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Bill Analysis

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Primary Sponsors: Sens. Schaffer and Fedor

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SUMMARY

- Under the offenses of “soliciting” and “engaging in solicitation after a positive HIV test”:
 - Repeals and replaces the three prohibitions currently under the offense of “soliciting” with a new prohibition under that offense that prohibits a person from knowingly soliciting another to engage in sexual activity for hire.
 - 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 of an equivalent municipal ordinance, if the person was in, was on, or used a motor vehicle.
- Enacts the offense of “engaging in prostitution,” with the prohibition under the offense prohibiting a person from recklessly inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person.
- Enacts the offense of “receiving proceeds of prostitution,” with the prohibition under the offense prohibiting a person from knowingly receiving or acquiring money or any other thing of value from a prostitute earned from sexual activity for hire, and includes the offense as a corrupt activity under the Corrupt Activity Law.
- Requires the Attorney General to establish and maintain the Sexual Exploitation Public Database, to contain the conviction record of persons convicted of a “prostitution offense” (a defined term) on or after the bill’s effective date, and provides procedures for the removal of a conviction record from the Database in specified circumstances.
- Creates GRF line item 055436, Sexual Exploitation Public Database, in the Attorney General’s operating budget, with an appropriation of \$170,000 in FY 2020 and \$20,000 in FY 2021 to establish and maintain the SEPD.

DETAILED ANALYSIS

Offenses of “soliciting” and “engaging in solicitation after a positive HIV test”

The bill modifies the offense of “soliciting” and the related offense of “engaging in solicitation after a positive HIV test” in several ways:

1. It repeals and replaces the three prohibitions currently under the offense of “soliciting” with a new prohibition under that offense that prohibits a person from knowingly soliciting another to engage in “sexual activity for hire” (as under current law, an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person) in exchange for the person receiving anything of value from the other person. A violation of the prohibition remains the offense “soliciting” and it is classified a third degree misdemeanor.¹ Some of the conduct barred under the current prohibitions that are repealed and replaced will be prohibited under the new offense of “engaging in prostitution” that the bill enacts, as described below. The current prohibitions that are repealed and replaced and their penalties are:²
 - a. A prohibition against a person soliciting another who is age 18 or older to engage with such other person in sexual activity for hire. A violation of this prohibition currently is a third degree misdemeanor.
 - b. A prohibition against a person soliciting another to engage with such other person in sexual activity for hire if the other person is age 16 or 17 and the offender knows that the other person is 16 or 17 or is reckless in that regard. A violation of this prohibition currently is a fifth degree felony.
 - c. A prohibition against a person soliciting another to engage with such other person in sexual activity for hire if either of the following applies: (i) the other person is under age 16, whether or not the offender knows the age of the other person, or (ii) the other person is a person with a developmental disability and the offender knows or has reasonable cause to believe the other person is a person with a developmental disability. A violation of this prohibition currently is a third degree felony. A person convicted of a violation of this prohibition currently has duties under the Sex Offender Registration and Notification Law (SORN Law) as a Tier II offender. The bill repeals the current SORN Law references to a person being convicted of a violation of this prohibition having such duties, and the bill’s enactment of the new prohibition described in (1), above, and its enactment of the provisions regarding

¹ R.C. 2907.24(A), (C), and (D).

² Current R.C. 2907.24(A)(1) to (3) and (C)(1).

- the new offense of “engaging in prostitution” that it enacts, as described below do not provide that a person convicted of a violation of the new prohibition or offense has duties under the SORN Law.³
2. It retains without change a current prohibition against a person, with knowledge that the person has tested positive as a carrier of an HIV virus, from engaging in conduct in violation of any of the other prohibitions under the offense. However, under the bill, this prohibition will relate only to the new prohibition the bill enacts, as described in (1) above, and, because they all are repealed, it will no longer relate to activity of a type described under the current prohibitions described in (1)(a) to (c), above, that the bill repeals (and no similar prohibition will be included under the new offense of “engaging in prostitution” that the bill enacts, as described below). As under current law, a violation of this prohibition is the offense of “engaging in solicitation after a positive HIV test,” a third degree felony.⁴
 3. It repeals a provision that authorizes either a Class 6 suspension of the driver’s or commercial driver’s license, instruction permit, or nonresident driving privilege (a definite period of three months to two years), or the imposition of a term of community service in the number of hours set by the court, on an offender who is convicted of or pleads guilty to a violation of any of the current prohibitions under the offense of “soliciting,” an attempt to commit a violation of any of those prohibitions, the offense or an attempt to commit the offense of “engaging in solicitation after a positive HIV test,” or a violation of or attempt to commit a violation of a municipal ordinance that is substantially equivalent to any of those prohibitions or offenses, and who, in committing or attempting to commit the violation or offense, was in, was on, or used a motor vehicle. Because of the bill’s repeal of this authorization, it also repeals existing references to a suspension imposed under the authorization.⁵

Offense of “engaging in prostitution”

The bill enacts the offense of “engaging in prostitution.” The prohibition under the offense prohibits a person from recklessly inducing, enticing, or procuring another to engage in “sexual activity for hire” (an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person) in exchange for the person giving anything of value to the other person.⁶ The penalty for the offense is as follows:⁷

³ R.C. 2950.01.

⁴ R.C. 2907.24(B) and (C)(2).

⁵ Current R.C. 2907.24(D); also R.C. 119.062, 4510.07, and 4510.13.

⁶ R.C. 2907.231(A) to (C).

⁷ R.C. 2907.231(C); also R.C. 2929.13(B)(1) and (F)(4).

