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S.B. 5
133rd General Assembly

Bill Analysis

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Version: As Reported by House Criminal Justice

Primary Sponsors: Sens. Kunze and Dolan

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SUMMARY

- Modifies the penalties for the offense of promoting prostitution by expanding the circumstances in which it is a third degree felony and enacting a circumstance in which it is a second degree felony.
- Sets the fee for an application for a Certificate of Qualification for Employment (CQE) at \$50.
- Creates a rebuttable presumption of eligibility for a CQE if the court that receives the petition finds that the application was filed after the applicable waiting period and after sufficient time has elapsed from the date of release.
- Requires each licensing authority to include information related to CQEs and Certificates of Achievement and Employability on its website and on certain materials and forms.

DETAILED ANALYSIS

Promoting prostitution – general penalties

The bill modifies the penalties for the offense of promoting prostitution. Under the bill, as under existing law, the offense generally is a fourth degree felony subject to increased penalties that apply in specified circumstances.¹ The bill modifies the specified circumstances so that, under the bill, the circumstances in which increased penalties apply to promoting prostitution are as follows:²

1. Under the bill, subject to the provision described below in (2), the offense is a third degree felony if any of the following apply: (a) a prostitute in the brothel involved in the

¹ R.C. 2907.22(B)(1).

² R.C. 2907.22(B)(2) and (3).

offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the minor's age, (b) the offender previously has been convicted of promoting prostitution or a substantially similar offense under a law of another state or the United States, or (c) the offender also is convicted of a drug trafficking offense under the Drug Offenses Law.³ Currently, the offense is a third degree felony only if the circumstance described in clause (a) of this paragraph applies.

2. Under the bill, the offense is a second degree felony if the offender previously has been convicted of two or more offenses of promoting prostitution or two or more substantially similar offenses under a law of another state or the United States. Currently, the offense never is a second degree felony.

Promoting prostitution – specification penalties

Firearms specifications

The bill expressly restates the fact that mandatory prison terms required under existing law for persons convicted of a felony and a firearm specification apply with respect to a person convicted of promoting prostitution and one of those specifications. This provision does not change existing law, but, rather, expressly restates it in the promoting prostitution statute. The bill's language states that if an offender convicted of promoting prostitution also is convicted of any of three specified types of existing firearm specifications that was included in the document charging the offense, the court must sentence the offender to a mandatory prison term as provided in a provision of the existing Felony Sentencing Law.⁴ The types of existing firearm specifications referred to in the bill's provision described in this paragraph, unchanged by the bill, and the mandatory prison term required under the existing Felony Sentencing Law provision, unchanged by the bill, with respect to each such specification are:

1. A specification charging that the offender had a firearm on or about the offender's person or under the offender's control while committing a felony, with a mandatory prison term of one year;⁵
2. A specification charging that the offender had an automatic firearm or a firearm equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the felony, with a mandatory prison term of six years;⁶
3. A specification charging that the offender had a firearm on or about the offender's person or under the offender's control while committing the felony and displayed,

³ R.C. 2925.03, not in the bill.

⁴ R.C. 2907.22(B)(5).

⁵ R.C. 2929.14(B)(1)(a)(iii) and R.C. 2941.141, not in the bill.

⁶ R.C. 2929.14(B)(1)(a)(i) and R.C. 2941.144, not in the bill.

brandished, or indicated possession of the firearm or used it to facilitate the offense, with a mandatory prison term of three years.⁷

Human trafficking specification

Current law, unchanged by the bill, expressly states that if an offender convicted of promoting prostitution also is convicted of a specification that was included in the document charging the offense and that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court must sentence the offender to a mandatory prison term and order the offender to make restitution as provided in existing provisions of the Felony Sentencing Law, unchanged by the bill.⁸ The mandatory restitution required under the existing Felony Sentencing Law provision is the greater of: the gross income or value to the offender of the victim's labor or services; or the value of the victim's labor as guaranteed under federal minimum wage and overtime provisions and state labor laws.⁹ The mandatory prison term required under the existing Felony Sentencing Law provision depends on the degree of the underlying offense. The required mandatory prison terms that are relevant to promoting prostitution under existing law, the bill, or both provide as follows (other portions of the existing provision pertain to mandatory prison terms when the underlying offense is a first or fifth degree felony, but those portions are not relevant to promoting prostitution under either existing law or the bill and are not summarized):¹⁰

1. If the underlying offense is a fourth degree felony, the mandatory prison term is 18 months for a fourth degree felony and 12 months for a fifth degree felony – this provision applies to promoting prostitution regarding fourth degree felonies under both the bill and existing law.
2. If the underlying offense is a second or third degree felony, the mandatory prison term is a definite term of three years to eight years for a second degree felony and three years to 36 months for a third degree felony (if the second degree felony is committed on or after March 22, 2019, the three-year to eight-year mandatory term is imposed as the minimum prison term portion of the offender's indefinite prison term) – this provision applies to promoting prostitution regarding third degree felonies under both the bill and existing law and regarding second degree felonies under the bill but not under existing law.

