Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 130 of the 130th G.A. **Date**: May 28, 2014

Status: As Reported by Senate Criminal Justice **Sponsor**: Rep. Fedor

Local Impact Statement Procedure Required: Yes

Contents: Modifies court procedures and criminal offenses associated with human trafficking, enhances the penalty for soliciting, and declares an emergency

State Fiscal Highlights

STATE FUND	FY 2015 – FUTURE YEARS
General Revenue Fund (GRF)	
Revenues	- 0 -
Expenditures	Potential, possibly significant, annual incarceration cost increase
Indigent Defense Support Fund (Fund 5DY0)	
Revenues	Potential, likely no more than minimal, annual gain in locally collected state court costs
Expenditures	- 0 -
Victims of Crime/Reparations Fund (Fund 4020)	
Revenues	Potential, likely no more than minimal, annual gain in locally collected state court costs
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2015 is July 1, 2014 – June 30, 2015.

- **Incarceration expenditures**. As a result of the bill's felony solicitation enhancements, additional offenders/juveniles could be sentenced to a state prison/juvenile correctional facility. The resulting increase in annual state incarceration costs for the Department of Rehabilitation and Correction and/or the Department of Youth Services is uncertain, but could be significant as the number of offenders and juveniles may total in the hundreds or more per year statewide.
- **Court cost revenues**. As the number of felony solicitation convictions may run in the hundreds or more annually statewide, there may be a minimal increase in locally collected state court costs credited to the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020) each year.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2014 – FUTURE YEARS
County Criminal and Juvenile Justice Systems	
Revenues	Potential annual gain in court costs and fines
Expenditures	Potential annual increase in operating costs
Municipal Criminal Justice Systems	
Revenues	Potential annual loss in court costs and fines
Expenditures	Potential annual decrease in criminal justice system operating costs
Sheriffs	
Revenues	Potential minimal annual gain in sex offender registration fees
Expenditures	Potential, more than minimal, annual increase in sex offender registration and notification costs

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

- **Felony solicitation**. The bill could generate a savings effect for certain municipal criminal justice systems and a related expenditure increase in county criminal and juvenile justice operating costs, as certain solicitation cases may shift from the former to the latter and potential sanctions elevate. The number of cases that could be affected in this manner in any given municipality or county is uncertain, but could be in the hundreds annually in certain local jurisdictions. In some of these local jurisdictions, the magnitude of the related shift in revenues and expenditures could exceed minimal per year.
- **Sheriffs**. The requirement that felony solicitation offenders register as Tier II sex offenders may have a more than minimal impact on the annual costs of sex offender registration and notification administration for certain sheriff departments. These costs may be offset to some degree by the collection of additional sex offender registration fees.

Detailed Fiscal Analysis

Overview

Of the bill's numerous changes to laws related to human trafficking, this fiscal analysis focuses on the changes carrying the most potential to affect state and/or local government revenues and expenditures as follows:

- Enhances the penalty for soliciting from a misdemeanor of the third degree to a felony of the fifth degree if the person solicited is 16 or 17 years old and a felony of the third degree if the person solicited is less than 16 years old or has a developmental disability; and
- Requires the above-referenced offender to register as a Tier II sex offender.

Both of the above-noted changes apply to the seller and the purchaser of sexual activity for hire. Thus, there will be situations where the seller and the purchaser are arrested and charged at the same time and place, and both will be subject to the bill's felony enhancement and sex offender registration requirements. Current law enforcement policies and procedures yield a much higher percentage of solicitation violations for selling sexual activity for hire than for purchasing such activity. The bill's enhanced penalties could alter local enforcement practices such that a significantly higher number of apprehensions include both the purchaser and the seller.

