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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 16  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for S.B. 16's Bill Analysis](#)

**Version:** As Reported by House Criminal Justice

**Primary Sponsor:** Sen. Schaffer

**Local Impact Statement Procedure Required:** No

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### Highlights

#### Emergency service responders

- The bill's criminal offense and penalty modification provisions are not expected to have a significant ongoing fiscal effect on county and municipal criminal justice systems.
- Local criminal justice systems and the Department of Rehabilitation and Correction may experience a minimal annual expenditure increase to incarcerate or supervise certain offenders for a longer period than otherwise may have been the case under existing law.

#### Emergency powers when suppressing a riot and firearms rights

- A new cause of action in the courts of common pleas or the Ohio Court of Claims related to the preservation of firearms rights may increase the number of cases filed in those courts, leading to additional administrative costs for those courts and additional litigation and potential settlement costs for the state or a political subdivision.
- The extension of valid and existing concealed handgun licenses during an emergency will likely result in at least some short-term loss of renewal fees received by the Attorney General and county sheriffs with a corresponding reduction in workload and related expenses.

#### Importuning

- The bill may result in a marginal increase in incarceration costs for the Department of Rehabilitation and Correction for each offender who receives a mandatory prison sentence under the bill or if a longer sentence is imposed than otherwise may have been the case under existing law for offenders convicted of importuning.

## **Voyeurism**

- Local criminal justice systems may experience an increase in their annual operating costs, albeit minimally, to process cases involving voyeurism. The number of impacted cases statewide, and subsequently the number of sentenced individuals, is likely to be negligible for any given jurisdiction.
- There may be a minimal annual increase in incarceration costs for county and municipal justice systems, and the departments of Rehabilitation and Correction and Youth Services, as a relatively small number of adults and juveniles may be sentenced to a term of incarceration due to the new prohibitions under the bill.

## **SORN restrictions**

- Local criminal justice systems (law enforcement, prosecutors, courts, public defenders, and sanctioning systems) will likely experience some increase in workload and related costs to enforce compliance with the bill's prohibition. The magnitude of increases will depend on the number of registrants to whom the bill's restrictions would apply, the number of violators, the number of repeat violators, and the number of registrants in a position for whom a background check may make a restriction violation less likely.
- 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.

## **County correctional officers carrying firearms**

- The Attorney General may incur minimal one-time costs to adopt rules governing the training and certification of county correctional officers authorized to carry firearms while on duty. Any subsequent ongoing costs will depend on the number of county correctional officers authorized to carry firearms while on duty.

## **Statewide Emergency Alert System**

- Any costs incurred by the state and its political subdivisions related to the integration of individuals with Autism Spectrum Disorder or another developmental disability into existing emergency alert programs are expected to be minimal.

## **Detailed Analysis**

The bill: (1) makes changes to the law as it pertains to specified conduct committed or directed against an emergency service responder<sup>1</sup> (ESR) or a family or household member or co-worker of an ESR, (2) regards emergency powers when suppressing a riot and firearms rights, (3) establishes a mandatory prison term for certain "importuning" violations, (4) modifies the offense of "voyeurism" by broadening and clarifying certain criteria for the act of voyeurism, (5) specifies that there is no period of limitations for prosecution of conspiracy or attempt to

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<sup>1</sup> "Emergency service responder" means any law enforcement officer, first responder, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, firefighter, or volunteer firefighter.

commit, or complicity in committing, aggravated murder or murder, (6) expands the existing authority of a probation officer or Adult Parole Authority (APA) field officer to search, with or without a warrant, the person, residence, or certain property of certain offenders, (7) enacts restrictions in the Sex Offender Registration and Notification Law (SORN Law) to prohibit a person who is in a “restricted offender category” to begin service in a volunteer position that affords extensive contact with minor children, (8) modifies existing prohibitions against the restraint of a pregnant woman or child, (9) eliminates the requirement that county prosecutors annually report certain case resolutions to county boards of commissioners and the State Fire Marshal, (10) authorizes a county correctional officer to carry firearms while on duty, and (11) authorizes the Statewide Emergency Alert System to be activated to assist in locating individuals with Autism Spectrum Disorder or another developmental disability.

