Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 262 of the 129th G.A. **Date**: June 12, 2012

Status: As Reported by Senate Judiciary **Sponsor**: Rep. Fedor

Local Impact Statement Procedure Required: Yes

Contents: Trafficking in persons

State Fiscal Highlights

STATE FUND	FY 2013 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	Potential annual gain in expungement fees
Expenditures	Potential, likely no more than minimal, annual increase in incarceration costs
Various Funds of the Attorney General	
Revenues	- 0 -
Expenditures	Potential minimal annual increase to perform data, training, and public awareness duties
Human Trafficking Fund (new fund)	
Revenues	Potential gain in seized money and receipts from sold property
Expenditures	Potential increase, up to available revenue
Indigent Defense Support Fund (Fund 5DY0)	
Revenues	Potential negligible annual loss in locally collected state court costs
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential negligible annual loss in locally collected state court costs
Expenditures	Potential increase, to make additional victim compensation awards

Note: The state fiscal year is July 1 through June 30. For example, FY 2013 is July 1, 2012 – June 30, 2013.

- **Expungement fees.** The bill may result in an annual gain in expungement fee revenue by expanding the number of persons eligible to apply for an expungement.
- **Attorney General.** The bill may minimally increase the Attorney General's annual operating expenses related to data collection, peace officer training, and public awareness programs.
- **Incarceration costs.** The bill's mix of prohibition expansions and penalty enhancements are likely to result in a no more than minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration costs. However, these prohibition expansions and penalty enhancements could lead to an increase in incarceration costs well in excess of minimal if the associated conduct is

currently undercharged or if awareness of the conduct leads to additional arrests and convictions.

- **Human Trafficking Fund.** The bill creates the Human Trafficking Fund consisting of money seized in connection with trafficking in persons, compelling prostitution, or promoting prostitution, or derived from the proceeds thereof. Money in the fund, to be administered by the Department of Job and Family Services, is for the sole purpose of providing assistance to victims. The amounts that could be credited to, and disbursed from, the fund annually are uncertain.
- **Court cost revenues.** As a result of the bill's authorization of juvenile courts to hold a delinquent child complaint in abeyance under certain conditions, a negligible amount of annual revenue in the form of state court costs that may have been collected under current law will not be collected and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).
- **Victims of Crime Fund.** The bill may increase compensation expenditures from the Victims of Crime/Reparations Fund (Fund 4020) by expanding the list of persons eligible to receive such compensation.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2012 – FUTURE YEARS
Counties (criminal and juvenile justice systems)	
Revenues	Potential gain in court costs, fees, and fines
Expenditures	Potential increase in criminal and juvenile justice system operating costs
Municipalities (criminal justice systems)	
Revenues	Potential minimal annual gain in expungement fees
Expenditures	Potential minimal annual increase to process expungement applications

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

- **Counties generally.** The bill may increase the costs that a county criminal or juvenile justice system incurs annually in processing criminal and juvenile cases, as it could generate additional cases requiring resolution or require extra time and effort on similar types of criminal or juvenile matters that occur under current law and practice. There may be a related gain in revenues generated from court costs and fines. It is possible that the costs of the bill's diversion program for certain allegedly delinquent children could exceed minimal for some juvenile justice systems.
- **Expungements.** The annual costs to counties and municipalities to handle the potential increase in expungement requests, including a court hearing, will be minimal, with the possibility that some portion of those costs will be covered by the local portion ($20) of the $50 expungement application fee.

Detailed Fiscal Analysis

Attorney General

The bill both requires and permits the Attorney General to engage in certain actions specified below. These required and permitted actions closely mirror activities already undertaken by the Attorney General for other violations of Ohio law and are not expected to generate a more than minimal annual increase in the agency's operating costs. Specifically, under the bill, the Attorney General is:

- Required to annually publish statistical data on trafficking in persons violations;
- Required to provide specified training for peace officers in investigating and handling trafficking in persons; and
- Permitted to prepare public awareness programs designed to educate potential victims of trafficking in persons and their families.

Criminal prohibitions

Table 1 below summarizes the bill's prohibition expansions and penalty enhancements.

