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Office

H.B. 390
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Lanese and John

Local Impact Statement Procedure Required: No

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Highlights

- Local law enforcement agencies may incur minimal ongoing operating costs to comply with the bill's requirement that biological evidence in a trafficking in persons investigation or prosecution be secured for a specified period.
- The Office of the Attorney General's Bureau of Criminal Investigation (BCI) may experience a minimal increase in annual workload and costs related to performing a DNA analysis of any sexual assault examination kit related to a trafficking in persons offense forwarded by a law enforcement agency.
- Local law enforcement agencies generally will experience a short-term increase in administrative costs to review all records and reports related to investigations of trafficking in persons, and forward the contents of any related sexual assault examination in its possession to BCI. The one-time cost increase to any given agency will depend on the length of the lookback period and the number of cases requiring such review.
- There may be a relatively small increase in the number of persons charged and convicted of a felony sex offense and subsequently sentenced to a term of incarceration in state prison. The associated annual operating costs for county criminal justice systems and the Department of Rehabilitation and Correction are expected to be minimal at most.
- Eliminating the authorization in certain circumstances for the use of the Reparations Fund to pay for electronic monitoring may result in a potential savings of up to \$300,000 per year for the Reparations Fund and a potential cost increase for certain courts if they continue to order monitoring for indigent persons who are unable to pay, the amount of which is uncertain.

Detailed Analysis

Sex assault exam kits for trafficking in persons cases

Preservation of biological evidence

The bill requires government retention entities in possession of a sexual assault examination kit during an investigation or prosecution for an offense of “trafficking in persons” to follow current law procedures for preserving and cataloging biological evidence. Local law enforcement agencies may incur minimal ongoing operating costs to comply with the bill’s requirement that biological evidence in a trafficking in persons investigation or prosecution be secured for a specified period. There are likely to be no costs for law enforcement agencies with practices already compliant with this requirement.

The procedure currently applies to (1) aggravated murder, (2) murder, (3) voluntary or involuntary manslaughter, (4) aggravated vehicular homicide, (5) rape or attempted rape, (6) sexual battery, and (7) certain cases of gross sexual imposition (generally pertaining to cases where the victim is less than 13 years of age).

Performance of DNA analysis

The bill requires sexual assault examination kits collected in relation to a trafficking in persons case to be tested and submitted to the Attorney General’s Bureau of Criminal Investigation (BCI) or another crime laboratory for a DNA analysis of the contents of the kit if a DNA analysis has not previously been performed on the kit. The bill does not change the sexual assault examination kit collection process. An examination kit will continue to be voluntary, and a suspected victim will still be able to stop the biological evidence collection process at any time.

According to the Attorney General’s Office, law enforcement and other entities that may possess human trafficking-related sexual assault examination kits are not prohibited from forwarding the contents of a kit to BCI, or a laboratory under contract with BCI, for DNA analysis. BCI and other laboratories are permitted to test any kit that is submitted. These entities are required to test examination kits related to specified sexual offenses that, according to subject matter experts, would also be an underlying part of the trafficking in persons offense. As a matter of practice, if law enforcement suspects that a person is a victim of a sexual offense, evidence is obtained including if that offense is an element of a trafficking in persons case. This would suggest that the potential number of additional kits submitted for analysis will be relatively small and the related annual operating costs for BCI minimal.

Law enforcement agency review of records and reports

The bill requires that a law enforcement agency review all of its records and reports pertaining to its investigation of any violation of a trafficking in persons offense as soon as possible. If the review determines that a person committed a trafficking in persons offense, the law enforcement agency must forward the contents of the sexual assault examination kit to BCI not later than one year after the effective date of the bill. The one-time cost increase to any given agency will depend on the length of the lookback period and the number of cases requiring such review.

The table below provides a selected summary of Ohio’s human trafficking statistics for the five-year period from calendar years (CYs) 2016 through 2020.¹ It includes the number of human trafficking investigations, arrests, and successful criminal convictions.

| Human Trafficking Statistic | 2016 | 2017 | 2018 | 2019 | 2020 |
|------------------------------------|-------------|-------------|-------------|-------------|-------------|
| Investigations | 135 | 202 | 242 | 251 | 216 |
| Arrests | 79 | 70 | 80 | 166 | 76 |
| Criminal Convictions | 28 | 18 | 61 | 56 | 18 |

Criminal prosecutions

Because of the bill, there may be a relatively small increase in the number of persons charged and convicted of a felony sex offense and subsequently sentenced to a term of incarceration in state prison. The associated annual operating costs for county criminal justice systems to prosecute and adjudicate such cases are expected to be minimal at most.

As of December 2021, the prison population managed by the Department of Rehabilitation and Correction (DRC) totaled 43,234. For FY 2021, the average annual cost per inmate was \$35,405 (\$97 per day). The marginal cost of adding a relatively small number of offenders to the prison system is roughly \$4,000 per offender per year. If, as assumed, the bill will affect a relatively small number of offenders then any increase in DRC’s annual incarceration costs is likely to be minimal.

