

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **S.B. 220** DATE: **January 23, 2008**
STATUS: **As Introduced** SPONSOR: **Sen. Schuring**
LOCAL IMPACT STATEMENT REQUIRED: **Yes**
CONTENTS: **Prostitution penalties**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential increase in annual incarceration costs totaling up to \$5.7 million or more within a year or so of the bill's effective date
Victims of Crime/Reparations Fund (Fund 402)	
Revenues	Potential gain in locally collected state court costs, perhaps in the tens of thousands of dollars annually
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- **Incarceration expenditures.** According to an analysis compiled by the Department of Rehabilitation and Correction's (DRC) Bureau of Research, the bill's felony enhancements will, over time, require the Department to add, at a minimum, 225 additional inmate beds to its prison system, the majority of which will be needed to house female offenders. DRC's web site, as of January 2008, indicates that the annual incarceration cost per inmate is \$25,331. If DRC's research is a reasonable approximation of the bill's impact on its future inmate population, then the increase in its annual incarceration costs could conceivably total up to \$5.7 million or more (\$25,331 x estimated 225 additional beds). Based on a rather quick perusal of DRC's calendar year (CY) 2006 time-served report, it appears that the average time served was slightly in excess of six months for a fifth-degree felony and just under one year for a fourth-degree felony. This suggests that the bill's effect on the size of DRC's institutional population and related operating costs may fully manifest itself within no more than a year or so of its effective date.
- **Court cost revenues.** For a felony offense, the state court cost totals \$45, with \$15 of that amount being credited to the GRF and the remaining \$30 being credited to Fund 402. Since the bill is not expected to generate any new cases, the GRF should experience no effect to its revenue stream. Currently, if the offense is a misdemeanor, Fund 402 gains \$9 per conviction. For those cases that are elevated to a felony, Fund 402 could realize a net gain of \$21 per conviction. Therefore, depending upon how these penalty-enhanced cases will ultimately be adjudicated, Fund 402 may realize an increase in its annual deposits, perhaps in the tens of thousands of dollars.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
Counties	
Revenues	Likely gain in fines and court costs, magnitude uncertain, but could easily exceed minimal in certain urban areas
Expenditures	Likely increase to prosecute, defend, adjudicate, and sanction prostitution-related conduct, magnitude uncertain, but could easily exceed minimal in certain urban areas
Municipalities	
Revenues	Likely loss in fines and court costs, magnitude uncertain, but could easily exceed minimal in certain urban areas
Expenditures	Potential savings in relation to prosecution, defense, adjudication, and sanctioning prostitution-related conduct, magnitude uncertain, but could easily exceed minimal in certain urban areas

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

- ***County criminal justice systems.*** As a result of the bill's penalty enhancements, certain conduct related to prostitution handled by municipal courts and county courts as misdemeanors under existing law will shift to courts of common pleas where they will be handled as felonies. This shift will likely increase any affected county criminal justice system's costs related to the prosecution, defense, adjudication, and sanctioning of certain offenders, and potentially increases the amount of revenues that counties collect from court costs and fines imposed on those offenders. The magnitude of those expenditure increases and revenue gains could easily exceed minimal in certain urban areas of the state, as the number of prostitution-related charges filed in those jurisdictions is in the range of 2,000 to 3,000, a large number of which involve repeat offenders. The effect on county sanctioning costs would be alleviated to the degree that a court opts to sentence offenders to a prison term rather than to impose a mix of locally funded residential and nonresidential sanctions.
- ***Municipal criminal justice systems.*** The caseload shifting noted in the immediately preceding dot point means that municipal criminal justice systems will realize a savings in the annual costs that would otherwise be incurred in the process of prosecuting, defending, adjudicating, and sanctioning offenders who engage in certain prostitution-related conduct, and will likely lose revenues that might otherwise have been collected from court costs and fines imposed on those offenders. The magnitude of those expenditure decreases and revenue losses could easily exceed minimal in urban areas of the state where certain municipal criminal justice systems process a significant number of misdemeanor prostitution-related charges each year.

Detailed Fiscal Analysis

Most notably, the bill enhances, when certain qualifying criteria are met, the penalties for the offenses of: (1) promoting prostitution, (2) soliciting, (3) prostitution, (4) procuring, and (5) loitering to engage in solicitation. Three of these penalty enhancements (for the offenses of procuring, soliciting, and prostitution) will elevate certain repeat offenses from a misdemeanor to a felony. Table 1 immediately below illustrates the proposed penalty enhancements for these five offenses.

