Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 280** DATE: **December 16, 2008**

STATUS: **As Reported by Senate Judiciary--Criminal Justice** SPONSOR: **Rep. Schneider**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **To require facilities that perform abortions to display a sign; to enhance the criminal penalty for causing or attempting to cause physical harm to a family or household member who was pregnant at the time of the offense; and to make other changes to the law regarding human trafficking and assault on a pregnant woman**

State Fiscal Highlights

STATE FUND	FY 2009	FY 2010 and Future Years
General Revenue Fund		
Revenues	- 0 -	- 0 -
Expenditures	Minimal increase for the Department of Health for web site modification	- 0 -
	Potential increase, totaling several hundred thousands of dollars for human trafficking provisions for the Department of Rehabilitation and Correction	Prison population stacking effect generating incarceration cost increase totaling up to several million or more dollars annually for human trafficking provisions for the Department of Rehabilitation and Correction
	Potential increase for the Department of Rehabilitation and Correction of uncertain magnitude related to incarceration costs for cases involving assault and domestic violence against a pregnant woman	
	Potential minimal increase for the Office of the Attorney General for establishing committee	- 0 -
Operating Expenses (Fund 5D60)		
Revenues	- 0 -	- 0 -
Expenditures	Potential minimal increase for the State Medical Board of Ohio	
Victims of Crime/Reparations Fund (Fund 4020)		
Revenues	Gain potentially exceeding minimal	
Expenditures	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2007 is July 1, 2006 – June 30, 2007.

- ***Department of Health***. The bill requires the Department of Health to publish a notice on its Internet web site in a manner that can be copied and produced in poster form. The cost would likely be minimal.

- ***State Medical Board of Ohio*.** The State Medical Board of Ohio could realize an increase in administrative and possible investigative and adjudication costs as a result of the bill. It is likely that these costs would be minimal; however, the total costs would be dependent on the number of physicians who violate the provisions in the bill.

- ***Department of Rehabilitation and Correction*.** Additional offenders might be sentenced to prison subsequent to the bill's enactment, and thus, there could be an increase in the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs. The bill enhances the penalties for domestic violence cases against pregnant women when the offender knew the victim was pregnant. Additionally, the bill imposes mandatory minimum sentencing in some domestic violence cases and assault cases when the offender knew the woman was pregnant. Mandatory minimum sentences can increase incarceration times for violators, thus, increasing costs for DRC.

- ***Department of Rehabilitation and Correction*.** Based on a preliminary analysis provided by DRC, the bill's human trafficking penalty enhancement provisions appear likely to increase its annual incarceration costs, the magnitude of which could total up to several million or more dollars annually in subsequent years.

- ***Attorney General.*** The bill encourages the Office of the Attorney General to establish a Trafficking in Persons Study Commission. If the Attorney General were to establish this committee, the ongoing annual operating expenses for the state appears unlikely to exceed minimal, which means an estimated cost of less than $100,000 per year.

- ***Victims of Crime/Reparations Fund*.** Given the shifting of certain domestic abuse cases from the misdemeanor to the felony level, the Victims of Crime/Reparations Fund could collect an additional $21 compared to the revenue generated from the misdemeanors under current law. Thus, as a result of perhaps as many as 7,400 offenders being convicted of, or pleading guilty to, the penalty enhanced conduct, the state may gain an additional $21 in locally collected state court costs for each such instance for deposit in Fund 402. The magnitude of this potential gain could exceed the minimal threshold for the state, which is $100,000.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 and FUTURE YEARS
Counties	
Revenues	Gain of uncertain magnitude
Expenditures	Increases possibly exceeding minimal in some jurisdictions
Municipalities	
Revenues	Loss of uncertain magnitude
Expenditures	Decrease

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- ***Counties and Municipalities*.** Certain domestic abuse cases will be elevated to the status of felonies, thus shifting such cases out of municipal and county courts into the more expensive felony component of county criminal justice systems. This shifting of cases may result in the following fiscal effects: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues.