Table 1. Penalty Enhancements for Certain Violations

Offense	Degree of Offense	
	Current Law	The Bill
Trafficking in persons	Felony 2nd degree	Felony 1st degree (mandatory prison term of 10, 11, 12, 13, 14, or 15 years)
Obstruction of justice*	Felony 3rd degree	Felony 2nd degree
Procuring**	Misdemeanor 1st degree	Felony 4th degree, Felony 5th degree
Importuning	Not applicable***	Felony 5th degree

* Under the bill, obstruction is a felony of the 2nd degree if the person who is aided committed human trafficking.
** Under the bill, procuring is a felony of the 4th degree if the person who engages in sexual conduct for hire is under age 16 or a felony 5th degree if the person who engages in sexual conduct for hire is 16 or 17.
*** Penalty unchanged, but adds circumstances that may or may not constitute criminal conduct under current law.

Table 2 below summarizes the existing sentences and fines, unchanged by the bill, for felony and certain misdemeanor offenses generally.

Table 2. Existing Sentences and Fines for Offenses Generally

Offense Level	Fine	Maximum Term
Felony 1st degree	Up to $20,000	3, 4, 5, 6, 7, 8, 9, 10 years' definite prison term
Felony 2nd degree	Up to $15,000	2, 3, 4, 5, 6, 7, 8 years' definite prison term
Felony 3rd degree	Up to $10,000	1, 2, 3, 4, 5 years' definite prison term
Felony 4th degree	Up to $5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months' definite prison term
Felony 5th degree	Up to $2,500	6, 7, 8, 9, 10, 11, 12 months' definite prison term
Misdemeanor 1st degree	Up to $1,000	Not more than 180-day jail stay

Department of Rehabilitation and Correction (DRC)

The bill's expansion of existing prohibitions and related penalty enhancements is likely to result in no more than a minimal annual increase in the Department of Rehabilitation and Correction's GRF-funded incarceration expenditures. This is a result of certain offenders that may have been sentenced to a prison term for similar conduct under current law and practice being sentenced to a longer prison term under the bill. The number of additional inmate beds that would be needed as a result of these longer stays in prison is expected to be around 20, with each bed carrying a marginal cost estimated at between $3,000 and $4,000 annually.

However, if certain conduct addressed by the bill, e.g., procuring or importuning, is currently undercharged or the awareness of the conduct leads to additional arrests, the combination of longer sentences and additional prison-bound offenders could result in an increase in the prison population and related annual incarceration cost increase well in excess of minimal.

Sex Offender Registration and Notification

The bill requires offenders convicted of promoting prostitution or of trafficking in persons under certain circumstances to register as sex offenders. This requirement is likely to generate little, if any, additional costs for the existing Sex Offender Registration and Notification (SORN) system, which is the primary responsibility of county sheriffs and the Attorney General.

State court cost revenues

As a result of the bill's authorization of a juvenile court to hold a delinquent child complaint in abeyance under certain conditions, a negligible amount of annual revenue in the form of state court costs may not be collected locally and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs for a felony offense total $60, of which Fund 5DY0 receives $30 and Fund 4020 receives $30. As few abeyances are expected to be granted by the juvenile court, the decrease in state court cost revenues will likely be negligible. It is also important to note that any potential reduction in this revenue is further minimized by the acknowledgement that the collection of court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unable or unwilling to pay.

Fund 4020. The bill provides that nothing in the statute that lists persons ineligible for compensation from Fund 4020 is applicable for claimants whose claim is based on being a victim of trafficking in persons if the claimant was less than 18 years of age when the criminally injurious conduct occurred. The potential resulting increase in the number of applicants for victim compensation and the magnitude of those awards is uncertain.

Human Trafficking Fund

The bill creates the Human Trafficking Fund in the state treasury consisting of money seized in connection with trafficking in persons, compelling prostitution, or

promoting prostitution or acquired from the sale of property in connection with these offenses. Money in the fund, which is to be administered by the Department of Job and Family Services, is for the sole purpose of treating, caring for, rehabilitating, educating, housing, and providing assistance to victims. The amount that could be credited to, and disbursed from, the fund annually is uncertain. It is also possible that some or all of the money deposited in the fund is money that would otherwise have been credited to other state and/or local enforcement agencies.

