



# OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 251 of the 132nd G.A.

**Status:** As Introduced

**Sponsor:** Sen. Schiavoni

**Local Impact Statement Procedure Required:** Yes

**Subject:** Nonconsensual dissemination of private sexual images

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### State Fiscal Highlights

- 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, and fines) from offenders convicted of violating the bill's criminal prohibitions. 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 by victim provision 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 legal complexity of the matter.

### Detailed Fiscal Analysis

The bill: (1) creates the offense of "nonconsensual dissemination of private sexual images," a violation of which is a third, second, or first degree misdemeanor depending on the circumstances present, (2) requires the court order a convicted offender to forfeit any property acquired or maintained in connection with the nonconsensual dissemination of private sexual images, (3) creates a civil action in which the victim may file against the convicted offender, (4) prohibits employers, higher education institutions, and public licensing authorities from taking certain actions against a victim, and (5) makes disseminating matter harmful to juveniles a third degree

misdemeanor when a violation involves the transmission of private sexual images under certain specified circumstances.

### **Estimated criminal offense caseload**

In general, the fiscal impact of the bill's misdemeanor offenses 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.<sup>1</sup> Further research suggests that about 10% of former intimate partners have threatened to distribute intimate photos and about 60% of those follow through with the threat.<sup>2</sup>

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.

### **Local criminal and juvenile justice systems**

#### **County and municipal expenditures**

Irrespective of any difficulties in making arrests and prosecuting viable cases, there is the potential for a very large statewide increase in misdemeanor 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 expenditures related to investigating, prosecuting, adjudicating, defending (if the offender is indigent), and sanctioning offenders would potentially increase significantly in any affected county or

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<sup>1</sup> "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](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.

<sup>2</sup> 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>.

municipality, particularly if the courts imposed a jail term given the nature of the offense and the damages inflicted on victims.

The table below summarizes current law's jail terms and fines generally for misdemeanors of the third, second, and first degree. The average jail cost statewide is around \$76 per day.

<b>Jail Terms and Fines for Certain Misdemeanor Offenses Generally</b>		
<b>Classification</b>	<b>Fine</b>	<b>Possible Term of Incarceration</b>
Misdemeanor 3rd degree	Up to \$500	Jail, not more than 60 days
Misdemeanor 2nd degree	Up to \$750	Jail, not more than 90 days
Misdemeanor 1st degree	Up to \$1,000	Jail, not more than 180 days

### **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 prohibitions 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 number of convictions, the size of the fines imposed by the courts, and the collection rates for those jurisdictions.

### **Criminal forfeiture of property**

Under the bill, in addition to any other penalties or dispositions, the court is required to order a convicted offender to forfeit any property acquired or maintained in connection with the nonconsensual dissemination of private sexual images. It is likely that common pleas, municipal, and county courts can absorb this forfeiture provision into their daily operations with no discernible ongoing cost. The value of the property that might be forfeited annually to the state and/or a political subdivision is indeterminate.

### **State court cost revenues**

As a result of the bill's prohibitions, 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. 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.

## **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.

## **Employment requirements**

Under the bill, an employee who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images may file a civil action against an employer for failure to comply with the bill's requirements in relation to discrimination prohibited, reasonable accommodations, paid leave, and victim confidentiality. The court may award compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action. Additionally, if the individual was wrongfully discharged, the court may reinstate the individual's employment.

Presumably, employers generally will comply with the bill's employment requirements and the number of civil actions that might be filed in common pleas, municipal, and county courts will be relatively small in the context of their overall caseloads. It is expected that state and local public employers generally will comply with the bill's employment requirements and rarely incur costs to defend their actions and pay for a remedy.

## **Higher education requirements**

Under the bill, an institution of higher education is prohibited from engaging in certain actions against an applicant or student who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images. Presumably, public institutions of higher education generally will comply with the bill's prohibition and rarely incur costs to defend their actions and pay for a remedy.

## **Public licensing authority requirements**

Under the bill, a public licensing authority is prohibited from knowingly taking certain actions against an individual who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images. Presumably, state and local licensing authorities generally will comply with the bill's prohibition and rarely incur costs to defend their actions and pay for a remedy.