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S.B. 297
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by Senate Judiciary

Primary Sponsor: Sen. Johnson

Local Impact Statement Procedure Required: No

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Highlights

- The bill's expansion of ethnic intimidation can be seen as enhancing the penalty of certain riot offenses that are motivated by race, color, religion, or national origin. This penalty enhancement may result in minimal annual increases in: (1) GRF institutional operating expenses of the departments of Rehabilitation and Correction and Youth Services, and (2) state court cost revenue apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- The above-noted expansion will have a minimal net annual fiscal effect on the revenues and expenditures of local criminal and juvenile justice systems. However, some misdemeanor cases may move from the jurisdiction of county or municipal courts to county courts of common pleas who have jurisdiction of felony level criminal cases.
- Defining antisemitism for the purpose of investigations and proceedings by state agencies would codify an existing executive order (Executive Order 2022-06D), thus it should have no fiscal effect on most state agencies. However, it may add to the complexity of investigations and, potentially, increase charges filed for the Ohio Civil Rights Commission.

Detailed Analysis

The bill (1) expands the offense of ethnic intimidation to include the offenses of riot and aggravated riot committed by reason of the race, color, religion, or national origin of another person or group of persons, and (2) defines antisemitism for the purpose of investigations and proceedings by state agencies, including the Ohio Civil Rights Commission.

Ethnic intimidation

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 expands the list of underlying offenses for ethnic intimidation to include the offenses of riot and aggravated riot.

Based on available statistics related to both hate crimes and riot and aggravated riot incidents, the number of cases that could be affected by the bill’s expanded offense of ethnic intimidation, to include rioting offenses, will likely be small in the context of any given local criminal and/or juvenile justice system’s current caseloads. These statistics are summarized below.

Crime statistics

As seen in the crime statistics reported to the FBI that are summarized in Table 1 below, from 2019 through 2023, the number of crimes motivated by the victim’s religion ranged from a low of 24 (2019) to a high of 83 (2023) for Ohio. The number of crimes motivated by the victim’s race, ethnicity, or ancestry ranged from a low of 200 (2019) to a high of 292 (2020).¹

Over the same period, the average number of incidents of “riot” or “aggravated riot” as reported by law enforcement to the Ohio Incident-Based Reporting System (OIBRS) was 54 and 42 respectively. While OIBRS does not reflect final charging or conviction data, it may provide a sense of the overall number of violations annually of an offense.²

Year	Religion	Race/Ethnicity/Ancestry
2023	83	210
2022	56	268
2021	65	288
2020	58	292
2019	24	200
Average	57	252

¹ [Hate Crime Data](https://cde.ucr.cjis.gov) for Ohio is available on the FBI Crime Data Explorer: cde.ucr.cjis.gov.

² OIBRS is a voluntary reporting program in which Ohio law enforcement agencies can submit crime statistics directly to the state and federal government. At this time, the number of law enforcement agencies submitting data to OIBRS represents approximately 81% of the population.

Local fiscal effects

The bill will not create new criminal cases, but instead will (1) likely shift certain existing misdemeanor rioting cases from the subject matter jurisdiction of a municipal or county court to the felony jurisdiction of a court of common pleas, and (2) elevate the penalty for a rioting offense committed by a juvenile that is already under the jurisdiction of the juvenile court. Any case processing and adjudication cost savings for municipalities and related cost increases for counties will be minimal annually. The fine and court cost and fee revenue that municipalities may lose, and counties may gain as a result of such shifting will be minimal annually.

In the event of an ethnic intimidation conviction stemming from a misdemeanor offense of rioting, the bill may also shift sanctioning costs for certain adult offenders whose sentence involves a period of incarceration from a local jail to the Ohio Department of Rehabilitation and Correction.

State fiscal effects

As a result of the bill's expansion of the offense of ethnic intimidation, some number of additional offenders may be sentenced to a state prison or juvenile correctional facility and some may be sentenced to longer terms of incarceration or supervision.

