

Fiscal Note & Local Impact Statement

122nd General Assembly of Ohio

BILL: Sub. H.B. 32 (with amendment AM1548.122/bc) DATE: May 12, 1997

STATUS: In House Health, Retirement and Aging Committee SPONSOR: Rep. Reid

LOCAL IMPACT STATEMENT REQUIRED: No — Minimal cost

CONTENTS: Expands prohibitions in the commission of sex offenses, to include the use of controlled substances, and requires mandatory prison sanctions.

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

- Although the bill expands prohibitions under violation of sex offenses statutes, the number of additional cases created should be minimal since the vast majority may currently be addressed under existing statutes which prohibits an offender from substantially impairing the other persons judgement.
- Since the bill increases penalties and requires mandatory sentencing for rape and gross sexual imposition it would result in a potential increase in state costs for incarceration.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Potential negligible increase	Potential negligible increase	Potential negligible increase

- The bill could result in an increase in the seriousness of cases prosecuted, thus producing a potential increase in county expenditures related to prosecution, adjudication.
- Fine and asset forfeiture revenues from drug cases could increase and possibly offset some of the increase in expenditures.



Detailed Fiscal Analysis

The bill (1) expands prohibitions in the commission of sex offenses, to include the use of controlled substances; (2) increases the penalties for trafficking in and possession of flunitrazepam (Rohypnol); and (3) requires courts to impose mandatory sentences on offenders convicted of rape.

Availability of Rohypnol

Until March 1996, Rohypnol was available to consumers in the United States only by importation of a 90-day supply based on a valid prescription. According to the US. Customs Service, 270 seizures of 310,184 tablets of Rohypnol were made between January 1990 and February 1996, with 90 percent of the seizures made after 1992, indicating its growing availability. As of March 1 1996, the US. Drug Enforcement Administration (DEA) documented 2,460 law enforcement cases involving Rohypnol nationwide, with 816 cases in Texas, and 562 in Florida. These two states are the primary entry points into the US. for the illegal trade of this drug. The DEA also reported that 2,000 seizures of the drug had been made in 32 states.

The bill by changing the offense category for trafficking in and possession of Rohypnol essentially imposes the same penalties associated with trafficking in and possession of controlled substances in schedule I or II. But given that the Pharmacy (PRX) board is only aware of one case presently in the state involving Rohypnol, and that the State Highway Patrol has reported only two cases of arrests involving this drug, it is assumed that it has not become a drug of choice in Ohio, hence no current significant impact on the state is expected. However, any substantial increase in the number of prosecutions would increase county expenditures for prosecution and adjudication. Fine and asset forfeiture revenues could also increase and possibly offset the potential increase in expenditures. This will also result in an increase in expenditures to DRC as a result of the enhanced penalties, which would result in offenders being sentenced to longer prison terms.

The DEA has proposed rescheduling Rohypnol as a Schedule I drug, pending a review by the FDA. If this occurs, enactment of the law in Ohio would be a mere formality, as ORC 3719.41 changes constantly with Federal Law or rules, i.e. the federal law will be enforced.

Administration of Controlled Substances on Victims

The bill prohibits any person who has administered a controlled substance to another person from engaging in conduct with that person that constitutes the offense of rape, sexual battery, corruption of a minor, gross sexual imposition or sexual imposition and increases the penalties for those offenses. Penalty for rape is F1, this bill adds a mandatory sentence, sexual battery is enhanced from an F4 to F2, corruption of a minor goes to F3 from F4 or F5 from M1 if the victims is less than 4 years younger than the offender, gross sexual imposition is increased from F4 to F3.

Although no data is available as to the number of sex offenses victims who had controlled substances administered to them to facilitate the commission of the crime, anecdotal

information obtained from DRC 1992 intake study may serve as a loose guide. In 1992, the study shows that there are 214 persons committed to DRC facilities with a sex offense as a primary or secondary offense. Of these 214 persons, 6 persons had an additional charge of possession of powder cocaine-1, marijuana-1, "unknown cocaine"-1, and "unknown drugs"-3. In addition, a 1996 DRC intake report shows 19 persons were committed for corruption of another with drugs. Although this offense relates primarily to offenders who have provided drugs to others for the purpose of making them demand more drugs, we can draw inferences from the numbers. However, the likelihood and extent to which there will be additional cases is difficult to estimate. In addition, the number of additional cases created could be minimal since the vast majority may currently be addressed under existing statutes which prohibits an offender from substantially impairing the other persons judgement. Whatever the outcome of additional cases might be, the state will experience a potential increase in expenditures as a result of the enhanced penalties and mandatory sentences.

Synopsis of Changes

The substitute bill drops the rescheduling as in the original bill, but adds an increase in penalties for trafficking and possession and adds mandatory sentencing. Due to the current small number of cases and existing law, fiscal effects are expected to be minimal. In addition, the penalties in the substitute bill for trafficking are similar to those that would have applied to rescheduling, hence no fiscal change. The amendment to the substitute bill removes language that requires a mandatory prison sentence for offenders convicted of gross sexual imposition or sexual battery, thus restoring sanctioning options and possibly reducing the increase in state incarceration costs.

□ *LBO staff: Ogbe O. Aideyman, Budget Analyst/Economist*

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