1. Except as described below in (2) or (3), it is a first degree misdemeanor. In sentencing the offender, the court must require the offender to attend an education or treatment program aimed at preventing persons from inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person and, notwithstanding the fine otherwise authorized in the Misdemeanor Sentencing Law for a first degree misdemeanor (a fine of not more than \$1,000), the court may impose on the offender a fine of not more than \$1,500.
2. Except as described below in (3), the offense is a fifth degree felony if the offender previously has been convicted of or pleaded guilty to “engaging in prostitution.” In sentencing the offender, notwithstanding the range of prison terms otherwise authorized in the Felony Sentencing Law for a fifth degree felony (a definite prison term of 6, 7, 8, 9, 10, 11, or 12 months), the court must impose on the offender a mandatory prison term of one month and may impose on the offender a definite prison term from the range of prison terms otherwise authorized in the Felony Sentencing Law for a fifth degree felony. Related to this mandatory prison term, the bill specifies that the existing provisions regarding a presumption of a community control sanction for a fourth or fifth degree felony do not apply to this offense when it is a felony.
3. The offense is a fourth degree felony if the offender previously has been convicted of or pleaded guilty to two or more offenses of “engaging in prostitution.” In sentencing the offender, the court must impose on the offender a mandatory prison term of six months and may impose on the offender a definite prison term from the range of prison terms authorized in the Felony Sentencing Law 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). Related to this mandatory prison term, the bill specifies that the existing provisions regarding a presumption of a community control sanction for a fourth or fifth degree felony do not apply to this offense when it is a felony.

Offense of “receiving proceeds of prostitution” and inclusion as a “corrupt activity”

Offense

The bill enacts the offense of “receiving proceeds of prostitution.” The prohibition under the offense prohibits a person from knowingly receiving or acquiring money or any other thing of value from a prostitute earned from “sexual activity for hire” (an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person).⁸ The penalty for the offense is as follows:⁹

1. Except as described below in (2), it is a third degree felony.

⁸ R.C. 2907.251(A) and (B).

⁹ R.C. 2907.251(C).

2. If the offender commits the violation by knowingly receiving or acquiring money or any other thing of value from a prostitute and the prostitute is under age 18, it is a second degree felony.

Inclusion as a “corrupt activity”

The bill includes conduct constituting the offense of “receiving proceeds of prostitution” that it enacts, as described above, as a “corrupt activity” for purposes of the Corrupt Activity Law, located in R.C. 2923.31 to 2923.36.¹⁰ Under that Law, a person who engages in a “pattern of corrupt activity” (a defined term) is subject to potential criminal and civil penalties and sanctions.

Sexual Exploitation Public Database

Establishment and entry and removal of conviction records

The bill requires the Attorney General (the AG) to establish and maintain the Sexual Exploitation Public Database (the SEPD). If a person is convicted of or pleads guilty to a “prostitution offense” on or after the bill’s effective date, the bill requires the clerk of courts to send the prostitution offender’s conviction record to the AG. The AG must ensure that a prostitution offender’s conviction record received from a clerk of courts is entered into the SEPD if the prostitution offender was convicted of or pleaded guilty to the prostitution offense on or after the bill’s effective date.¹¹

The AG must ensure that a prostitution offender’s conviction records received as described above are removed from the SEPD as follows:¹²

1. If five years have elapsed since the offender’s most recent conviction of or plea of guilty to a prostitution offense or a sexually oriented offense, the AG must automatically remove the offender from the SEPD. The offender does not need to submit an application to be removed from the SEPD under this provision.
2. If the offender’s conviction of or plea of guilty to a prostitution offense or a sexually oriented offense has been overturned, expunged, or sealed prior to the automatic removal from the SEPD described in paragraph (1), above, the offender may submit an application to be removed from the SEPD. If the AG approves the offender’s application to be removed from the SEPD, the AG must remove the offender from the SEPD.

Rules

The bill requires the AG to adopt rules under the Administrative Procedure Act establishing guidelines for the establishment and operation of the SEPD and prescribe forms necessary for the establishment and operation of the SEPD, including rules and forms establishing procedures for a prostitution offender to submit an application to be removed

¹⁰ R.C. 2923.31(I).

¹¹ R.C. 109.96(B) to (D).

¹² R.C. 109.96(E).

from the SEPD and for the AG to approve or deny an offender’s application to be removed from the SEPD.¹³

Definitions

The bill defines the following terms that apply to the SEPD provisions described above:¹⁴

“Conviction record” means a record containing all of the following: (1) the prostitution offender’s full legal name, (2) the prostitution offender’s last known address, (3) a color photograph of the prostitution offender, (4) the offense of which the prostitution offender was convicted or to which the prostitution offender pleaded guilty, (5) the date the offense listed in clause (4) was committed, and (6) the city and county in which the offense listed in clause (4) was committed.

“Prostitution offender” means a person who was convicted of or pleaded guilty to a prostitution offense.

“Prostitution offense” means a violation of a prohibition under the current offense of “promoting prostitution,”¹⁵ or under the offense of “engaging in prostitution” enacted in the bill (see **“Offense of “engaging in prostitution,”**” above).

“Sexually oriented offense” has the same meaning as in the SORN Law.¹⁶

Appropriation for SEPD

The bill creates GRF line item 055436, Sexual Exploitation Public Database, in the Attorney General’s operating budget, with an appropriation of \$170,000 in FY 2020 and \$20,000 in FY 2021 to establish and maintain the SEPD.¹⁷

HISTORY

Action	Date
Introduced	11-26-19

S0247-I-133/ks

¹³ R.C. 109.96(F).

¹⁴ R.C. 109.96(A).

¹⁵ R.C. 2907.22, not in the bill.

¹⁶ R.C. 2950.01.

¹⁷ Sections 3 and 4.