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S.B. 33
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by Senate Judiciary

Primary Sponsor: Sen. Hoagland

Local Impact Statement Procedure Required: No

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Highlights

- The bill may slightly increase the number of felony offenders being sentenced to prison for criminal mischief and aggravating trespass offenses. The corresponding annual increase in GRF institutional operating expenditures is likely to be small enough that the Department of Rehabilitation and Correction (DRC) will be able to absorb it into the daily cost of operating the state prison system.
- The bill will likely elevate certain misdemeanors to felonies, which could generate a minimal amount of additional annual state court cost revenue that is apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- The bill will trigger a potential annual savings effect on municipal criminal justice system operating costs and a potential annual expenditure increase in county criminal justice system operating costs. In such circumstances, revenues in the form of court costs, fees, and fines, will also shift from the former to the latter.
- The timing and magnitude of the bill's increased organizational fines that could be collected and retained by counties is indeterminate.
- The bill's creation of a new civil cause of action for willfully causing damage to a critical infrastructure facility appears unlikely to generate any discernible ongoing fiscal effects on local trial courts, most likely courts of common pleas.

Detailed Analysis

The bill: (1) adds new prohibitions to the offenses of criminal mischief, criminal trespass, aggravated trespass, and making false alarms that pertain to specified types of conduct occurring in or on a critical infrastructure facility, (2) provides for the imposition of increased fines on organizations that are complicit in those offenses or that are complicit in specified types of telecommunications harassment involving a critical infrastructure facility, and (3) creates a new civil cause of action for willfully causing damage to a critical infrastructure facility.

Criminal offenses

Criminal mischief

Under current law, criminal mischief prohibits a broad range of conduct that generally involves knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with the property of another. The bill will not create any new criminal mischief cases, but will incorporate a much higher charge if a critical infrastructure facility is involved. The penalty for criminal mischief currently ranges from a third degree misdemeanor to a fourth degree felony, depending on the offender's conduct. The bill makes criminal mischief involving a critical infrastructure facility a third degree felony, and requires any organization found guilty of complicity in a violation be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a third degree felony.

Available data suggests that the number of criminal mischief cases statewide range from roughly 600 to 700 per year, and that the number of such cases in any given local jurisdiction involving a critical infrastructure facility will be relatively small in the context of that jurisdiction's overall criminal caseload. For example, the Franklin County Municipal Court averaged approximately 75 charges annually over the past several years. It would likely be a much smaller subset of these cases that could have involved a critical infrastructure facility as defined by the bill.

Trespass

Criminal trespass

Under current law, criminal trespass generally prohibits a person from knowingly entering or remaining on the land or premises of another. The penalty for the offense is a fourth degree misdemeanor. The bill expands this offense to include knowingly entering or remaining on a critical infrastructure facility. The bill makes criminal trespass committed in violation of the new prohibition a first degree misdemeanor, and requires any organization found guilty of complicity in a violation be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a first degree misdemeanor.

Aggravated trespass

Under current law, aggravated trespass prohibits a person from entering or remaining on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to that person. The penalty for the offense is a first degree misdemeanor. The bill adds a new prohibition under the offense of aggravated trespass that expressly prohibits a person from entering or remaining on a critical infrastructure facility with purpose to destroy or tamper with the facility. The bill

makes the penalty for this new prohibition a third degree felony, and requires any organization found guilty of complicity in a violation be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a third degree felony.

Telecommunications harassment

Under current law, unchanged by the bill, a person is prohibited from knowingly making or causing to be made a telecommunication, or knowingly permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller engages in certain specified actions. The penalty for the offense ranges from a first degree misdemeanor to a third degree felony, depending on the offender's conduct.

Under the bill, if an organization is found guilty of complicity in a violation of the telecommunications harassment prohibition involving a threat of damage to or destruction of a critical infrastructure facility, the court is required to impose a fine that is ten times the maximum fine that can be imposed on an individual for such a violation.

Making false alarms

The bill modifies the offense of making false alarms by including a new prohibition that prohibits a person from initiating or circulating a report or warning of an alleged or impending fire, explosion, or other catastrophe with knowledge that the report or warning is false and likely to impede the operation of a critical infrastructure facility. The penalty for the offense, under continuing law, ranges from a first degree misdemeanor to a third degree felony, depending on the offender's conduct.