## Emergency service responders

### New offense and modifications of existing offenses

The bill creates the offense of unlawfully impeding public passage of an ESR, a violation of which is a first degree misdemeanor, and modifies the prohibitions and penalties for the existing offenses of assault and menacing as it relates to certain conduct against or directed at an ESR, or family or household member or co-worker of an ESR.<sup>2</sup> The following table summarizes the criminal offense created by the bill as well as the bill’s modifications to existing prohibitions or penalties when the victim is an ESR, a family or household member, or co-worker of an ESR.

**Table 1. S.B. 16 – Criminal Offenses**

#### New criminal offense

**Unlawfully impeding public passage of an emergency service responder:** First degree misdemeanor subject to a jail stay of not more than 180 days, a fine of up to \$1,000, or both.

#### Existing penalty modifications and enhancements

Assault	Generally a first degree misdemeanor under current law. The bill modifies the penalty so that in addition to the current circumstances in which assault is already a fourth degree felony, it also is a fourth degree felony if the victim is an ESR, or a family or household member or co-worker of an ESR, and the offender knows or reasonably should know that status of the other person, and it is the offender’s specific purpose to commit the offense against the other person because of that status. For a fourth degree felony, the court may impose a 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18-month definite prison term, a fine not to exceed \$5,000, or both.
Menacing	Generally a fourth degree misdemeanor under current law. The bill prohibits a person from knowingly placing or attempting to place another in fear of physical harm or death by displaying a deadly weapon, if the other person is an ESR or a family or household member of an ESR and the offender knows or reasonably should know that

<sup>2</sup> The bill specifies that assault and menacing are allied offenses of similar import, meaning that a person can be charged with both offenses, but can only be convicted of one (R.C. 2941.25(A)).

**Table 1. S.B. 16 – Criminal Offenses**

	status of the other person, and makes a violation a first degree misdemeanor. A subsequent violation is a fourth degree felony.
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Based on LBO conversations with the Ohio Prosecuting Attorneys Association and the Ohio Judicial Conference, the impact of the bill’s creation of a new offense and penalty modifications on county and municipal criminal justice systems is not likely to exceed minimal. This is because the bill is not expected to generate a large number of additional cases, as at least some of the bill’s prohibited conduct can generally be charged under existing law. The exception to this would be if the state were to experience an increase in public disorder or disturbances, such as was experienced in the summer of 2020. If that were to happen, the bill may result in a significant number of new cases and charges, thereby having a greater impact on county and municipal criminal justice systems. Assuming such occurrences are relatively rare, the bill is unlikely to have a discernible impact on any given criminal justice system on an ongoing basis.

In the event that offenders are convicted under the bill instead of under existing law, the likely effect may be increased time incarcerated. As a result, local correctional facilities, e.g., jails and community-based correctional facilities, and the Department of Rehabilitation and Correction may experience an increase in expenditures to incarcerate certain offenders for a longer period than otherwise may have been the case under existing law. Such an increase is likely to be no more than minimal annually.

## **Emergency powers when suppressing a riot and firearms rights**

The bill (1) generally prohibits any restrictions on firearms rights during any disaster, war, act of terrorism, riot, civil disorder, public health crisis, public nuisance, or emergency of whatever kind or nature, and (2) extends the validity of a concealed handgun license during a declared emergency and for 90 days after the emergency ends.