**Table 1
Proposed Penalty Enhancements**

Offense (Current law penalty)⁺	Circumstances for Proposed Enhanced Penalty	Proposed Penalty Enhancement
Promoting prostitution (Generally a fourth-degree felony; if the prostitute is a minor, a third-degree felony)	<ul style="list-style-type: none"> Offense occurs in a school safety zone or within 1,000 feet of a school building or the boundaries of a school premises ("committed in proximity to a school") 	Third-degree felony; if the prostitute is a minor, second-degree felony
Soliciting (Generally a third-degree misdemeanor; if the offender has prior positive HIV test, a third-degree felony)	<ul style="list-style-type: none"> Committed in proximity to a school 	First-degree misdemeanor
	<ul style="list-style-type: none"> Committed in proximity to a school <u>and</u> the offender has two or more prior convictions for conduct committed in proximity to a school 	Fifth-degree felony*
Prostitution (Generally a third-degree misdemeanor; if the offender has prior positive HIV test, a third-degree felony)	<ul style="list-style-type: none"> Committed in proximity to a school 	First-degree misdemeanor
	<ul style="list-style-type: none"> Committed in proximity to a school <u>and</u> the offender has two or more prior convictions for conduct committed in proximity to a school 	Fifth-degree felony*
Procuring (First-degree misdemeanor)	<ul style="list-style-type: none"> Committed in proximity to a school <u>and</u> the offender has multiple prior convictions of the offense similarly committed 	Third-degree felony*
Loitering to engage in solicitation (Generally a third-degree misdemeanor; if the offender has prior positive HIV test, a third-degree felony)	<ul style="list-style-type: none"> Committed in proximity to a school <u>and</u> the offender has multiple prior convictions of the offense similarly committed 	First-degree misdemeanor
<p>+ Penalty for first offense unchanged by the bill. * For these offenses, the proposed penalty increase, i.e., from a misdemeanor to a felony, may result in cases being removed from the subject matter jurisdiction of county courts and municipal courts and transferred to the jurisdiction of courts of common pleas.</p>		

Local fiscal effects

In order to estimate the bill's potential local fiscal effects, LSC fiscal staff reviewed data from a variety of sources and spoke to various officials in Ohio's local court systems. While all local

jurisdictions, in particular county criminal justice systems, could realize some manner of an increase in felony-level offenses related to prostitution, it seems likely that those court systems that primarily serve urban communities will be most affected, experiencing potentially dramatic shifts in their current caseloads, as the bill's penalty enhancements elevate certain prostitution-related cases from the misdemeanor subject matter jurisdiction of county courts and municipal courts to the felony subject matter jurisdiction of courts of common pleas.

For calendar year (CY) 2006, the FBI reported that there were 79,673 arrests nationwide related to "prostitution and commercialized vice."¹ This information was compiled from the arrest data reported by more than 17,000 law enforcement agencies whose jurisdictions in total cover more than 95% of the population of the United States. For Ohio alone, the FBI reported 951 arrests. It is unclear though, if this figure includes arrests related to the act of prostitution, including solicitation. Additionally, it is also unclear whether these figures include arrests made for violations of substantially equivalent municipal ordinances. Since the Franklin County Municipal Court alone processed over 1,400 charges of solicitation in 2006, it appears that the FBI's data does not portray an entirely accurate portrait of prostitution-related activity in Ohio. Therefore, since Ohio makes a clear distinction between "prostitution" and "solicitation," arrest data was also obtained from a selection of statewide sources.

In Ohio, the most prevalent prostitution-related charge appears to be associated with the act of "solicitation."² For example, in 2006, 1,475 charges of *solicitation* were filed in the Franklin County Municipal Court as compared with only 52 *prostitution* charges. The related charging data is detailed in Table 2 immediately below.

