Fiscal Note & Local Impact Statement

127 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Proposed Sub. S.B. 220 (LSC 127 1293-1)** DATE: **February 6, 2008**

STATUS: **In Senate Judiciary--Criminal Justice** 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 incarceration cost increase, annual magnitude uncertain
Offender Financial Responsibility Fund (Fund 5H8)	
Revenues	Potential cost recovery from offenders subject to electronic monitoring
Expenditures	Potential increase to electronically monitor certain offenders in certain counties

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

- ***Incarceration expenditures.*** If offenders are sentenced to a longer prison stay than might otherwise have been the case under current law and sentencing practices, then presumably the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs would increase to secure and service those offenders, assuming all other conditions remain the same. Whether or not this potential increase in DRC's annual incarceration costs could exceed minimal is, as of this writing, uncertain. In the context of state expenditures, an increase in excess of minimal means an estimated cost of more than $100,000 per year. That uncertainty aside, the fiscal effect on annual state incarceration costs appears unlikely to be significantly in excess of minimal, meaning it is unlikely to approach millions of dollars per year.

- ***Electronic monitoring.*** DRC's Adult Parole Authority (APA) provides presentence investigation and supervision services to the courts of common pleas in 50-plus counties. This reality raises the question of who in those counties would be responsible for the administration of any court-ordered electronic monitoring: the county or the APA. As of this writing, LSC fiscal staff does not know whether this will be an issue in certain counties for the APA, and if it is, how it might be resolved. Thus, until we have had an opportunity to explore this issue with the appropriate APA personnel, its implications for state expenditures and revenues, if any, are unclear. It appears, but is by no means certain, that any revenues collected from offenders subject to electronic monitoring by the APA would be deposited in the state treasury to the credit of DRC's existing Offender Financial Responsibility Fund (Fund 5H8).

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
Counties and Municipalities	
Revenues	Potential gain in electronic monitoring moneys from offenders, annual magnitude uncertain
Expenditures	Likely criminal justice system cost increase, annual magnitude uncertain, but could easily exceed minimal in certain urban areas if offenders are deemed indigent and unable to pay the costs associated with enhanced sanctions

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

- ***Criminal justice system case processing costs generally.*** The changes to the sentencing law proposed by the bill will not produce any new criminal cases, but may alter the way in which some individual cases make their way through county and municipal criminal justice systems. In some cases, the bill's sanction enhancement may make a defendant more willing to negotiate a plea with the local prosecutor (potentially reducing trial-related expenditures), while in other cases a defendant may fight to avoid the imposition of a more serious sanction and be more willing to have their case heard before a judge or jury (potentially increasing expenditures). Although uncertain as to whether these potential expenditure increases and decreases will offset one another, it appears that any net fiscal effect would, in the worst-case scenario, be minimal at most with respect to the annual operating costs of any affected county or municipal criminal justice system.

- ***Jail.*** In its review of caseload data from a variety of jurisdictions, LSC fiscal staff has discerned that prostitution and prostitution-related conduct appears to be a high volume activity in certain urban jurisdictions, with a rather sizeable portion of the offenders committing those offenses being convicted of, or pleading guilty to, a misdemeanor. Under certain circumstances, the bill authorizes the sentencing court to impose an additional definite jail term of not more than 60 or 120 days, with the average per diem for a local jail at around $60 or so. Generally, the local jurisdiction ultimately responsible for paying these costs would be the county in the case of an offender being charged pursuant to the Revised Code (felony or misdemeanor) or the municipality in which the conduct occurred if it involved violation of an ordinance (misdemeanor). Clearly, these incarceration costs would be minimized by the degree to which the sentencing court opted to either not utilize the bill's sanction enhancement or ordered a period of electronic monitoring.

- ***Electronic monitoring.*** At the time of this writing, LSC fiscal staff does not have the information readily at hand that would permit a reliable estimate of the frequency with which a court would utilize the bill's electronic monitoring sanction. The bill mandates that the offender pay all costs associated with use of the monitoring device. Given that the primary source of income for these offenders is likely to be associated with illegal enterprises, it may, in actuality, be more likely that these offenders would not be able to pay the costs associated with monitoring.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill most notably:

- Authorizes, when certain qualifying criteria are met, a court to impose an additional jail or prison term for the offenses of: (1) promoting prostitution, (2) soliciting, (3) prostitution, (4) procuring, and (5) loitering to engage in solicitation.
- Authorizes a court to require the offender, in lieu of the additional prison or jail term, to wear a real-time processing, continual tracking electronic monitoring device (herein referred to as "continual electronic monitoring") for a period of time that the additional term could have been imposed.
- Requires the offender to pay all costs associated with the electronic monitoring sanction, including the cost of the use of the monitoring device.

Table 1, which is located at the end of this document, displays the proposed discretionary sanction enhancements for the prostitution-related offenses noted in the first dot point above.

Prevalence of activity

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

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[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.