Felony solicitation

Under current law and law enforcement practice, both purchasers and sellers of sexual activity for hire can face prosecution for a violation of the prohibition against solicitation (R.C. 2907.24). Over 90% of the convictions for solicitation violations are of sellers of sexual activity for hire, suggesting that local law enforcement focuses generally on the sellers and not the purchasers of sexual activity for hire. Additionally, current practice indicates that, when a minor faces a situation where they could be charged with a solicitation (for selling) violation, law enforcement generally utilizes, where possible, its discretion to charge the minor with other violations related to their apprehension (such as disorderly conduct, theft, drug possession, loitering) rather than charging the minor with a solicitation violation. Thus, there is not a lot of solid data on the frequency with which these transactions involve a seller that is a minor. The information that is available, however, suggests that there are a relatively significant number of minors involved in the selling of sexual activity for hire.

If the bill's felony penalty enhancements lead law enforcement to place a greater emphasis on policing the purchasers of sexual activity for hire, then the number of arrests, prosecutions, and convictions for this type of behavior could increase as compared to current practice. The size of this potential increase is unknown but potentially significant, as a large number of persons involved in solicitation as sellers are minors. According to a preliminary report of the Ohio Attorney General's Human

Trafficking Commission, the average age for an individual to become a victim of child sex trafficking was 13, and an estimated 49% of human trafficking victims were under age 18 when they were first trafficked.

As noted above, a minor selling sexual activity for hire is generally not charged with solicitation by arresting authorities but may face other related criminal conduct, e.g., loitering. If law enforcement changes their current practice in this regard, then a minor selling sexual activity for hire could face an increased penalty under the bill. Under these conditions, the potential number of new felony violations increases by several hundred to thousands annually statewide.

Local fiscal effects

The changes in the bill that may produce noticeable local costs are: (1) the penalty enhancements for solicitation with a person under the age of 18 or developmentally disabled, and (2) the required classification of the offender as a Tier II sex offender. These changes, discussed in more detail below, may generate costs for county criminal and juvenile justice systems and savings for municipal criminal justice systems. Also noted are the bill's changes to the state's existing intervention in lieu of conviction law.

Solicitation penalty enhancements

The bill could generate a savings effect for certain municipal criminal justice systems and a related expenditure increase in county criminal and juvenile justice operating costs, as certain solicitation cases are likely to shift from the former to the latter and potential sanctions elevate. The number of cases that could be affected in this manner in any given municipality or county is uncertain, but could be in the hundreds annually in certain local jurisdictions. In some of these local jurisdictions, the magnitude of the related shift in revenues and expenditures could exceed minimal per year.

The bill's felony solicitation penalty enhancements will affect local expenditures on certain criminal and juvenile cases in two ways. First, certain criminal cases that would have been handled by a municipal court or a county court as misdemeanors under existing law will shift to a court of common pleas where they will be handled as felonies and offenders could be subjected to more serious sanctions. As a result, municipalities may realize some savings in their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders. Conversely, counties could experience an increase in their annual criminal justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well.

Second, offenders who are young enough to be processed through the juvenile courts would also face the possibility of more serious penalties and sentencing. As a result, the annual costs to county juvenile justice systems to resolve these cases and appropriately sanction the offending juveniles may rise.

The felony penalty enhancements could create a loss of court cost and fine revenue for municipalities while increasing court cost and fine revenue for counties. The amount of court cost and fine revenue that will shift in this manner per year is uncertain.

Sex offender registration

Expenditures. The bill requires a person convicted of a violation of solicitation with a person under age 18 or who is developmentally disabled to register as a Tier II sex offender under the existing Sex Offender Registration and Notification (SORN) Law. Under current law, a Tier II sex offender is required to register with the appropriate county sheriff every 180 days for 25 years. According to the Buckeye State Sheriffs' Association, it costs a sheriff approximately $269.10 per registrant per year to perform SORN-related duties and responsibilities. As previously noted, the potential number of felony solicitation convictions that will be generated as a result of the bill is uncertain, but could easily be in the hundreds or more annually statewide. In certain counties, the SORN Law-related costs could easily exceed $10,000 per year.

