



# Ohio Legislative Service Commission

*Jessica Murphy*

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 439 of the 131st G.A.

**Date:** May 9, 2016

**Status:** As Reported by House Judiciary

**Sponsor:** Rep. Anielski

**Local Impact Statement Procedure Required:** No

**Contents:** Expands certain sex offenses to include an impaired person

### State Fiscal Highlights

- As result of a relatively small statewide increase in the number of felony convictions for certain sex offenses, there may be: (1) a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs, and (2) a negligible annual gain to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020) in the form of locally collected state court costs.

### Local Fiscal Highlights

- Municipal criminal justice systems may experience a minimal annual expenditure savings and a related annual revenue loss, as voyeurism cases involving an impaired individual move from the misdemeanor jurisdiction of a municipal court to the general division of a common pleas court. There may also be a related negligible annual loss in court costs, fees, and fines that might otherwise have been collected from the offender.
- The annual prosecution, defense (if indigent), and sanctioning costs of a county criminal justice system may minimally increase due to the possibility of a relatively small increase in felony sex offense cases requiring adjudication and subsequent offender sanctioning. There may be a related minimal annual revenue gain in fines, fees, and court costs collected from those offenders.

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## Detailed Fiscal Analysis

The bill expands four existing sex offenses (voyeurism, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in nudity-oriented material or performance) to prohibit some or all of the proscribed acts when they involve an impaired person. As a result of these offense expansions, two outcomes are possible (1) some sex offense cases that would have been adjudicated as misdemeanors under current law will elevate to felonies and (2) certain conduct that may or may not be illegal, or more difficult to prosecute, under current law will become somewhat easier to prosecute.

### Local fiscal effects

The potential fiscal effect of the bill is centered on county criminal justice systems as additional felony voyeurism, pandering, and nudity-oriented material charges may be filed and more convictions secured. The disposition of these charges will presumably require some time and effort for prosecution, defense if the offender is indigent, and the court of common pleas to adjudicate the cases. The net of the related increase in costs for any given county will be minimal at most annually, as the number of additional felony cases will be relatively small, especially in the context of the criminal justice system's overall caseload.

Additional felony convictions mean that a county may realize a gain in court costs, fees, and fines imposed by the court and collected from offenders. Violators of the bill's proscribed acts are guilty of either a felony of the fifth, fourth, third, or second degree depending on the circumstances present, the fine for which ranges from up to between \$2,500 and \$15,000, depending on the felony level. The courts, however, rarely impose the maximum permissible fine. It is also the case that collecting court costs, fees, and fines from offenders can be problematic, as many are financially unable or unwilling to pay. This generally suggests that the amount of additional annual revenue collected by any given county will be minimal.

The bill may also affect municipal criminal justice systems, as a relatively small number of voyeurism cases that might have been charged as a third or second degree misdemeanor will be charged as a fifth degree felony. This outcome shifts such cases out of the municipal criminal justice system and into the felony jurisdiction of a county criminal justice system. This may create a minimal annual savings effect, and related negligible annual revenue loss of fines, fees, and court costs for the municipality.

### State fiscal effects

The expectation is that the number of additional felony offenders sentenced to prison annually for a violation of one of the bill's expanded prohibitions where the victim is an impaired person will be relatively small. The likely fiscal effect will be a no more than minimal annual increase in the Department of Rehabilitation and

Correction's (DRC) GRF-funded incarceration costs. This is because a relatively small increase in an existing prison population of 50,000-plus does not generate a significant increase in DRC's annual incarceration expenditures. Although DRC's annual cost per inmate currently averages around \$24,715, the marginal cost of adding a relatively small number of additional offenders to that population is lower, between \$3,000 and \$4,000 per offender per year.

Of the four expanded sex offenses that are the subject of this bill, by far the largest number committed to prison in recent years are offenders who have violated the prohibition against pandering obscenity. Their averaged time served, which varies by offense level, ranges from 1.6 years (fifth degree felony) to 4.8 years (second degree felony).

As a result of a relatively small statewide increase in felony convictions, additional, likely negligible, revenue in the form of state court costs may be collected and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs for a felony offense total \$60, of which Fund 5DY0 receives \$30 and Fund 4020 receives \$30.

### Sentences and fines generally

The table below summarizes current law's sentences and fines for felonies of the second, third, fourth, and fifth degree, and misdemeanors of the second and third degree.

<b>Existing Sentences and Fines for Certain Offense Levels Generally</b>		
<b>Offense Level</b>	<b>Fine</b>	<b>Possible Term of Incarceration</b>
<b>Felony</b>	<b>Range</b>	<b>Prison Term</b>
2nd degree	Up to \$15,000	2, 3, 4, 5, 6, 7, 8 years definite
3rd degree	Up to \$10,000	1, 2, 3, 4, 5 years definite
4th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months definite
5th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, 12 months definite
<b>Misdemeanor</b>	<b>Range</b>	<b>Jail Stay</b>
2nd degree	Up to \$750	Not more than 90 days
3rd degree	Up to \$500	Not more than 60 days