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H.B. 431
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsors: Reps. Abrams and Carfagna

Local Impact Statement Procedure Required: No

Jessica Murphy, Budget Analyst

Highlights

"Soliciting" and "engaging in prostitution"

- The bill's new offense of "engaging in prostitution" enhances the penalty for conduct related to the "demand" side of sexual activity for hire that is currently prohibited under "soliciting" from a third degree misdemeanor to a first degree misdemeanor.
- The bill requires the sentencing court to order an "engaging in prostitution" offender to attend an education or treatment program aimed at preventing future violations. It is unclear as to whether the courts will incur any additional annual costs related to these programs or if those costs may be passed on to the offender.

Trafficking in persons

- The bill will increase: (1) the number of juveniles identified as victims of human trafficking, and (2) the number of cases requiring the appointment of a guardian ad litem at the expense of the court. The net annual fiscal effect of these changes on juvenile divisions of courts of common pleas is expected to be minimal at most.

Sex Offender Registration and Notification (SORN) Law

- The bill allows certain offenders convicted of unlawful sexual conduct with a minor to petition a court of common pleas for modification or termination of duties under the existing SORN Law. It is likely that the courts of common pleas can use existing staff and appropriated resources to absorb the additional work created by the petition procedure.
- The bill permits record sealing in the case of a termination of duties. This will have a minimal annual fiscal effect on courts of common pleas, as there will be some gain in record sealing application fees and a related increase in time and effort for the courts to

review applications and potentially seal additional records. This provision may generate minimal at most application fee revenue annually for the state's General Revenue Fund (GRF).

- The Attorney General's Bureau of Identification and Investigation is expected to absorb the additional record sealing work utilizing existing staff and appropriated resources, as well as the work to notify the appropriate sheriff of an order issued regarding a hearing to review the petition.
- There may be a minimal net annual change in the costs and revenues of county sheriffs, as the duration of the duties of certain SORN Law registrants may be reduced to some degree.
- The annual county criminal justice system costs for the mandatory participation in a sex offender treatment program for a relatively small number of offenders will depend on the degree to which a court is already ordering such participation as a nonresidential sanction.

Detailed Analysis

"Soliciting" and "engaging in prostitution"

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 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 third degree misdemeanor to a first degree misdemeanor. 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."

The Franklin County Municipal Court alone processed over 1,000 charges of solicitation on average in recent years. 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.

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 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 annual decrease in such suspensions and related license reinstatement fee revenue.

Education or treatment program

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.

Trafficking in persons

The bill's provisions regarding the classification of juveniles as victims of human trafficking and the requirement for the courts to appoint a guardian ad litem for a child when the court believes that the act charged is soliciting, loitering to engage in solicitation, or prostitution or the juvenile is a victim of human trafficking are likely to increase the expenses of the juvenile court associated with guardianship. This will be due to a likely increase in both the number of juveniles identified as victims of human trafficking and the number of cases in which a guardian ad litem is appointed by the court. Based on the historical number of juveniles identified as victims of human trafficking, the increases are expected to be minimal. From 2015 through 2019, the Attorney General identified 233 juvenile victims of human trafficking, averaging 47 annually.

Appointment of guardian ad litem

Costs associated with the appointment of a guardian ad litem vary between counties, by the length of the case, and by the type of guardian. According to the Ohio CASA/GAL Association, a guardian ad litem who is also an attorney may cost on average $50 per hour, while a volunteer court appointed special advocate (CASA) would be less expensive for the court.[1] Currently, 51 counties utilize a CASA program. Most juveniles are considered indigent by the court; therefore, all costs associated with guardians would be borne by the court.

Abeyance of juvenile court proceedings

The bill allows the court to grant a petition for abeyance without a hearing if the prosecuting attorney consents. Changes to the abeyance procedure have the potential to decrease the work of the court by eliminating the requirement for a hearing to grant an

[1] The Ohio CASA/GAL Association is a nonprofit corporation that provides CASA programs and their volunteers with training, funding, leadership, quality assurance, and management assistance.

abeyance in certain circumstances. However, any potential increase in the number of juveniles identified as victims of human trafficking will also increase the number of cases eligible for abeyance with the potential for a hearing whenever the prosecuting attorney requests one. The net annual fiscal effect of these changes is expected to be minimal at most.