### **Preservation of firearms rights during an emergency<sup>3</sup>**

#### **Civil action**

Under the bill, a person, group, or entity adversely affected by any manner of law or other action enacted or enforced in violation of the bill is permitted to file an action for damages, injunctive relief, declaratory relief, or other appropriate redress in the court of common pleas of the county in which the aggrieved person resides or the group or entity is located. If a firearm, firearm component, or other deadly weapon is confiscated or seized, a person is permitted to apply to the court of common pleas of the county in which the item or items were seized or confiscated for the immediate return of the item or items. If a court orders the return of seized or confiscated items and the item or items are not returned in accordance with the order, the aggrieved party may claim reasonable costs and attorney fees for the loss and the cost of

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<sup>3</sup> The firearms rights involve the transport, storage, sale, transfer, commerce in, import and export of, distribution, repair, maintenance, and manufacture of deadly weapons or firearms, ammunition, and accessories and components related to deadly weapons or firearms, shooting ranges, and other goods and services directly related to lawful deadly weapon or firearm possession, use, storage, repair, maintenance, sale, and transfer, and training in the use of deadly weapons or firearms.

reclaiming the item or items, or the cost of any damages to the item or items. If the claim is filed against any state agency, official, employee, or other agent of the state for money damages, it is to be filed with the Ohio Court of Claims.

These provisions may increase the number of cases filed in the courts of common pleas and the Ohio Court of Claims, leading to additional administrative costs for those courts, and additional costs for the state or political subdivision to respond, and in some cases, additional costs in the form of damages. Because the cause of action relies on the declaration of an emergency, it is likely that any opportunity for a violation to occur will be rare, and, assuming the state and political subdivisions generally follow the law, the fiscal impact will be minimal at most.

### **Extension of concealed handgun license**

Under the bill, if (1) a concealed handgun license has been issued to a licensee, (2) the Governor issues an executive order declaring an emergency, and (3) the date that the valid and existing license would or is scheduled to expire falls within the period of emergency,<sup>4</sup> the license is automatically extended throughout the duration of the period of the emergency plus an additional 90 days.

Under current law, the cost of a concealed carry license is as follows: new (\$67/\$91) and renewal (\$50/\$74).<sup>5</sup> A license is valid for five years. The county sheriff collects the fees as part of their duties and responsibilities to administer and enforce the state's concealed carry laws. The sheriff retains a portion of the fee for crediting to the Sheriff's Concealed Handgun License Issuance Expense Fund, which is used for any costs incurred by the sheriff in connection with performing any administrative functions related to the issuance of concealed handgun licenses. The remainder is credited to the state's General Reimbursement Fund (Fund 1060), which the Attorney General uses, in part, to fund the cost of background checks performed by the Bureau of Criminal Investigation (BCI), as well as any checks requested from the FBI.

The extension during an emergency will likely result in at least some short-term loss of revenue received by the Attorney General and county sheriffs with a corresponding reduction in workload and related expenses. Revenue lost during the deferral period would presumably be mostly regained following the end of the emergency period and additional 90-day extension period while workload and related expenses may increase to accommodate any backlog of licenses.

### **Political subdivision suppression of a riot or mob**

The bill's changes to a political subdivision's emergency powers, as described below, will have no direct fiscal effect on the state or political subdivisions.

Under current law, the chief administrative officer of a political subdivision with police powers is permitted to prohibit the sale, offering for sale, dispensing, or transportation of firearms or other dangerous weapons, ammunition, dynamite, or other dangerous explosives in, to, or from areas cordoned off for the suppression of a riot or when there is clear and present

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<sup>4</sup> Or the 30 days immediately preceding the date of that declaration.

<sup>5</sup> Applicants residing in Ohio for five years or more pay a fee of \$67 for a new license or \$50 for a renewal license. Applicants residing in Ohio for less than five years pay an additional \$24 for a new or renewal license for the cost of the required FBI background check (R.C. 2923.125).

danger of a riot. The bill removes this permission as related firearms or other dangerous weapons, and ammunition while retaining it for dynamite or other dangerous explosives.

Under continuing law, when engaged in suppressing a riot or when there is a clear and present danger of a riot, the chief administrative officer of a political subdivision with police powers is permitted to (1) cordon off any area or areas threatened by the riot, and (2) generally prohibit a person from entering the cordoned off area. The bill extends these provisions to include the suppression of mobs, as well as riots.

## Importuning

The bill modifies the existing offense of “importuning” by adding a prohibition against soliciting a person who is under 16 to engage in sexual activity with the offender when the person who is under 16 is substantially impaired because of a mental or physical condition, and specifies that a violation of the prohibition is a third degree felony.

