OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

S.B. 393
136th General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 393's Bill Analysis

Version: As Passed by the Senate

Primary Sponsors: Sens. Timken and Manning

Local Impact Statement Procedure Required: No

Jessica Murphy, Senior Budget Analyst

Highlights

- The bill's penalty enhancements will shift some cases from misdemeanor to felony jurisdiction and increase penalties for certain existing offenses, primarily felonies. These changes, along with some number of additional cases stemming from expanded offenses, may minimally increase local criminal justice costs. Any such increase is likely to be absorbed with existing resources, and some costs may be offset by court cost and fine revenue.
- The increase in the Department of Rehabilitation and Correction's incarceration costs will depend on the number of offenders who serve longer terms, the additional time imposed, and the marginal and institutional cost per offender for each additional year of confinement. Some additional offenders will receive prison terms and others will serve longer terms, which will create a stacking effect on the prison population. This effect will build gradually and peak several years after the bill takes effect.
- The bill's juvenile-to-juvenile sexting offenses may produce a minimal annual savings for the Department of Youth Services, as a small number of youth who might otherwise have been committed may instead receive local sanctions.

Detailed Analysis

The bill makes changes to various sexually oriented offenses involving juvenile victims and enhances the penalty for certain offenses related to sexual conduct with an animal. Full details, including tables comparing current law penalties with those proposed in the bill, are available in the LSC bill analysis. To help illustrate the impact of any changes in offense levels described in that analysis, Table 1 below lists the maximum fines and terms of incarceration for each offense level under current law.

For purposes of this fiscal analysis, the bill's offenses are grouped into the following three sections with the fiscal effects following each section: (1) sexually oriented offenses involving juvenile victims, (2) juvenile-to-juvenile sexting, and (3) sexual conduct with an animal.

Table 1. Felony and Misdemeanor Sentences and Fines for Offenses

Offense Level	Fine	Term of Incarceration
Felony 1st degree*	Up to $20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years indefinite prison term
Felony 2nd degree*	Up to $15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term
Felony 3rd degree	Up to $10,000	9, 12, 18, 24, 30, or 36 months definite prison term
		12, 18, 24, 30, 36, 42, 48, 54, or 60 months definite prison term**
Felony 4th degree	Up to $5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony 5th degree	Up to $2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term
Misdemeanor 1st degree	Up to $1,000	Jail, not more than 180 days
Misdemeanor 2nd degree	Up to $750	Jail, not more than 90 days
Misdemeanor 3rd degree	Up to $500	Jail, not more than 60 days
Misdemeanor 4th degree	Up to $250	Jail, not more than 30 days
Minor misdemeanor	Up to $150	Citation issued; not subject to arrest or jail

*The sentencing court shall impose a minimum sentence for first and second degree felony offenses committed after March 22, 2019 (definite sentences were previously imposed). The court shall specify a maximum sentence that is 50% greater than the minimum sentence. The court may, after a hearing, reduce the minimum sentence by 5% to 15% upon recommendation of the Department of Rehabilitation and Correction.

**The longer sentence range applies to aggravated vehicular homicides and assaults, sexual battery, gross sexual imposition, sex with a minor, and robbery or burglary with two or more separate aggravated or nonaggravated robberies or burglaries.

Sexually oriented offenses involving juvenile victims

Unlawful sexual conduct with minor

Under current law, no person who is 18 years of age or older is permitted to engage in sexual conduct with another when the offender knows the other person is 13 years old or older but less than 16 years old. The bill increases the penalty from a third degree felony to a second degree felony when the offender is ten or more years older than the other person and has not been previously convicted of rape, sexual battery, or unlawful sexual conduct with a minor.

Because the penalty for this circumstance of sexual conduct with a minor is increased, it is possible that some offenders may serve longer sentences in the custody of the Department of Rehabilitation and Correction (DRC) (up to three additional years), potentially leading to a stacking effect over time. The table below provides some context regarding the current inmate

population, based on DRC commitment data from CY 2018 through CY 2022. Third degree felony sexual conduct with a minor as the most serious committing offense accounted for an average of 0.37% of total commitments annually.

Table 2. Prison Commitments Unlawful Sexual Conduct with a Minor (F3), CY 2018-CY 2022[1]

Offense	2018	2019	2020	2021	2022
Unlawful sexual conduct with a minor (F3)	76	50	43	44	57
Total Commitments	**17,596**	**16,856**	**11,174**	**13,677**	**14,090**

The bill also creates new circumstances for the offense of unlawful sexual conduct with a minor that address sexual conduct with victims who are 16 years of age or older, but less than 18 years when there is an age gap of four or more years between the victim and the offender.

The Ohio Prosecuting Attorneys' Association (OPAA) indicates these new circumstances function essentially as raising the age of consent, creating new charging opportunities where none exist under current law. In cases where the offender is less than ten years older than the victim, the penalty is a first degree misdemeanor. When the offender is ten or more years older than the victim, the penalty is either a fourth degree or second degree felony, depending on if the offender has been previously convicted of rape, sexual battery, or unlawful sexual conduct with a minor.

