



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: [H.B. 300 of the 130th G.A.](#)

Date: March 12, 2014

Status: As Introduced

Sponsor: Rep. Antonio

Local Impact Statement Procedure Required: No

Contents: Expands the offense of "ethnic intimidation" to include another person's disability, gender identity, or sexual orientation

State Fiscal Highlights

- There may be: (1) a no more than minimal annual increase in the institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services, and (2) a negligible annual gain in the amount of the locally collected court costs that is credited to the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

- Municipalities may experience a minimal reduction in the amount of their annual criminal justice system expenditures, and counties could experience a minimal 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.
- Municipalities may lose a minimal amount of court cost and fine revenue that might otherwise have been collected and counties may gain a minimal amount of court cost and fine revenue from cases that might otherwise not have been under the subject matter of the jurisdiction.

Detailed Fiscal Analysis

Overview

Under current law, if a person violates the offense of aggravated menacing, menacing, criminal damaging or endangering, criminal mischief, or telecommunications harassment by reason of another's race, color, religion, or national origin, that person is guilty of ethnic intimidation. A violation of this prohibition is an offense of the next higher degree for the underlying offense. The bill adds disability, gender identity, and sexual orientation to the list of reasons that will elevate the penalty to the next higher degree for the underlying offense.

The number of cases that could be affected by the bill in any given local criminal justice system is likely to be relatively small given the infrequency with which similar cases are reported under current law and that the motivation(s) behind an offender's conduct can be more difficult to prove. Thus, any resulting changes in state and local revenues and expenditures will be, at most, minimal annually.

Degree of offense

Table 1 below shows the general penalty structure for the offense of ethnic intimidation, which is based, as noted above, on certain specified underlying offenses. For example, if a person commits aggravated menacing, generally a first degree misdemeanor, and is found to have committed that act for reason of the victim's race, color, religion, or national origin, then the offense rises to the next degree, which in this example is a fifth degree felony.

Table 1. Penalties for Ethnic Intimidation		
Offense	Degree of Offense	
	Underlying Offense*	Ethnic Intimidation
Aggravated Menacing	Misdemeanor 1st degree	Felony 5th degree
Menacing	Misdemeanor 4th degree	Misdemeanor 3rd degree
Criminal Damaging or Endangering	Misdemeanor 2nd degree	Misdemeanor 1st degree
	Misdemeanor 1st degree	Felony 5th degree
Criminal Mischief	Misdemeanor 3rd degree	Misdemeanor 2nd degree
	Misdemeanor 1st degree	Felony 5th degree
Telecommunications Harassment	Misdemeanor 1st degree	Felony 5th degree
	Felony 5th degree	Felony 4th degree

*These are the general penalties under current law for the underlying offenses, and can elevate higher depending upon the circumstances present.

Hate crime statistics

As seen in the crime statistics reported to the FBI that are summarized in Table 2 below, between 2007 and 2012, the number of crimes motivated by the victim's sexual orientation ranged from a low of 37 (2010) to a high of 63 (2012). The number of crimes motivated by the victim's disability ranged from a low of 1 (2011) to a high of 53 (2009).

These statistics would suggest that the number of cases that could be affected by the addition of disability, gender identity, or sexual orientation to the offense of ethnic intimidation will generally be very small in the context of any given local criminal and/or juvenile justice system.

Table 2. Hate Crimes in Ohio, 2007-2012 (FBI Hate Crime Statistics)						
Incident Type	2007	2008	2009	2010	2011	2012
Race	161	190	142	147	119	129
Religion	25	28	24	37	18	27
Sexual Orientation	53	57	47	37	48	63
Ethnicity	43	41	31	23	12	29
Disability	30	29	53	3	1	9
TOTAL	312	345	297	247	198	257

Local expenditures

Because of the limited number of cases likely to be affected by the bill's expansion of the offense of ethnic intimidation, any potential decrease in municipal criminal justice system expenditures and any potential increase in county criminal and juvenile justice system expenditures would likely be no more than minimal annually. The bill's penalty enhancement could affect local expenditures on certain criminal and juvenile cases in that 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 a felony. As a result, municipalities may lose some of 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. Second, offenders who are young enough to be processed through the juvenile courts would also face the possibility of more serious penalties and sentencing, which may increase the annual costs a county juvenile justice system incurs to process these cases.

Furthermore, it is possible that prosecutors (and when applicable public defenders) could experience an increase in the amount of time spent on a case alleging ethnic intimidation. These cases require additional proof specific to the motivation for the offense which may not be readily apparent in all cases. As such, a prosecutor or public defender may have less time to devote to other cases thereby potentially leading to delays in the disposition of other cases. Due to the relative infrequency with which ethnic intimidation offenses alleging disability, gender identity, or sexual orientation are reported, it is unlikely that such cases will notably increase the costs of processing current caseloads.

State expenditures

As a result of the bill's expansion of the offense of ethnic intimidation: (1) additional adult offenders could be sentenced to prison or additional juvenile

offenders could be committed to the state, which may increase the annual incarceration costs for the Department of Rehabilitation and Correction (DRC) or the care and custody costs for the Department of Youth Services (DYS), and (2) some offenders may serve longer sentences than would otherwise have been the case under current law. To the extent that additional time is served due to felony enhancements, state GRF incarceration-related expenses may increase accordingly. Any resulting increase in incarceration costs or DYS's care and custody costs would be no more than minimal annually because relatively few adults or juveniles will be affected by the potential felony enhancements.

State and local revenues

The state may gain locally collected court cost revenue for the Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0), as the state court cost imposed on an offender/juvenile and paid to Fund 4020 is higher for a felony than a misdemeanor: \$60 versus \$29. The amount that the fund may gain, however, is likely to be negligible, as the number of affected criminal and juvenile cases is likely to be relatively small.

As the penalty enhancement could shift certain cases involving adult offenders out of a county court or a municipal court (which handle misdemeanors) and into a court of common pleas (which handle felonies), this creates a potential loss of court cost and fine revenue for municipalities. Conversely, it creates the possibility that counties may gain court cost and fine revenue. It is also possible that juvenile offenders may be fined higher amounts than would otherwise have been the case under current law and sentencing practices. As the number of affected criminal and juvenile cases will likely be relatively small, the amount of annual court cost and fine revenue that municipalities might lose and counties might gain would be no more than minimal.

Sentences and fines for certain offenses generally

Table 3 below summarizes current law's sentences and fines generally for the felony and misdemeanor offense levels affected by the bill.

Table 3. Sentences and Fines for Certain Offenses Generally		
Offense Level	Fine	Maximum Term
Felony 2nd degree	Up to \$15,000	2, 3, 4, 5, 6, 7, 8 years' definite prison term
Felony 3rd degree	Up to \$10,000	1, 2, 3, 4, 5 years' definite prison term
Felony 4th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months' definite prison term
Felony 5th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, 12 months' definite prison term
Misdemeanor 1st degree	Up to \$1,000	6-month jail stay
Misdemeanor 2nd degree	Up to \$750	90-day jail stay
Misdemeanor 3rd degree	Up to \$500	60-day jail stay
Misdemeanor 4th degree	Up to \$250	30-day jail stay