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Bill Analysis
Legislative Service Commission

S.B. 23

127th General Assembly
(As Introduced)

Sens. Goodman, Stivers, Coughlin, Clancy, Gardner, Niehaus, Jacobson, Padgett, Carey, Mumper, Smith, Austria

BILL SUMMARY

- Creates the offenses of "involuntary servitude," "sexual servitude of a minor," and "trafficking in persons for forced labor or services."
- Provides that a court sentencing an offender convicted of any of those new offenses, in addition to the restitution sanction imposed under existing Felony Sentencing Law, must impose upon the offender restitution including the greater of the following: (1) the gross income or value to the defendant of the victim's labor or services, and (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938" and state labor laws.
- Requires the Attorney General, in consultation with the Department of Job and Family Services and not later than one year after the bill's effective date, to issue a report outlining how existing victim protection laws and regulations respond to the needs of victims of any of those new offenses, and suggesting areas of improvement and modification of existing victim protection laws, and requires the Department of Job and Family Services, in consultation with the Attorney General and not later than one year after the bill's effective date, to issue a report outlining how existing social service programs respond or fail to respond to the needs of victims of any of those new offenses, and the interplay of existing social service programs with federally funded victim service programs and suggesting areas of improvement and modification of existing social service programs.

CONTENT AND OPERATION

The bill enacts a series of criminal offenses, and related provisions, regarding involuntary servitude, sexual servitude, and trafficking in persons in specified contexts.

Offense of "involuntary servitude"

The bill prohibits a person from knowingly subjecting another person to forced "labor" or "services" (see "*Definitions*," below) by doing any of the following in a manner not otherwise prohibited by existing R.C. 2905.01(B)(3) or 2905.02(A)(3) (see **COMMENT 1**, for a summary of these existing provisions, which are not in the bill): (1) causing or threatening to cause physical harm to any person, (2) physically restraining or threatening to physically restrain another person, (3) abusing or threatening to abuse the law or legal process, (4) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, or (5) by committing a violation of existing R.C. 2905.11 (see **COMMENT 2** for a summary of this existing provision, which is not in the bill) or causing or threatening to cause financial harm to any person.

A violation of this prohibition is the offense of "involuntary servitude." A violation of the portion of the prohibition described in clause (1) of the preceding paragraph is a felony of the first degree, and the court may impose a term of years not to exceed ten years in addition to the penalty imposed for a felony of the first degree. A violation of the portion of the prohibition described in clause (2) of the preceding paragraph is a felony of the second degree, and the court may impose a term of years not to exceed seven years in addition to the penalty imposed for a felony of the second degree. A violation of the portion of the prohibition described in clause (3) of the preceding paragraph is a felony of the third degree, and the court may impose a term of years not to exceed five years in addition to the penalty imposed for a felony of the third degree. A violation of the portion of the prohibition described in clause (4) of the preceding paragraph is a felony of the third degree. A violation of the portion of the prohibition described in clause (5) of the preceding paragraph is a felony of the fifth degree, and the court may impose a term of years not to exceed two years in addition to the penalty imposed for a felony of the fifth degree. (R.C. 2905.32.)

Offense of "sexual servitude of a minor"

The bill prohibits a person, in a manner that is not otherwise prohibited by existing R.C. 2907.21, 2907.22, 2907.32, 2907.321, 2907.322, or 2907.323 (see

COMMENT 3, for a summary of these existing provisions, which are not in the bill), from doing either of the following: (1) knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means, another person under 18 years of age, knowing that the other person will engage in prostitution, a sexually-explicit performance, or the production of pornography, or (2) knowingly causing a person under 18 years of age to engage in prostitution, a sexually-explicit performance, or the production of pornography.

A violation of this prohibition is the offense of "sexual servitude of a minor." If the victim is between 16 years of age and 18 years of age and the violation does not involve overt force or threat of force, the offense is a felony of the first degree, and the court may impose a term of years not to exceed five years in addition to the penalty for a felony of the first degree. If the victim has not reached 16 years of age and the violation does not involve overt force or threat of force, the offense is a felony of the first degree, and the court may impose a term of years not to exceed ten years in addition to the penalty for a felony of the first degree. If the violation does involve overt force or threat of force, the offense is a felony of the first degree, and the court may impose a term of years not to exceed 15 years in addition to the penalty for a felony of the first degree. (R.C. 2905.33.)

