

# Fiscal Note & Local Impact Statement

127<sup>th</sup> General Assembly of Ohio

Ohio Legislative Service Commission  
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BILL: **Sub. S.B. 205 (LSC 127 0604-5)**                      DATE: **December 10, 2008**

STATUS: **In Senate Judiciary--Criminal Justice**                      SPONSOR: **Sen. Fedor**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**                      **Potential more than minimal net additional local cost in As Introduced version; Potential no more than minimal net additional local cost in substitute version**

CONTENTS: **Human trafficking**

## State Fiscal Highlights

STATE FUND	FY 2009	FY 2010	FUTURE YEARS
<b>General Revenue Fund (GRF)</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase, totaling several hundred thousands of dollars	Potential increase, totaling several hundred thousands of dollars	Prison population stacking effect generating incarceration cost increase totaling up to several million or more dollars annually
<b>GRF and/or Other Funds of the Office of the Attorney General</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase for study commission	Potential minimal increase for study commission	Potential minimal increase for study commission

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Incarceration costs.** Based on a preliminary analysis provided by the Department of Rehabilitation and Correction (DRC), the bill's human trafficking penalty enhancement provisions appear likely to increase its annual incarceration costs, the magnitude of which could total up to several million or more dollars annually in subsequent years.
- **Office of the Attorney General.** If the Attorney General were to establish a Trafficking in Persons Study Commission, the ongoing annual operating expenses associated with its duties and responsibilities for the state appear unlikely to exceed minimal, which means an estimated cost of less than \$100,000 per year. It seems likely that certain political subdivisions of the state may also incur some additional costs if the Attorney General needs assistance in collecting and analyzing data. Such costs would likely be no more than minimal, which means an estimated cost of no more than \$5,000 for any affected county or municipality per year.



## *Local Fiscal Highlights*

- **Human trafficking criminal cases.** The bill will not create additional human trafficking-related criminal actions or proceedings for county criminal justice systems to process, but may affect the time and effort required to resolve such matters. The penalty enhancement provisions may expedite the bargaining process in some instances, which potentially reduces costs; in other instances, the penalty enhancement provisions may slow the bargaining process, which potentially increases costs. That said, the net fiscal effect on any given county criminal justice system is likely to be minimal, which means an estimated reduction or increase of no more than \$5,000 per year.
- **Study commission.** If the Attorney General were to establish a Trafficking in Persons Study Commission, it seems likely that certain political subdivisions of the state may also incur some additional costs if the Attorney General needs assistance in collecting and analyzing data. Such costs would likely be no more than minimal, which means an estimated cost of no more than \$5,000 for any affected county or municipality per year.

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## *Detailed Fiscal Analysis*

### Overview

For the purposes of this fiscal analysis, the bill most notably:

- Requires a mandatory prison term for kidnapping, abduction, compelling prostitution, promoting prostitution, illegal use of a minor in nudity-oriented material or performance, endangering children.
- Increases the penalty for engaging in a pattern of corrupt activity if committed in the furtherance of human trafficking.
- Strongly encourages the Attorney General to establish a Trafficking in Persons Study Commission.

### Penalties for committing offenses in the furtherance of human trafficking

#### Offense levels for certain prohibited conduct under current law

The existing offense levels for the prohibited conduct addressed by the bill are summarized in Table 1 immediately below.

<b>Table 1 Offense Levels for Certain Prohibited Conduct Under Current Law</b>	
<b>Type of Offense</b>	<b>Level of Offense</b>
Kidnapping	Felony of the first or second degree depending on circumstances present
Abduction	Felony of the third degree
Compelling prostitution	Felony of the third degree generally; Felony of the second degree under certain circumstances
Promoting prostitution	Felony of the fourth degree generally; Felony of the third degree under certain circumstances
Illegal use of a minor in nudity-oriented material or performance	Felony of the second, fourth, or fifth degree depending on circumstances present
Endangering children	Misdemeanor of the first degree generally; Felony of the second, third, fourth, or fifth degree under certain circumstances
Engaging in a pattern of corrupt activity	Felony of the second degree generally; Felony of the first degree under certain circumstances

#### Prison terms generally and under the bill

Table 2 immediately below displays the prison term associated with the bill's prohibited conduct under current law and compares it to the enhanced mandatory prison term that the court would impose under the bill.

