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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Legislative Budget  
Office

S.B. 247  
133<sup>rd</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for S.B. 247's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Sens. Schaffer and Fedor

**Local Impact Statement Procedure Required:** Yes

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### Highlights

- The bill's prostitution-related penalty enhancements will result in an indeterminate increase in the Department of Rehabilitation and Correction's annual incarceration costs, which are paid for primarily with money appropriated from the GRF.
- The bill's felony-level penalty enhancements could result in a potentially significant number of prostitution-related cases that otherwise would have been under the subject matter jurisdiction of a municipal or county court to shift to that of a court of common pleas. This means that the associated costs (law enforcement, prosecution, adjudication, and sanctioning) and revenues (fine, court costs, and fees) shift as well. The related annual expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.
- It is unclear as to whether the courts will incur any additional annual costs by requiring first-time offenders engaged in prostitution to attend an education or treatment program.
- The bill appropriates GRF of \$170,000 in FY 2020 and \$20,000 in FY 2021 for the purposes of assisting the Office of the Attorney General with absorbing the associated one-time and ongoing costs of establishing and maintaining the Sexual Exploitation Public Database (SEPD).
- Any workload increase for the clerks of courts to provide the Attorney General with conviction records of certain prostitution offenders for entry into the SEPD will be incorporated into their current duties utilizing existing staff and resources. Those costs are likely to be minimal.

## Detailed Analysis

The bill generally modifies certain soliciting offenses and penalties. In addition to these changes, the bill enacts the offenses of “engaging in prostitution” and “receiving proceeds of prostitution,” and creates the Sexual Exploitation Public Database (SEPD) with a corresponding appropriation to the Office of the Attorney General.

### Sexual Exploitation Public Database

The bill requires the Attorney General to establish and maintain the SEPD of certain convicted prostitution offenders. The conviction record of any individual convicted of or pleading guilty to either promoting prostitution or certain circumstances of soliciting sexual activity for hire will be entered into the SEPD.

In calendar year (CY) 2020, the Ohio Office of Criminal Justice Services published a report that examines trends in prostitution-related offenses using data entered in the Ohio Incident-Based Reporting System (OIBRS) from CY 2011 through CY 2016. According to the report, of all prostitution-related offenses, “solicitation” had the highest rate, with an average of 10.3 incidents per 100,000. Comparatively, “promoting prostitution” occurred at a much lower rate, at 0.45 individuals per 100,000.<sup>1</sup>

### Attorney General

The Office of the Attorney General will experience a one-time cost to design and build the SEPD as well as some administrative costs to adopt rules and prescribe forms for its establishment and operation. If five years have elapsed since the prostitution offender’s most recent conviction of a prostitution offense, the offender is automatically removed from the SEPD. There will be some ongoing costs related to entering a qualifying offender’s information into the SEPD, as well as the work associated with any removals.

According to the Attorney General, the SEPD would likely be designed and maintained by an outside vendor who currently contracts with the Attorney General to operate the violent offender database, and sex offender and arson registries. For the purposes of assisting the Attorney General with absorbing the associated one-time and ongoing costs, the bill appropriates GRF of \$170,000 in FY 2020 and \$20,000 in FY 2021.

### Clerks of court

Courts will be responsible for forwarding conviction information to the Attorney General’s Bureau of Criminal Investigation (BCI). This information will be sent in one of three ways: (1) manually (written on a form issued by BCI), (2) electronically through an FTP (file transfer protocol), or (3) electronically through the Ohio Supreme Court’s Ohio Courts Network (OCN). Many courts currently send information to BCI using automated criminal justice information systems.

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<sup>1</sup> Nicholson, Kristina C., M.S. *Human Trafficking and Related Offenses*, Ohio Office of Criminal Justice Services, Department of Public Safety. [https://www.ocjs.ohio.gov/links/Human\\_Trafficking\\_and\\_Related\\_Offenses.pdf](https://www.ocjs.ohio.gov/links/Human_Trafficking_and_Related_Offenses.pdf). Accessed February 2020.

