



OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: S.B. 250 of the 132nd G.A.

Status: As Introduced

Sponsor: Sen. Hoagland

Local Impact Statement Procedure Required: No

Subject: Criminal mischief, criminal trespass, and aggravated trespass involving a critical infrastructure facility

State Fiscal Highlights

- The bill may slightly increase the number of felony offenders being sentenced to prison for criminal mischief and aggravating trespass offenses. The corresponding annual increase in GRF institutional operating expenditures is likely to be small enough that the Department of Rehabilitation and Correction (DRC) will be able to absorb it into the daily cost of operating the state prison system.
- The bill will likely elevate certain misdemeanors to felonies, which could generate a small amount of additional annual state court cost revenue that is apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

- The bill will likely elevate certain misdemeanors to felonies, resulting in a potential annual savings effect on municipal criminal justice system operating costs and a potential annual expenditure increase in county criminal justice system operating costs. In such circumstances, revenues in the form of court costs, fees, and fines, will also shift from the former to the latter.
- The civil liability for trespass provision appears unlikely to generate any discernible ongoing fiscal effects on local trial courts.

Detailed Fiscal Analysis

The bill: (1) adds new prohibitions to the offenses of criminal mischief, criminal trespass, and aggravated trespass that pertain to specified types of conduct occurring in or on a critical infrastructure facility, (2) provides for the imposition of increased fines on organizations that are complicit in those offenses, and (3) extends certain provisions regarding civil liability for damages caused by willful property damage or a theft offense to also apply regarding damages caused by trespassing on a critical infrastructure facility. Some of the new prohibitions expressly pertain to conduct that involves flying a drone over a critical infrastructure facility.

Criminal offenses

Criminal mischief

Under current law, criminal mischief prohibits a broad range of conduct that generally involves knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with the property of another. The bill will not create any new criminal mischief cases, but will incorporate a much higher charge if a critical infrastructure facility is involved. The penalty for criminal mischief currently is a third degree misdemeanor, first degree misdemeanor, fifth degree felony, or fourth degree felony, depending upon the offender's conduct. The bill makes criminal mischief involving a critical infrastructure facility a first degree felony.

Available data suggests that the number of criminal mischief cases statewide range roughly 600 to 700 per year, and that the number of such cases in any given local jurisdiction involving a critical infrastructure facility will be relatively small in the context of that jurisdiction's overall criminal caseload. For example, the Franklin County Municipal Court averaged approximately 75 charges annually from calendar years 2014 through 2016. It would likely be a much smaller subset of these cases that would have involved a critical infrastructure facility.

Trespass

Criminal trespass

Under current law, criminal trespass generally prohibits a person from knowingly entering or remaining on the land or premises of another. A violation is a misdemeanor of the fourth degree. The bill expands this offense to include knowingly entering, remaining on, or operating a drone over the land or premises of another that contains a critical infrastructure facility. The bill makes criminal trespass committed in violation of the new prohibition a first degree misdemeanor.

Aggravated trespass

Under current law, aggravated trespass prohibits a person from entering or remaining on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to that person. A violation of this offense is a first degree misdemeanor. The bill adds a new prohibition under the offense of aggravated trespass that prohibits a person from entering, remaining on, or operating a drone over the land or premises of another containing a critical infrastructure facility with purpose to deface, damage, destroy, or tamper with the facility, or otherwise impede or inhibit the facility's operations. The bill makes a violation of this new prohibition a third degree felony.

The likely number of new criminal trespass and aggravated trespass cases statewide would be fairly small given the requirement that the offenses involve a critical infrastructure facility and/or the possible use of a drone. Bringing forth new cases involving drones flying over critical infrastructure may be complicated by certain

difficulties tracking and apprehending the individual or organization that is flying the drone. Drones that are unmarked and flown from distant or otherwise hidden locations may be difficult to identify and link to an individual or organization.

Fiscal effects

The bill's new prohibitions will affect local expenditures on certain criminal cases in two ways. First, it will shift criminal cases that would have been handled by municipal courts and county courts as misdemeanors under existing law to courts of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may reduce some of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders who commit these offenses. Second, counties could experience an increase in their annual criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.