In the context of the size of the state's prison population (43,500) and the number of offenders sentenced to prison annually, the number of additional offenders that could be sentenced to prison is likely to be relatively small and the associated incarceration costs minimal. The annual marginal cost for the Department of Rehabilitation and Correction to incarcerate a few additional offenders is approximately \$5,000 per offender.

The Department of Youth Services' (DYS) average daily facility population for FY 2023 was 497. The marginal cost to add a juvenile to that population in FY 2023 was around \$38 per day, or \$13,870 per year. This suggests that adding a relatively small number of juveniles to that population in any given year will result in no more than a minimal increase in DHS's annual institutional care and custody costs. It should be noted that the majority of youth adjudicated by the juvenile justice system for felony level offenses are served locally through community-based programs instead of being committed to a DHS facility.

In addition, to the extent there are additional felony convictions under the bill, 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.

Penalties and sentencing

Table 2 shows the general penalty structure of the offense of ethnic intimidation based on the additional underlying offenses of riot and aggravated riot.

Table 2. Rioting Penalties Under Ethnic Intimidation

Underlying offense	Penalty for Underlying Offense	Penalty for Ethnic Intimidation
Aggravated riot (RC 2917.02)	Fifth, fourth, or third degree felony depending on nature of violation	Penalty for the underlying offense increases by one degree to a fourth, third, or second degree
Riot (RC 2917.03)	First degree misdemeanor	Penalty for the underlying offense increases one degree to a fifth degree felony

Table 3 shows the maximum fines and possible terms of incarceration for the offense levels affected by the bill.

Table 3. Sentences and Fines

Offense Level	Fine	Term of Incarceration
Second degree felony*	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term
Third degree penalty	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Fourth degree penalty	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Fifth degree penalty	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term
First degree misdemeanor	Up to \$1,000	Jail, not more than 180 days

*The sentencing court shall impose a minimum sentence for second degree felony offenses committed after March 22, 2019. The court shall specify a maximum sentence that is 50% greater than the minimum sentence. The court may, after a hearing, reduce the minimum sentence by 5% to 15% upon recommendation of the Department of Rehabilitation and Correction.

Generally, there is a presumption in favor of community control rather than the imposition of a prison term for fifth degree felonies under current sentencing guidelines. In the case of a third degree felony, generally, there is no presumption for a prison term or community control. For second degree felonies, there is a presumption that a prison term will be imposed.

Definition of antisemitism in certain investigations and proceedings

Under the bill, when a state agency reviews, investigates, or decides whether there has been a violation of any relevant policy, law, or regulation prohibiting discriminatory acts the agency must consider the working definition of antisemitism adopted by the International Holocaust Remembrance Alliance (IHRA) on May 26, 2016, to determine whether an alleged act was motivated by discriminatory antisemitic intent. Currently, pursuant to an executive order, all state agencies, departments, boards, and commissions (including all public colleges and

universities) must use this definition, or an “appropriate alternative” definition, when taking these actions. Thus, as the bill would codify the executive order, it should have no fiscal effect on most state agencies.

However, according to the Ohio Civil Rights Commission, complying with the bill would add an additional step to their current investigatory process. This step would involve determining whether an act or practice constitutes antisemitism based upon the IHRA definition. Commission representatives stated that the bill could potentially lead to investigations into behaviors that may not necessarily constitute unlawful discrimination under current law. Some behavior under current law may rise meeting the definition of an antisemitic act, but only if other criteria are met. The bill effectively removes the burden of meeting these other criteria first.³ As a result, the Commission’s workload may increase depending on the extent to which investigations increase in complexity and the potential for additional charges of discrimination being filed annually.

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³ For example, currently an individual could make a statement one time in the workplace against those of the Jewish faith. While that behavior could constitute an act of antisemitism under the bill, under current law and practice, the behavior would have to meet the criteria of being severe or pervasive in order for the Commission to pursue a charge alleging an unlawful discriminatory act or practice.