Revenues. Under current law unchanged by the bill, the sheriff may charge a fee for the registration or changes in registration for a sex offender required to register with the sheriff. The fee is deposited into the county general fund and allocated back to the sheriff to be used to defray the cost associated with registering offenders and providing community notification. The amount of registration revenue expected to be collected is likely to be minimal regardless of the number of new registrants. For a variety of reasons, most offenders are unwilling or unable to pay. Thus, the degree to which this revenue may offset all or some portion of the annual costs associated with additional Tier II sex offenders is uncertain.

Intervention in lieu of conviction

The bill expands the category of persons eligible for intervention in lieu of conviction (ILC), and allows an offender who is a victim of human trafficking to apply for ILC. Under current law, if the court elects to consider such a request, a hearing is scheduled, an assessment ordered, and an intervention plan recommended. If the court then grants the request, the offender is required to fulfill all of the terms and conditions of that plan for at least one year, which is likely to include participation in treatment and recovery support services.

These changes may increase, to some degree, the number of offenders requesting and then being granted ILC. Presumably, this will increase, to some degree, the costs that the court and its affiliated entities incur to assess offenders, develop intervention plans, and pay for offender participation in those plans. Whether those costs will be more or less than might otherwise have been incurred to sanction such offenders is uncertain.

State fiscal effects

Incarceration expenditures

As a result of the bill's felony solicitation enhancements: (1) additional adult offenders could be sentenced to prison, which would increase the Department of Rehabilitation and Correction's (DRC) annual incarceration costs, and (2) additional juvenile offenders could be committed to the state, increasing the Department of Youth Services' (DYS) annual care and custody costs. The annual magnitude of the increase in incarceration costs for DRC and/or DYS is uncertain but could be significant.[1] The number of sellers and buyers that could be convicted of a felony, rather than a misdemeanor as under current law, may run into the hundreds or more annually statewide. Potentially offsetting this possible cost incarceration increase is the bill's ILC expansion provision, which may divert some felony offenders/juveniles into local treatment systems that might otherwise have been sentenced to a state prison or juvenile correctional facility.

State revenues

The bill's felony solicitation enhancements may lead to a minimal at most annual gain for the state in the amount of locally collected court cost revenue that would be divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs imposed for a felony generally total $60, with $30 of that amount being deposited equally to the credit of Fund 5DY0 and Fund 4020. The number of felony convictions could easily total in the hundreds or more annually statewide.

Prohibitions and penalties generally

Under the bill, the penalty for soliciting is enhanced from a misdemeanor of the third degree to a felony of the fifth or third degree depending on the circumstances present. As noted, these enhancements will apply to both the seller and the purchaser.

In addition, the bill creates new, and expands existing, prohibitions. These prohibitions include trafficking in persons (felony of the first degree), commercial sexual exploitation of a minor (felony of the third degree), and unlawful advertising of massage (felony of the fifth degree). It is not expected that these prohibitions, or in the case of human trafficking the elimination of certain elements of the prohibition for certain victims, will lead to a significant increase in the number of felony cases statewide.

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[1] The average annual cost for DRC to incarcerate an offender in prison is currently around $22,836 (or $62.57 per day), with the marginal annual cost of adding an offender estimated at between $3,000 and $4,000. The average annual cost of incarcerating a juvenile in a DYS facility is currently around $202,502 (or $554.80 per day), with the marginal annual cost of adding a juvenile estimated at $10,000.

The table below summarizes the sentences and fines for a misdemeanor of the third degree, as well as those for felonies of the fifth, third, and first degrees. This reflects current law's general sentence and fine structure, which is unchanged by the bill.

Sentences and Fines for Certain Offense Levels Generally		
Offense Level	**Possible Fine**	**Possible Term of Incarceration**
3rd Degree Misdemeanor	Up to $500	Up to 60-day jail stay
5th Degree Felony	Up to $2,500	6, 7, 8, 9, 10, 11, 12 months definite prison
3rd Degree Felony	Up to $10,000	1, 2, 3, 4, 5 years definite prison
1st Degree Felony	Up to $20,000	3, 4, 5, 6, 7, 8, 9, 10, 11 years definite prison

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