



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 268 of the 131st G.A.

Date: April 12, 2016

Status: As Introduced

Sponsor: Reps. Hall and Dever

Local Impact Statement Procedure Required: No

Contents: Records expungement, prostitution penalties, and intervention in lieu of conviction

State Fiscal Highlights

- The Department of Rehabilitation and Correction's (DRC) GRF-funded incarceration costs may increase, given that the possibility of longer prison terms for certain prostitution-related offenders will produce a "stacking effect." The result is that, over the course of five to six years after the bill's effective date, DRC's annual incarceration costs may slowly increase before peaking at possibly as much as around \$1.9 million per year.
- The state's GRF may gain, at most, a minimal amount of revenue annually from a portion of the \$50 record expungement fee.

Local Fiscal Highlights

- The records expungement provision will have a minimal annual fiscal effect on local criminal and juvenile justice systems, as there will be some gain in fee revenues and some additional work for courts to expunge records.
- There may be a relatively small increase in the number of persons granted intervention in lieu of conviction, the cost of which for any given county or municipality should be no more than minimal annually.

Detailed Fiscal Analysis

The bill (1) expands the list of human trafficking-related convictions and delinquency adjudications that may be expunged, (2) increases the penalties for the offenses of compelling and promoting prostitution, and (3) authorizes intervention in lieu of conviction for certain offenses committed while a victim of compelling prostitution. Due to the relatively small population of identified victims of human trafficking, the fiscal effect on state and local criminal justice systems is likely to be minimal at most annually.

Expungement of delinquency and criminal records

The bill expands the list of juvenile delinquency and criminal conviction records that may be expunged if an offender committed certain delinquent or criminal acts as a result of having been a victim of human trafficking. Additional records include any: (1) drug abuse offense, (2) sex offense, (3) theft offense, (4) offense of violence, and (5) spreading contagion. According to the 2015 Ohio Attorney General's Office Human Trafficking Annual Report, 203 potential victims of human trafficking were identified in 2015.

Under the bill, a small number of additional persons will be eligible to apply for expungement. Expungement applicants, unless indigent, are required to pay a \$50 fee. The \$50 application fee is divided between the state GRF (\$30) and the county or municipality (\$20). The annual costs for local criminal and juvenile justice systems to handle a potential increase in expungement requests will be minimal at most, with the application fee likely to offset all, or some portion, of those costs.

Penalties for compelling and promoting prostitution

The bill increases the penalties for the offenses of compelling and promoting prostitution. Under current law, compelling prostitution generally is a felony of the third degree, but increases to a felony of the second or first degree under certain circumstances. The offense of promoting prostitution generally is a felony of the fourth degree, but increases to a felony of the third degree under certain circumstances. The bill makes the offenses of compelling and promoting prostitution a felony of the first degree in all cases.

The principal fiscal effect of these penalty enhancements may be a steady increase over a period of several years in the amount of GRF funding that DRC expends annually on institutional operations. In effect, by extending prison stays beyond what the amount of time served would otherwise have been under current law, the bill will trigger a "stacking effect." This term refers to the increase in the prison population that occurs as certain offenders currently serving time stay in prison longer while the number of new offenders entering the prison system does not decrease. This "stacking" process will stabilize when the number of offenders who begin serving their additional

time as part of the penalty enhancement in the bill is about the same as the number leaving prison after serving their additional time.

The table below summarizes a possible result of the penalty enhancements based on available information. Compelling prostitution generally is a felony of the third degree. The average prison time served for all felonies of the third degree is 2.0 years. Prostitution generally is a felony of the fourth degree. The average prison time served for all felonies of the fourth degree is 1.1 years. The bill makes both offenses a felony of the first degree, the average prison time served of which is 6.7 years. This means that the average prison time served by these offenders could increase by as much as 5 to 6 years. It should be acknowledged that how a judge may actually sentence such an offender is uncertain. It would not be surprising if the judge imposes a prison term at the lower end of the range for a felony of the first degree: 3, 4, or 5 years. The full range for a felony of the first degree is a definite prison term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years.

Average Time Served for Certain Prostitution-Related Offenses					
Offense	Current Law	Average Time Served*	The Bill	Average Time Served*	Additional Time Served*
Compelling Prostitution	F3	2.0	F1	6.7	4.7
Promoting Prostitution	F4	1.1	F1	6.7	5.6

*Source: Ohio Department of Rehabilitation and Correction's Time Served Report for CY 2014. Time served is in years.

At around the sixth year following the bill's effective date, the "stacking" process is likely to stabilize. The average of eight promoting prostitution and eight compelling prostitution offenders committed to prison annually, serving an additional 5.6 years and 4.7 years respectively, will require around 83 additional beds every year. At the current annual institutional operating cost of \$22,836 per bed, these additional beds will potentially cost DRC around \$1.9 million (83 x \$22,836) per year.

These penalty enhancements will mean that a given county may realize a revenue gain in the form of court-imposed fines. The fine for a first degree offense is up to \$20,000, while the fine for third and fourth degree felonies are up to \$10,000 and \$5,000, respectively. The court, however, rarely imposes the maximum permissible fine. It is also the case that collecting court costs, fees, and fines from offenders can be problematic, as many are financially unable or unwilling to pay. This suggests generally that the amount of additional annual revenue collected by any given county will be negligible.

Intervention in lieu of conviction

The bill allows a victim of compelling prostitution to request intervention in lieu of conviction (ILC) when charged with certain offenses¹ in the same manner as current law provides when certain factors may have led to the offense: alcohol or drug usage,

¹ These offenses include: theft, unauthorized use of a motor vehicle, passing bad checks, misuse of credit cards, forgery, and/or nonsupport or contributing to nonsupport of dependents.

mental illness, intellectual disability, or the offender was a victim of human trafficking. LSC conversations with subject matter experts suggest that victims of compelling prostitution may already commonly be granted ILC at the judge's discretion, indicating the bill is widely codifying current practice in this regard. This suggests that any cost for any given municipality or county will be minimal annually, as the likely number of additional persons granted ILC would be relatively small.

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