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S.B. 100
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsors: Sens. Manning and Antonio

Local Impact Statement Procedure Required: No

Jessica Murphy, Senior Budget Analyst

Highlights

- The bill will likely affect a relatively small number of cases where the alleged conduct includes the illegal use of a tracking device or tracking application. The associated processing and sanctioning costs for any given county or municipal criminal justice system should be minimal annually, as would any gain in revenue from fines and court costs and fees.
- As a result of the bill's felony penalty enhancement that will apply to a subset of new cases, there may be a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration/supervision costs to the extent that offenders are convicted and sentenced.
- According to law enforcement representatives, authorizing law enforcement officers to collect an oral fluid sample from a person arrested for operating a vehicle under the influence (OVI) will largely be cost neutral.
- The bill increases the fines for repeated offenses of selling tobacco products to a minor and enables a business that engages in such practice to be declared a public nuisance. This may result in additional fine revenue for certain counties, townships, and municipalities related to convictions for selling tobacco products to minors. The amount of additional fine revenue will vary from jurisdiction to jurisdiction and will also depend on whether the charges are filed under the Revised Code or under local ordinance, if available.

Detailed Analysis

Prohibit installing tracking device or application without consent

The bill (1) prohibits a person from knowingly installing, without consent, a tracking device or tracking application on another person’s property or to cause such a device or application to track the position or movement of another person or their property, (2) specifies circumstances in which previously granted consent is presumed to be revoked, and (3) provides exemptions to the prohibition. A violation of the prohibition is the offense of “illegal use of a tracking device or application,” generally, a first degree misdemeanor. The penalty increases to a fourth degree felony under certain circumstances (e.g., if the offender has had a prior conviction of this offense of menacing by stalking, was the subject of a protection order at the time of the offense, or has a history of violence toward the victim). The table below shows the bill’s felony and misdemeanor sentences and fines for the new offense.

Penalties for Illegal Use of a Tracking Device or Application		
Offense Level	Fine	Term of Incarceration
Felony, 4 th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Misdemeanor, 1 st degree	Up to \$1,000	Jail, not more than 180 days

Current trends

Unwanted tracking with a device or application has been increasingly reported since the advent of certain technological advances that allow individuals to use and place electronic tracking devices on persons and property more easily and inexpensively. The technology allows users to easily track lost or stolen property such as keys, wallets, luggage, and vehicles, as well as individuals like children. In addition to these intended uses, tracking devices and/or software applications have also been reported in incidents involving theft, and more commonly, stalking.

According to the National Conference of State Legislatures (NCSL), as of September 2022, “At least 26 states and the District of Columbia have addressed privacy concerns raised when individuals track the movements of others without their knowledge.” Of that number, 11 have included prohibitions to using such technology without consent to their stalking laws: Alaska, Arizona, Connecticut, Illinois, Maryland, New York, North Carolina, North Dakota, Oklahoma, Washington, and Wyoming, plus the District of Columbia.¹ Additionally, NCSL reports that the market is growing as parents use them to safeguard their children, and caregivers use them to monitor individuals with dementia or other health conditions or special needs.

¹ National Conference of State Legislatures (NCSL), “Private Use of Location Tracking Devices: State Statutes,” September 2022. Available at [NCSL.org](https://www.ncsl.org).

Fiscal effect

The bill can be seen, at least in part, as addressing conduct that, given rapidly changing technology, may not explicitly or unambiguously violate an existing prohibition. The bill provides additional avenues to prosecute such conduct, but is unlikely to change the seriousness of sanctions that an offender could face. Currently, the conduct could be charged under the offense of “menacing by stalking,” a violation of which is generally a first degree misdemeanor.² However, “menacing by stalking” requires a pattern of conduct, which may be difficult to establish with a device or application. Anecdotal evidence suggests that it is problematic for some local prosecutors and law enforcement officials to determine an appropriate charge for unwanted tracking in the manner prohibited by the bill because such conduct is not explicitly prohibited. Prosecutors and officers may feel more comfortable charging the conduct under the new offense. Additionally, the charges maybe be more successfully prosecuted. The bill also provides for a number of exceptions including certain uses by law enforcement, parents and legal guardians, caregivers, and certain business-related activities.

The number of new criminal cases stemming from the bill, and how many of those may rise to a felony level charge, is difficult to estimate for several reasons, perhaps most notably because of the issue of detection. Based on current charging trends however, the bill will likely affect a relatively small number of cases under the jurisdiction of any given county and municipal criminal justice system. The costs associated with adjudication, prosecution, indigent defense (if applicable), and sanctioning, including residential sanctions, will likely be minimal at most annually. For those offenders convicted of a felony and sentenced to prison or supervision, the Department of Rehabilitation and Correction (DRC) would experience GRF-funded cost increase. However, the fiscal effect of a relatively small increase in an existing prison population of approximately 45,000 will not generate a significant increase in DRC’s 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 \$5,000 per offender per year.

