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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 368
(1_133_1400-4)
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 368's Bill Analysis](#)

Version: In House Criminal Justice

Primary Sponsor: Rep. Baldrige

Local Impact Statement Procedure Required: No

Shaina Morris, Budget Analyst

Highlights

- It is likely that local criminal justice systems generally will experience some increase in their annual operating costs, in particular counties as they have jurisdiction over felonies. Although such a cost increase is not readily quantifiable, it should be relatively small for any given county criminal justice system and more or less absorbed by utilizing existing staff and resources.
- The bill may result in a marginal increase in the size of the prison population that the Department of Rehabilitation and Correction (DRC) will likely absorb by utilizing existing staff and resources.
- The bill's civil remedy provision appears unlikely to generate any discernible ongoing fiscal effects on common pleas, municipal, and county courts that have jurisdiction based on the amount in controversy.

Detailed Analysis

The bill: (1) revises and relocates existing prohibitions of certain computer related activities, (2) creates a number of new prohibitions that encompass other types of computer related activities, and (3) provides for civil remedies to persons harmed by any violations.

Prohibited conduct

The bill amends certain existing criminal law as it relates to computer related activities. It appears that much of the conduct addressed by the bill is prosecutable under current law, for example, under the offenses of theft, unauthorized use of property, tampering with records,

disrupting public services, and vandalism.¹ The bill can be seen, at least in part, as addressing conduct that, given rapidly changing technology, may not explicitly, or unambiguously, violate an existing prohibition. Under the bill, such conduct may be more prosecutable.

LBO has not collected any evidence suggesting that the bill will have a significant effect on county criminal justice systems. It will affect to some degree existing computer related cases, and may generate a few new such cases. As a result, county criminal justice systems generally will experience some increase in their annual operating costs. Although such a cost increase is not readily quantifiable, it should be relatively small for any given county criminal justice system and more or less absorbed by utilizing existing staff and resources.

It is possible that additional offenders may be sentenced to prison or that some offenders will be sentenced to prison for a longer stay than would have occurred under current law. The result may be a marginal increase in the size of the prison population that the Department of Rehabilitation and Correction (DRC) will likely absorb by utilizing existing staff and resources. For FY 2018, the average annual cost per inmate was \$27,835 (\$76.26 per day). The annual marginal cost for adding an additional offender to the prison system is about \$4,000 per offender.

Existing prohibitions

Current law contains two main prohibitions of certain computer related activities. The first is criminal mischief, which prohibits a broad range of conduct that includes impairing the functioning of a computer, computer system, computer network, computer software, or computer program. The penalty for criminal mischief ranges from a first degree misdemeanor to a fourth degree felony, depending on the value of the property involved. The bill eliminates this manner of committing criminal mischief as it applies to computers, and replaces it with new prohibitions related to electronic computer service interference, tampering, and manipulation (see table below).

The second current offense is the unauthorized use of a computer, cable, or telecommunications property prohibiting, among other things, unauthorized access to another's computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service. The penalty for violating this prohibition ranges from a fifth degree felony to a second degree felony, depending on the value of the loss. The bill limits this prohibition to enact new prohibitions that encompass unauthorized use, attempted use, and other computer related activities (see table below).

¹ It appears that much of the conduct addressed by the bill also violates existing federal criminal law. Thus, it is likely that the federal government can and is taking action in such matters involving computer crimes, and by doing so, assumes the associated investigative, prosecutorial, adjudication, and sanctioning costs. <https://www.justice.gov/usao-ndoh/pr/akron-man-sentenced-six-years-prison-launching-denial-service-attacks-shut-down-web>.

New prohibitions

The bill creates the five computer related felony offenses summarized in the table below. For each of those offenses, the table notes the degree(s) of the felony offense, the amount of the fine that may be imposed on an individual or organization, and the length of the potential prison term. The fines and terms of incarceration reflect current law, which is unchanged by the bill. Under current law, in the case of fourth and fifth degree felonies, there is a presumption generally in favor of a community control rather than the imposition of a prison term. In the case of a third degree felony generally, there is no presumption for a prison term or community control. The bill also provides for a penalty enhancement if the offender acted recklessly with regard to the victim's status as elderly or disabled.

Sentences and Fines for Bill's New Criminal Offenses			
Offense	Degree Level	Fines	Term of Incarceration
Electronic computer service interference	4 th degree felony	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Electronic data tampering	3 rd degree felony	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Electronic data manipulation	4 th degree felony	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Computer trespass*	2 nd degree felony	Up to \$15,000	Indefinite prison term consisting of minimum term selected by the sentencing judge from the range of terms authorized for a felony of the second degree (2, 3, 4, 5, 6, 7, or 8 years), and maximum term set by statute and based on the minimum selected
	3 rd degree felony	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
	4 th degree felony	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
	5 th degree felony	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term
Electronic data theft	3 rd degree felony	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Unauthorized data disclosure	3 rd degree felony	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term

*Refer to the LSC bill analysis for the circumstances that determine the applicable degree of the felony.

Civil action

The bill allows a person affected by a violation of any of the bill's prohibitions to bring a civil action against the convicted person within two years of the violation or discovery of the damage, whichever is later. If, as noted above, much of the conduct addressed by the bill is prosecutable under current law, then it is likely that such a person can already file a civil action seeking damages in the appropriate local trial court. This suggests that the bill may affect the outcome of such cases, but is unlikely to generate a significant number of new civil filings for any given trial court to adjudicate. There should be no discernible ongoing fiscal effects on the court's daily operations.

Under current law, courts of common pleas have original jurisdiction in all civil cases in which the amount in controversy exceeds \$15,000. The jurisdiction of municipal and county courts in civil cases is limited to matters in which the amount of money in dispute does not exceed \$15,000.

Conforming changes

The bill makes numerous conforming changes to existing law. These changes appear to have no discernible fiscal effects on the state or its political subdivisions.

Synopsis of Fiscal Effect Changes

From a fiscal perspective, the two substantive differences between the latest substitute bill (I_133_1400-4) and the immediately preceding version (I_133_1400-3) are summarized below. The likely net effect is that there may be a relatively small increase or decrease in the size of DRC's annual prison population from what otherwise may have occurred under the immediately preceding version of the bill. Such a change generally affects DRC's annual marginal cost of adding or subtracting a relatively small number of offenders to its prison population, which is around \$4,000 per offender per year.

- The latest version adds "attempt" to violate the bill's new criminal prohibitions as a violation subject to the same penalties as an actual violation. This makes it possible that additional offenders may be sentenced to prison or that offenders will be sentenced to prison for a longer term than otherwise may have been the case under the immediately preceding version of the bill.
- The latest version requires the offender to have acted "recklessly" to enhance the penalty for a violation of the offense of computer trespass when the victim is elderly or disabled. This makes it possible that fewer offenders may be sentenced to prison or that offenders will be sentenced to prison for a shorter term than otherwise may have been the case under the immediately preceding version of the bill.