

Fiscal Note & Local Impact Statement

126th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: [Am. Sub. S.B. 17](#) DATE: March 29, 2006

STATUS: As Enacted – Effective August 3, 2006 SPONSOR: Sen. Spada

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: **Requires a member of the clergy, rabbi, priest, Christian Science practitioner, minister, or any person or layperson, other than a volunteer, acting as a leader, official, delegate, or other designated function on behalf of any church, religious society, or faith to report the abuse or neglect of a child that is known or reasonably believed to have been committed by any other member of the clergy, rabbi, priest, Christian Science practitioner, minister, or person or layperson, other than a volunteer, so acting on behalf of any church, religious society, or faith, tolls the criminal statute of limitations for violations involving abuse or neglect of a child if certain individuals fail to report the abuse or neglect of the child, provides for the issuance of temporary protection orders and civil protection orders for victims of sexually oriented offenders, provides a 12-year statute of limitations for civil assault or battery actions brought by victims of childhood sexual abuse based on childhood sexual abuse or civil actions brought by victims of childhood sexual abuse asserting resulting claims, expands the offense of "sexual battery" to also prohibit a cleric from engaging in sexual conduct with a minor who is a member of, or attends, the church or congregation served by the cleric, creates a cause of action for a declaratory judgment in cases in which a victim of childhood sexual abuse is barred from bringing an ordinary civil action by the expiration of the limitations period, creates a registration and community notification program for persons who are found liable in a declaratory judgment action for assault or battery based on childhood sexual abuse, requires the Attorney General to establish on the Internet a civil registry of persons found liable in a declaratory judgment action for assault or battery based on childhood sexual abuse, prohibits persons required to register after being found liable in a declaratory judgment action for assault or battery based on childhood sexual abuse from failing to register and from living within 1,000 feet of any school premises, requires occupational licensing boards to consider a person's listing on the civil registry in making determinations related to the licensing of the person, and requires a sheriff to notify the public children services agency of registered sex offenders in the jurisdiction**

State Fiscal Highlights

STATE FUND	FY 2006	FY 2007	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase
Victims of Crime/Reparations Fund (Fund 402)			
Revenues	- 0 -	Potential minimal gain	Potential minimal gain
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2006 is July 1, 2005 – June 30, 2006.

- **Incarceration costs.** As a result of the bill, it is possible that more offenders may be sentenced to prison than might otherwise have been the case under current law and sentencing practices, the fiscal effect of which would be to increase the Department of Rehabilitation and Correction's (DRC) annual incarceration and subsequent post-release control costs. As the likely number of affected offenders appears to be relatively small, any increase in DRC's annual operating expenses would be minimal at most, which for the purposes of this fiscal analysis means less than \$100,000 per year for the state.
- **Court cost Revenues.** Offenders must pay locally collected state court costs. State court costs for a felony conviction total \$45, with \$30 of that amount being credited to the Victims of Crime/Reparations Fund (Fund 402) and the remainder, or \$15, being credited to the General Revenue Fund (GRF). State court costs for a misdemeanor conviction total \$24, with \$9 of that amount being credited to the Victims of Crime/Reparations Fund and the remainder, or \$15, being credited to the GRF. Given the relatively small number of additional convictions expected to result from the bill, as well as the generally problematic nature of collections, the potential annual revenue gains to the state's GRF and Victims of Crime/Reparations Fund would likely not exceed minimal.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2006	FY 2007	FUTURE YEARS
Counties (Public Children Service Agencies and Civil and Criminal Justice Systems)			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential increase	Potential increase	Potential increase
Municipalities			
Revenues	Potential minimal loss	Potential minimal loss	Potential minimal loss
Expenditures	Potential minimal decrease	Potential minimal decrease	Potential minimal decrease

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

- **Mandatory reporting.** The bill is likely to increase the number of reports of child abuse and/or neglect that public children services agencies (PCSAs) and county and municipal peace officers will receive. The Legislative Service Commission (LSC) is not able to estimate how many additional reports will be received as a result of this bill. However, any additional reports made as a result of this bill will increase the administrative costs for the entity that receives the report. However, any increase in administrative costs for receiving additional reports is likely to be minimal.

