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H.B. 295
(1_135_0364-8)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 295's Bill Analysis](#)

Version: In House Criminal Justice

Primary Sponsor: Rep. Demetriou

Local Impact Statement Procedure Required: No

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Highlights

- Local criminal and juvenile justice systems will likely 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. Some of these costs may be partially offset by fine and court cost revenue, if collected.
- There may be a marginal annual 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 over such matters.

Detailed Analysis

The bill establishes four new criminal offenses including: (1) failure to verify the age of a person accessing materials that are obscene or harmful to juveniles, (2) use of false identifying information to access materials that are obscene or harmful to juveniles, (3) nonconsensual dissemination of fabricated sexual images, and (4) nonconsensual creation of a fabricated sexual image. The bill also provides for penalty enhancements to the existing offense of disseminating an image of another person nonconsensual dissemination of private sexual images. Certain civil remedies are authorized for victims of the offenses of failure to verify the age of a person accessing materials that are obscene or harmful to juveniles, and nonconsensual dissemination of fabricated sexual images. The bill provides for an affirmative defense if certain criteria are met.

New criminal offenses

The bill's new offenses may result in some number of adults and/or juveniles being charged and adjudicated. Depending on the charge, cases may be filed in either a county or municipal court (misdemeanor level cases) or in a court of common pleas (felony level cases or cases involving juveniles).

The table below shows the bill's new felony and misdemeanor sentences and fines for those offenses.

Sentences and Fines for Bill's New Criminal Offenses			
Offense	Degree Level	Fines	Term of Incarceration
Failure to verify the age of a person accessing materials that are obscene or harmful to juveniles*	Misdemeanor 1 st degree	Up to \$1,000	Jail, not more than 180 days
Use of false identifying information to access materials that are obscene or harmful to juveniles**	Misdemeanor 4 th degree	Up to \$250	Jail, not more than 30 days
Nonconsensual creation (or solicitation to the creation) of fabricated sexual images	Felony 4 th degree, generally	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison
	Felony 3 rd degree, if the offender has certain prior offenses, or a child-victim offense	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Nonconsensual dissemination of fabricated sexual images	Felony 4 th degree, generally	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison
	Felony 3 rd degree, if the offender has certain prior offenses	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term

*Each day that a person violates this provision is a separate offense.

**Specifies this is a delinquent act that would be a 4th degree misdemeanor if committed by an adult.

Penalty enhancements for existing offenses

Under current law, knowingly disseminating nonconsensual private sexual images is a third degree misdemeanor. The bill increases this penalty to a fifth degree felony, punishable by up to 6, 7, 8, 9, 10, 11, or 12 months definite prison term, a fine of up to \$2,500, or both. If the offender meets certain criteria in regards to prior conviction, the penalty escalates to a fourth degree felony (from a second degree misdemeanor), punishable by up to 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term, a fine of up to \$5,000, or both. As a result of these penalty increases, some number of cases may shift from the jurisdiction of municipal courts to courts of common pleas.

Municipalities may realize some savings in their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, counties may experience an increase in their annual criminal and juvenile justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.

Criminal justice system fiscal effects

The number of new criminal cases, and those that will experience penalty enhancements, stemming from prohibited behavior in the bill is difficult to estimate. The bill will likely affect a relatively small number of cases under the jurisdiction of any given county and municipal criminal justice system. However, the costs associated with adjudication, prosecution, indigent defense (if applicable), and sanctioning, including a residential sanction such as jail, will likely be minimal annually for any single jurisdiction.

Counties and municipalities may gain minimal additional revenue collected from violators pursuant to the order of the sentencing court. In addition, a court generally imposes state court costs that are credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The \$60 felony amount is divided as follows: \$30 to Fund 5DY0 and \$30 to Fund 4020. The \$29 misdemeanor amount is divided as follows: \$20 to Fund 5DY0 and \$9 to Fund 4020. The annual revenue gain to the state because of violations of the bill's prohibition will be minimal at most annually. Of note is that the court rarely imposes the maximum permissible fine, and collecting the fine and court costs and fees can be problematic. This is because offenders can be financially unable or unwilling to pay.

Some number of additional offenders/juveniles could be sentenced to a state prison/juvenile correctional facility for a felony offense or offenders/juveniles could receive longer sentences than would have been the case under current law. The resulting increase in annual state incarceration costs for either the Department of Rehabilitation and Correction or the Department of Youth Services (DYS) is uncertain. In the case of fourth or third degree felonies, there is presumption generally in favor of a community control rather than the imposition of a prison term. In the case of juvenile offenders, DHS may also experience an increase in supervision costs.

Civil actions

The bill provides for a civil remedy to a victim of the offense of failure to verify the age of a person accessing materials that are obscene or harmful to juveniles, as well as a victim of the offense of nonconsensual dissemination of fabricated sexual images. A civil action, from a victim

of nonconsensual dissemination of fabricated sexual images, is required to be brought within four years after the cause of action accrues and two years for a victim of failure to verify age of person accessing materials that are obscene or harmful to juveniles. Included in the actions that the court is permitted to take is the award of compensatory damages, reasonable attorney's fees, court costs, and other reasonable expenses incurred in maintaining the civil action. The court may also grant an injunction or a temporary restraining order. The number of new civil actions that may be filed as a result of the bill is uncertain but likely to be minimal annually for any single jurisdiction.

The effect on the daily operations and related operating expenses of the courts will depend on the monetary amount being sought by the victim, the frequency of civil actions being filed, and the matter's legal complexity. Municipal and county courts have limited civil jurisdiction, and may only hear cases in which the amount of money in dispute does not exceed \$15,000. Common pleas courts hear all cases in which the amount of money in dispute is more than \$15,000.

Forfeiture

Under the bill, in addition to any other penalties or dispositions, the court is permitted to order a convicted offender to forfeit any property acquired or maintained in connection with the nonconsensual dissemination of fabricated sexual images. It is likely that common pleas, municipal, and county courts can absorb the administrative cost of holding these forfeiture proceedings into their daily operations with no discernible ongoing cost. The value of the property that might be forfeited annually to the state and/or a political subdivision is indeterminate.

Synopsis of Fiscal Effect Changes

The substantive differences between the fiscal effects of the substitute bill (I_135_0364-8) and the As Introduced version are summarized below:

- The substitute bill establishes a new criminal offense of nonconsensual creation of a fabricated sexual image, a fourth degree felony. Under the substitute bill, if the offender was previously convicted of or pleaded guilty to nonconsensual creation of fabricated sexual images, a sexually oriented offense, or a child-victim oriented offense, nonconsensual creation of fabricated sexual images is a third degree felony.
- The substitute bill makes a variety of changes to the criminal offenses and their related penalties that were originally outlined in the As Introduced version of the bill, generally lessening those penalties. These changes are reflected in the table on page two titled "**Sentences and Fines for Bill's New Criminal Offenses.**" These changes make it possible that some offenders will be sentenced to prison for a shorter term.
- The substitute bill increases the penalty of knowingly disseminating nonconsensual private sexual images from a third degree misdemeanor to a fifth degree felony. Generally, for subsequent offenses, the penalty is a fourth degree felony.
- Under the substitute bill, civil action, from a victim of nonconsensual dissemination of fabricated sexual images, is required to be brought within four years after the cause of action accrues and two years for a victim of failure to verify age of person accessing materials that are obscene or harmful to juveniles. These changes have the potential to

reduce or limit the number of civil actions that may have been brought forward under the previous version of the bill.

- In the case of a civil action, the substitute bill authorizes a court to also grant an injunction or a temporary restraining order.