Gross sexual imposition

The bill expands the offense of gross sexual imposition to prohibit a person having sexual contact with another, causing another to have sexual contact with the offender, or causing two or more other persons to have sexual contact when the offender knows either of the following or the offender is reckless in regard to either of the following: (1) the other person or one of the other persons is 16 years of age or older and less than 18 years of age and four or more years younger than the offender, or (2) the other person or one of the other persons is 13 years of age or older but less than 16 years of age and four or more years younger than the offender. Under the first scenario, a violation could be charged as a second degree misdemeanor. Under the second scenario, a violation could be charged as a fourth degree felony.

According to OPAA, these changes address situations where the offender does not use force, threats, or exploit impairment. In those situations, the new circumstances would allow charges to be brought based on the victim's age and the age gap, which under current law could not be charged under this offense.

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

Pandering of material involving minors and artificial depictions

The bill expands the offense of "pandering obscenity involving a minor or impaired person" to include "depictions of a purported minor."[2] It also expands the offenses of "pandering sexually oriented matter involving a minor or impaired person" and "illegal use of a minor or impaired person in nudity-oriented material or performance" to include "artificially generated depictions"[3] of minors.

Additionally, the bill provides enhanced penalties for certain circumstances of these offenses generally related to the age of the minor involved, the presence of violent content, and the quantity of material. Depending on the nature of the violation, the enhancement may either retain the existing felony level but require a mandatory prison term, or increase the felony level and require a mandatory term. Notably, it provides an additional five-year mandatory prison term if the offender is at least 18 at the time of the offense and convicted of a specification that the material possessed by the offender consisted of 100 or more images.

According to OPAA, these changes would create new charging possibilities. Because these offenses currently require that an actual person be depicted, these circumstances cannot be prosecuted so there may be more criminal charges, cases, and convictions of such offenses as a result of these expansions and clarifications.

Fiscal effect

Adjudication costs and revenues

To the extent that the bill's newly created circumstances and expanded offenses result in additional misdemeanor or felony cases, local criminal justice agencies could experience increased costs related to investigating, prosecuting, adjudicating, and sanctioning offenders, as well as providing defense counsel if the offender is indigent.

Any increase in costs associated with prosecuting and adjudicating new cases generated by the bill could be partially offset by revenue from court costs and fines. Fine revenue, which may increase due to the various penalty enhancements (see Table 1 above for comparisons) would be deposited with the county in which the trial court is located. However, courts rarely impose the maximum allowable fine, and collecting fines, fees, and court costs can be difficult because offenders may be unable or unwilling to pay. Additionally, courts typically impose state court costs that are credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims

[2] A "depiction of a purported minor," for purposes of the bill, is a visual representation that appears to depict an actual minor that a reasonable person would believe depicts or represents an actual minor but may or may not depict an actual minor (R.C. 2907.321(E)(2)).

[3] An "artificially generated depiction," for purposes of the bill, is a visual depiction of an actual person that was created or edited by artificial intelligence or other computer-generated means and that a reasonable person would believe depicts or represents an actual person who is identifiable by the person's face, likeness, or other distinguishing characteristic (R.C. 2907.321(E)(1)).

of Crime/Reparations Fund (Fund 4020).[4] As a result, any annual revenue gain to the state created by the bill is expected to be minimal.

The number of cases that may be affected by the bill's penalty enhancements is not readily quantifiable. The new mandatory terms may also influence the amount of time and effort required by prosecutors, defense attorneys, and the courts to resolve these cases, particularly if the possibility of longer prison sentences affects plea negotiations. OPAA expects that the mandatory terms and specification could encourage offenders to plead. However, because mandatory terms must be served first and consecutively to any other mandatory terms, they will result in longer overall prison sentences, as discussed below.

Department of Rehabilitation and Correction and Department of Youth Services costs

The bill's various offense expansions and penalty enhancements carries two potential effects for the prison system operated by the Department of Rehabilitation and Correction (DRC). First, offenders sentenced to a prison term for a felony offense under current law may be sentenced to a longer prison term under the bill, eventually resulting in a "stacking effect" on bed counts. Second, offenders that might not have been prison bound under current law may now be sentenced to a prison term under the bill. LBO has requested a population and cost impact statement from DRC and will update this fiscal note when that information becomes available.[5] While DRC's inmate population will likely grow over time, the costs associated with those increases could follow one of two formulas. Generally, DRC advises LBO which formula is appropriate for the circumstances described under a bill. However, if population numbers are expected to increase beyond current anticipated rates, the institutional cost scenario is typically advised. LBO will update this analysis if additional information is provided by DRC. Until then, the two cost basis scenarios are summarized as follows.

Marginal cost scenario

According to the DRC 2025 Annual Report, the average marginal cost to house an additional offender was $13.47 per day or $4,917 per year. Marginal costs, as defined by DRC, are those that increase or decrease directly on a per-person basis with changes in prison population. The major categories that comprise marginal costs, from largest to smallest, are:

- Medical (pharmaceuticals, medical supplies, hospitalization, and ambulance services);
- Food Service;
- Storeroom/Quartermaster (clothing, mattresses, and sheets and blankets); and
- Mental Health (pharmaceuticals and mental health supplies).