Engaging in prostitution with a person with a developmental disability

The bill creates the offense of “engaging in prostitution with a person with a developmental disability.” Specifically, a person is prohibited 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 if the other person is a person with a developmental disability and the offender knows or has reasonable cause to believe that the other person is a person with a developmental disability. A violation of the prohibition is a third degree felony.

The practical effect of the new offense is that it will serve as a victim-based penalty enhancement by creating felony status for conduct that is already prohibited in the Revised Code under the offense of “engaging in prostitution,” which is a first degree misdemeanor. The following table shows the fine and term of incarceration applicable under current law for the existing misdemeanor offense of “engaging in prostitution” and the new felony offense of “engaging in prostitution with a person with a developmental disability.”

¹ Data from the Office of the Attorney General’s annual human tracking reports.

Table 2. Felony and Misdemeanor Penalties for Engaging in Prostitution

| Offense Level | Fine | Possible Term of Incarceration |
|--|----------------|---|
| Third degree felony (New victim enhancement) | Up to \$10,000 | 9, 12, 18, 24, 30, or 36 month definite prison term |
| First degree misdemeanor (Existing general offense) | Up to \$1,500 | Jail, not more than 180 days |

*In the case of a third degree felony generally, there is no presumption for a prison term versus community control.

By bifurcating the offense of “engaging in prostitution” to make conduct against a person with a developmental disability a felony offense, the bill would shift what is likely to be a small number of cases from misdemeanor jurisdiction of a county or municipal court to the felony jurisdiction of a court of common pleas. Although felony cases tend to be more time consuming and expensive to adjudicate, any related cost shifting that may occur will be minimal annually. Depending on the amount that an offender is fined and whether or not they pay that amount, it is possible that counties could experience a slight increase in fine and court cost revenue that would partially offset any increased costs.²

Additionally, if an offender is convicted of “engaging in prostitution with a person with a developmental disability,” that offender could be sentenced to a term of incarceration in a state-run prison instead of local confinement in a jail. To the extent that a judge would sentence a prison term, DRC could incur marginal costs to incarcerate a small number of additional offenders and local jails may experience a corresponding decrease in costs. The magnitude of any increase or decrease in incarceration expenditures is expected to be negligible, as a small number of cases are expected to be impacted. The marginal cost of adding a small number of offenders to the prison system is roughly \$4,000 per offender per year.

Electronic monitoring

Under current law, if an offender violates a protection order that was issued under R.C. 2151.34 or 2903.214 and the offense required electronic monitoring of the offender, the court may require, in addition to any other sentence imposed, that the offender be electronically monitored by a law enforcement agency designated by the court. The court may also order electronic monitoring for violators of either of those types of protection orders. Unless the court determines that the offender is indigent, the court must order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the device. If the court determines that the respondent or offender is indigent, the installation and monitoring costs may be paid out of the Reparations Fund (Fund 4020), with the amounts paid subject to a maximum amount of \$300,000 per year for all such payments and according to rules of the Attorney General. The bill eliminates this authorized use of the Reparations Fund. The elimination may result in a potential savings of up to \$300,000 per year for the Reparations Fund and a

² The state court costs total \$60 for a felony and \$29 for a misdemeanor. The \$60 felony amount is divided as follows: \$30 to the Indigent Defense Support Fund (Fund 5DY0) and \$30 to the Reparations Fund (Fund 4020). The \$29 misdemeanor amount is divided as follows: \$20 to Fund 5DY0 and \$9 to Fund 4020.

potential cost increase for certain courts if they continue to order monitoring for indigent persons who are unable to pay, the amount of which is uncertain.

Funeral expenses for crime victims

The bill expands the circumstances the Attorney General is permitted to make an emergency award of reparations to include funeral expenses of a decedent victim of a crime when all of the following conditions are met:

- There is reasonable belief that the requirements of the written findings of fact and decision of the investigation before granting an award of reparations will be met;
- The decedent and claimant are indigent; and
- The claimant will suffer undue hardship if not granted immediate relief.

The bill will not increase the number of claims filed or amount disbursed as reparations under the state's Victim of Crime Compensation Program,³ but will expedite part of the reimbursement of funeral expenses, that otherwise would have been paid before the full award. There is no statutory provision dictating the amount of time the Attorney General's office has to make a decision on a request for an emergency award however, according to the Attorney General, it typically takes two weeks. In FY 2021, the average processing time for a homicide claim for a final award of reparations was 125 days and 114 for all other claim types.

³ The Attorney General pays for the reparations awards with money appropriated from the Reparations Fund (Fund 4020) and secondarily from the federal Crime Victim Assistance Fund (Fund 3FV0).