The bill also requires the imposition of a mandatory prison term for violations of “importuning” in the following circumstances: (1) the offender, in addition to soliciting the other person, arranged to meet the other person for the purpose of engaging in sexual activity, (2) the offender is ten or more years older than the other person, or (3) if a law enforcement officer posed as a person 13 or older but less than 16, and the officer is ten or more years older than the officer claimed to be.

Under existing law, unchanged by the bill, “importuning” is generally either a fifth degree or third degree felony, depending on the elements of the offense, and there is currently a presumption that a prison term will be imposed.<sup>6</sup> Under the bill, this means that in certain cases, instead of a presumption for prison where the offender may not have otherwise been sentenced to prison, the offender will instead be required to serve a mandatory prison term. This may result in a marginal increase in incarceration costs for the Department of Rehabilitation and Correction for each offender who receives a mandatory prison sentence under the bill when they otherwise may not have under existing law, or if a longer sentence is imposed than otherwise may have been the case under existing law. The annual marginal cost for adding an additional offender to the prison system is around \$4,000 per offender. The penalties, including potential prison terms for fifth degree and third degree felonies, are shown in the table below.

<b>Offense Level</b>	<b>Fine</b>	<b>Term of Incarceration</b>
Felony 3 <sup>rd</sup> degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Felony 5 <sup>th</sup> degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term

<sup>6</sup> Offenders who have previously been convicted of a sexually oriented offense or a child-victim oriented offense are required to serve a mandatory prison term under existing law.

## Voyeurism

The bill modifies the offense of “voyeurism” by broadening and clarifying certain criteria for the act of voyeurism including defining a “place where a person has a reasonable expectation of privacy” and “private area.” Table 3 below summarizes the offense of voyeurism prohibitions under the bill, which remain unchanged from current law, including the offense levels, maximum fines, and possible jail or prison terms under existing law.

The net impact of the bill’s changes is that it may make some allegations and cases of voyeurism easier to investigate, charge, and prosecute. As such, there may be a slight increase in the number of criminal cases generated annually, thus increasing the costs to local criminal justice systems. 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 few and infrequent 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. This would be attributable to a relatively small number of offenders being sentenced to a term of incarceration, or a longer term, than otherwise might have been the case under current law.

**Table 3. Voyeurism Prohibitions and Penalties**

Offense	Offense Level	Maximum Fines	Term of Incarceration
Spying or eavesdropping on another person (unchanged by the bill)	3 <sup>rd</sup> degree misdemeanor	\$500	Jail, not more than 60 days
Recording another person (modified by the bill)	2 <sup>nd</sup> degree misdemeanor	\$750	Jail, not more than 90 days
Recording another person through clothing (modified by the bill)	1 <sup>st</sup> degree misdemeanor	\$1,000	Jail, not more than 180 days
Recording another person who is a minor (modified by the bill)	5 <sup>th</sup> degree felony	\$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term

## Period of limitations

The bill specifies that there is no period of limitations for prosecution of conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder. Under the

existing statute of limitations for criminal offenses, prosecution for a felony, including the previously listed offenses, generally must be commenced within six years after the offense was committed. The bill's elimination of the period of limitations applies both prospectively as well as retroactively for those offenses which were committed prior to the bill's effective date and for which prosecution was not barred on the day prior to that effective date.

By eliminating the period of limitations for prosecution of conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder, some courts of common pleas may experience an increase in workload and related costs if a case is adjudicated more than six years after the offense was committed. The magnitude of any such increase will vary by court and will ultimately depend upon the number of cases prosecuted under the bill for which prosecution would otherwise have been barred under the existing six year period of limitation, and the complexity of those cases.

