counties annually.

Detailed Fiscal Analysis

From a fiscal perspective, the bill has the following six key features:

(1) Revises the law regarding sexual predator determination hearings for certain offenders convicted of a sexually oriented offense.

(2) Makes Department of Rehabilitation and Correction employees generally immune from liability in a civil action for acts under the Sex Offender Registration and Notification Law.

(3) Makes certain importuning violations a sexually oriented offense.

(4) Increases the time at which certain prior notices must be given to a county sheriff by certain sex offenders.

(5) Expands the categories of persons in the community who must be notified by the county sheriff of a sexual predator's or habitual sex offender's registration.

(6) Declares an emergency.

Sexual predator hearings

A portion of the bill essentially responds to a recent criminal case in which the Supreme Court of Ohio ruled that, in the matter of an offender convicted of a sexually oriented offense but not found guilty of a sexually violent predator specification, a sentencing judge cannot then conduct a hearing to determine whether the offender is a sexual predator. Under the bill, the Revised Code would be modified so that the sentencing judge in this circumstance would be required to hold such a hearing.

The impact of this feature of the bill, which will be felt by county criminal justice systems and their courts of common pleas, could be twofold and largely depends upon current local sexual predator hearing practices around the state.

First, the bill will require, under the circumstances outlined above, that a sentencing judge conduct a hearing to determine whether an offender is a sexual predator. Legislative Service Commission fiscal staff believe that the number of required additional hearings will be relatively small in the jurisdiction of any given court of common pleas and that any resulting increase in annual county adjudication, prosecution, and indigent defense counsel costs should be no more than minimal.

Second, the bill specifies that, in the case of an offender convicted of or pleading guilty to a sexually violent predator specification, the sentencing court cannot then conduct a hearing to determine whether the offender is a sexual predator. This provision may reduce the number of sexual predator hearings that are occurring in some jurisdictions if a sentencing judge believes that he or she is required to conduct a hearing when an offender has already been convicted of or plead guilty to a sexually violent predator specification. By stating that, under these circumstances a sentencing judge shall not hold a hearing to determine whether the offender is a sexual predator, counties may experience a decrease in annual adjudication, prosecution, and indigent defense counsel costs. The size of that potential expenditure decrease annually would depend upon the degree to which the practice of a particular court of common pleas was to conduct such hearings.

Although the net fiscal effect of these two provisions on county criminal justice systems is uncertain, it appears that, if these political subdivisions were to experience an increase in annual expenditures related to sexual predator hearings, it would be no more than minimal. County revenues should be unaffected by these two provisions of the bill.

These two provisions of the bill as they relate to the conduct of sexual predator hearings should not affect state revenues and expenditures.

Civil action immunity

The bill provides immunity from liability in a civil action to Department of Rehabilitation and Correction employees generally in connection to duties under the Sex Offender Registration and Notification (SORN) Law.

As the state's Court of Claims has original, exclusive jurisdiction over all civil actions filed against the State of Ohio and its agencies and departments, it appears unlikely that this feature of the bill will produce any direct fiscal effect on the annual revenues and expenditures of local governments.

Conversely, from the state's perspective, a fiscal effect is possible as this immunity provision may curtail certain formal civil legal actions or proceedings. If that were in fact to happen, then the state may lose some annual filing fee revenues, as fewer civil cases are initiated or move into the trial phase. Although it is extremely problematic to estimate the number of civil matters that could be affected by the bill, it appears that the number will be relatively small and that the potential loss in annual filing fee revenues for the state would be negligible.

The state may also realize a reduction in its annual expenditures on legal services and judicial operations, as it could find itself defending fewer civil actions in the Court of Claims. The bill may also reduce the amount that the state would otherwise have to payout annually to settle such matters. The size of the potential decrease in annual state expenditures related to adjudicating, defending, and settling civil matters pursued by certain individuals is difficult to predict.

Importuning violations

The bill makes a few changes to the offense of importuning, most notably making solicitation by means of a telecommunications device, a sexually oriented offense, which means that persons found to have committed such violations are subject to registration and other requirements under the state's SORN Law. The effect of this provision will in all likelihood be to increase the number of adult offenders and adjudicated delinquent children that will have to register with county sheriffs around the state. At this time, LSC fiscal staff are unable to estimate what that increase in the number of adult offenders and adjudicated delinquent children required to register with a county sheriff might be in any given county, however, no information has been collected suggesting that any such increase would be very large.

