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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 367
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 367's Bill Analysis](#)

Version: As Reported by House Government Oversight

Primary Sponsors: Reps. Mathews and Hillyer

Local Impact Statement Procedure Required: No

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Highlights

- The bill provides for a civil remedy to an individual injured by a malicious deepfake recording and a consumer of a deepfake recorder, regardless of whether the individual's persona is for a commercial purpose. It is expected that the common pleas, municipal, and county courts will be able to absorb any additional filings into their respective caseloads with little, if any, discernible effect on annual operating expenses.
- The bill broadens the offense of "extortion" which could result in more cases for local criminal justice systems to investigate and adjudicate. Although such a cost increase is not readily quantifiable, it should be relatively small for any given local 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.
- The bill may slightly increase the number of felony offenders being sentenced to prison for extortion, resulting in a marginal 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.

Detailed Analysis

The bill makes changes to the law relating to the unauthorized use of an individual's persona and prohibits certain unauthorized deepfake recordings. The bill provides a mix of criminal penalties and civil remedies related to these activities. A deepfake recording is defined by the bill as any visual or audio media in an electronic format, video recording, or sound recording that is created or altered in a manner such that it falsely appears to be an authentic record of the actual speech or conduct of an individual depicted in the media or recording. The bill exempts radio or television broadcasting stations from Ohio's Right of Publicity Law and from

the bill's prohibitions against using a modified facsimile of an individual's persona and against broadcasting, distributing, or exhibiting a malicious deepfake recording.¹

Civil actions

The bill provides for a civil remedy to an individual injured by a malicious deepfake recording and a consumer of a deepfake recorder, regardless of whether the individual's persona is for a commercial purpose. A civil action from an individual injured by a malicious deepfake recording that does not meet the bill's exceptions, is required to be brought within four years after the alleged violation. The court may award the prevailing party reasonable attorney's fees, court costs, and reasonable expenses associated with the civil action, order the destruction or other reasonable disposition of a malicious deepfake recording, and require the defendant to indemnify the plaintiff for any past or future expenses associated with the plaintiff's efforts to have the malicious deepfake removed or destroyed. Additionally, the individual may seek any of the following remedies:

1. Either actual damages or, at the election of the plaintiff, statutory damages in an amount between \$2,500 and \$10,000, as determined by the trier of fact, taking into account the willfulness of the violation, the harm to the individual in question, and the ability of the defendant to pay a civil damage award;
2. Punitive or exemplary damages, if applicable;
3. Temporary or permanent injunctive relief.

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 bill allows for additional statutory damages in a civil action if the crime of extortion is involved in connection with the malicious deepfake recording, regardless of whether there has been a conviction of or a plea of guilty for the crime of extortion. The damages, based on the amount the defendant extorts or attempts to extort from the plaintiff whose voice, image, or likeness is used in the deepfake recording, are further detailed in the LSC bill analysis.

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. Costs would likely be partially offset by filing fees charged by the court. 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. The number of new civil cases that may result is uncertain but likely will be minimal for any single jurisdiction and court.

Extortion

Under current law, extortion prohibits a range of conduct that generally involves exposing or threatening to expose any matter tending to subject any person to hatred, contempt, or ridicule, or to damage any person's personal or business reputation, or to impair any person's credit. The bill expands extortion to include when a person distributes, exhibits, or exchanges a malicious

¹ Includes cable or satellite operators, programmers, producers, and streaming services.

deepfake recording that falsely depicts or records the speech or conduct of another individual with the purpose to obtain something of value or to induce another to do an unlawful act. Under the bill, the offender would be guilty of a third degree felony, punishable by up to 9, 12, 18, 24, 30, or 36 months definite prison term, a fine of up to \$10,000, or both.

The number of new criminal cases stemming from the prohibited behavior in the bill is difficult to estimate, but will likely affect a relatively small number of cases under the jurisdiction of any given county and municipal criminal justice system. As such, the costs associated with adjudication, prosecution, and indigent defense (if applicable), will likely be minimal annually for any single jurisdiction.

To the extent that new cases are successfully prosecuted, 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 will be minimal at most annually. Of note is that courts rarely impose 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 could be sentenced to a state prison for a felony offense. The resulting increase in annual state incarceration costs for the Department of Rehabilitation and Correction (DRC) is uncertain, but likely to be minimal annually. The marginal cost for DRC to add a relatively small number of offenders to its total inmate population is estimated at around \$4,000 per offender per year.