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, and most prostitution-related charges are filed as misdemeanors. Additionally, when arrest data was compared to the locations of schools in the Columbus area, an overwhelming majority appears to fall within the immediate vicinity of a school building or the boundaries of a school premises. Based on these two observations, LSC fiscal staff has concluded that, assuming all other conditions remain the same, subsequent to the bill's effective date, a large proportion of offenders committing prostitution and prostitution-related offenses could face charges that include the "proximity to a school" specification and the associated sanction enhancement.

Local fiscal effects

Criminal justice system case processing costs generally

The changes to the sentencing law proposed by the bill will not produce any new criminal cases, but may alter the way in which some individual cases make their way through county and municipal criminal justice systems. In some cases, the bill's sanction enhancement may make a defendant more willing to negotiate a plea with the local prosecutor (potentially reducing trial-related expenditures), while in other cases a defendant may fight to avoid the imposition of a more serious sanction and be more willing to have their case heard before a judge or jury (potentially increasing expenditures). Although uncertain as to whether these potential expenditure increases and decreases will offset one another, it appears that any net fiscal effect would, in the worst-case scenario, be minimal at most with respect to the annual operating costs of any affected county or municipal criminal justice system.

It is important to point out that the sentencing judge has discretionary authority to utilize the bill's sanction enhancement under certain circumstances, and is not required to do so. Presumably, certain judges find the currently available statutory sanctions more than adequate for the purposes of sanctioning offenders engaged in prostitution or prostitution-related conduct, in which case the bill's penalty enhancements may have little or no utility. As of this writing, however, LSC fiscal staff is uncertain as to how the bill's penalty enhancements may alter the manner in which judges sanction certain offenders from how judges might otherwise have sanctioned those offenders under current law and practice.

Jail

In its review of caseload data from a variety of jurisdictions, LSC fiscal staff has discerned that prostitution and prostitution-related conduct appears to be a high volume activity in certain urban jurisdictions, with a rather sizeable portion of the offenders committing those offenses being convicted of, or pleading guilty to, a misdemeanor. As noted, under certain circumstances, the sentencing court is permitted to impose an additional definite jail term of not more than 60 or 120 days.

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. If one assumes that these averages are a reasonable approximation of current costs, then the cost of an additional definite jail term of not more than 60 or 120 days generates an expense in the range of up to $3,400 to $7,000 per offender. Generally, the local jurisdiction ultimately responsible for paying these costs would be the county in the case of an offender being charged pursuant to the Revised Code (felony or misdemeanor) or the municipality in which the conduct occurred if it involved violation of an ordinance (misdemeanor). Clearly, these incarceration costs would be minimized by the degree to which the sentencing court opted to either not utilize the bill's sanction enhancement or ordered a period of electronic monitoring.

Electronic monitoring

As noted, the bill provides that, in lieu of imposing an additional prison or jail term under certain circumstances, a court may require an offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. At the time of this writing, LSC fiscal staff does not have the information readily at hand that would permit a reliable estimate of the frequency with which a court would utilize this sanctioning tool.

Costs of continual electronic monitoring appear to range from $9 to $18 a day. According to a report by the Task Force to Study Criminal Offender Monitoring by Global Positional Systems in the State of Maryland (herein referred to as the "Maryland Task Force"), a survey found that active monitoring systems typically cost between $9 and $12 a day.[3] This report was published in December 2005. More recently, however, *I-Secure Trac* made a product presentation to members of the Ohio General Assembly's Senate Criminal Justice Committee and stated that electronic monitoring through a global positioning system would cost $18 a day.[4]

As noted, the bill mandates that the offender pay all costs associated with use of the monitoring device. Given that the primary source of income for these offenders is likely to be associated with illegal enterprises, it may, in actuality, be more likely that these offenders would not be able to pay the costs associated with monitoring. The bill is silent in regard to alternative financing options, including, but not limited to, county or municipally subsidized monitoring programs for those declared indigent.

[3] Tewey, John F., Task Force to Study Criminal Offender Monitoring by Global Positional Systems in the State of Maryland, Final Report to the Governor and the General Assembly, December 31, 2005, page 5.

[4] Gongwer News Service Ohio, *Senators Told GPS Electronic Monitoring of Offenders Could Save State $148 Million*, Volume #77, Report #22, Article #09 -- Friday, February 1, 2008.

Regardless of these uncertainties, it seems safe to assume, on its face, that electronic monitoring would be a less expensive sentencing alternative than jail.

That said, it should also be noted that the nature of the electronic monitoring permitted under the bill would be accompanied with other costs, which include connecting the equipment, monitoring the data, reclaiming lost or damaged equipment, and enforcement of violations of the court's orders. According to the Maryland Task Force, most "jurisdictions recommended a caseload of anywhere from twenty (20) to twenty-five (25) offenders per agent" for these types of monitoring systems.[5] If a judge decides to utilize this type of sanctioning tools on a wide-scale basis, additional staff may be needed.