Table 2
CY 2006 Prostitution-Related Charges Filed in the Franklin County Municipal Court

Offense	City of Columbus Ordinance	Ohio Revised Code	Other Municipal Ordinances	Total Charges
Solicitation	1,402	73	0	1,475
Procuring/promoting	0	8	0	8
Prostitution	24	28	0	52
Loitering for prostitution	7	480	0	487

Based on conversations with the Columbus City Attorney's Office, it appears that repeat offenses are particularly common in prostitution and prostitution-related offenses. Additionally, when arrest data was compared to the locations of schools in the Columbus area, an overwhelming majority appears to fall within 1,000 feet of a school building or the boundaries of a school premises. Based on these two observations, LSC fiscal staff has concluded that, while the bill will create no new cases, a significant number of existing cases could be elevated from a misdemeanor to a felony.

Under current law, four types of prostitution-related offenses could rise to the level of a felony. Three of the four offenses are dependent upon certain qualifying criteria: (1) promoting prostitution, (2)

¹ U.S. Department of Justice – Federal Bureau of Investigation, Uniform Crime Statistics, *Crime in the United States, 2006*, Table 29, (October 31, 2007) <http://www.fbi.gov/ucr/cius2006/index.html>.

² ORC 2907.24 defines solicitation as soliciting another to engage with such other person in sexual activity for hire.

soliciting, if the offender has tested positive for HIV, (3) prostitution, if the offender has tested positive for HIV, and (4) loitering to engage in solicitation, if the offender has tested positive for HIV. That said, based on the City of Columbus' experience, it appears that most prostitution-related charges are filed as misdemeanors.

Arrest and detention costs

According to Columbus City Attorney's Office, vice detectives have expressed some concern over the increase in paperwork and administrative costs associated with the bill's enhanced soliciting, prostitution, and procuring penalties. While most prostitution-related offenders are given a citation and summons under current law and practice, as a result of the bill, if the offender is charged with a felony-level offense, the arresting unit will be required to transport the offender to jail. Once transported, the offender would be required to post bond or await his/her arraignment hearing. As a result, it is possible that local law enforcement agencies could experience increased costs associated with the transport, processing, and detention of these offenders. While it is difficult to predict what these increases would total annually, from LSC fiscal staff's perspective, such costs could be more than minimal for certain local jurisdictions. For the purposes of this fiscal analysis, a cost in excess of minimal means an estimated annual expenditure increase of more than \$5,000 for certain affected counties or municipalities.

Prosecution costs

When a person is arrested for a misdemeanor or felony offense, the prosecuting attorney for that municipal jurisdiction initially processes the case. Both municipal courts and county courts have the authority to conduct preliminary hearings in felony cases.³ If the charge is a misdemeanor, the case will remain within the jurisdiction of the municipal court or county court. However, if the charge is a felony, the case will be referred to the court of common pleas in that county after the initial arraignment. A felony charge is issued at the point of arrest and the city prosecutor would be obligated to arraign the case as a felony.

As noted, city prosecutors will still be responsible for handling these cases through the initial arraignment. Subsequent to arraignment, felony cases fall under the authority of the county prosecutor. Thus, as a result, certain city attorneys may realize some operational savings, while certain county prosecutors could experience a notable increase in their workload and associated administrative costs. It has been speculated by those in the criminal justice field that most of these felony cases will ultimately be pled down to a misdemeanor charge, but despite this possibility, the case will still remain in the jurisdiction of the court of common pleas and under the purview of the county prosecutor.

Court operations

Like the county prosecutors, courts of common pleas will most likely see an increase in their caseloads. After these new felony cases are arraigned in the municipal court or county court, the court of common pleas will ultimately adjudicate the case (even if the charge is later reduced). At the time of this writing, it is difficult to estimate the total fiscal impact this shift in caseloads will have on county

³ The Supreme Court of Ohio, *The Ohio Courts Summary, 2006*, May 2007 (page 9).

courts, municipal courts, and courts of common pleas, both in terms of case-processing costs and fine and court cost collections, but LSC fiscal staff assumes it could be more than minimal for certain county and municipal jurisdictions, especially those located in the state's more urban areas.

Jail costs

While it is possible that many cases will be pled down to a misdemeanor, judges may be more amenable to sentence certain offenders to longer jail terms. After reviewing caseload data from a variety of jurisdictions, the Department of Rehabilitation and Correction (DRC) anticipates a rather sizeable increase in jail populations across the state if the bill is enacted. According to the *State of Ohio Annual Jail Report, 2005*, the average per diem rate for a full service jail was \$58.19 and the average per diem rate for a minimum security jail was \$56.14. It should also be noted that, due to a variety of factors, including limited appropriate local sanctions, some courts may opt to sentence certain offenders to a prison term, thus shifting the related costs to the state.

