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H.B. 531
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 531's Bill Analysis](#)

Version: As Passed by the Senate

Primary Sponsors: Reps. Lear and Lorenz

Local Impact Statement Procedure Required: No

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Highlights

- **Criminal offense.** The bill's new offenses of "sexual extortion" may create new cases (or impact related existing cases) for local criminal justice systems to process and adjudicate. The associated costs for any given local criminal justice system is expected to be minimal annually, as would be any gain in revenue from fines and court costs and fees. Any increase in felony convictions may result in a marginal increase in the size of the prison population that is supervised by the Department of Rehabilitation and Correction (DRC).
- **Custodial compliance.** Additional revenue from civil penalties may be generated annually from custodians of digital assets that fail to comply with certain court orders. Such penalties would be directed to the Attorney General's Consumer Protection Enforcement Fund (Fund 6310).
- **Warrants for electronic information.** The bill contains several provisions regarding warrants for electronic information that have little, if any, fiscal effect.

Detailed Analysis

The bill: (1) prohibits sexual extortion, (2) expedites the process for court-ordered compliance with digital asset disclosure and account termination requests initiated by parents and legal custodians or guardians of deceased users under the age of 18 or the fiduciary of the estate of that deceased user, and (3) requires service providers to comply with search warrants and interception warrants for electronic information.

Sexual extortion

The bill creates the offenses of sexual extortion. Sexual extortion prohibits a person from threatening to release, exhibit, or distribute private images of another as a means of extortion.

Generally sexual extortion is a third degree felony, set at the same level as the existing offense of extortion. However, if the offender was previously convicted of or pleaded guilty to a violation of sexual extortion, or if the offense involves a person under age 18, an elderly person, or a disabled adult (and the offender knows or has reason to know the victim is such a person), the offense increases to a second degree felony. If the offender was previously convicted of or pleaded guilty to two or more violations of sexual extortion, or a first subsequent violation if the victim is a person in a protected class, the offense increases to a first degree felony.

The table below shows the possible penalties for sexual extortion. Under current sentencing guidelines, generally, there is no presumption for a prison term or community control for a third degree felony. For first and second degree felonies, there is a presumption that a prison term will be imposed. Under the bill, a court may consider a victim's suicide, directly resulting from a felony offense, as a factor in sentencing. In some cases, this could potentially result in a different sentencing outcome, such as a prison sentence instead of community control, or a longer prison term, depending on the judge's discretion.

Felony Sentences and Fines for Sexual Extortion		
Offense Level	Fine	Term of Incarceration
Felony 1 st degree*	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years indefinite prison term
Felony 2 nd degree*	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term
Felony 3 rd degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term

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

Fiscal effect

According to the Ohio Prosecuting Attorneys Association, some of the conduct prohibited by the bill's new offenses could potentially be prosecuted under existing charges such as "extortion," "disseminating matter harmful to juveniles," or possibly "pandering obscenity," depending on the specific materials shared. However, the bill may potentially make prosecution for the specific conduct easier by clarifying that threats to distribute private images is a form of extortion. As a result, there may be a small number of additional felony cases for courts of common pleas to adjudicate, and for existing similarly situated cases, some may be more successfully prosecuted.

The costs associated with adjudicating, prosecuting, and defending (if the offender is indigent) a small number of new cases will likely be minimal annually for any single jurisdiction. Any increase in costs would be offset to some extent through court cost and fine revenue. Fines would be deposited with the county in which the trial court is located. Of note is that a 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. 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 annual revenue gain to the state because of violations of the bill will be minimal at most annually.

As a result of any convictions, there could potentially be a small number of additional offenders sentenced to prison, or a longer prison term for a small number of offenders who might have otherwise been convicted of extortion or another felony offense. The fiscal effect of a relatively small increase in an existing prison population of approximately 45,000 will not generate a significant increase in the Department of Rehabilitation 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 \$5,000 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.

Digital assets

The bill expedites the adjudication of applications for court-ordered disclosure of a deceased user's electronic communications and digital assets or termination of the account if the user was under 18 at the time of death and the request is initiated by their parent or legal custodian or guardian (at the time of death), or the fiduciary of the estate. Specifically, the bill requires courts of common pleas, within 30 days, to adjudicate these applications. The bill also requires the court to impose a range of escalating civil penalties if it finds that the custodian failed to comply with the court order. Any penalty revenue collected would be credited to the Consumer Protection Enforcement Fund (Fund 6310), which is utilized by the Attorney General.

The bill will not affect the number of applications filed in a court of common pleas for court ordered disclosure of digital assets, but may increase the administrative workload of some courts to comply with the bill's 30-day timeframe and the ordering of financial sanctions. Presumably, the number of such filings are relatively infrequent. If this is true, then any increase in operating costs for any given court would be minimal in terms of workload and staff time.

Warrants for electronic information

The bill contains several provisions regarding warrants for electronic information that have little, if any, fiscal effect. It requires providers of electronic communication services or remote computing services operating in the state to comply with any court-issued search warrant or interception warrant, regardless of whether user data is held at a location within or outside the state. Additionally, courts are permitted to issue an order on a service provider that is a corporation or entity that is incorporated or organized in this state, or a company or business entity doing business in this state under a contract or terms of a service agreement with a state resident.