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H.B. 322
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 322's Bill Analysis](#)

Version: As Passed by the House

Primary Sponsors: Reps. Seitz and Abrams

Local Impact Statement Procedure Required: No

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Highlights

- The bill's impact on individual local criminal justice systems related to prosecuting, defending (if indigent), adjudicating, and sanctioning of offenders, will depend how frequently the new offense of grooming will be charged as a standalone offense, opposed to an additional charge involving other existing offenses.
- The bill's felony penalties for the offense of grooming will result in a relatively small increase in an existing prison population of approximately 44,000. The marginal cost for Department of Rehabilitation and Correction to add a relatively small number of offenders to its total inmate population is estimated at around \$4,000 per year.
- The bill replaces the criminal penalties for failing to comply with the Child Sex Abuse Registry requirements with a civil penalty.
- By extending the period in which a prosecution may be brought for failure to report child abuse and neglect, a few additional misdemeanor cases are likely to be filed that otherwise would be barred under the current statute of limitations. There would be no discernible ongoing annual fiscal effects on municipal and county courts to adjudicate a small number of additional cases.

Detailed Analysis

Childhood sexual abuse registration and community notification

The bill makes various changes related to the Child Sex Abuse Registry. Most notably, the bill provides that if a registrant fails to comply with the registration, notice, and verification requirements, the penalty for a violation of the offense is a civil penalty of up to \$2,500, instead

of a fifth degree felony. The bill is silent as to how those penalties are to be distributed. The replacement of the criminal penalty remedies a case law finding regarding the criminal penalty.

The bill makes other modifications that are largely procedural. For example, the bill allows the aggrieved person to file a civil action to enforce the registry's verification requirements if the prosecuting attorney does not file the action within 45 days after the failure to comply was referred from the sheriff. Courts of common pleas should be able to absorb any additional civil action filings into their caseloads with minimal, if any, effect on daily operations and related costs.

The bill also extends, from two to four years, the statute of limitations for commencing a criminal prosecution against a mandatory reporter that fails to report child abuse or neglect. Unchanged by the bill, those subject to the mandatory reporting requirements include but are not limited to attorneys, doctors, dentists, nurses, home health agency employees, nursing home employees, firefighters, peace officers, and clergy. It appears that mandatory reporters generally perform their duty in good faith and reported violations of their duty to report occur infrequently. This suggests that there will be no discernible ongoing annual fiscal effects on municipal and county courts to adjudicate a small number of additional misdemeanor cases.

Offense of grooming

The bill creates the offense of "grooming" to allow prosecutors to pursue criminal penalties against individuals who demonstrate a pattern of conduct with the purpose of engaging in sexual activity with a minor. The bill defines "pattern of conduct" as two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization.

Two types of behavior are tied to the new offense. The first applies to offenders 18 years or older when the victim is less than 16 years and who is four or more years younger than the offender. The second applies to offenders in a relationship of trust with a minor victim, such as a parent, stepparent, guardian, teacher, coach, etc. A violation is a second or first degree misdemeanor, depending on which prohibition is violated, and increases to a felony of the third, fourth, or fifth degree in certain circumstances (e.g., the victim is less than 13, the offender supplied drugs/alcohol to the victim, the offender has a prior conviction of grooming or a sexually oriented/child-victim oriented offense). The [LSC bill analysis](#) describes in greater detail the conduct and circumstances that determine a violation of these prohibitions and the associated penalty level.

The following table shows the possible fine and term of incarceration applicable to each applicable offense level.

Table 1. Felony Sentences and Fines for Grooming		
Offense Level	Fine	Term of Incarceration
Felony 3 rd degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term

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Offense Level	Fine	Term of Incarceration
Felony 4 th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony 5 th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term
Misdemeanor 1 st degree	Up to \$1,000	Jail, not more than 180 days
Misdemeanor 2 nd degree	Up to \$750	Jail, not more than 90 day

Criminal caseloads

According to the Ohio Prosecuting Attorneys' Association, while the new offense could be used as an additional charge that is tied to a more serious offense such as importuning, more likely it will be charged as a standalone offense to prevent conduct from becoming more serious.

The possibility that new criminal cases will be created means that annual costs for local criminal justice systems to prosecute, adjudicate, defend (if indigent), and sanction persons may rise. The amount of the annual increase in any given local jurisdiction will depend on the number of new misdemeanor and felony cases generated. It is problematic to precisely estimate the number of likely new cases, given lack of established prevalence rates of the number of child sexual abusers who employ sexual grooming tactics. In 2020, the Journal of Child Sex Abuse, published an online article on the process and behaviors that constitute sexual grooming.¹ With respect to prevalence, the article suggests the following:

1. Sexual grooming is a deliberate process that is highly complex and nuanced, often mirroring normal adult/child interactions. As such, the general public has trouble identifying potentially predatory sexual grooming behaviors.
2. The goals of grooming are to gain initial cooperation from the victim, decrease the likelihood of discovery, and increase the likelihood of future sexual contact.
3. It is estimated that almost half of all child sexual assault cases involve some element of grooming.

Prison population

The bill's felony penalty increases may lead to additional sex offenders being sentenced to prison. Based on Department of Rehabilitation and Correction (DRC) commitment data from CY 2018 through CY 2022 (shown in Table 2 below), sex offenses accounted for an average of 8.4% of total commitments annually.

¹ Georgia M. Winters, Elizabeth L. Jeglic & Leah E. Kaylor (2020): Validation of the Sexual Grooming Model of Child Sexual Abusers, Journal of Child Sexual Abuse (DOI: 10.1080/10538712.2020.1801935) available at tandfonline.com.

Table 2. Prison Commitments for Sex Offenses, CY 2018-CY 2022²					
Offense	2018	2019	2020	2021	2022
Sex offenses	1,373	1,335	961	1,210	1,218
Total Commitments	17,596	16,856	11,174	13,677	14,090

As a result, DRC may experience an increase in related operating and incarceration costs. The average cost to house an offender in CY 2022 was \$99.96 per day or \$36,485.40 per year. However, when considering the marginal cost increase, the cost to house an individual inmate was \$11.31 per day or \$4,128.15 per year during CY 2022. Marginal costs are based on additional medical and mental health costs as well as food and clothing. It does not include additional security, facility, or administrative costs which have already been factored into the overall operating costs of DRC. For purposes of this fiscal note, using the marginal cost rate seems reasonable to presume. The number of offenders who may be affected by the bill's felony penalties in any given year is indeterminate and will ultimately depend on the number of grooming charges and whether there are accompanying charges, the type of conduct involved and the offender's criminal history, as well as the outcome of the local adjudication process.

State and local revenues

Any increase in criminal cases and subsequent convictions because of the bill may lead to a gain in related state and local revenues. The state revenues would be in the form of locally collected state court costs, in the amount of \$29 for a misdemeanor and \$60 for a felony. Those amounts are apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). Counties and municipalities may gain revenues in the form of local court costs, fees, and fines. The amount of revenue that either the state or local governments may gain annually is likely to be negligible, as the number of affected cases is expected to be relatively small, and the difficulties of collecting financial sanctions from unwilling or indigent offenders.

² See [DRC Commitment Reports](https://drc.ohio.gov) for CY 2018 through CY 2022, which are available on DRC's website: drc.ohio.gov.