- ***Counties*.** The bill imposes mandatory minimum sentences for aggravated assault, felonious assault, and assault if the offender is convicted of a specification that the victim was a woman that the offender knew was pregnant at the time of the offense. The bill also imposes some mandatory minimum sentences in domestic violence cases if the offender knew the woman was pregnant. The mandatory minimum sentencing cases may complicate county court costs and thus increase county court investigative, prosecuting, and defending costs. Incarceration costs for felony cases would be paid by the state. The bill imposes mandatory minimum sentences of at least 30 days in jail for misdemeanor assault if the offender is convicted of a specification that the victim was a woman that the offender knew was pregnant at the time of the offense. This could increase incarceration and prosecutorial costs for counties.

- ***Counties*.** The bill will not create additional human trafficking-related criminal actions or proceedings for county criminal justice systems to process, but may affect the time and effort required to resolve such matters. The penalty enhancement provisions may expedite the bargaining process in some instances, which potentially reduces costs; in other instances, the penalty enhancement provisions may slow the bargaining process, which potentially increases costs. That said, the net fiscal effect on any given county criminal justice system is likely to be minimal, which means an estimated reduction or increase of no more than $5,000 per year.

- ***Counties.*** The bill would make certain individuals who are required to report child abuse or neglect liable for compensatory and exemplary damages resulting from a civil action. It is assumed that any civil actions would be handled in a county court of common pleas. As a result, county courts of common pleas would realize an increase in court costs. However, courts would receive a gain in revenue for things such as civil filing fees that should offset, or partially offset, these court costs.

Detailed Fiscal Analysis

Display of notice by offices or facilities where abortions are performed or induced

The bill requires the Department of Health to publish a notice on its Internet web site in a manner that can be copied and produced in poster form. The notice must state: (1) that no one can force another person to have an abortion, (2) that an abortion cannot be legally performed on anyone, regardless of her age, unless she voluntarily consents to having the abortion, (3) that before an abortion can legally be performed, the pregnant female must sign a form indicating that she consents to having the abortion voluntarily and without coercion by any person, and (4) that if someone is trying to force another person to have an abortion against the other person's will, the other person should not sign a consent form, and, if the other person is at an abortion facility, should tell an employee of the facility that someone is trying to force the other person to have an abortion.

The bill requires each office or facility at which abortions are performed or induced to post the notice in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors. The notice specifies the poster dimensions and the minimum typeface required. The bill explicitly requires an "ambulatory surgical facility" that performs or induces abortions to comply with that requirement. The bill specifies that the notice-posting requirement does not apply to an office or facility at which abortions are performed or induced due only to a "medical emergency." As used in this provision, "medical emergency" means a condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion.

Fiscal effect of notice display

The Department of Health will realize an increase in costs related to creating the notice and posting it on their web site. The cost is expected to be minimal as long as they only have to post the form.

There are currently 22 government-owned hospitals in Ohio. These hospitals are owned by counties or the state. According to the Ohio Hospital Association, it is believed that abortions are performed in hospitals only in the case of medical emergencies. If this is indeed the case, then hospitals would not be required to post the notice and there would be no cost associated with this provision on government-owned hospitals.

Under the bill, ambulatory surgical facilities that perform or induce abortions must comply with the notice-posting requirement. An ambulatory surgical facility may be either hospital-operated or independent. If an ambulatory surgical facility is affiliated with one of the 22 government-owned hospitals, then that facility and hence the government-owned hospital itself, may experience an increase in administrative costs related to the notice-posting requirement. This increase in costs should be minimal. LSC staff randomly checked ambulatory

surgical facility web sites. It appears from the facilities' web sites that most facilities are owned by physicians or health care groups and are not affiliated with government-owned hospitals.

Disciplinary actions

Under the bill, the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, must limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under the bill.

Fiscal effect of disciplinary actions

The State Medical Board of Ohio could realize an increase in administrative and possible investigative and adjudication costs as a result of the bill. It is likely that this cost would be minimal; however, the total costs would be dependent on the number of physicians who violate the provisions in the bill.

Assault cases when the victim is pregnant

The bill requires a mandatory jail term or mandatory prison term for felonious assault, aggravated assault, and assault if the offender is convicted of a specification that the victim was a woman that the offender knew was pregnant at the time of the offense.