Juvenile courts

Juvenile courts are currently handling relatively few cases that would be subject to the bill's abeyance procedure. This procedure is a diversion program and is already used by juvenile courts under certain conditions. The diversion process can be more expensive than a traditional case in juvenile court and it is possible under the bill that, if juvenile courts experience an increase in these types of cases, they could see a more than minimal annual increase in expenditures.

The bill permits courts, under certain circumstances, to make any orders regarding placement, services, supervision, diversion actions, and conditions of abeyance, including, but not limited to, engagement in trauma-based behavioral health services or educational activities, that the court considers appropriate and in the best interest of the child. Under this provision, a court could order a placement of a child with a specific foster care provider. Under federal regulations, federal financial participation (FFP) for Title IV-E foster care maintenance is not available when a court orders a placement with a specific foster care provider. However, FFP would be available if the court hears relevant testimony and works with all parties – including the agency with placement and care responsibility – to make appropriate placement decisions or the court names the child's placement in the court order as an endorsement or approval of the agency's placement choice. Under Title IV-E, the federal government reimburses the state about 64% for monthly foster care payments to foster parents or institutions to support an out-of-home placement for a child.

County criminal justice system expenditures generally

The bill's impact on county criminal justice system caseloads and related expenditures is expected to be minimal. 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. Thus, violations of the bill's expanded prohibitions will in all likelihood generally create few, if any, 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 bill's prohibition expansions and penalty enhancements may expedite the bargaining process in some instances, which potentially reduces costs; in other instances, it may slow the bargaining process, which potentially increases costs. The net effect of those possibilities is likely to be a no more than minimal annual increase in any given county criminal justice system's operating costs.

County revenues

Subsequent to a conviction, the court generally imposes local court costs and a fine to be paid by the offender, and if collected, deposits in the county treasury. Given the number of cases in which a violation of the bill's expanded prohibitions is likely to be relatively small in the context of a jurisdiction's overall criminal caseload, the amount of additional court cost and fine revenues that counties may actually collect annually will be no more than minimal. As noted, the collection of court costs and fines from certain offenders can be problematic, especially in light of the fact that many are unable or unwilling to pay.

Expungement

The bill authorizes a person convicted of a prostitution-related offense to apply for expungement of the record of conviction if the person's participation in the offense was a result of being a victim of human trafficking, and requires the applicant, unless indigent, pay a $50 fee. The annual costs to county and municipal criminal justice systems to handle the potential increase in expungement requests, including a court hearing, are likely to be minimal at most. The $50 application fee will be divided between the state GRF ($30) and the county or municipality ($20).

Allied offenses

The bill changes existing law to more specifically state that a violation of trafficking in persons and a violation of compelling prostitution or any other violations of R.C. Chapter 2907. (sex offenses) are allied offenses of similar import. This change appears to narrow the circumstances in which the same conduct may be construed as constituting two or more allied offenses, and thus potentially broaden the circumstances in which the same conduct constitutes two or more offenses of dissimilar import. For allied offenses, a defendant can only be convicted of one. For dissimilar offenses, a defendant can be convicted of all of them. This suggests that certain defendants may be more likely to be convicted of multiple offenses and possibly sentenced to a longer term of incarceration than might have been the case under current law.

Prevalence of human trafficking in Ohio

The Ohio Trafficking in Persons Study Commission, Research and Analysis Sub-Committee reports that an estimated 3,437 foreign-born persons in Ohio may be at risk for labor or sex trafficking. Of that total, 783 foreign-born persons are estimated to be trafficked into the labor or sex trade in Ohio. In addition, the Sub-Committee reported that in Ohio an estimated 2,879 American-born youth are at risk for sex trafficking and an additional 1,078 American-born youth are trafficked into the sex trade over the course of a year. Aside from those estimates, from 2007 to 2009 in Ohio, seven cases of international labor trafficking were identified by the Sub-Committee. For

cases of American-born youth, Toledo has identified 60 child victims of sex trafficking since the Northwest Ohio Innocence Lost Task Force was organized in 2006.[1]

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[1] Celia Williamson et. al., Ohio Trafficking in Persons Study Committee, Research and Analysis Sub-Committee, *Report on the Prevalence of Human Trafficking in Ohio* (2010).