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Office

S.B. 109
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 109's Bill Analysis](#)

Version: As Passed by the House

Primary Sponsor: Sen. Hackett

Local Impact Statement Procedure Required: No

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Highlights

- **Sex offenses.** The bill's expansion of sexual battery to include conduct currently prohibited under sexual imposition may shift some misdemeanor cases from the jurisdiction of a municipal or county court to the jurisdiction of a court of common pleas to be tried as a felony, thus shifting workload and related adjudication and local sanctioning costs for those cases. As a result of the bill's sex offense changes collectively, there may also be a relatively small number of offenders who could be sentenced to, or serve longer periods of, incarceration/supervision in a state correctional facility.
- **State Medical Board regulation.** The bill expands requirements for reporting to the State Medical Board, which might lead to additional investigations. Additionally, the bill requires the Board to provide certain information on its website regarding practitioners on probation. These provisions could result in a minimal increase in costs.
- **Automatic suspensions.** The bill authorizes the State Medical Board to recommend a license be suspended without a prior hearing in certain situations and adds circumstances under which a licensee will be subject to an automatic license suspension. This could reduce administrative costs if fewer hearings were held.
- **Unauthorized pelvic examinations.** The Ohio Board of Nursing and the State Medical Board may experience costs to adopt rules or to investigate any potential violations of the bill's pelvic examination provisions.

Detailed Analysis

Sex offenses

Sexual battery

The bill expands the offense of felony sexual battery by: (1) including certain actions that are currently classified as sexual imposition under current law, generally a misdemeanor offense, and (2) adding a circumstance under which an action may be considered sexual battery to include that in which the offender is a licensed medical professional; the other person, or one of the other persons, is a patient of the offender; and the sexual activity occurs in the course of medical treatment.

While statewide conviction data for sexual imposition is not collected or reported, in calendar years 2022 and 2021, the Franklin County Municipal Court reported an average of 20 cases filed for sexual imposition.¹ Given that Franklin County has about 11% of the Ohio population, one can estimate that around 182 charges may be filed statewide annually.

Extrapolating this number across the state suggests that a relatively small number of misdemeanor sexual imposition cases could instead be charged as a felony of the fourth or fifth degree. In some cases, the felony charge provided by the bill may induce offenders to accept a plea bargain, however the principal effect is that cases will shift from municipal and county courts that currently handle misdemeanor cases to the common pleas courts which will have jurisdiction over felony cases. In addition, the number of new sexual battery cases in which the offender is a licensed medical professional is likely to be even fewer.

Rape

The bill also expands the circumstances under which rape is committed by providing that the offender knows that the other person's judgment or control is substantially impaired as a result of the influence of any drug administered to the other person with consent for the purpose of medical or dental examination, treatment, or surgery. The bill may generate a relatively small increase in the number of cases in which a person is charged with, and subsequently convicted of, rape, a felony under continuing law.

State fiscal effects

Incarceration expenditures

Under current sentencing practices, around 130 offenders per year enter prison for sexual battery which is a felony of the third or second degree.² The bill will shift some convictions involving sexual contact, under the expanded offense of sexual battery that otherwise would have been a misdemeanor under sexual imposition, to a felony of the fifth or fourth degree.

The fiscal effect of a relatively small increase in an existing prison population of approximately 44,500 will not generate a significant increase in the Department of Rehabilitation

¹ Franklin County Municipal Court Annual Reports can be found on its [Reports webpage](#) on the court's website: fcmcclerk.com.

² The commitment reports from DRC can be generated on its [Reports webpage](#) under the "About" tab on DRC's website: drc.ohio.gov.

and Correction's (DRC) annual incarceration expenditures. The marginal cost for DRC to add a relatively small number of offenders to its total inmate population is estimated at around \$4,000 per offender per year. This suggests that any increase in DRC's GRF-funded incarceration costs is likely to be no more than minimal annually.

Local criminal justice system fiscal effects

As mentioned, the expanded sexual battery offense in the bill carries the potential to shift specified sexual imposition criminal cases that, based on current law, would most likely be adjudicated as misdemeanors under the subject matter jurisdiction of a municipal court or county court to a sexual battery felony charge under the subject matter jurisdiction of the common pleas court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter in terms of the costs to process the case and sanction the violator. From the fiscal perspective of local governments, such an outcome will simultaneously increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) felony sexual battery involving sexual contact, while decreasing analogous municipal and county court criminal justice system expenditures related to the prosecution of certain sexual imposition offenses. The magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, should be no more than minimal annually.