Penalty for domestic violence when the victim is pregnant

Prohibitions

Existing law prohibits a person from doing any of the following:

(1) Knowingly causing or attempting to cause "physical harm" to a "family or household member";

(2) Recklessly causing "serious physical harm" to a family or household member; or

(3) By threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

Current penalties

A violation of any of the prohibitions listed above is the offense of "domestic violence." The existing penalty for the offense of "domestic violence" is as follows:

(1) Except as otherwise described in subsequent paragraphs, a violation of the prohibition described above in clause (3) under "Prohibitions" is a misdemeanor of the fourth degree, and a violation of the prohibition described above in clause (1) or (2) under "Prohibitions" is a misdemeanor of the first degree.

(2) Except as otherwise provided in paragraph (3), below, if the offender previously has pleaded guilty to, or been convicted of, domestic violence, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to domestic violence, a violation of R.C. 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of the prohibition described above in clause (1) or (2) under "Prohibitions" is a felony of the fourth degree, and a violation of the prohibition described above in clause (3) under "Prohibitions" is a misdemeanor of the second degree.

(3) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in clause (2), above, involving a person who was a family or household member at the time of the violations or offenses, a violation of the prohibition described above in clause (1) or (2) under "Prohibitions" is a felony of the third degree, and a violation of the prohibition described above in clause (3) under "Prohibitions" is a misdemeanor of the first degree.

Penalties under the bill

The bill enhances criminal penalties for the offense of "domestic violence" when the offender knew the victim was pregnant at the time of the offense. Additionally, there are mandatory prison terms for some cases.

Fiscal effect of enhanced penalties

The Pregnancy Risk Assessment Monitoring System Data Summary (PRAMS) is a joint surveillance project between the Department of Health and the U.S. Centers for Disease Control and Prevention. PRAMS is a mail survey with a telephone follow-up of a random sample of recent mothers of live-born infants. According to PRAMS approximately 5% of women have been physically abused during pregnancy by a husband, partner, or anyone else – these women may or may not have reported this abuse to authorities. In 2006, there were approximately 148,000 births in Ohio. If 5% of these women were abused during pregnancy, this means that up to 7,400 pregnant women were abused by a husband, partner, or anyone else. For the purposes of this fiscal note, LSC staff assumes that the majority of these cases were perpetuated by a family or household member and thus could be tried with the enhanced penalties.

Local government fiscal effects

The bill's penalty enhancement carries the potential to elevate certain domestic abuse cases that, based on current law, would most likely be adjudicated as a misdemeanor under the subject matter jurisdiction of a municipal court or a county court to a felony under the subject matter jurisdiction of a court of common pleas. Relative to a misdemeanor, a felony is generally a more expensive criminal matter to resolve.

Certain domestic abuse cases that would have been misdemeanors under current law will be elevated to the status of felonies, thus shifting such cases out of municipal and county courts into the more expensive felony component of county criminal justice systems. From the fiscal perspective of local governments, this elevation of certain domestic violence cases may simultaneously: (1) increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) certain offenders, while decreasing analogous municipal criminal justice system expenditures, and (2) generate additional court cost and fine revenues for counties, while causing a loss in analogous municipal court cost and fine revenues.

The bill imposes mandatory minimum sentences for aggravated assault, felonious assault, and assault if the offender is convicted of a specification that the victim was a woman that the offender knew was pregnant at the time of the offense. The bill also imposes some mandatory minimum sentences in domestic violence cases if the offender knew the woman was pregnant. The mandatory minimum sentencing cases may complicate county court costs and thus increase county court investigative, prosecuting, and defending costs. Additionally, the imposition of a mandatory minimum sentence for a misdemeanor assault with a specification that the victim was a woman that the offender knew was pregnant at the time of offense could increase incarceration and prosecutorial costs for municipalities.

State government fiscal effects

By enhancing certain domestic abuse cases under the above-noted circumstances from a misdemeanor to a felony, the bill creates the possibility that a person who could not otherwise have been sentenced to a prison term under current law can theoretically, at least, be sentenced to a prison term in the future. As a result, additional offenders might be sentenced to prison subsequent to the bill's enactment, and there could be an increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs. Additionally, the imposing of mandatory minimum sentences could increase incarceration costs, since judges would have no discretion in terms of sentencing.