Counties and municipalities may gain minimal annual revenue collected from violators pursuant to the order of the sentencing court. In addition, a court generally imposes state court costs that are credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The \$60 felony amount is divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020. The \$29 misdemeanor amount is divided as follows: \$20 to Fund 5DY0 and \$9 to Fund 4020.

The annual revenue gain to the state because of violations of the bill’s prohibition will be minimal at most annually.

Of note is that the court rarely imposes the maximum permissible fine, and collecting the fine and court costs and fees can be problematic. This is because offenders can be financially unable or unwilling to pay.

² Menacing by stalking is generally a first degree misdemeanor, and increases to a felony of the fourth or fifth degree depending on the circumstances present.

Oral fluid testing

The bill authorizes law enforcement officers to collect an oral fluid sample from a person arrested for operating a vehicle under the influence (OVI). Such samples may then be tested for the presence of a drug of abuse or a metabolite of a drug of abuse in order to be used as evidence related to an OVI charge. Currently, chemical testing in Ohio may include a person's whole blood, blood serum or plasma, breath, or urine. Oral fluids would be in addition to these possible other testing methods.

According to law enforcement representatives, this provision will largely be cost neutral. Testing costs for oral fluid are generally the same as those for blood and urine. Presumably, permitting the inclusion of oral fluids as a testing mechanism could create certain efficiencies for law enforcement agencies in terms of administering the tests (in the case of urine testing, gender considerations may be needed). However, for those agencies that opt to utilize this type of chemical test, there would likely be one-time costs for training, rule and policy updates, and then ongoing costs for the test kits. In CY 2022, the Ohio State Highway Patrol made 15,036 OVI arrests and 3,059 drug-impaired driving arrests. Prior to the COVID-19 pandemic, OVI convictions statewide by all law enforcement agencies averaged around 50,000 per year.

Selling tobacco products to a minor

The bill increases the fines for repeated offenses of selling tobacco products to a minor and enables a business that engages in such practice to be declared a public nuisance. Current law prohibits the selling of tobacco products to any person under the age of 21 ("minors"). "Tobacco products" means any product that is made or derived from tobacco or that contains any form of nicotine and also includes vaping products and accessories, regardless of whether they contain nicotine.

The bill generally retains the offense levels for selling tobacco products to minors:

- Misdemeanor of the fourth degree for a first offense (jail term of not more than 30 days, a fine of up to \$250, or both); and
- Misdemeanor of the third degree (jail term of not more than 60 days, a fine of up to \$500, or both) if the offender was previously convicted of the same conduct, regardless of the number of times.

While the bill retains this misdemeanor structure, it increases the applicable fines for violations as follows: \$500 for a third violation, \$1,000 for a fourth violation, and \$1,500 for a fifth or more subsequent violations. The bill will not create new criminal cases.

The bill also creates a new category of what constitutes a "nuisance" to include any place in which a pattern of continuous or repeated violations of selling tobacco products to minors has occurred. Under current law, unchanged by the bill, certain persons are authorized to bring a civil suit against a person thought to be maintaining a public nuisance.³

³ "Certain persons" include the Attorney General; the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation in which the alleged nuisance exists; the prosecuting attorney of the county in which the alleged nuisance exists; the law director of a township that has

Fiscal impact

Overall, the bill may result in additional fine revenue for certain counties, townships, and municipalities related to convictions for selling tobacco products to minors. The amount of additional fine revenue will vary from jurisdiction to jurisdiction and will also depend on whether the charges are filed under the Revised Code or under local ordinance, if available. A number of local jurisdictions statewide have enacted ordinances related to selling tobacco products to minors as well as certain business licensing regulations. As such, the magnitude of the increase in potential fine revenue will depend on the number of repeat violations in any given jurisdiction and whether those jurisdictions already have in place certain ordinances or business licensing restrictions related to the prohibited behavior (some may opt to continue to file charges under those existing ordinances). For those jurisdictions that do not have such ordinances in place, fine revenue will likely increase.

The number of businesses that may qualify, be pursued, and ultimately declared a “nuisance” under the bill is uncertain but is unlikely to result in significant additional costs or workload for county courts of common pleas or prosecuting authorities.

For background, the city of Columbus passed an ordinance in December 2016 that gave the Columbus Public Health Department the authority to regulate tobacco retailers by licensing and enforcing civil fines associated with tobacco sales to minors. As part of its enforcement efforts, the city conducts facility buy attempts, where a secret shopper will attempt an underage purchase. Violations are subject to a civil fine of \$1,000 for a first violation, \$5,000 for a second violation within two years of the first violation, and \$10,000 for a third or subsequent violation within two years of the initial violation and the license to conduct business will be revoked. In 2022, 108 out of 416 facilities, or 26.0%, buy attempts were noncompliant.