The costs and benefits of implementing this sanctioning tool would vary widely from jurisdiction to jurisdiction. Points of consideration could include potential savings from future capital outlays, potential increases in offender violations due to instant notifications, potential staffing increases to analyze data and monitor offenders, and potential costs related to the need for additional office space, travel, and storage.[6]

State fiscal effects

As a result of the bill, the state could experience fiscal effects generated by: (1) prison-bound offenders being sentenced to an additional term of incarceration ranging from one to twelve months, and (2) offenders requiring electronic monitoring in counties where the Department of Rehabilitation and Correction's (DRC) Adult Parole Authority (APA) provides supervision services to the court of common pleas.

Incarceration

DRC's web site indicates that, as of January 2008, the daily and annual incarceration costs per inmate were $69.40 and $25,331, respectively. If offenders are sentenced to a longer prison stay than might otherwise have been the case under current law and sentencing practices, then presumably DRC's GRF-funded incarceration costs would increase to secure and service those offenders, assuming all other conditions remain the same. Whether or not this potential increase in DRC's annual incarceration costs could exceed minimal is, as of this writing, uncertain. In the context of state expenditures, an increase in excess of minimal means an estimated cost of more than $100,000 per year.

That uncertainty aside, the fiscal effect on annual state incarceration costs appears unlikely to be significantly in excess of minimal, meaning it is unlikely to approach millions of dollars per year. This is because the number of offenders currently being sentenced to prison for prostitution-related conduct is relatively small in the context of a prison system housing around 50,000 offenders and processing 28,000-plus offenders through its three reception centers per year. It also seems unlikely that many, if any, judges will sentence additional felony offenders to a prison term if such judges are doing so under current law.

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[5] Tewey, John F., Task Force to Study Criminal Offender Monitoring by Global Positional Systems in the State of Maryland, Final Report to the Governor and the General Assembly, December 31, 2005, page 20.
[6] *Ibid*, page 21.

Electronic monitoring

The APA provides pre-sentence investigation and supervision services to the courts of common pleas in 50-plus counties. This reality raises the question of who in those counties would be responsible for the administration of any court-ordered electronic monitoring: the county or the APA. As of this writing, LSC fiscal staff does not know whether this will be an issue in certain counties for the APA and, if it is, how it might be resolved. Thus, until we have had an opportunity to explore this issue with the appropriate APA personnel, its implications for state expenditures and revenues, if any, are unclear. It appears, but is by no means certain, that any revenues collected from offenders subject to electronic monitoring by the APA would be deposited in the state treasury to the credit of DRC's existing Offender Financial Responsibility Fund (Fund 5H8).

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Table 1
Proposed Discretionary Sanction Enhancement

Offense	Discretionary Sanction Enhancement with "Committed in Proximity to a School" Specification
Promoting prostitution (Generally a fourth-degree felony; if the prostitute is a minor, a third-degree felony)	Fourth-degree or Third-degree felony • First offense: Additional definite prison term or electronic monitoring of 1 to 6 months • Subsequent offense*: Additional prison term or electronic monitoring of 1 to 12 months
Soliciting (Generally a third-degree misdemeanor; if the offender has prior positive HIV test, a third-degree felony)	Third-degree misdemeanor • First offense: Additional definite jail term or electronic monitoring of not more than 60 days • Subsequent offense*: Additional definite jail term or electronic monitoring of not more than 120 days Third-degree felony • First offense: Additional definite prison term of 1 to 6 months or equivalent electronic monitoring time • Subsequent offense*: Additional prison term of 1 to 12 months or equivalent electronic monitoring time
Prostitution (Generally a third-degree misdemeanor; if the offender has prior positive HIV test, a third-degree felony)	Third-degree misdemeanor • First offense: Additional definite jail term or electronic monitoring of not more than 60 days • Subsequent offense*: Additional definite jail term or electronic monitoring of not more than 120 days Third-degree felony • First offense: Additional definite prison term of 1 to 6 months or equivalent electronic monitoring time • Subsequent offense*: Additional prison term of 1 to 12 months or equivalent electronic monitoring time
Procuring (First-degree misdemeanor)	First-degree misdemeanor • First offense: Additional definite jail term or electronic monitoring of not more than 60 days • Subsequent offense*: Additional definite jail term or electronic monitoring of not more than 120 days
Loitering to engage in solicitation (Generally a third-degree misdemeanor; if the offender has prior positive HIV test, a third-degree felony)	Third-degree misdemeanor • First offense w/spec: not more than 60 days • Subsequent offense* w/spec: not more than 120 days Third-degree felony • First offense: Additional definite prison term of 1 to 6 months or equivalent electronic monitoring time • Subsequent offense*: Additional prison term of 1 to 12 months or equivalent electronic monitoring time

* Includes any prior conviction of either promoting, soliciting, loitering to engage in prostitution, procuring, or prostitution with "committed in proximity to a school" specification(s).