Fines, fees, and court costs

Local revenues

For persons convicted of, or pleading guilty to, a felony, the sentencing court generally is required and/or permitted to impose a fine, fees, and court costs that are retained locally for various purposes. A waiver of payment is permitted if the person is determined to be indigent.

The elevation of a misdemeanor to a felony means that revenue from fines, fees, and court costs collected by municipal and county courts will instead be collected by courts of common pleas. The maximum permissible fine for a misdemeanor of the third degree (the general penalty for sexual imposition) is \$500. The maximum permissible fine for a felony of the fifth degree (general penalty for sexual battery involving sexual contact) is up to \$2,500.

The likely revenue loss for municipal criminal justice systems and revenue gain for county criminal justice systems as a result of the shift and new cases, while likely minimal, is difficult to precisely calculate because many offenders, especially those convicted of a felony, are either financially unable or unwilling to pay. It is also the case that the court rarely imposes the maximum permissible fine.

State revenues

Any increase in felony-level criminal cases and subsequent convictions because of the bill may lead to a gain in related state revenues in the form of locally collected state court costs. Under ongoing law, those costs amount to \$29 for a misdemeanor and \$60 for a felony apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The amount of money that the state may gain annually is likely to be negligible, as the number of affected cases is expected to be relatively small, and the difficulties of collecting financial sanctions from unwilling or indigent offenders.

Sentencing of sexually violent predator

For purposes of the sentencing of sexually violent predators, the bill expands the definition of “violent sex offense” to include the expanded offense of rape or the expanded offense of sexual battery if the sexual activity involved is sexual conduct. The number of additional court hearings that the bill may trigger is uncertain, as is the subsequent number of offenders that may be sentenced to a term of life imprisonment without parole. However, the affected population of offenders is not expected to be large for the following reasons: (1) the current offenses of rape and sexual battery are already defined as violent offenses, (2) the existing offense of rape potentially covers the additional circumstance under the expanded offense of rape, and (3) expanded offense of sexual battery mainly includes sexual contact which would not be included under the modified definition.

SORN Law classification

The bill retains the Tier III sexual offender/child-victim offender classification under the Sex Offender Registration and Notification (SORN) Law that applies to individuals convicted of sexual battery under current law to those convicted of sexual battery, under the bill, when the sexual activity involved is sexual conduct.

If the sexual activity involved is sexual conduct, the bill classifies the offender as a Tier II sex offender/child-victim offender who must verify registration information every 180 days after the initial registration date, for 25 years for an adult offender or for 20 years for a juvenile offender. Sexual contact otherwise charged under sexual imposition absent the expanded offense of sexual battery would have been a Tier 1 offense, which requires adult offenders verify registration information annually for 15 years after the initial registration date, or ten years for a juvenile.

Fiscal impact

The number of offenders required to register longer and have to verify certain information more frequently as a result of a higher level SORN classification each year is likely to be relatively small and the corresponding increase in any given county sheriff’s annual registration, notification, and enforcement costs generally would not exceed minimal. Any additional administrative costs may be offset to some degree by the collection of permissive sex offender registration fees that are retained by the county.

According to the Office of the Attorney General, these changes will not result in a discernible effect on expenditures to maintain the state’s sex offender registry.

Reporting duties

The bill adds to reporting duties by prohibiting any person who knows that a licensed medical professional has committed a sex offense against the medical professional’s patient from failing to report such knowledge or suspicion to law enforcement authorities within 30 days. Failure to report a crime is a fourth degree misdemeanor, a violation of which carries a possible jail term of not more than 30 days, a fine of up to \$250, or both.

Fiscal impact

It is expected that mandatory reporters generally will perform their duty in good faith and violations of this prohibition will be relatively infrequent. This suggests that there will be no discernible ongoing annual fiscal effects on local governments.

State Medical Board-related provisions

Notices of indictment or conviction of licensed medical professionals

The bill requires prosecutors to notify the Medical Board when licensees are indicted or charged and bound over for trial in cases in which sexual activity occurs between a licensed medical professional and a patient during medical treatment. Additionally, the bill requires the prosecutor to notify the Board of the conviction of, or plea of guilty to, a felony or specified type of misdemeanor of any person licensed or authorized to practice as dietitians, anesthesiology assistants, respiratory care professionals, acupuncturists, radiology assistants, and genetic counselors.