Promoting prostitution – elements of the offense and definitions

The existing prohibition under the offense of promoting prostitution, unchanged by the bill, prohibits a person from knowingly: (1) establishing, maintaining, operating, managing, supervising, controlling, or having an interest in a brothel or any other enterprise a purpose of

⁷ R.C. 2929.14(B)(1)(a)(ii) and R.C. 2941.145, not in the bill.

⁸ R.C. 2907.22(B)(4).

⁹ R.C. 2929.18(B)(8), not in the bill.

¹⁰ R.C. 2929.14(B)(7), not in the bill.

which is to facilitate engagement in sexual activity for hire, (2) supervising, managing, or controlling the activities of a prostitute in engaging in sexual activity for hire, (3) transporting another, or causing another to be transported, in order to facilitate the other person's engaging in sexual activity for hire, or (4) for the purpose of violating or facilitating a violation of any of the portions of the prohibition described in clause (1), (2), or (3), inducing or procuring another to engage in sexual activity for hire.¹¹

The following existing definitions are relevant to the prohibition:¹²

“Sexual activity” means sexual conduct or sexual contact, or both. As used in this definition: **“sexual conduct”** means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another (penetration, however slight, is sufficient to complete vaginal or anal intercourse); and **“sexual contact”** means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

“Prostitute” means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

Certificates of Qualification for Employment

Fees

The bill sets the fee required for an application for a Certificate of Qualification for Employment (CQE) at \$50. Current law does not specify the fee that must be paid for an application. Upon receiving a petition for a CQE, a court of common pleas or the designee of the Deputy Director of the Division of Parole and Community Services who receives the petition may waive all or part of the \$50 filing fee for an applicant who is indigent. Of the \$50 application fee, \$20 must be paid into the county general revenue fund and the remaining \$30 must be paid into the state treasury. If the fee is partially waived for an applicant who is indigent, the partial fee must be first applied to the balance due to the county general revenue fund, and any partial amount remaining after the first \$20 must be paid to the state treasury.¹³

Rebuttable presumption

The bill also creates a rebuttable presumption that an individual is eligible for a CQE if the court that receives the petition for a CQE finds all of the following:¹⁴

- That the application was filed after the expiration of the continuing law waiting period;

¹¹ R.C. 2907.22(A).

¹² R.C. 2907.01, not in the bill.

¹³ R.C. 2953.25(B)(3), (5), and (6).

¹⁴ R.C. 2953.25(C)(5).

- If the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at least three years have passed since the date of release of the individual from any period of incarceration in a state or local correctional facility that was imposed for the offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at least three years have passed since the date of the individual's final release from all other sanctions imposed for the offense;
- If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at least one year has passed since the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for the offense, and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for the offense, at least one year has passed since the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

An application that meets the requirements for the rebuttable presumption is to be denied only if the court that receives the petition finds that the evidence reviewed by the court under continuing law rebuts the presumption of eligibility by establishing, by clear and convincing evidence, that the applicant has not been rehabilitated.¹⁵

Websites and forms

The bill requires each "licensing authority" (a defined term) to include all of the following information on its website:¹⁶

- That a disqualification for licensure based on a criminal conviction may be overcome if the individual applying for the license or, as applicable, the individual's employee, holds a CQE or a Certificate of Achievement and Employability (CAE);
- A reference to the CQE website maintained by the Department of Rehabilitation and Correction (DRC).

Additionally, a licensing authority must include on any form, policy, manual, or other material that lists criminal offenses, the conviction of which would disqualify an applicant from licensure, a statement that the disqualification may be overcome if the individual applying for the license, or as applicable, the individual's employee, holds a CQE or a CAE, including a reference to the CQE website maintained by DRC.¹⁷

Finally, the bill requires that any predetermination form, nonconviction statement form, or other form used by a licensing authority to determine whether a conviction or adjudication

¹⁵ R.C. 2953.25(C)(6).

¹⁶ R.C. 9.78(C)(2) and (3).

¹⁷ R.C. 9.78(D).

disqualifies an applicant from licensure must include a section requesting the applicant to provide information if they are a recipient of a CQE or CAE.¹⁸

Under continuing law, unchanged by the bill, a “licensing authority” is a board, commission, or other entity that issues licenses under Title 47 of the Revised Code or any other provision of the Revised Code to practice an occupation or profession, or a political subdivision that issues a license or charges a fee for an individual to practice an occupation or profession in that political subdivision.¹⁹

HISTORY

| Action | Date |
|-------------------------------|----------|
| Introduced | 02-12-19 |
| Reported, S. Judiciary | 03-06-19 |
| Passed Senate (32-0) | 03-06-19 |
| Reported, H. Criminal Justice | 10-11-19 |

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¹⁸ R.C. 9.78(E).

¹⁹ R.C. 9.78(A)(2).