Under current law, courts are responsible for ensuring that BCI receives a weekly report containing a summary of certain felony and misdemeanor cases, including the two prostitution-related offenses enacted by the bill. However, the bill may result in some increase in administrative costs to local criminal justice systems due to expanded reporting requirements, as certain information constituting a conviction record, such as a colored photograph of the offender, would otherwise not be reported.

It appears, generally, that any workload increase for clerks of courts to provide the Attorney General with conviction records of certain prostitution offenders for entry into the SEPD, as required by the bill, will be incorporated into their current duties utilizing existing staff and resources.

## **Soliciting and engaging in prostitution revisions**

The bill revises and relocates existing prohibitions of “soliciting” under the new offense of “engaging in prostitution.” Given that much of the conduct addressed by the bill is prosecutable under current law, it arguably can be seen as enhancing the penalty for conduct related to inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for something of value that is currently barred under “soliciting.”

The bill increases the penalty for this conduct from a misdemeanor of the third degree to a misdemeanor of the first degree, absent any specification. In addition, violators will be required by the sentencing court to attend an education or treatment program aimed at preventing reoccurring conduct and may be subject to a fine of up to \$1,500, an amount that is \$1,000 more than the maximum fine possible for misdemeanor violations of “solicitation.”

For CY 2018, the FBI reported that there were 24,944 arrests nationwide related to “prostitution and commercialized vice.”<sup>2</sup> This information was compiled from the arrest data reported by 12,966 law enforcement agencies whose jurisdictions in total cover more than 95% of the population of the United States. For Ohio alone, the FBI reported 807 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 1,000 charges of solicitation on average in recent years, it appears that the FBI’s data does not portray an entirely accurate portrait of prostitution-related activity in Ohio. Despite a number of uncertainties and some level of variation between data sources, it is clear that the bill may affect a potentially large number of cases. Precisely estimating the number of affected cases is difficult as only a subset of these solicitation and prostitution-related cases would involve conduct that would constitute a violation of the offense of “engaging in prostitution” as defined by the bill.

It should also be noted that the bill repeals the authorization for either a suspension of the driver’s or commercial driver’s license or permit, or a term of community service, for an offender who is convicted of committing or attempting to commit either offense or a violation

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<sup>2</sup> U.S. Department of Justice – Federal Bureau of Investigation, Uniform Crime Statistics, *Crime Data Explorer, 2018*, <https://www.fbi.gov/services/cjis/ucr/nibrs>.

of an equivalent municipal ordinance, if the person was in, was on, or used a motor vehicle. To the extent that such suspensions, and subsequent collection of reinstatement fees, are occurring under current law, there would be a commensurate decrease in such suspensions and revenue annually after the bill's effective date.

### **Education or treatment program**

In the case of a first-time offense, the court must require the offender attend an education or treatment program aimed at preventing persons from engaging in prostitution. Such a program could be run by a third-party entity rather than by the court itself. In this case, municipal and county courts will incur minimal costs to identify programming for these offenders. The bill is silent as to who is responsible for paying the third party for services. It is expected that, if there were a fee to attend, it would be paid by the offender. It is unclear what percentage of offenders would be indigent and unable to pay for the program. The impact of waiving the fee or providing financial assistance in this circumstance is uncertain.

In the event that a court opts to operate their own program, costs would depend on whether the court is able to collaborate with an agency, school, or another court. The annual costs that a court will incur to create and operate such a program without partners is uncertain. However, to the extent that a program helps to curtail repeat violations by an offender, indirectly, a savings effect may be created. The likelihood of this outcome depends on the effectiveness of a program in deterring future conduct.

### **Felony penalty enhancement**

The penalty for engaging in prostitution will elevate from a misdemeanor of the first degree to a felony of the fifth degree for a prior conviction of the offense, and to a felony of the fourth degree for more than two previous convictions. Anecdotal evidence suggests that repeat offenses are particularly common in prostitution-related offenses.

