



OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: H.B. 497 of the 132nd G.A.

Status: As Reported by House Community and Family Advancement

Sponsor: Reps. Rogers and Manning

Local Impact Statement Procedure Required: Yes

Subject: Nonconsensual dissemination of private sexual images

State Fiscal Highlights

- There may be a likely no more than minimal annual increase in the incarceration-related expenditures of the departments of Rehabilitation and Correction and Youth Services, as a relatively small number of adults and juveniles, respectively, could be sentenced to confinement in a state facility.
- There will be a gain in state court cost revenue credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020), with the annual amount dependent upon the number of criminal violations and the ability to collect financial sanctions from offenders.

Local Fiscal Highlights

- Local criminal and juvenile justice system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning a potentially large number of additional offenders may create significant annual costs in many jurisdictions.
- Counties and municipalities are likely to gain additional revenue (court costs, fees, fines) from offenders convicted of violating the bill's new criminal offense. The annual amount will be dependent upon the number of criminal violations and the ability to collect financial sanctions from offenders.
- The effect of the bill's civil action provisions on the daily operations and related operating expenses of the courts will depend on the monetary amount being sought by the victim, the frequency of civil actions being filed, and the matter's legal complexity.

Detailed Fiscal Analysis

The bill: (1) creates a new first degree misdemeanor offense that prohibits the nonconsensual dissemination of private sexual images, with subsequent violations elevating to a felony of the fourth or fifth degree depending on the number of prior

convictions, (2) establishes a criminal forfeiture provision for profits or equipment related to the commission of the offense, and (3) creates a civil action in which the victim may file against the convicted offender.

Estimated caseload

In general, the fiscal impact of a new criminal offense depends on the likely number of new cases the criminal and juvenile justice systems would have to handle. Research into this subject suggests that the nonconsensual dissemination of private sexual images is not a rare or infrequent occurrence, although no systematic data appears to exist.

Several studies indicate that between 20% and 30% of various samples of teenagers and young adults have emailed or texted nude pictures of themselves to another person.¹ Further research suggests that about 10% of former intimate partners have threatened to distribute intimate photos and about 60% follow through with the threat.²

While the specific number of nonconsensual distributions that occur in Ohio is unclear, these studies suggest there is a potential for thousands of instances statewide that could be subject to charges under the bill. This number will depend on various factors, including whether a victim becomes aware of distributed images and then reports the matter to law enforcement, and the potentially time-consuming and problematic nature of investigating the matter (collecting evidence and tracking the distribution). Since it is not specifically prohibited under current law, many instances of nonconsensual distribution of private sexual images may go unreported. The bill may bring these cases into the criminal and juvenile justice systems.

State fiscal effects

State incarceration costs

If an offender has previously been convicted of nonconsensual dissemination of private sexual images, then a subsequent offense under the bill would be a felony of the fifth degree. If there are two or more previous convictions, a subsequent offense would be a felony of the fourth degree.

¹ "Sex and Tech: Results from a survey of teens and young adults," (2008), National Campaign to Prevent Teen and Unplanned Pregnancy, http://www.thenationalcampaign.org/sextech/pdf/sextech_summary.pdf.

Temple, Jeff et al. "Teen sexting and its association with sexual behaviors," *Archives of Pediatrics and Adolescent Medicine*, 166(9) (2012): 828-833.

Strassberg, DS et al. "Sexting by high school students: an exploratory and descriptive study," *Archives of Sexual Behavior*, 42(1) (2013): 15-21.

² McAfee (2013), "Lovers Beware: Scorned Exes May Share Intimate Data and Images," [Press Release] online: <http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx>.

To the extent that such subsequent convictions occur, there is the possibility of a term of incarceration either in a state prison or juvenile correctional facility, which may increase the annual incarceration costs for the Department of Rehabilitation and Correction (DRC) and the care and custody costs for the Department of Youth Services (DYS). Predicting the likely number of repeat offenders and the likelihood of their being sentenced to a term of incarceration is problematic. Given the nature of the offense, it is likely that some courts will sentence repeat offenders to be incarcerated.

In the context of the current prison population of about 49,250, if the number of affected offenders is relatively small, then the associated marginal cost for DRC to incarcerate a few additional offenders is around \$3,500 per year per offender. A much larger number of additional offenders require DRC to make various accommodations in staff and facilities. The additional annual per capita cost for a larger number of offenders is about \$26,364.

The average daily population of DYS's juvenile correctional facilities totals around 493. The marginal cost to add a juvenile to that population is \$27 per day, or \$9,855 per year. This suggests that adding a relatively small number of juveniles to that population in any given year will result in a relatively small increase in DYS's annual institutional care and custody costs.

State court cost revenues

As a result of the bill's new offense, some persons whose conduct may not have been criminal under current state law will be arrested and successfully prosecuted. This creates the possibility that the state may gain locally collected court cost revenues credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

The state court cost for a misdemeanor conviction is \$29, with \$20 of that amount being credited to Fund 5DY0, and \$9 to Fund 4020. The state court cost for a felony conviction is \$60, with \$30 of that amount being credited to Fund 5DY0, and \$30 to Fund 4020.

As the number of persons each year potentially convicted statewide may be large, the amount of court cost revenues credited to those state funds annually may also be significant depending on the number of convictions and the collection rates, the latter of which are typically low.

Local criminal and juvenile justice systems

County and municipal expenditures

Irrespective of any difficulties in making arrests and prosecuting viable cases, there will be a potentially large statewide increase in misdemeanor and felony cases for local criminal and juvenile justice systems to resolve involving persons whose conduct under current law might not have led to their being arrested, charged, and prosecuted. If this were to happen, then, theoretically at least, local system expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and

sanctioning offenders would potentially increase significantly in any affected county or municipality, particularly if the courts imposed a jail term given the nature of the offense and the damages inflicted on victims. The possible jail term for a first degree misdemeanor is not more than 180 days; the average jail cost statewide is around \$76 per day.

County and municipal revenues

If, as assumed above, the number of additional criminal and juvenile cases and successful prosecutions that will be created exclusively by violations of the bill's new prohibition may be somewhat large in any affected local jurisdiction, then the potential amount of annual revenue (court costs, fees, and fines) that might be generated for that local jurisdiction may also be significant. The actual amount collected in any jurisdiction will depend on the size of the fines imposed by the courts and the collection rates for those jurisdictions.

Criminal forfeiture

The bill also establishes a criminal forfeiture provision for profits or equipment related to the commission of the offense. Any net gain from criminal forfeiture would be offset to some extent by additional administrative costs to implement the forfeiture process.

Civil action by victim

The bill permits a victim of nonconsensual dissemination of private sexual images to file a civil action against the convicted offender. Included in the actions that the court is permitted to take is the award of compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.

The effect on the daily operations and related operating expenses of the courts will depend on the monetary amount being sought by the victim, the frequency of civil actions being filed, and the matter's legal complexity. Municipal and county courts have limited civil jurisdiction, and may only hear cases in which the amount of money in dispute does not exceed \$15,000. Common pleas courts hear all cases in which the amount of money in dispute is more than \$15,000.