- **Referral to the PCSA.** All reports of child abuse and neglect are referred to the PCSAs in the county in which the abuse or neglect has occurred or is occurring. The Legislative Service Commission is not able to estimate how many additional referrals will be made as a result of this bill. However, each referral that is received will cost the PCSA a minimum of \$110.17 for screening the report and as much as \$1,418.59 to screen and investigate a referral.
- **Orders of protection.** The additional circumstances under which protection orders may be sought could potentially increase costs to the courts to consider the request for the protection order and if necessary, issue the order.
- **County criminal justice systems.** From the perspective of county criminal justice systems, the bill could: (1) increase criminal justice expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders (including jail-related expenses), and (2) generate additional court cost and fine revenues. As the likely number of new misdemeanor and felony cases that will be generated by the bill appears to be relatively small, any resulting increase in criminal justice expenditures or gain in revenues for a given county annually would not be likely to exceed minimal. For the purposes of this fiscal analysis, minimal means an estimated expenditure increase or estimated revenue gain of no more than \$5,000 for any affected county per year.
- **County civil justice systems.** The bill establishes limitation periods relative to the filing of certain civil assault and battery actions. The key fiscal effect of this provision, from the perspective of the courts of common pleas, will be a potential influx of additional future civil case filings stemming from the widening of the window of opportunity for certain plaintiffs to file a specified civil action. With the opportunity to file specified civil actions extended, there will likely be some increase in filings, and a corresponding increase in case processing costs for affected courts of common pleas, including the expense associated with jury trials. Given that the number of new civil cases that will likely be generated by the bill appears to be relatively small, these additional costs would not likely exceed the minimal threshold on an ongoing basis.
- **Municipal criminal justice systems.** The bill's expansion of the offense of sexual battery and the corresponding penalty enhancement could potentially elevate a few cases involving a specific set of circumstances, that would have been a misdemeanor of the first degree under current law, to the status of a felony of the third degree, thus shifting such cases out of municipal courts into the more expensive felony case processing system in the courts of common pleas. Such a result could simultaneously: (1) decrease municipal criminal justice expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders, and (2) cause a loss in municipal court cost and fine revenues. As the likely number of cases that will be affected in this manner by the bill's expanded definition of sexual battery appears to be relatively small, any resulting changes in annual municipal criminal justice expenditures and revenues for any given local jurisdiction would not be likely to exceed minimal. For the purposes of this analysis, "minimal" means an expenditure savings or a revenue loss that is estimated at no more than \$5,000 per year for any affected municipality.

Detailed Fiscal Analysis

Mandatory reporting of child abuse or neglect

Under current law, there are certain individuals who are required to report their knowledge or suspicion that a child under age 18 or a mentally retarded, developmentally disabled, or physically impaired child under age 21 has suffered or faces a threat of suffering abuse or neglect. Reports are to be made to the public children services agency (PCSA) or a county or municipal peace officer in the county in which the abuse or neglect is occurring or has occurred.

The bill requires that except under certain circumstances, a member of the clergy, rabbi, priest, Christian Science practitioner, minister, or any person or layperson, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith report the known or reasonably believed abuse or neglect of a child has occurred when the perpetrator is any other such member of the clergy, rabbi, priest, Christian Science practitioner, minister, or person or layperson, other than a volunteer, so acting on behalf of any church, religious society, or faith. Failure to so report such known or suspected abuse would constitute a misdemeanor of the first degree, which carries a fine of not more than \$1,000 and not more than six months in jail. As the likely number of new cases that will be generated by the bill appears to be relatively small, any resulting increase in criminal justice expenditures or gain in revenues for a given county annually would not be likely to exceed minimal.

The bill also changes other laws related to reporting of known or suspected child abuse or neglect to reporting of child abuse that is known or *reasonably* suspected or believed to have occurred.

Once a person makes a report of suspected child abuse or neglect, the report, if not taken by the PCSA is referred to the PCSA in the county. The PCSA must then make a determination of whether or not the referral warrants further investigation. If it is determined that the referral warrants further investigation it is "screened in." Once a referral is screened in, the PCSA must determine if the child has been or is at risk of abuse or neglect and decide if action must be taken to protect the child. According to data collected through the National Child Abuse and Neglect Data System, almost two-thirds of referrals made in Ohio in 2001 were screened in because they met the standards that warrant an investigation or assessment. (There were 104,400 referrals made and 70,079 were screened in.)