Sex Offender Registration and Notification Law

The bill: (1) allows certain offenders convicted of unlawful sexual conduct with a minor to petition a court of common pleas for modification or termination of duties under the existing Sex Offender Registration and Notification (SORN) Law, (2) permits record sealing in those cases, and (3) requires a court to sentence certain offenders convicted of unlawful sexual conduct with a minor to a sex offender treatment program as a nonresidential sanction.

According to research by Families and Individuals for Reform (FAIR), as of January 2017, up to roughly 235 current SORN registrants would potentially be eligible for reclassification, registration termination, and record sealing subsequent to the bill's effective date, with an estimated 29 newly convicted offenders eligible annually thereafter. The courts of common pleas will be required to sentence those newly convicted offenders to a sex offender treatment program as a nonresidential sanction.

Petitioning the court

Once an offender has completed community control sanctions, the offender may petition the original sentencing court to review the effectiveness of the sanction and to determine the offender's duty to comply with sex offender registration requirements. The court is required to notify the prosecutor who prosecuted the offense and hold a hearing. Once notified, the prosecutor is required to notify the victim of the original offense of the hearing who may submit to the prosecutor a written statement regarding the offender's conduct post-conviction, and the prosecutor may file an objection to the petition.

Upon review, which must include any objection by the prosecutor and any written victim statement, the court is required to enter one of three types of orders: (1) terminate the offender's duty to comply with SORN Law registration duties, (2) reclassify the offender from a Tier II offender with child-victim classification to a Tier I offender with child-victim classification, or (3) continue the offender's Tier II offender with child-victim classification. Under continuing law, an adult Tier II offender is required to register for 25 years and to verify his or her address every 180 days. An adult Tier I offender is required to register for 15 years and verify his or her address annually.

A termination or reclassification stays in effect for the entirety of the offender's sentence, and the offender may refile three years following the first decision and five years after a second if the court reclassifies or continues classification.

Given the relatively small statewide population of eligible offenders, it is likely that the courts and prosecutors can absorb the additional work associated with this petition procedure utilizing existing court personnel and appropriated resources.

Notification

The court is required to provide the Ohio Attorney General's Bureau of Criminal Identification and Investigation (BCII) with a copy of the order, with BCII subsequently required to notify the county sheriff with whom the offender most recently registered of the court's

order. BCII can be expected to perform this additional work utilizing existing personnel and appropriated resources.

A reclassification from Tier II to Tier I (order (2) above) results in reduced registration and address verification requirements for the offender; termination (order (1) above) results in an end to registration and address verification.

Currently, there are over 18,000 nonincarcerated adults registered under the SORN Law with county sheriffs statewide. Because of the bill, it is possible that the duration of the required registration duty for a relatively small number of those offenders will be reduced to some degree. The corresponding decrease in any given sheriff's annual registration, notification, and enforcement costs generally will not be significant.

There is also a possible effect on a county sheriff's revenue-generating activities. Current law permits a sheriff to charge SORN Law registrants a fee not exceeding a total of $25 for certain actions in each registration year. All such fees are paid into the county general fund and then allocated to the sheriff to be used to defray SORN Law administration costs. The termination of an offender's registration duty means that sheriffs collecting such fees may lose a negligible amount of revenue that otherwise would have been collected in any given year.

Record sealing

Three years following the offender's final discharge in a case where the court orders a termination of duty to comply as described above, the offender may petition the court to have the record sealed. The annual costs for county criminal justice systems and BCII to handle a potential increase in sealing requests will be minimal at most, with the application fee to offset some portion of those costs. Record sealing applicants, unless indigent, are required to pay a $50 fee. The $50 application fee is divided between the state GRF ($30) and the county general revenue fund ($20).

Sex offender treatment program

The bill may result in additional expenses for courts of common pleas and affiliated entities to utilize sex offender treatment programs certified by the Department of Rehabilitation and Correction as a nonresidential sanction and to manage offenders sentenced to such programs. Courts are not prohibited under existing law from utilizing such programs, which suggests that this required sanction may be codifying current practice in certain counties. Any annual cost increase for a given county not currently utilizing such a program will be manageable with existing resources, as the likely number of additional offenders sentenced to a sex offender treatment program will be relatively small (an estimated 29 offenders annually statewide).