Offense of "trafficking in persons for forced labor or services"

The bill prohibits a person from knowingly doing either of the following: (1) intending or knowing that the person will be subjected to forced "labor" or "services" (see "Definitions," below), recruiting, enticing, harboring, transporting, providing, or obtaining by any means another person, or (2) benefiting financially or receiving anything of value from participation in a venture that results in a violation of a prohibition described above in "Offense of "involuntary servitude"" or "Offense of "sexual servitude of a minor"," as enacted in the bill.

A violation of this prohibition is the offense of "trafficking in persons for forced labor or services," a felony of the first degree. The court may impose a term of years not to exceed five years in addition to the penalty for a felony of the first degree. (R.C. 2905.34.)

Definitions

As used in the provisions of the bill described above in "Offense of "involuntary servitude"," "Offense of "sexual servitude of a minor"," and "Offense of "trafficking in persons for forced labor or services"": (1) "labor" means work of economic or financial value, and (2) "services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor (R.C. 2905.31).

Special restitution sanction

Financial sanctions in general--existing law

Existing law provides that, in general, the court imposing a sentence upon an offender for a felony may sentence the offender to certain authorized financial sanctions or a combination of those authorized financial sanctions. Financial sanctions that may be so imposed include, but are not limited to: (1) restitution (see "**Existing law**" under "**Restitution sanction**," below), (2) a fine payable to the state, a political subdivision, or one or more law enforcement agencies, with the amount based on a standard percentage of the offender's daily income over a period of time and the seriousness of the offense, (3) a statutory fine specified for the degree of the felony in question, (4) a "state fine" or costs, (5) reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the costs of implementing any community control sanction or the costs of confinement, or (6) for specified controlled substance and drug offenses and for a felony OVI offense, a mandatory fine in a specified amount.

Except as otherwise described in this paragraph, a financial sanction imposed on a felon is a judgment in favor of the state or a political subdivision in which the sentencing court is located, and the offender subject to the financial sanction is the judgment debtor. Special rules apply regarding a financial sanction of reimbursement, and a financial sanction of restitution is an order in favor of the victim of the offender's criminal act that can be collected through execution or an order, as described below, and the offender is considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once a financial sanction is imposed as a judgment or order under this provision, the victim, private provider, state, or political subdivision may bring an action to do any of the following: (1) obtain execution of the judgment or order through any available procedure, including an execution against the property of the judgment debtor under R.C. Chapter 2329., an execution against the person of the judgment debtor under R.C. Chapter 2331., a proceeding in aid of execution under R.C. Chapter 2333. of the Revised Code, the attachment of the property of the judgment debtor under R.C. Chapter 2715., or the garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code, or (2) obtain an order for the assignment of wages of the judgment debtor under R.C. 1321.33.

A court that imposes a financial sanction upon a felon may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it. A court imposing a financial sanction upon a felon may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized to collect the financial sanction

may enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the financial sanction. If a court that imposes a financial sanction upon a felon finds that the offender satisfactorily has completed all other sanctions imposed and that all restitution that has been ordered has been paid as ordered, the court may suspend other financial sanctions that have not been paid. No financial sanction imposed upon a felon precludes a victim from bringing a civil action against the offender. (R.C. 2929.18.)

Restitution sanction

Existing law. Regarding the restitution that existing law authorizes as a financial sanction that may be imposed upon a felon, existing law provides that the sentencing court may impose restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's "economic loss" (see below). If the court imposes restitution, the court is required to order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court must determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution cannot exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court must hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments must be credited against any recovery of "economic loss" (see below) in a civil action brought by the victim or any survivor of the victim against the offender. If the court imposes restitution, the court may order that the offender pay a surcharge of not more than 5% of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments. The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered; if the court grants the motion, it may modify the payment terms as it determines appropriate. (R.C. 2929.18(A)(1).)