The Public Children Services Association of Ohio (PCSAO) estimates in its County Child Protection Workload Analysis that intake assessments and interviews take an average of 14.38 hours. The average cost for investigation activities is \$98.65 per hour. Total cost for investigation activities is \$1,418.59 (\$98.65/hour x 14.38 hours). (The average cost for report screening and intake only is \$110.17 (\$95.80/hour x 1.15 hours).)

The bill is likely to increase the number of reports of child abuse and neglect that PCSAs and county and municipal peace officers will receive. Similarly, the bill is likely to increase the

number of referrals of child abuse and neglect made to PCSAs. While LSC is not able to estimate how many additional reports will be made or how many additional referrals PCSAs will receive as a result of this bill, any additional reports made will cause a minimal increase in the administrative costs of the entity that receives the report and any additional referrals that are made will increase the costs of the PCSA that receives the referral. As stated above, if a PCSA receives a referral and determines that the referral does not warrant additional action, the average cost to the PCSA for that referral is \$110.17. If a PCSA receives a referral and determines that an investigation is warranted, the average cost to the PCSA for that referral is \$1,418.59.

Sexual battery

The bill expands the definition of sexual battery to specifically prohibit a cleric from engaging in sexual conduct with a minor who is a member of the cleric's church or congregation. As a result of this expanded definition, certain specific situations involving sexual conduct that might have constituted either a felony of the fourth degree, a misdemeanor offense, or even possibly no criminal violation at all under current law, would be prohibited conduct that is chargeable as a felony of the third degree.

Of particular relevance to local jurisdictions is the question of whether an offense involving sexual conduct, which under certain circumstances is a misdemeanor of the first degree, will rise to the level of a felony of the third degree. Under the bill's revised definition of sexual battery to include sexual conduct between a cleric and a member of the church who is a minor can be a sufficient trigger to elevate some cases from the misdemeanor jurisdiction of county and municipal courts to the felony jurisdiction of courts of common pleas. Generally, it is more expensive for a county to process a felony case than it is for a county or municipality to process a misdemeanor case.

The local fiscal effect of the bill's criminal penalty provisions could be to simultaneously: (1) decrease municipal criminal justice expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning certain offenders, (2) cause a loss in municipal court cost and fine revenues, (3) increase county criminal justice expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning certain offenders, and (4) cause a loss in county court cost and fine revenues. As the likely number of cases that will be affected in this manner appears likely to be relatively small in any given local jurisdiction, any resulting changes in annual county and municipal criminal justice expenditures would not exceed minimal. "Minimal" in this instance means revenue or expenditure changes that are estimated at no more than \$5,000 per year for any affected county or municipality.

Statute of limitations

Current law specifies that a criminal prosecution is barred unless it is commenced within certain periods after an offense is committed. Existing law specifies that the period of limitation does not run during any of the following times: (1) during any time when the *corpus delicti* remains undiscovered, (2) during any time when the accused purposely avoids prosecution (proof that the accused departed Ohio or concealed his or her identity or whereabouts is *prima-facie* evidence of his or her purpose to avoid prosecution), or (3) during any time a prosecution against the accused based on the same conduct is pending in Ohio, even though the indictment,

information, or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal.

The bill enacts a provision that specifies an additional circumstance in which the period of limitations for a criminal prosecution of a specified nature does not run. Under this new provision, in addition to the situations specified under existing law, the period of limitation for a violation of any provision of R.C. Title 29 (the Criminal Code) that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age does not run until either of the following occurs: (1) the victim of the offense reaches the age of majority, or (2) a public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has knowledge of or suspects that the abuse or neglect occurred.

From the perspective of county criminal justice systems, the bill will in all likelihood: widen the net concerning criminal prosecutions of older cases involving child abuse or neglect by extending or delaying the traditional statute of limitations period in these types of crimes. As a result of this provision of the bill, the following may occur: (1) increase county criminal justice expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning the offender, and (2) generate additional court cost and fine revenues. As the likely number of cases that will be affected by the bill appears to be relatively small, any resulting increase in criminal justice expenditures or gain in revenues for a given county annually would not likely exceed minimal.

