



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 68 of the 132nd G.A.  
(L\_132\_0252-3)

**Status:** In House Criminal Justice

**Sponsor:** Rep. Anielski

**Local Impact Statement Procedure Required:** No

**Subject:** Expands certain sex offenses to include an impaired victim

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### State Fiscal Highlights

- As a 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

- 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.

### Detailed Fiscal Analysis

The bill most notably expands three existing sex offenses (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 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 sex offense 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 a felony of the fourth or third degree depending on the circumstances present, the fine for which ranges from up to between \$5,000 and \$10,000, 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.

### **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 \$24,763, 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 three expanded sex offenses that are the subject of this bill, by far the largest number committed to prison are offenders who have violated the prohibition against pandering obscenity. The total number of offenders committed annually to prison for the offense has averaged around 120 in the last few years. Their average time served, which varies by offense level, has ranged 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 credit to 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 third and fourth degree.

Existing Sentences and Fines for Certain Offense Levels Generally		
Felony Offense Level	Fine	Possible Prison Term
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

## Synopsis of Fiscal Effect Changes

Under the previous substitute version of the bill (L\_132\_0252-1) an offender charged with voyeurism where the victim is an impaired person would be charged as a fifth degree felony rather than a second degree misdemeanor as under current law. This would shift such cases out of the municipal criminal justice system and into the felony jurisdiction of a county criminal justice system which could result in a minimal savings effect (time and effort) and related negligible revenue loss (fines, fees, court costs) for the municipality. The latest substitute bill (L\_132\_0252-3) does not contain this enhanced penalty provision.

The previous substitute version of the bill imposes the same penalties for certain sex offenses involving an impaired person as those that currently apply to those offenses involving a minor. Depending on the circumstance, some offenses involving an impaired person would rise to a felony of the second degree. In such cases, the latest substitute bill changes the penalty to a third degree penalty with a maximum incarceration term of up to five years, which means the likely increase in DRC's annual incarceration costs will be less significant.