As used in the existing Felony Sentencing Law, including the restitution provision described in the preceding paragraph (existing R.C. 2929.01(M) and (WW), not in the bill): (1) "economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense

incurred as the result of the commission of the offense ("economic loss" does not include "non-economic loss"), and (2) "non-economic loss" means any nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to: pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

Operation of the bill. The bill provides that, "in addition to the restitution sanction imposed" under the provision described above in "**Existing law**," if the offender violates a prohibition described above in "**Offense of 'involuntary servitude'**," "**Offense of 'sexual servitude of a minor'**," or "**Offense of 'trafficking in persons for forced labor or services'**," as enacted in the bill, the court must impose restitution including the greater of the following: (1) the gross income or value to the defendant of the victim's labor or services, or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938" and state labor laws (R.C. 2929.18(A)(1)(b)).

Reports required of Attorney General and Department of Job and Family Services

The bill requires the Attorney General, in consultation with the Department of Job and Family Services and not later than one year from the bill's effective date, to issue a report outlining how existing victim protection laws and regulations respond to the needs of victims of a violation of a prohibition described above in "**Offense of 'involuntary servitude'**," "**Offense of 'sexual servitude of a minor'**," or "**Offense of 'trafficking in persons for forced labor or services'**," as enacted in the bill, and suggesting areas of improvement and modification of existing victim protection laws. It also requires the Department of Job and Family Services, in consultation with the Attorney General and not later than one year from the bill's effective date, to issue a report outlining how existing social service programs respond or fail to respond to the needs of victims of a prohibition described above in "**Offense of 'involuntary servitude'**," "**Offense of 'sexual servitude of a minor'**," or "**Offense of 'trafficking in persons for forced labor or services'**," as enacted in the bill, and the interplay of existing social service programs with federally funded victim service programs and suggesting areas of improvement and modification of existing social service programs. (R.C. 2905.35.)

COMMENT

1. Existing R.C. 2905.01(B)(3), which is not in the bill, prohibits a person by force, threat, or deception, or, in the case of a victim under the age of 13 or mentally incompetent, by any means, from knowingly holding another in a condition of involuntary servitude, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim. A violation of the prohibition (or of any of a series of other prohibitions set forth in R.C. 2905.01) is the offense of "kidnapping." Kidnapping generally is a felony of the first degree, but it is a felony of the second degree if the offender releases the victim in a safe place unharmed.

Existing RC. 2905.02(A)(3), which is not in the bill, prohibits a person without privilege to do so, from knowingly holding another in a condition of involuntary servitude. A violation of the prohibition (or of any of a series of other prohibitions set forth in R.C. 2905.02) is the offense of "abduction," a felony of the third degree.

2. Existing R.C. 2905.11, which is not in the bill, prohibits a person, with purpose to obtain any valuable thing or valuable benefit or to induce another to do an unlawful act, from doing any of the following: (a) threatening to commit any felony, (b) threatening to commit any offense of violence, (c) violating R.C. 2902.21 or 2903.122, (d) uttering or threatening any calumny against any person, or (e) exposing or threatening to expose any matter tending to subject any person to hatred, contempt, or ridicule, or to damage any person's personal or business repute, or to impair any person's credit. A violation of this prohibition is the offense of "extortion," a felony of the third degree.

3. Existing R.C. 2907.21, which is not in the bill, prohibits a person from knowingly do any of the following: (a) compelling another to engage in sexual activity for hire, (b) inducing, procuring, encouraging, soliciting, requesting, or otherwise facilitating a minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor, (c) paying or agreeing to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor, (d) paying a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity, pursuant to a prior agreement, whether or not the offender knows the age of the minor, or (e) allowing a minor to engage in sexual activity for hire if the person allowing the child to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person *in loco parentis* of the minor. A violation of this prohibition is the offense of "compelling

prostitution," which is a felony of the second or third degree, depending upon the circumstances present.