The penalty for the engaging in prostitution offense as a felony is as follows:

- In the case of a fifth degree felony, the court must impose a mandatory prison term of one month and may impose a definite prison term from the range of prison terms otherwise authorized for a fifth degree felony (a definite prison term of 6, 7, 8, 9, 10, 11, or 12 months).
- In the case of a fourth degree felony, the court must impose a mandatory prison term of six months and may impose a definite prison term from the range of prison terms otherwise authorized for a fourth degree felony (a definite prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months).
- Existing Felony Sentencing Law regarding a presumption of a community control sanction for a fourth or fifth degree felony does not apply to this offense when it is a felony.

As a result of the felony penalty enhancement in the bill, a potentially significant number of cases that otherwise would have been under the subject matter jurisdiction of a municipal or county court could shift to that of a common pleas court. This means that the associated costs (law enforcement, prosecution, adjudication, and sanctioning if there is a conviction) and revenues (fine, court costs, and fees) shift as well. The related expenditure

savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.

There is the possibility that the presence of the mandatory prison term specifications created in the bill would be used in the bargaining process to induce the accused to accept plea agreements. Even so, the bill's enhancements are likely to result in additional offenders being sentenced to a prison term that would not have had a prison term imposed under current law. As LBO is unable to ascertain the number of affected cases, the annual increase in the Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration expenditures is indeterminate. The average annual cost for DRC to incarcerate an offender in an Ohio prison in FY 2019 was \$27,835, with the marginal annual cost of adding a small number of offenders costing much less, nearly \$4,000 per offender.

## **Receiving proceeds of prostitution**

The bill prohibits a person from knowingly receiving or acquiring money or any other thing of value from a prostitute earned from sexual activity for hire. A violation of "receiving proceeds of prostitution" is generally a third degree felony. However, if the offender knowingly receives proceeds of prostitution from a prostitute who is under 18, the violation is a second degree felony.

## **Engaging in a pattern of corrupt activity**

This new prohibition is also included in the existing "corrupt activity" statute. If certain violations meet the criteria for "engaging in a pattern of corrupt activity" under R.C. 2923.32, the offender may also be subject to the penalties for a first degree felony under the state's Corrupt Activities Law. The sentencing court has the option to:

- Impose a fine in lieu of the general fine for a first degree felony not exceeding the greater of three times the gross value gained or three times the gross loss caused payable to the state's existing Corrupt Activity Investigation and Prosecution Fund (Fund 6290);
- Assess court costs; and/or
- Assess investigative and prosecutorial costs.

It is unknown how often a sentencing court would impose these types of sanctions or how often a case would meet the criteria for prosecution of "engaging in a pattern of corrupt activity." Existing data indicates that the option to impose a fine as described in the first dot point above is rarely used. From CY 2000 to date, no deposits have been made to Fund 6290.

## **Criminal justice system impact**

The number of violations of "receiving proceeds of prostitution" or "engaging in a pattern of corrupt activity" resulting in new criminal cases is expected to be relatively low. Based on information gathered from subject matter experts, this behavior would likely be tied to other possible offenses, for instance "compelling prostitution" or "promoting prostitution." As an additional charge, the likely result would be to give prosecutors additional avenues in which to prosecute the prohibited behavior. Some cases may traverse the legal system as originally charged, while others may be pled down. Others may be dismissed outright in lieu of an amended charge.

Any additional costs for county criminal justice systems to prosecute, adjudicate, and sanction offenders is likely to be minimal at most annually, and potentially absorbed by utilizing existing staff and resources. Money collected from violators (fines and court costs and fees) may offset those costs to some degree. In the case of a felony, the state collects a \$60 court cost from the offender divided as follows: \$30 to the Indigent Defense Support Fund (Fund 5DY0) and \$30 to the Victims of Crime/Reparations Fund (Fund 4020).

To the extent that additional offenders are convicted of this new offense and sentenced to prison, DRC may experience an increase in marginal costs of nearly \$4,000 per offender per year.