## **Searches of offender under supervision**

The bill expands the existing authority of a probation officer or Adult Parole Authority (APA) field officer to search, with or without a warrant, the person, residence, or certain property of an offender who is under supervision for community control, nonresidential sanction, or post-release control, or of an individual who was granted conditional pardon or parole, transitional control, or other release from prison. Under the bill, probation officers and APA field officers would also be permitted to conduct such searches if an offender, as part of agreed upon terms and conditions for community control, is required by the court to consent to searches, or if an offender otherwise provides consent for the search. The bill also specifies that the written notice currently provided by a court and the APA to offenders sentenced to community control or a nonresidential sanction, and individuals granted a conditional pardon or parole, transitional control, or another form of authorized release from prison, or placed on post-release control, must include notice of all search authority.

Under the bill, local courts and the APA may incur additional minimal one-time costs to include the bill's expanded search authority into the required written notice. Any costs incurred as a result of searches conducted under these provisions will depend upon the number of searches conducted that otherwise would not have been. There may be some cost savings realized if current practice and procedures involve seeking warrants for such searches, which would impact not only the supervising authorizing but also the courts as well.

## **SORN restrictions**

The bill enacts restrictions in the Sex Offender Registration and Notification Law (SORN Law) to prohibit a person who is in a "restricted offender category" to begin service in a volunteer position that affords extensive contact with minor children.<sup>7</sup> Under the bill, extensive contact generally involves direct work with, or supervision or disciplinary power over, minors. The prohibition applies to certain offenders convicted of a sexually oriented offense involving a victim under age 18, or a child-victim oriented offense. With respect to that offense, the restricted offender category applies if one of the following applies:

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<sup>7</sup> 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.



1. The offender is either a Tier II or a Tier III sex offender/child-victim offender with respect to the offense and is subject to SORN duties; 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.

The bill provides that if an offender violates the bill's restriction, as reported by law enforcement, 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 based on the number of prior restriction convictions.

Calculating the fiscal effects of the bill's new prohibitions is problematic because of a variety of unknowns, including the number of registrants to whom the restriction 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, but likely to be minimal, at most, for any given jurisdiction. 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.

## **Restraint of a pregnant woman or child**

The bill modifies the prohibition against the restraint of a pregnant woman or child who is charged with or has been convicted of an offense by removing leg and ankle restraints from the prohibited types of restraint. The bill also lowers the level of threat required in order to restrain such a woman or child from a serious threat of physical harm or substantial security risk, to a risk of physical harm or a security risk. These provisions are not expected to have a discernible fiscal effect on the state or its political subdivisions.

## **County prosecuting attorney reports**

The bill eliminates the requirement that county prosecutors annually report all criminal case resolutions to the board of county commissioners and all fire-related case resolutions to the State Fire Marshal. This provision may result in a minimal amount of savings annually for county prosecutors as a result of no longer having to report these case resolutions.

## **County correctional officers carrying firearms**

The bill authorizes a county correctional officer to carry firearms while on duty in the same manner as a law enforcement officer if the county correctional officer is specifically authorized to carry firearms and has received firearms training. The bill grants such an individual with protection from civil or criminal liability for any conduct occurring while carrying firearms to the same extent as a law enforcement officer. This provision largely affects operations of county sheriffs, the Attorney General, and affiliated Ohio Peace Officer Training Commission (OPOTC).

## **Attorney General**

The bill requires OPOTC to recommend to the Attorney General, and the Attorney General to adopt rules governing the training and certification of county correctional officers authorized to carry firearms while on duty. The one-time rule adoption costs are likely to be minimal. The subsequent ongoing costs for OPOTC will depend on the number of county correctional officers authorized to carry firearms while on duty.

## **Statewide Emergency Alert System**

The bill authorizes the Statewide Emergency Alert System<sup>8</sup> to be activated to assist in locating individuals with Autism Spectrum Disorder or another developmental disability, in addition to individuals over 65 or with a mental impairment, as under current law. By expanding the situations in which the Statewide Emergency Alert System may be activated, the bill may result in likely no more than minimal costs for the state and its political subdivisions to integrate such individuals into existing emergency alert programs.

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<sup>8</sup> Per R.C. 5502.522, the Statewide Emergency Alert System is a coordinated effort among the Governor's Office, the Department of Public Safety, the Attorney General, law enforcement agencies, the state's public and commercial television and radio broadcasters, and others as determined necessary by the Governor.