In addition to any local fines and court costs, offenders can be ordered to pay locally collected state court costs. State court costs for a felony conviction total $45, with $30 of that amount being credited to the Victims of Crime/Reparations Fund (Fund 4020) and the remainder, or $15, being credited to the GRF. State court costs for a misdemeanor conviction total $24, with $9 of that amount being credited to the Victims of Crime/Reparations Fund and the remainder, or $15, being credited to the GRF. Thus, the GRF gains $15 irrespective of whether an offender is convicted of or pleads guilty to a misdemeanor or a felony. In the case of a felony, the Victims of Crime/Reparations Fund could collect an additional $21 compared to its potential take from a misdemeanor. Thus, as a result of a person being convicted of, or pleading guilty to, the penalty enhanced conduct, the state may gain an additional $21 in locally collected state court costs for each such instance for deposit in Fund 4020.

Factors in determination

Please note that there are several factors that could have an impact on this estimate. First, it is likely that not all of these women would report the abuse to authorities. Thus, fewer court

cases would be prosecuted and the enhanced penalty costs and mandatory minimum costs would be reduced. Second, the offender would need to know the victim of the violation was pregnant at the time of the violation. This may be hard for prosecutors to prove. Third, the cases that move from a misdemeanor offense to a felony offense in the bill will likely see a partial offset in court costs and possible incarceration expenses for certain governmental entities.

Penalties for committing offenses in the furtherance of human trafficking

Relative to its human trafficking provisions, the bill most notably:

(1) Requires a mandatory prison term for kidnapping, abduction, compelling prostitution, promoting prostitution, illegal use of a minor in nudity-oriented material or performance, endangering children; and

(2) Increases the penalty for engaging in a pattern of corrupt activity if committed in the furtherance of human trafficking.

Offense levels for certain prohibited conduct under current law

The existing offense levels for the prohibited conduct addressed by the bill are summarized in Table 1 immediately below.

Table 1
Offense Levels for Certain Prohibited Conduct Under Current Law

Type of Offense	Level of Offense
Kidnapping	Felony of the first or second degree depending on circumstances present
Abduction	Felony of the third degree
Compelling prostitution	Felony of the third degree generally; Felony of the second degree under certain circumstances
Promoting prostitution	Felony of the fourth degree generally; Felony of the third degree under certain circumstances
Illegal use of a minor in nudity-oriented material or performance	Felony of the second, fourth, or fifth degree depending on circumstances present
Endangering children	Misdemeanor of the first degree generally; Felony of the second, third, fourth, or fifth degree under certain circumstances
Engaging in a pattern of corrupt activity	Felony of the second degree generally; Felony of the first degree under certain circumstances

Prison terms generally and under the bill

Table 2 immediately below displays the prison term associated with the bill's prohibited conduct under current law and compares it to the enhanced mandatory prison term that the court would impose under the bill.

Table 2 Prison Terms Generally and Under the Bill		
Level of Offense	**Prison Term Under Current Law**	**Mandatory Prison Term Under the Bill**
Felony 1st degree	3,4,5,6,7,8,9,10 years definite	5,6,7,8,9,10 years definite
Felony 2nd degree	2,3,4,5,6,7,8 years definite	3,4,5,6,7,8 years definite
Felony 3rd degree	1,2,3,4,5 years definite	3,4,5 years definite
Felony 4th degree	6,7,8,9,10,11,12,13,14,15,16,17,18 months definite	18 months definite
Felony 5th degree	6,7,8,9,10,11,12 months definite	12 months definite

State fiscal effects

The bill will likely affect the state in two ways related to the annual incarceration costs incurred by the Department of Rehabilitation and Correction (DRC). In the short-term, some offenders that might not otherwise have been sentenced to prison under current law and practice may, under similar circumstances in the future, receive a mandatory prison term. In the long-term, some offenders that would have been sentenced to a prison term under current law and practice, under similar circumstances in the future, may receive a longer prison term than might otherwise have been the case. Either outcome increases DRC's annual incarceration costs, as the practical effect is to increase the size of the prison population.

