

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 23, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **SB20** by Huffman (Relating to the reporting regarding, investigation of, prosecution of, criminal and civil penalties for, and other consequences of prostitution, trafficking of persons, and related criminal offenses, to services and compensation available to victims of those offenses, and to orders of nondisclosure for persons who committed certain of those offenses.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB20, As Passed 2nd House: a positive impact of \$2,330,728 through the biennium ending August 31, 2021.

The provisions of the bill related to the creation of new offenses for the online promotion of prostitution and aggravated online promotion of prostitution and broadening of eligibility for orders of nondisclosure to victims of trafficking would have a positive, but indeterminate, fiscal impact to the State from fines, fees, and penalties; the number of convictions that would result from these changes cannot be determined.

The provisions of the bill related to the suspension of program fees for commercially sexually exploited persons court programs and allowing judges to suspend fines imposed on conviction would have a negative, but indeterminate, fiscal impact to the state; the number of judges that would suspend certain fines and fees resulting in a loss of state revenue cannot be determined.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$577,970
2021	\$1,752,758
2022	\$1,827,924
2023	\$1,832,073
2024	\$1,832,073

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from New General Revenue Dedicated Commercial Sexual Exploitation Victim Fund	Probable Savings/(Cost) from General Revenue Fund 1
2020	\$159,000	\$577,970
2021	\$159,000	\$1,752,758
2022	\$159,000	\$1,827,924
2023	\$159,000	\$1,832,073
2024	\$159,000	\$1,832,073

Fiscal Analysis

The bill would amend the Code of Criminal Procedure to require a judge to suspend the imposition of a sentence and place certain offenders convicted of prostitution offenses on community supervision with certain exceptions. The bill would require a judge who places certain offenders on community supervision to require the defendant to participate in a commercially sexually exploited persons court program if a program has been established in the county or municipality where the defendant resides. The bill would allow the judge to suspend in whole or in part the imposition of the program fee or any fine imposed on conviction. The bill would add online promotion of prostitution and aggravated online promotion of prostitution to the types of offenses for which an inception order can be issued. The bill would expand the definition of trafficking of persons.

The bill would provide that a person cannot be prosecuted for a prostitution offense that the person committed when younger than 18. The bill provides that such an offense is a Class B misdemeanor except that it is a Class A misdemeanor if the actor has been previously convicted three or more times of the offense.

The bill would create the Commercial Sexual Exploitation Victim Fund as a dedicated account in the General Revenue Fund. The bill would impose a \$500 court cost on conviction of certain prostitution and trafficking offenses that would be deposited to the new account. The bill would establish procedures for the collection and deposit of the court costs. Funds collected would be subject to audit by the Comptroller. The bill would allow the Legislature to appropriate money from the account only to the Criminal Justice Division of the Governor's Office to be used only for certain purposes.

The bill would amend the Code of Criminal Procedure to provide that any offense that bears the title "aggravated" carries a limitations period of five years unless a limitations period has otherwise been specifically provided for that aggravated offense.

The bill would amend the Family Code to provide that notwithstanding Texas Rule of Civil Procedure 107, a court may render a protective order that is binding on a respondent who does not attend a hearing if the respondent received service of the application and notice of the hearing and proof of service was filed with the court before the hearing.

The bill would amend the Health and Safety Code to expand eligibility for participation in the first offender prostitution prevention program.

The bill would take effect September 1, 2019.

Methodology

According to the Department of Public Safety, there were 753 convictions for prostitution offenses and 43 convictions for trafficking-related offenses where the offender was the payer in fiscal year 2017. For the purposes of this analysis, it is assumed that similar conviction rates would continue each year. Based on the analysis of the Comptroller of Public Accounts, the \$500 fee on a prostitution offense and a trafficking-related offense if the offender is the payer would generate \$398,000 each year. This analysis assumes a 40 percent collection rate, which would result in an estimated \$159,200 each year in revenues to the new fund (796 convictions x \$500 fee x 40 percent collection rate = \$159,200 each year). The revenue gains are reflected in the table above.

Based on the analysis of the Comptroller of Public Accounts, creation of offenses of online promotion of prostitution and aggravated online promotion of prostitution and increase the penalty of the offenses under certain circumstances would have an indeterminate fiscal impact to the State from court costs associated with these offenses. The number of convictions that would result from these new offenses cannot be determined.

Based on the analysis of the Comptroller of Public Accounts, suspension in whole or in part of the program fee for a commercially sexually exploited persons court program and allowing a judge to suspend in whole or in part the imposition of any fine imposed on conviction would have a negative, but indeterminate fiscal impact to the state. The frequency which judges would suspend certain fines and fees that would result in a loss in revenue cannot be estimated.

Under the provisions of the bill, certain prostitution related offenses would be reduced from a felony to a misdemeanor; a person would commit an offense if the person promotes the prostitution of another individual or facilitates another individual to engage in prostitution via an interactive computer service or information content provider online as outlined in the bill; a person may not be prosecuted for certain prostitution offenses committed when younger than 18 years of age; and the statute of limitations for certain offenses that bear the title 'aggravated' would be five years.

This analysis assumes that reclassifying the offense from a state jail felony to a Class A misdemeanor would result in a savings due to the reduction in time served within a state jail and under state jail felony community supervision related to the offense of prostitution. In fiscal year 2018, 170 people were admitted to state jail and the average length of stay was 192 days for the prostitution offense modified by the bill's provisions. The cost per day for state jail according to the Legislative Budget Board's January 2019 Uniform Cost Report was \$52.46. The savings were calculated by multiplying the cost per day by the average length of stay and the 170 individuals admitted to state jail. These individuals would now be placed on misdemeanor community supervision. To calculate the cost for misdemeanor community supervision, the cost per day of 70 cents was multiplied by the maximum number of days for which the State pays, 182 days, and the 170 individuals previously admitted to state jail.

This analysis also assumes that a savings would be realized due to the decrease in individuals placed under felony community supervision. In fiscal year 2018, 111 people were placed under felony community supervision and the average length of supervision was 730 days for this offense. The savings were calculated by multiplying the 111 individuals previously placed under felony community supervision by the cost per day of \$1.92 and the average length of supervision. This savings would be offset by the cost realized over the same time period for these individuals who would now be placed under misdemeanor community supervision. To calculate the cost for misdemeanor community supervision, the cost per day of 70 cents was multiplied by the maximum number of days for which the State pays, 182 days, and the 111 individuals previously placed

under felony community supervision.

This analysis does not anticipate a significant savings as a result of prohibiting the prosecution of those younger than 18 for prostitution as specified by the bill. In fiscal year 2018, fewer than ten individuals who were younger than 18 at offense were placed under adult community supervision or admitted into an adult state correctional institution for prostitution. In fiscal year 2018, fewer than ten juveniles were referred to a juvenile court for the offense of prostitution.

This analysis assumes the bill's provisions will reach full implementation in fiscal year 2021, includes a minor time lag, and assumes sentencing patterns and release policies not addressed in the bill remain constant. Additional information is available in the Criminal Justice Impact Statement.

Based on the analysis of the Office of Court Administration, the Office of Attorney General, Department of Public Safety, and Texas Department of Licensing and Regulation, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

El Paso County and Galveston County do not anticipate a significant fiscal impact.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

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