**Table 2  
Prison Terms Generally and Under the Bill**

<b>Level of Offense</b>	<b>Prison Term Under Current Law</b>	<b>Mandatory Prison Term Under the Bill</b>
Felony 1st degree	3,4,5,6,7,8,9,10 years definite	5,6,7,8,9,10 years definite
Felony 2nd degree	2,3,4,5,6,7,8 years definite	3,4,5,6,7,8 years definite
Felony 3rd degree	1,2,3,4,5 years definite	3,4,5 years definite
Felony 4th degree	6,7,8,9,10,11,12,13,14,15,16,17,18 months definite	18 months definite
Felony 5th degree	6,7,8,9,10,11,12 months definite	12 months definite

**State fiscal effects**

The bill will likely affect the state in two ways related to the annual incarceration costs incurred by the Department of Rehabilitation and Correction (DRC). In the short-term, some offenders that might not otherwise have been sentenced to prison under current law and practice may, under similar circumstances in the future, receive a mandatory prison term. In the long-term, some offenders that would have been sentenced to a prison term under current law and practice, under similar circumstances in the future, may receive a longer prison term than might otherwise have been the case. Either outcome increases DRC's annual incarceration costs, as the practical effect is to increase the size of the prison population.

**Short-term incarceration costs.** Generally, the bill's human trafficking penalty enhancements appear unlikely to noticeably increase DRC's short-term incarceration cost, because they affect offenders likely to have been sentenced to some prison time under current law and practice. The one potential exception to this is the mandatory prison term required for offenses of the fourth and fifth degree when the human trafficking specification is attached. Under the bill, these offenders must be sentenced to the maximum term for their offense. Under current law, the presumption for these offenders is that they will not receive prison time. The result is that some additional offenders in this category will receive mandatory maximum prison sentences who would otherwise have been sentenced to community control or some lesser amount of prison time. The potential increase in DRC's incarceration costs related to these fourth- and fifth-degree felons could total several hundred thousands of dollars annually.

**Long-term incarceration costs.** Examining a more long-term perspective, the changes to the felony sentencing law related to human trafficking specifications means that, in the future, certain offenders, subsequent to the bill's enactment, would receive longer prison terms than might otherwise have been the case under current law and practice. In effect, by extending prison stays beyond what the amount of time served might otherwise have been under current law, the bill will trigger a "stacking effect," which refers to the increase in the inmate population that occurs as certain offenders stay in prison longer and the number of offenders entering the prison system does not decrease.

To estimate the impact of this stacking effect on the future size of the DRC's inmate population, LSC fiscal staff consulted the Department's Bureau of Research. DRC's preliminary

analysis noted that, when the resulting stacking effect stabilizes, the Department would need up to a few hundred additional inmate beds. According to DRC's web site, the annual incarceration cost per inmate as of November 2008 is budgeted at \$24,729. If DRC's preliminary research is a reasonable approximation of the bill's stacking effect, then the increase in its GRF-funded incarceration costs conceivably total up to several million or more dollars annually.

### **Local fiscal effects**

The conduct addressed by the bill is prohibited under current law and generally rises to the level of a felony falling under the subject matter jurisdiction of courts of common pleas and county criminal justice systems. Thus, the bill will not create additional criminal actions or proceedings for county criminal justice systems to process, but may affect the time and effort required to resolve such matters. The penalty enhancement provisions may expedite the bargaining process in some instances, which potentially reduces costs; in other instances, the penalty enhancement provisions may slow the bargaining process, which potentially increases costs. That said, the net fiscal effect on any given county criminal justice system is likely to be minimal, which means an estimated reduction or increase of no more than \$5,000 per year.

### **Trafficking in Persons Study Commission**

The bill strongly encourages the Attorney General to establish a Trafficking in Persons Study Commission to: (1) study and review the problem of trafficking in persons, (2) study and review criminal law of this state to determine the manner and extent to which it currently applies to conduct that involves or is related to trafficking in persons, (3) develop recommendations to address the problem of trafficking in persons, and (4) prepare a report that summarizes its findings and its recommendations.

LSC fiscal staff has not had an opportunity to fully explore the fiscal implications of this amendment with staff of the Office of the Attorney General. That said, if the Attorney General were to implement these duties and responsibilities, the ongoing annual operating expenses for the state appear unlikely to exceed minimal, which means an estimated cost of less than \$100,000 per year. It seems likely that certain political subdivisions of the state may also incur some additional costs if the Attorney General needs assistance in collecting and analyzing data. Such costs would likely be no more than minimal, which means an estimated cost of no more than \$5,000 for any affected county or municipality per year.

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