The table below summarizes the fines and sentences (incarceration terms in jail or prison) for misdemeanors and felonies generally under existing law, unchanged by the bill with the exception of organizational fines. The bill specifies that, notwithstanding the fines provided under existing law for an organization convicted of a criminal offense, the fine for an organization found to be complicit in a violation of one of the new prohibitions is ten times the maximum fine that can be imposed on an individual. For example, as noted in the current law table below, the maximum organizational fine for a first degree misdemeanor is \$5,000. Under the bill, the maximum organizational fine for a violation of the new criminal trespass prohibition, a first degree misdemeanor, is ten times the individual fine of \$1,000, or \$10,000.

Fines and Sentences for Criminal Offenses Generally		
Offense Level	Individual/Organizational Fine	Term of Incarceration
1st Degree Misdemeanor	Up to \$1,000/\$5,000	Not more than 180 days in jail
2nd Degree Misdemeanor	Up to \$750/\$4,000	Not more than 90 days in jail
3rd Degree Misdemeanor	Up to \$500/\$3,000	Not more than 60 days in jail
4th Degree Misdemeanor	Up to \$250/\$2,000	Not more than 30 days in jail
1st Degree Felony	Up to \$20,000/\$25,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years
2nd Degree Felony	Up to \$15,000/\$20,000	2, 3, 4, 5, 6, 7, or 8 years
3rd Degree Felony	Up to \$10,000/\$15,000	1, 2, 3, 4, or 5 years
4th Degree Felony	Up to \$5,000/\$10,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months
5th Degree Felony	Up to \$2,500/\$7,500	6, 7, 8, 9, 10, 11, or 12 months

Given the number of criminal cases in any given local jurisdiction that will be affected by the new prohibitions appears to be relatively small, any potential decrease in annual municipal criminal justice system expenditures and any potential increase in

annual county criminal justice system expenditures would likely be no more than minimal.

As the new prohibitions would shift certain criminal cases out of county courts and municipal courts and into courts of common pleas, this creates a potential loss of court cost, fee, and fine revenue for municipalities that otherwise might have been collected from individuals. Conversely, it creates the possibility that counties may gain court cost, fee, and fine revenue collected from individuals. As the number of affected criminal cases appears likely to be relatively small, the amount of annual court cost, fee, and fine revenue that municipalities might lose and counties might gain would be no more than minimal.

As noted, the bill also requires that with regard to all three criminal offenses, any organization found guilty of complicity in a violation of that prohibition is required to be punished with a fine that is ten times the maximum fine that can be imposed on an individual convicted of that offense. This could result in fines as high as \$200,000 against organizations found complicit in a first degree felony criminal mischief case, and \$100,000 in a case involving aggravated trespassing. The frequency of cases involving some form of criminal mischief or trespassing on a critical infrastructure facility with direct complicity between the offender(s) and some larger organization is indeterminate.

The new criminal mischief and aggravated trespassing prohibitions may also slightly increase the number of felony offenders being sentenced to prison. Under current law, it appears that very few persons are sentenced to prison for criminal mischief. Under the bill, if the violation involves a critical infrastructure facility, it becomes a felony of the first degree and a few offenders may be sent to prison. The marginal annual cost for such a small number of additional offenders would be around \$3,600 per offender; the Department of Rehabilitation and Correction (DRC) will be able to absorb this into its daily cost of operating the state prison system.

The new criminal mischief and aggravated trespassing prohibitions may also lead to a minimal annual gain for the state in the amount of locally collected court cost revenue apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). This is because the total amount of state court costs imposed on an offender and apportioned between Fund 5DY0 and Fund 4020 is higher for a felony (\$60) than it is for a misdemeanor (\$29).

Civil liability for trespass

Under current law, a person may pursue a civil action in the courts to seek damages from a person who willfully damages the owner's property or who commits a theft offense. The bill expands such a cause of action to recover damages from a person who damages the owner's property while trespassing on a critical infrastructure facility. It is unclear whether this provision will increase the number of civil court filings because a property owner experiencing damage to that property can already file a civil action regardless of whether that property contains a critical infrastructure facility. This

suggests that the provision appears unlikely to generate any discernible ongoing fiscal effects on local trial courts.