Institutional cost scenario

According to the DRC 2025 Annual Report, the average institutional cost to house an offender was $109.57 per day or $39,993 per year. Institutional costs are calculated by dividing

[4] For misdemeanors, state court costs are $29 and credited as follows: $20 to the Indigent Defense Support Fund (Fund 5DY0) and $9 to the Victims of Crime/Reparations Fund (Fund 4020). For felonies, state court costs are $60 divided as follows: $30 to Fund 5DY0 and $30 to Fund 4020.

[5] R.C. 5120.51.

all DRC operating costs by the number of housed offenders, for a certain period of time. Included in this cost are items such as employee salaries, building costs and maintenance, and other items of expense that are incurred regardless of inmate population.

Under the bill, the Department of Youth Services (DYS) could also experience an increase in population size over time. DYS's average daily facility population in FY 2024 was around 500. The marginal cost to add a juvenile to that population is around $44.55 per day, or about $16,261 per year. This suggests that adding a relatively small number of juveniles to that population in any given year will result in no more than a minimal increase in DYS's annual institutional care and custody costs. It should be noted that the majority of youth adjudicated by the juvenile justice system for felony-level offenses are served locally through community-based programs instead of being committed to a DYS facility.

Sex Offender Registration and Notification costs and revenues

The bill updates the Sex Offender Registration and Notification (SORN) Law to account for new sexually oriented offenses added by the bill, specifically violations involving the new circumstances for unlawful sexual conduct with a minor. The number of additional SORN registrants in any given jurisdiction is expected to be relatively small and the corresponding increase in a county sheriff's annual registration, notification, and enforcement costs will be minimal.

Current law permits a sheriff to charge registrant fees in each registration year. All such fees are paid into the county general fund and then allocated to the sheriff to be used to defray SORN Law administration costs. The amount of additional fee revenue that may be generated annually for any given county general fund will be minimal at most.

In addition to permissive fees, county sheriffs are required to charge a fee of $100 when a person first registers as a sex offender. That fee is deposited in the state treasury to the credit of the Rape Crisis Program Trust Fund (Fund 5NV0) for distribution to rape crisis programs. The amount of additional fee revenue that the bill's SORN Law registration requirement may generate annually for Fund 5NV0 is likely to be minimal at most.

Juvenile-to-juvenile sexting

The bill creates new "sexting" offenses that apply only in instances where the offender is under 18 years of age by adding two new circumstances for the offenses of "pandering sexually oriented matter involving a minor" and "illegal use of a minor in a nudity-oriented material or performance." These new circumstances are described in the LSC bill analysis (PDF).[6]

For these offenses, a first violation is a first degree misdemeanor. Penalties escalate to a fifth degree felony for a prior violation of the first circumstance and to a second degree felony for a prior violation of the second circumstance.

Fiscal effect

Under current law, such conduct could be subject to existing prohibitions under these sex offenses, with violations involving a minor are a second degree felony.

[6] See "**New minor offender 'sexting' offenses**" of the LSC bill analysis (page 9).

According to OPAA, juvenile-to-juvenile sexting cases are commonly addressed through diversion or by reducing charges when the exchanges are consensual and limited in scope, and less flexibility is typically exercised when images are distributed more broadly. The new circumstances established by the bill generally reflect how such cases are currently handled at the local level by establishing a clearer misdemeanor-level pathway for first-time, consensual juvenile-to-juvenile conduct.

As a result, it is possible that some local jurisdictions will find the new circumstances more appropriate to the conduct, and as a result, there could be situations wherein an offender might have been charged and sanctioned for felonious conduct under current law and practice, but may be more likely to be charged and sanctioned for the misdemeanor conduct specified by the bill. That said, the bill also specifies that prosecution under these new minor-specific offenses does not preclude prosecution under any other applicable section law. Prosecutors retain full discretion to pursue existing felony-level charges.

Additionally, the bill could produce a minimal annual savings effect on DYS's institutional operating costs, as it is possible that a relatively small number of persons that might otherwise have been incarcerated in a state correctional facility will instead be sanctioned locally.

Sexual conduct with an animal

The bill increases the penalty, from a second degree misdemeanor to a fifth degree felony, for knowingly engaging in sexual conduct with an animal, or knowingly possessing, selling, or purchasing an animal with the intent that it be subjected to sexual conduct.

It also increases the penalty, from a second degree misdemeanor to a first degree misdemeanor, for knowingly organizing, promoting, aiding, or abetting in the conduct of an act involving sexual conduct with an animal.

Fiscal effect

Data reported through the Ohio Incident-Based Reporting System (OIBRS) shows that statewide, fewer than ten incidents involving sexual conduct with an animal were recorded between CY 2021 and CY 2025. As a result of the bill's penalty enhancements, a very small number of cases may shift from the misdemeanor jurisdiction of municipal or county courts to the felony jurisdiction of courts of common pleas. Given the rarity of these offenses, any resulting shift in costs or revenues between municipalities and counties is expected to involve so few cases that the annual impact on case processing, adjudication costs, and related fine or court cost revenues will likely be negligible.