The bill also provides that any civil actions brought by victims of childhood sexual abuse based on alleged childhood sexual abuse shall be brought within 12 years after the initial cause of action accrues. A cause of action based on childhood sexual abuse begins to accrue from the date on which the victim reaches the age of majority. Under current law, such a civil action must be brought forth within one year after the initial cause of action occurs. The key fiscal effect of this provision, from the perspective of the courts of common pleas, will be some likely increase in new civil case filings stemming from the widening of the window of opportunity for plaintiffs to file an action. At this time, it remains uncertain as to how many additional future civil actions brought by victims of childhood sexual abuse based on allegations of childhood sexual abuse will be brought forward. With the opportunity to file extended to a period of 12 years, there will likely be some future increase in filings, and a corresponding increase in case processing costs for affected courts of common pleas, including the expense associated with jury trials. Given that the number of new cases that will likely be generated by the bill appears to be relatively small, these additional costs would not likely exceed the minimal threshold for any affected court of common pleas on an ongoing basis.

Declaratory judgments

In any case in which an individual is precluded from commencing a civil action for assault or battery based on childhood sexual abuse against a person solely because the statute of limitation period has expired on or before the effective date of this section of the bill, the Attorney General or the county prosecuting attorney may bring an action in a court for the purpose of obtaining a declaratory judgment finding that the person would have been liable for

assault or battery based on the childhood sexual abuse were it not for the statute of limitations. If the court finds, by a preponderance of the evidence, that the defendant would be liable for assault or battery based on childhood sexual abuse were it not for the statute of limitations, the court shall enter a judgment and shall order that the defendant be listed on a civil registry maintained by the Attorney General. As a result of this provision of the bill, there will likely be some future increase in filings, and a corresponding increase in case processing costs for affected courts of common pleas, including the expense associated with jury trials. Given that the number of new cases that will likely be generated by the bill appears to be relatively small, these additional costs would not likely exceed the minimal threshold for any affected court of common pleas on an ongoing basis.

Civil registry

The bill creates a registration and community notification program for persons who are found liable in a declaratory judgment action for assault or battery based on childhood sexual abuse as described above. The bill further requires the Attorney General to establish on the Internet a civil registry of all such persons found liable in a declaratory judgment action for assault or battery based on childhood sexual abuse. Any persons required to register, after being found liable in a declaratory judgment action, is prohibited from failing to register and from living within 1,000 feet of any school premises. Failure to follow the proper registration procedures as specified by the bill would be a felony of the fifth degree. As of this writing, LSC fiscal staff has not had the opportunity to conduct the research necessary to produce a reasonable estimate of the likely expenditures required to implement and enforce such a civil registry.

Consideration by an occupational licensing board

The bill also requires occupational licensing boards to consider a person's listing on the civil registry in making a determination related to licensing of the person. This provision may cause an increase in the administrative burden of licensing boards to obtain and consider a person's listing on the civil registry when granting, renewing, modifying, suspending, or revoking a license or other authorization to engage in an occupation. LSC staff did not have the opportunity to discuss this issue with the licensing boards to determine the magnitude of fiscal impact this provision may have on the licensing boards.

Sheriff notification to public children services agency

The bill requires the county sheriff to provide written notice of registered sex offenders to the public children services agency that has jurisdiction over the area located within the county served by the sheriff. As of this writing, LSC fiscal staff has not had an adequate opportunity to research the fiscal implications of the notification requirement. Thus, the potential effect, if any, for the workload and operating expenses of any given sheriff is uncertain. That said, as a sheriff already provides certain registered sex offender notifications under the existing Sex Offender Registration and Notification (SORN) Law, the requirement that an additional local governmental entity be notified may in all likelihood not generate a costly new administrative burden.

Protection orders for victims of sexually oriented offenses

The bill adds to the circumstances under which individuals may seek protection orders. Under the bill, upon the filing of a criminal complaint that alleges the commission of any sexually oriented offense, not necessarily against a family or household member, the complainant, the alleged victim, or a family or household member of an alleged victim (or, if in an emergency the alleged victim was unable to file, a person who made an arrest for the alleged violation or offense) may request the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set. The bill also allows a person on his or her own behalf, or a parent or adult household member on behalf of any other family or household member, to seek a civil protection order against a respondent who had allegedly committed a sexually oriented offense against the petitioner or another victim.

These additional circumstances under which protection orders may be sought could potentially increase costs to the courts to consider the request for the protection order and if necessary, issue the order.

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