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H.B. 459
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Cutrona and LaRe

Local Impact Statement Procedure Required: Yes

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Highlights

- County sheriffs will incur one-time and ongoing administrative work to check and verify additional information related to sex offender registration, make determinations of compliance with the bill's new restrictions, and identify which of the offenders subject to registration duties prior to the effective date of the bill fall into a "restricted category." Increases in workload, and related costs, will largely depend on the number of sex offenders residing in their respective jurisdictions.
- The Attorney General's Bureau of Criminal Investigation (BCI) will incur significant, one-time costs to modify Ohio Law Enforcement Gateway (OHLEG) software related to the additional information that the sheriffs will be required to forward for inclusion in the state's Registry of Sex Offenders and Child-Victim Offenders. The ongoing workload may require BCI to hire additional staff, the cost of which is estimated at between \$59,000 to \$73,000 annually per hire for salary and benefits.
- The potential for settled cases being reopened to determine which offenders are "restricted" is uncertain, as are any related costs for courts, prosecutors, and possibly public defense counsel.
- The potential local fiscal effects of the bill's remedies for violations on operations of law enforcement, prosecutors, courts, public defense counsel, and sanctioning systems, are uncertain.

Detailed Analysis

The bill establishes two "restricted offender categories" that apply to certain offenders convicted of (1) a sexually oriented offense involving a victim under age 18, or (2) a child-victim oriented offense. Offenders in either category are prohibited from serving in an employer,

employee, contractor, or volunteer position that affords extensive contact with minor children.¹ The two categories account for the replacement of Megan’s Law, the state’s prior sex offender classification system, with the Sex Offender Registration and Notification Law (SORN Law) that went into effect on January 1, 2008, and are as follows:

1. The offender is either a Tier II or a Tier III sex offender/child-victim offender with respect to the offense; or
2. The offense was committed prior to January 1, 2008, and under the version of the SORN Law in effect prior to that date, the offender was adjudicated or classified a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender with respect to the offense.

Note that the “restricted offender category” includes only convicted criminal offenders and does not include children adjudicated delinquent. The table below shows the number of adult offenders in the Registry of Sex Offenders and Child-Victim Offenders as of March 2021. An unknown subset of these offenders would be subject to the bill’s restrictions.

Table 1. Sex Offenders in Ohio, March 2021*	
Sex Offender Classification System	Adult Offenders
Sex Offender Registration and Notification (SORN) Law	8,139
Tier II: Required to register for 25 years; verify address every 180 days	5,767
Tier III: Required to register for life; verify address every 90 days	2,372
Megan’s Law	6,554
Sexual offender/child-victim offender: registration required annually for 10 years	1,633
Habitual offender: registration required annually for 20 years	557
Sexual predator/child-victim predator: registration required every 90 days for life	4,364
Total	14,693

*The table excludes data on Tier I offenders because these offenders are not in a “restricted offender category.”

The bill states that the application of the restrictions described above to a person who committed the person’s sexually oriented offense or child-victim oriented offense prior to the bill’s effective date is procedural and remedial, pertains to conduct of the person occurring on or after that date, and does not impose punishment on the person for the sexually oriented offense

¹ The bill provides a 90-day time frame for a person in a “restricted offender category” serving in a prohibited capacity prior to the effective date of the bill to come into compliance with the prohibition.

or child-victim oriented offense. This means that the bill will apply to existing registrants and new registrants.

SORN Law registration and offender categorization

The bill expands the information that an offender who registers a place of employment address under the SORN Law must provide in the registration form with respect to their employer if they are in the “restricted category.” The provision of this information allows a county sheriff to ensure compliance with the bill’s restrictions.

The bill does not change existing sex offender registration and address verification duties. Rather, it will require a sheriff to perform additional administrative functions related to checking and verifying certain information related to sex offenders residing in their jurisdiction. The sheriff or their designee will be required to make determinations on whether a restricted offender is in compliance with the bill based on the offender’s detailed description of their position and duties of employment.

According to the Buckeye State Sheriffs’ Association, this new administrative function could create a burdensome level of additional work for sheriffs, as it is unclear what information would need to be contained in the detailed description to allow for an accurate determination of compliance. Some descriptions might be easily discerned as affording extensive contact with minors (coaching, school, and daycare); other descriptions would be more problematic and labor intensive (hospitality or retail services).

