



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 106 of the 131st G.A.

**Date:** April 14, 2015

**Status:** As Introduced

**Sponsor:** Rep. Schaffer

**Local Impact Statement Procedure Required:** Yes

**Contents:** Offense of public indecency

### State Fiscal Highlights

- There may be a negligible annual increase in Sex Offender Registration and Notification (SORN) Law registration fees deposited in the existing Rape Crisis Program Trust Fund (Fund 5VN0), used by the Attorney General to fund eligible rape crisis programs.

### Local Fiscal Highlights

- **County criminal justice systems generally.** The bill may increase the costs that a county criminal justice system incurs in processing certain criminal cases, as a person charged with violating the new public indecency prohibition may be far less likely to bargain in order to avoid the SORN Law registration requirement. Such cases may be more likely to go to trial, which involves additional time and effort for juries, prosecutors, and public defenders and lengthened stays in local jails.
- **County sheriffs.** The requirement that certain public indecency offenders register as Tier I sex offenders will have a negligible impact on the annual costs of sex offender registration and notification administration for county sheriff departments. These costs may be offset to some degree by the collection of additional sex offender registration fees.

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## Detailed Fiscal Analysis

### Overview

The bill creates a new prohibition under the offense of public indecency that generally prohibits a person from "knowingly" engaging in certain prohibited behaviors that are likely to be viewed by and affront others who are in the person's physical proximity, who are not members of the person's household, and who are minors. Depending on the circumstances of the violation and the person's prior convictions, a violation can be either a misdemeanor of the fourth, third, second, or first degree. The bill also requires a person who violates the new prohibition to register under the Sex Offender Registration and Notification (SORN) Law as a Tier 1 offender.

### Caseloads

Charging data for the Franklin County Municipal Court indicate that between 2010 and 2013 there were, on average, about 110 charges of public indecency each year. Extrapolating this rate to the entire state based on the population of Franklin County, and assuming all other factors remain the same, one can estimate that there were, on average, approximately 1,200 to 1,300 public indecency charges statewide during those years.

The bill appears unlikely to create many, if any, new arrests and prosecutions as the conduct is already prohibited under current law. It is unclear how many instances of public indecency, for which there is an arrest under current law, would include the fact pattern and circumstances of the new provision in the bill. Anecdotal evidence suggests there are relatively few cases of public indecency to which the new prohibition created by the bill would apply.

### State and local fiscal effects

#### Expenditures

Prosecutors with experience in sex offense cases have indicated that prosecuting public indecency violations using the bill's prohibition may be problematic. Currently, the offense of public indecency includes two prohibitions, one of which prohibits a person from "recklessly" engaging in certain conduct. The new prohibition in the bill elevates this standard of intent to that of "knowingly" committing the offense of public indecency, which is a more difficult standard to prove. To avoid the difficulty of proving what the person knew at the time of the offense, many prosecutors may choose to continue to prosecute under the current law's reckless standard. If the implementation of the bill is consistent with this scenario, it would suggest that the bill will have no fiscal effect on county criminal justice systems since the prosecution of public indecency violations would remain unchanged from the manner in which they are resolved under current law and practice.

In some cases of public indecency, however, prosecutors may pursue the case under the new provision in the bill because it includes Tier 1 SORN Law registration. A Tier 1 offender is subject to registration and verification requirements every year for a period of 15 years following their initial registration. The current law public indecency prohibitions do not require SORN Law registration upon conviction. If someone is charged with the new public indecency provision in the bill, they may be far less likely to bargain in order to avoid the SORN Law registration requirement. If the prosecutor wants the SORN Law registration as part of the sanction, these cases are more likely to go to trial which involve cost for juries, prosecution, and public defenders and possible extended jail stays. The cost for county sheriffs to register additional SORN Law registrants will be negligible.

## **Revenues**

### **Rape Crisis Program Trust Fund**

Current law requires a county sheriff to charge a fee of \$100 when a person first registers as a sex offender. That fee is deposited in the state treasury to the credit of the Rape Crisis Program Trust Fund (Fund 5NV0), which the Attorney General uses to support rape crisis centers around the state. The amount of additional fee revenue that the bill's SORN Law registration requirement may generate annually for Fund 5NV0 will be negligible.

### **County general fund**

Current law permits a sheriff to charge a Tier 1 SORN Law registrant fees not exceeding a total of \$25 for certain actions in each registration year. All such fees are paid in the county general fund and then allocated to the sheriff to be used to defray SORN Law administration costs. The amount of additional fee revenue that the bill's SORN Law registration requirement may generate annually for a county general fund will be negligible.