Existing R.C. 2907.22, which is not in the bill, prohibits a person from knowingly: (a) establishing, maintaining, operating, managing, supervising, controlling, or having an interest in a brothel, (b) supervising, managing, or controlling the activities of a prostitute in engaging in sexual activity for hire, (c) transporting another, or causing another to be transported across the boundary of Ohio or of any Ohio county, in order to facilitate the other person's engaging in sexual activity for hire, or (d) for the purpose of violating or facilitating a violation of this section, inducing or procuring another to engage in sexual activity for hire. A violation of this prohibition is the offense of "promoting prostitution," which is a felony of the third or fourth degree, depending upon the circumstances present.

Existing R.C. 2907.32, which is not in the bill, prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following: (a) creating, reproducing, or publishing any obscene material, when the offender knows that the material is to be used for commercial exploitation or will be publicly disseminated or displayed, or when the offender is reckless in that regard, (b) promoting or advertising for sale, delivery, or dissemination; selling, delivering, publicly disseminating, publicly displaying, exhibiting, presenting, renting, or providing; or offering or agreeing to sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide, any obscene material, (c) creating, directing, or producing an obscene performance, when the offender knows that it is to be used for commercial exploitation or will be publicly presented, or when the offender is reckless in that regard, (d) advertising or promoting an obscene performance for presentation, or presenting or participating in presenting an obscene performance, when the performance is presented publicly, or when admission is charged, or (e) buying, procuring, possessing, or controlling any obscene material with purpose to violate clause (b) or (d) of this paragraph. A violation of this prohibition is the offense of "pandering obscenity," which is a felony of the fourth or fifth degree, depending upon the circumstances present.

Existing R.C. 2907.321, which is not in the bill, prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following: (a) creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers, (b) promoting or advertising for sale or dissemination; selling, delivering, disseminating, displaying, exhibiting, presenting, renting, or providing; or offering or agreeing to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers, (c) creating, directing, or producing an obscene performance that has a

minor as one of its participants, (d) advertising or promoting for presentation, presenting, or participating in presenting an obscene performance that has a minor as one of its participants, (e) buying, procuring, possessing, or controlling any obscene material, that has a minor as one of its participants, or (f) bringing or causing to be brought into Ohio any obscene material that has a minor as one of its participants or portrayed observers. A violation of the prohibition is the offense of "pandering obscenity involving a minor," which is a felony of the third or fourth degree, depending upon the circumstances present.

Existing R.C. 2007.322, which is not in the bill, prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following: (a) creating, recording, photographing, filming, developing, reproducing, or publishing any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, (b) advertising for sale or dissemination, selling, distributing, transporting, disseminating, exhibiting, or displaying any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, (c) creating, directing, or producing a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, (d) advertising for presentation, presenting, or participating in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, (e) knowingly soliciting, receiving, purchasing, exchanging, possessing, or controlling any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or (f) bringing or causing to be brought into Ohio any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bringing, causing to be brought, or financing the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality. A violation of the prohibition is the offense of "pandering sexually oriented matter involving a minor," which is a felony of the third or fourth degree, depending upon the circumstances present.

Existing R.C. 2907.323, which is not in the bill, sets forth a series of prohibitions described below. A violation of any of them is the offense of "illegal use of a minor in a nudity-oriented material or performance," which is a felony of the second, fourth, or fifth degree, depending upon the circumstances present. The section prohibits a person from doing any of the following:

(a) Photographing any minor who is not the person's child or ward in a state of nudity, or creating, directing, producing, or transferring any material or performance that shows the minor in a state of nudity, unless both of the following apply: (i) the material or performance is, or is to be, sold, disseminated, displayed,

possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance, and (ii) the minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(b) Consenting to the photographing of the person's minor child or ward, or photographing the person's minor child or ward, in a state of nudity or consenting to the use of the person's minor child or ward in a state of nudity in any material or performance, or using or transferring a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance;

(c) Possessing or viewing any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless one of the following applies: (a) the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance, or (b) the person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

HISTORY

ACTION	DATE
Introduced	02-20-07

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