



OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 168
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsors: Reps. Williams and Brennan

Local Impact Statement Procedure Required: No

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Highlights

- The impact of the bill is largely clarifying as it brings the existing offense of criminal child enticement into constitutional compliance. The bill's impact on individual local criminal justice systems related to prosecuting, defending (if indigent), adjudicating, and sanctioning of offenders is not expected to exceed minimal on an annual basis. However, elevating cases involving sexual motivation from a misdemeanor to felony will shift adjudication-related costs from county and municipal courts to courts of common pleas, and sanctioning costs from the county to the state.

Detailed Analysis

The bill modifies the offense of criminal child enticement by requiring that a person act with a sexual motivation or an unlawful purpose.

Under current law, there are three prohibitions under the offense of criminal child enticement. However, in 2014, the Ohio Supreme Court invalidated the general prohibition under the offense. That provision prohibits a person, by any means and without privilege to do so, from knowingly soliciting, coaxing, enticing, or luring any child under age 14 to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if certain conditions apply. Specifically, in *State v. Romage*, the Court held that this general prohibition is unconstitutionally overbroad in violation of the First Amendment to the United States Constitution. The Court did not consider the constitutional validity of the other two prohibitions in existing law.

The bill clarifies the offense by replacing the three prohibitions with a single prohibition. The new, more narrowly tailored prohibition addresses the same conduct as the current general prohibition, but incorporates the elements previously found in the other two prohibitions (i.e.,

actions motivated by sexual intent and actions with an unlawful purpose) as circumstances that constitute a violation.

Penalties

Under current law, the penalty for criminal child enticement generally is a first degree misdemeanor, but if the offender previously was convicted of criminal child enticement, rape, sexual battery, or the former offense of felonious sexual penetration, or kidnapping or gross sexual imposition when the victim was under 17 at the time of the offense, it is a fifth degree felony. The bill retains the existing penalty structure for violations of the offense committed with an unlawful purpose (other than sexual motivation).

The bill increases the penalty for criminal child enticement with a sexual motivation from a first degree misdemeanor to a fifth degree felony. In the same circumstance for a penalty enhancement described above, if the offender previously has been convicted of criminal child enticement or another specified offense when the offender was 17 at the time of the offense, the penalty increases to a fourth degree felony, and to a third degree felony if the offender has two prior such convictions.

The following table shows the possible fines and terms of incarceration for the penalty categories for criminal child enticement.

H.B. 168 Penalties for Criminal Child Enticement		
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
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

Fiscal effect

The bill is not expected to significantly increase the number of persons arrested, adjudicated, and sentenced to jail or prison for criminal conduct where the victim is under 14, although there will likely be some increase as a result of its clarification. Based on incidents reported to the Ohio Incident-Based Reporting System (OIBRS) between 2020 and 2024, an average of 87 of current law prohibitions of the offense were reported annually. While OIBRS does not reflect final charging or conviction data, it may provide a sense of the overall number of violations annually of an offense.¹

¹ OIBRS is a voluntary reporting program in which Ohio law enforcement agencies can submit crime statistics directly to the state and federal government. At this time, the number of law enforcement agencies submitting data to OIBRS represents approximately 81% of the population.

More possible is that the bill will (1) guide the charges filed by law enforcement and prosecutors in certain situations, (2) clarify an element of the subsequent litigation and bargaining between the prosecution and defense counsel, and (3) shift cases involving sexual motivation from a misdemeanor, under the jurisdiction of a municipal or county court, to a felony under the jurisdiction of a court of common pleas. Overall, these possibilities are not likely to discernibly add to the operating costs of local governments, as county and municipal criminal justice systems should be able to adjust to these possibilities with minimal time and effort.

To the degree that new cases are generated and a county or municipal justice system incurs costs, those costs will likely be minimal annually, as violations are expected to be small relative to existing criminal caseloads. Costs may be offset to some degree by the collection of fines, and court costs and fees imposed by the court. Fines are generally credited to a county's general fund, while local court costs and fees can be deposited for a mix of general and special purposes. For felonies, state court costs are \$60 and credited as follows: \$30 to the Indigent Defense Support Fund (Fund 5DY0) and \$30 to the Victims of Crime/Reparations Fund (Fund 4020). For misdemeanors, state court costs are \$29 and credited as follows: \$20 to Fund 5DY0 and \$9 to Fund 4020. If additional offenders are sentenced to a term of incarceration, there may be a marginal annual increase in state and local incarceration expenditures.

According to the Department of Rehabilitation and Correction (DRC), the FY 2024 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 average cost per bed for full-service jails is \$93.70.² However, for lower level felonies, there is generally a presumption that offenders would be subjected to community sanctions, which is generally a less costly alternative, rather than institutional incarceration. There generally is no presumption for or against prison for third degree felonies.

² As reported in the daily snapshot taken by DRC on June 30, 2024.