Under the bill, if an organization is found guilty of complicity in making a false alarm involving a threat of damage to or destruction of a critical infrastructure facility, the court is required to impose a fine that is ten times the maximum fine that can be imposed on an individual for such a violation.

Fiscal effects

The bill's new prohibitions will affect local expenditures on certain criminal cases in two ways. First, it will shift certain criminal cases that would have been handled by municipal courts and county courts as misdemeanors under existing law to courts of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may realize a savings effect on their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders who commit these offenses. Second, counties could experience an increase in their annual criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.

The table below summarizes the fines ("up to" amounts) and sentences (incarceration terms in jail or prison) for misdemeanors and felonies generally under existing law. The bill specifies that, notwithstanding the "up to" fine amounts provided under existing law for an organization convicted of a criminal offense, the fine for an organization found to be complicit in a violation of one of the new prohibitions is ten times the maximum fine that can be imposed on an individual. For example, as noted in the current law table below, the maximum organizational fine for a first degree misdemeanor is \$5,000. Under the bill, the maximum

organizational fine for a violation of the new criminal trespass prohibition, a first degree misdemeanor, is ten times the individual fine of \$1,000 or \$10,000.

Current Law Sentencing for Criminal Offenses Generally		
Offense Level	Individual/Organization Fines	Term of Incarceration
1st Degree Felony	Up to \$20,000/\$25,000	3, 4, 5, 6, 7, 8, 9, 10, 11 years definite prison
2nd Degree Felony	Up to \$15,000/\$20,000	2, 3, 4, 5, 6, 7, 8 years definite prison
3rd Degree Felony	Up to \$10,000/\$15,000	1, 2, 3, 4, 5 years definite prison
4th Degree Felony	Up to \$5,000/\$10,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months definite prison
5th Degree Felony	Up to \$2,500/\$7,500	6, 7, 8, 9, 10, 11, 12 months definite prison
1st Degree Misdemeanor	Up to \$1,000/\$5,000	Not more than 180 days in jail
2nd Degree Misdemeanor	Up to \$750/\$4,000	Not more than 90 days in jail
3rd Degree Misdemeanor	Up to \$500/\$3,000	Not more than 60 days in jail
4th Degree Misdemeanor	Up to \$250/\$2,000	Not more than 30 days in jail

Given the number of criminal cases in any given local jurisdiction that will be affected by the new prohibitions appears to be relatively small, any potential decrease in annual municipal criminal justice system expenditures and any potential increase in annual county criminal justice system expenditures would likely be no more than minimal. Conversely, it creates the possibility that counties may gain and municipalities may lose court cost, fee, and fine revenue. The amount of annual court cost, fee, and fine revenue that municipalities might lose and counties might gain would be no more than minimal.

As noted, with regard to the bill's prohibitions, any organization found guilty of complicity in a violation of that prohibition is required to be punished with a fine that is ten times the maximum fine that can be imposed on an individual convicted of that offense. The timing and magnitude of such a fine being imposed on and collected from an organization is indeterminate. Generally speaking, such a fine would be retained by the county in which the court adjudicating the matter is located.

The new criminal mischief and aggravated trespassing prohibitions may also slightly increase the number of felony offenders being sentenced to prison. Under current law, it appears that very few persons are sentenced to prison for criminal mischief. Under the bill, if the violation involves a critical infrastructure facility, it becomes a third degree felony and a few offenders may be sent to prison. The marginal annual cost for such a small number of additional offenders would be around \$3,600 per offender; the Department of Rehabilitation and Correction (DRC) will be able to absorb this into its daily cost of operating the state prison system.

The new criminal mischief and aggravated trespassing prohibitions may also lead to a minimal annual gain for the state in the amount of locally collected court cost revenue apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). This is because the total amount of state court costs imposed on an offender and apportioned between Fund 5DY0 and Fund 4020 is higher for a felony (\$60) than it is for a misdemeanor (\$29).

Civil liability for willful damage

Existing law, unchanged by the bill, authorizes a person who is injured in person or property by a criminal act to bring a civil action against the offender to recover damages and, if authorized under any other provision of law, to recover costs of maintaining the action, attorney's fees, and punitive or exemplary damages. The bill creates a new civil action to recover damages from a person who willfully causes damage to a critical infrastructure facility.

It is unclear whether this provision will increase the number of civil court filings because a property owner experiencing damage to that property can already file a civil action regardless of whether that property contains a critical infrastructure facility. This suggests that the provision appears unlikely to generate any discernible ongoing fiscal effects on local trial courts.