Courts and county sheriffs. Under current law, courts are already required and permitted to take certain actions relative to the classification of an adult offender or an adjudicated delinquent child as a person subject to the SORN Law, and county sheriffs already bear the burden of operating a sex offender registration and notification system. These adult offenders and adjudicated delinquent children are required to register with the county sheriff, who is in turn responsible, in the case of some adult offenders and adjudicated delinquent children, for notifying certain individuals and entities. County sheriffs are also required to forward address verifications and related information to the Office of the Attorney General's Bureau of Criminal Identification and Investigation (BCII). However, as LSC fiscal staff have not collected any information suggesting that this increase in the number of adult offenders and adjudicated delinquent children registering as sex offenders would be very large in any given county, it seems unlikely that the cost of this additional work for either a court or a county sheriff would exceed minimal annually.

State burdens. Pursuant to current law, the Office of the Attorney General has established and maintains the State Registry of Sex Offenders, which is housed at BCII. This registry contains all of the adult sex offender information forwarded from local officials and the Department of Rehabilitation and Correction (DRC). BCII also forwards this information to the FBI for inclusion in its National Sex Offender Database. With the enactment of Am. Sub. S.B. 3 of the 124th General Assembly, effective January 1, 2002, certain adjudicated delinquent children have been added to the registry and related information is now being forwarded by the Department of Youth Services (DYS).

The bill will in all likelihood increase the number of adult offenders and adjudicated delinquent children that will have to register with county sheriffs and thus add to the workload of BCII, DRC, and DYS. However, as LSC fiscal staff have not collected any information suggesting that this increase in the number of sex offender registrants would be very large, it seems likely that any cost associated with this additional work for any of these three state entities would be negligible.

Prior notice of intent to reside

The bill increases from "at least seven" to "at least twenty" the number of days prior to changing or taking up residence that sex offenders must provide a written notice and register with a county sheriff. This provision of the bill should not place any additional registration and notification burdens on county sheriffs, as it will not result in an increase in the number or types of registered sex offenders from what would have occurred under current law. If anything, by increasing the time of prior notice, a county sheriff may be able to be more efficiently and effectively management their sex offender registration and notification system. It is also possible that adult offenders and adjudicated delinquent children classified as sex offenders, or the latter's parents or legal guardian will fail to comply with the 20-day prior notice requirement. Failure to do so constitutes a violation of the offender's requirements under the existing SORN Law and can result in their arrest and prosecution.

Community notification

The bill expands the category of "neighbors" who must be notified of a sexual predator's or certain habitual sex offender's registration. The Office of the Attorney General's Bureau of Criminal Identification and Investigation, which maintains the State Registry of Sex Offenders, has reported that, as of February 25, 2002, of the 7,544 sex offenders registered statewide in Ohio, community notification applied to 965 (862 sexual predators and 103 habitual sex offenders).

In a conversation about the community notification duties of county sheriffs, the Buckeye State Sheriffs' Association indicated that this expansion of the category of "neighbors" could create significant costs in the state's more urban jurisdictions. As county sheriffs are generally only notifying neighbors directly adjacent to a sex offender's residence, in a densely packed urban area, the Buckeye State Sheriffs' Association believes that the number of neighbors that would have to be notified could triple or quadruple. Currently, this community notification process takes about two hours of a county sheriff's time per sex offender. It has been suggested that this community notification expansion could increase that amount of time spent on community notification to up to 16 hours per sex offender.

Failure to comply

It is possible that additional cases may be prosecuted in criminal court and additional cases will be adjudicated in juvenile court because adult offenders and adjudicated delinquent children, their parents or legal guardian fail to comply with the state's registration requirements. These new cases could increase annual county expenditures related to investigating, prosecuting, adjudicating, defending (if indigent), and sanctioning these adult offenders and adjudicated delinquent children, their parents or legal guardian. It appears, however, that, on an annual basis, the number of these possible new criminal prosecutions or adjudications in a given jurisdiction would be relatively small. Thus, any such increases in county expenditures related to these new criminal prosecutions and adjudications would likely be no more than minimal.

State and local revenues

Court cost and fine revenues generated for counties and the state may be affected by the bill as a result of the existing law that criminalizes the failure of adult offenders and adjudicated delinquent children, their parents or legal guardian to comply with registration requirements. At this time, it appears that a relatively small number of these cases may actually be prosecuted in criminal court or adjudicated in juvenile court, and thus, at most, a minimal amount of additional court cost and fine revenues may be collected by counties annually. The amount of additional locally collected state court cost revenues that might be collected and deposited to the credit of the state GRF and the Victims of Crime/Reparations Fund (Fund 402) would be negligible.

LSC fiscal staff: Laura A. Potts, Budget Analyst

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