Fiscal impact

These requirements could increase costs to the Board if additional investigations are conducted. However, the numbers of such cases in any given year are expected to be few, so any costs should be minimal. The notification costs are expected to be negligible and absorbed by local criminal justice systems utilizing existing resources.

Criminal and sexual misconduct reports

The bill makes several changes regarding reports that must be made to the Board by third parties, specifically regarding criminal conduct and sexual misconduct. Current law requires health care facilities that take disciplinary action against a State Medical Board licensee to report that information to the Board. The bill shortens this timeframe for these reports to be made from 60 days to 30 days. Additionally, it requires a health care facility to report to the Board investigations regarding criminal conduct or sexual misconduct against Board licensees within 30 days of beginning such an investigation. In addition, licensees and professional associations currently must report certain instances in which they believe a violation of the Medical Board Law or related rules have been violated. The bill adds to this requirement. Under the bill, if an association has a reasonable cause to suspect that a Board licensee has committed or participated in criminal conduct or sexual misconduct, the associations must report this information to the Board. However, the bill exempts a professional association or society whose staff interacts with members of the association only in advocacy, governance, or educational capacities and whose staff do not regularly interact with members in practice settings from these requirements. A person who violates these requirements is guilty of a fourth degree misdemeanor unless the person has been convicted of the same violations previously. In that case, it is a first degree misdemeanor. Finally, Board licensees are required to report to the Board criminal charges regarding criminal conduct, sexual misconduct, or any conduct involving the use of a motor vehicle while under the influence of alcohol or drugs.

Fiscal impact

The Board could realize an increase in costs if these reports led to additional investigations. The amount of this increase would depend on the number and scope of

investigations conducted. However, the number is anticipated to be relatively few, so costs should be minimal. Additionally, the bill could result in additional court costs if there are any violations regarding the notification requirements.

Automatic suspensions

The bill authorizes the State Medical Board to recommend a license be suspended without a prior hearing if the Board receives verifiable information that a licensee has been charged with a felony and the conduct constitutes a disciplinary violation under Ohio law. The bill also adds circumstances under which a licensee will be subject to an automatic license suspension, including regarding human trafficking and if a license to practice a health profession in another state is suspended or revoked. If this occurs, the Board must notify the impacted individual of the automatic suspension by certified mail or in person. If the impacted person does not timely request an adjudication, the Board is not required to hold a hearing and the Board may adopt a final order (if at least six Board members vote in the affirmative).

Fiscal impacts

These provisions could reduce the Board's administrative costs if fewer hearings were required to be conducted. The amount of savings would depend on how many hearings would no longer be necessary. However, the number of cases in any given year is anticipated to be few in number.

Board case reports and website information

Currently, the Board must prepare quarterly reports documenting the disposition of cases in the preceding three months. The bill requires the Board also include information regarding whether witnesses were interviewed and whether the individual against whom the complaint is directed is the subject of any pending complaints to these reports.

Finally, the bill requires the Board to provide on its website information regarding practitioners on probation and practicing under probationary status. The bill also requires the Board to provide on its website a sample probation disclosure letter to be used by practitioners to comply with the bill's provisions.

Fiscal impacts

The inclusion of additional information into the quarterly reports should not result in any discernible fiscal effect. However, the Board could realize minimal costs to provide the information regarding practitioners on probation on its website.

Ohio Board of Nursing and State Medical Board

Unauthorized pelvic exams

The bill prohibits a registered nurse (RN), advanced practice registered nurse (APRN), physician assistant (PA), physician, medical resident, or student actively pursuing education to become an RN, APRN, PA, or physician from performing or authorizing another individual from performing a pelvic, prostate, or rectal examination on an anesthetized or unconscious patient except in limited circumstances. The bill also specifies how medical providers must obtain informed consent for examinations. The bill authorizes the appropriate licensing board to take disciplinary action for violations of this prohibition. The State Medical Board of Ohio and the Ohio Board of Nursing regulate the impacted professionals. Thus, these boards may experience costs

to investigate violations and to take disciplinary action against a provider for any violations, as well as to adopt any necessary rules. The costs will depend on the number and scope of investigations. However, it is anticipated that the number of violations would be few. It is possible that a government-owned hospital may need to update consent forms or practices to comply with the bill.