State fiscal effects

Incarceration expenditures

As noted, an offender convicted of, or pleading guilty to, one of the bill's felony enhanced offenses could be sentenced to a term of local or state incarceration. Since the bill may result in increasing the number of felony convictions annually statewide, DRC may experience an increase in their GRF-funded incarceration costs.

However, based on the assumption that many of these new felony charges may be reduced to misdemeanors, the overall increase in the number of additional offenders that could be sentenced to prison may be relatively small, at least in comparison to the number of those felony offenders that are sanctioned locally. In addition, as summarized in Table 3 immediately below, existing sentencing guidance for some of the felony-enhanced conduct addressed by the bill, in particular for a fifth or fourth-degree felony, expresses a preference, dependent upon the circumstances present, against the imposition of a prison term.

**Table 3
Existing Sentences and Fines for Felony Offenses Generally**

Offense Level	Maximum Fine	Maximum Prison Term*
Second-degree felony	Not more than \$15,000	2, 3, 4, 5, 6, 7, or 8 years in prison (presumption for a prison term)
Third-degree felony	Not more than \$10,000	1, 2, 3, 4, or 5 years in prison (no preference for prison term except for certain offenses)
Fourth-degree felony	Not more than \$5,000	6 to 18-month definite prison term (preference against a prison term)
Fifth-degree felony	Not more than \$2,500	6 to 12-month definite prison term (preference against a prison term)

* Community and residential sanctions and nonresidential sanctions are available in lieu of prison.

It is difficult to determine how many additional offenders may ultimately be sentenced to prison annually as a result of the bill. This number is likely to depend greatly upon the prevalence of such activities in each local jurisdiction, whether the arresting officer charges the offender with a felony offense, the judgment of local prosecutors in pursuing the charge, and the sentencing practices and preferences of judges of the courts of common pleas.

That said, according to an analysis compiled by DRC's Bureau of Research, the bill's felony enhancements will, over time, require the Department to add, at a minimum, 225 additional inmate beds to its prison system, the majority of which will be needed to house female offenders.⁴ DRC's web site, as of January 2008, indicates that the annual incarceration cost per inmate is \$25,331. If DRC's research is a reasonable approximation of the bill's impact on its future inmate population, then the increase in its annual incarceration costs could conceivably total up to \$5.7 million or more (\$25,331 x estimated 225 additional beds). Based on a rather quick perusal of DRC's CY 2006 time-served report, it appears that the average time served was slightly in excess of six months for a fifth-degree felony and just under one year for a fourth-degree felony. This suggests that the bill's effect on the size of DRC's institutional population and related operating costs may fully manifest itself within no more than a year or so of its effective date.

Two caveats are important to note: (1) the estimate is based on DRC's current incarceration cost per inmate per year (presumably the cost will continue to rise over time), and (2) the estimate assumes all other conditions that could affect the size and cost of running the state's prison system will remain the same over time, which seems highly unlikely.

Court cost revenues

If, subsequent to the bill's enactment, a person is convicted of, or pleads guilty to, violating any of the bill's new penalty enhancements, then the sentencing court will most likely impose, pursuant to current law, locally collected state court costs that, if collected, would then be forwarded for deposit in the state treasury to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 402). For a felony offense, the state court cost totals \$45, with \$15 of that amount being credited to the GRF and the remaining \$30 being credited to Fund 402. Since the bill is not expected to generate any new cases, the GRF should experience no effect to its revenue stream. Currently, if the offense is a misdemeanor, Fund 402 gains \$9 per conviction. For those cases that are elevated to a felony, Fund 402 could realize a net gain of \$21 per conviction. Therefore, depending upon how these penalty-enhanced cases will ultimately be adjudicated, Fund 402 may realize an increase in its annual deposits, perhaps in the tens of thousands of dollars.⁵

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⁴ Kowalski, Brian R., Ohio Department of Rehabilitation and Correction, Bureau of Research, Interoffice Memorandum, November 13, 2007.

⁵ This assumes that Franklin County's caseload represents 10% of Ohio's population, and up to 50% of prostitution-related offenders are repeat offenders, and up to 50% of felony charges are not reduced to misdemeanors. The 50% criteria used in this calculation is arguably somewhat arbitrary, but seems to be a conservative estimate based on anecdotal evidence.