Short-term incarceration costs. Generally, the bill's human trafficking penalty enhancements appear unlikely to noticeably increase DRC's short-term incarceration costs, because they affect offenders likely to have been sentenced to some prison time under current law and practice. The one potential exception to this is the mandatory prison term required for offenses of the fourth and fifth degree when the human trafficking specification is attached. Under the bill, these offenders must be sentenced to the maximum term for their offense. Under current law, the presumption for these offenders is that they will not receive prison time. The result is that some additional offenders in this category will receive mandatory maximum prison sentences who would otherwise have been sentenced to community control or some lesser amount of prison time. The potential increase in DRC's incarceration costs related to these fourth- and fifth-degree felons could total several hundred thousands of dollars annually.

Long-term incarceration costs. Examining a more long-term perspective, the changes to the felony sentencing law related to human trafficking specifications means that, in the future, certain offenders, subsequent to the bill's enactment, would receive longer prison terms than might otherwise have been the case under current law and practice. In effect, by extending prison stays beyond what the amount of time served might otherwise have been under current law, the bill will trigger a "stacking effect," which refers to the increase in the inmate population that occurs as certain offenders stay in prison longer and the number of offenders entering the prison system does not decrease.

To estimate the impact of this stacking effect on the future size of the DRC's inmate population, LSC fiscal staff consulted the Department's Bureau of Research. DRC's preliminary analysis noted that, when the resulting stacking effect stabilizes, the Department would need up to a few hundred additional inmate beds. According to DRC's web site, the annual incarceration cost per inmate as of November 2008 is budgeted at $24,729. If DRC's preliminary research is a

reasonable approximation of the bill's stacking effect, then the increase in its GRF-funded incarceration costs conceivably total up to several million or more dollars annually.

Local fiscal effects

The conduct addressed by the bill is prohibited under current law and generally rises to the level of a felony falling under the subject matter jurisdiction of courts of common pleas and county criminal justice systems. Thus, the bill will not create additional criminal actions or proceedings for county criminal justice systems to process, but may affect the time and effort required to resolve such matters. The penalty enhancement provisions may expedite the bargaining process in some instances, which potentially reduces costs; in other instances, the penalty enhancement provisions may slow the bargaining process, which potentially increases costs. That said, the net fiscal effect on any given county criminal justice system is likely to be minimal, which means an estimated reduction or increase of no more than $5,000 per year.

Trafficking in Persons Study Commission

The bill strongly encourages the Attorney General to establish a Trafficking in Persons Study Commission to: (1) study and review the problem of trafficking in persons, (2) study and review criminal law of this state to determine the manner and extent to which it currently applies to conduct that involves or is related to trafficking in persons, (3) develop recommendations to address the problem of trafficking in persons, and (4) prepare a report that summarizes its findings and its recommendations.

Fiscal Effect

If the Attorney General were to implement these duties and responsibilities, the ongoing annual operating expenses for the state appears unlikely to exceed minimal, which means an estimated cost of less than $100,000 per year. It seems likely that certain political subdivisions of the state may also incur some additional costs if the Attorney General needs assistance in collecting and analyzing data. Such costs would likely be no more than minimal, which means an estimated cost of no more than $5,000 for any affected county or municipality per year.

Child abuse or neglect reports – civil action and civil liability

The bill specifies that reports of other incidents of known or suspected child abuse or neglect may be used in a civil action against a person who is alleged to have failed to report known or suspected child abuse or neglect, and to provide that a person who fails to report known or suspected child abuse or neglect is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made.

Fiscal effect

Currently, certain individuals are required to report known or suspected incidents of abuse or neglect. If these individuals do not make these reports, then they may be subject to criminal penalties. The bill would also make them liable for compensatory and exemplary damages resulting from a civil action. It is assumed that any civil actions would be handled in a county court of common pleas. As a result, county courts of common pleas would realize an

increase in court costs. However, courts would receive a gain in revenue for things such as civil filing fees that should offset, or partially offset, these court costs. It is unknown how many civil actions could, or would, be brought forward.

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