Moreover, the administrative burden to identify existing registrants that are restricted would also be significant, albeit one time. Presumably, urban counties with higher concentrations of registered sex offenders will experience a higher level of administrative burden. This work is necessitated by the fact that the new restrictions are procedural and remedial, and as such, can be imposed on those convicted prior to the bill’s effective date. As of March 2021, Ohio had 20,041 registered, nonincarcerated sex offenders. Of this total, 94% (18,784) were adults and 6% (1,257) were juveniles based on their age at the time of the offense. As mentioned, the bill’s restrictions will only apply to a subset of adult offenders.

It has been suggested that there is the potential for settled cases being reopened to determine which offenders are “restricted,” which would result in a one-time influx of case reviews. However, the Ohio Judicial Conference indicated that it is unlikely that the courts would have to preemptively hold a hearing for all possible “restricted” offenders convicted prior to the effective date of the bill. It appears that sentencing courts are required to notify offenders of their registration duties upon conviction and offenders who are sentenced to a prison term would be notified again by the Department of Rehabilitation and Correction (DRC) prior to their release pursuant to continuing law. The notification of the bill’s restrictions and information requirements will be incorporated into the notification of existing duties.

Additional information in the state’s sex offender registry

Currently, after an offender registers with a sheriff, the sheriff must forward the registration form and other material to the Attorney General’s Bureau of Criminal Investigation (BCI) under specified procedures. If an offender registers a school or place of employment address, the sheriff also must notify the law enforcement agency with jurisdiction over the premises of the school or place of employment of the offender’s name and that the offender has registered that address as a place at which the offender attends school or is employed. BCI must

include the information and materials forwarded in the state’s State Registry of Sex Offenders and Child-Victim Offenders established and maintained under the SORN Law.

The bill expands the information that the sheriff must provide to BCI to also require the sheriff to provide the description and the signed or sworn statement regarding employment if they were included with the registration. As with other information and materials provided to it, BCI must include this description or statement in the State Registry.

BCI anticipates considerable costs for programmatic changes to the Ohio Law Enforcement Gateway (OHLEG) software for the additional information that sheriffs will be required to track with regard to offender employment and volunteer work. There will also be an increase in call and email volume to the helpdesk stemming from questions about the new requirements and “how to” questions about the programmatic changes in the software. The workload increase may require BCI to hire more staff for its OHLEG division. The annual cost of a starting OHLEG Specialist, inclusive of benefits, ranges from \$59,000 to \$73,000.

Restriction violations

The bill provides that if an offender violates either restriction described above, a prosecutor may bring an action for an injunction for the violation or, if the offender previously had been subjected to an injunction for a violation of such a restriction, that the violation is a criminal offense. The penalty for a violation of the bill’s repeat violator restriction is generally a first degree misdemeanor, and elevates to a third or first degree felony penalty based on the number of prior restriction convictions. The following table shows existing law’s sentences and fines that will apply to violations of the bill’s restrictions.

Offense Level	Maximum Fine	Term of Incarceration
Felony 1 st degree*	\$20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years definite prison term
Felony 3 rd degree	\$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Misdemeanor 1 st degree	\$1,000	Jail, not more than 180 days

*For first and second degree offenses committed on or after March 22, 2019, that are not subject to life imprisonment, judges impose both a minimum and maximum prison term. Release is presumed at the expiration of the minimum prison term. Judges select a minimum prison term from the R.C. 2929.14(A) range. The maximum prison term is generally calculated as the minimum prison term plus 50% of itself.

Current SORN Law registration duties imposed on offenders must be satisfied within specified periods of time and have criminal penalties that apply if they are not timely satisfied. The bill does not change these penalties, but they will apply to a “restricted” offender that fails to provide accurate information required by the bill.

Calculating the fiscal effects of the bill’s restriction violation remedies is problematic because of a variety of unknowns, including the definition of a position that “affords extensive contact with minor children,” the number of registrants to whom the restrictions would apply, the number of likely violators, the number of likely repeat violators, and the number of registrants in a position for whom a background check may make a restriction violation less likely. Thus, the potential local fiscal effects on operations of law enforcement, prosecutors, courts,

public defense counsel, and sanctioning systems are uncertain. Assuming that the number of repeat violators is relatively small, any resulting increase in the Department of Rehabilitation and Correction's incarceration cost is likely to be minimal annually.