# *Fiscal Note & Local Impact Statement*

*123 rd General Assembly of Ohio*

BILL: **H.B. 2** DATE: **February 2, 1999**

STATUS: **As Introduced** SPONSOR: **Rep. Tiberi**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Creates the offense of exploitation of an elderly person or disabled adult**

## *State Fiscal Highlights*

| STATE FUND | FY 1999 | FY 2000 | FUTURE YEARS |
|---|---|---|---|
| **General Revenue Fund** | | | |
| Revenues | - 0 - | - 0 - | - 0 - |
| Expenditures | - 0 - | Increase, depending on rise in intake and lengths of stay | Increase, depending on rise in intake and lengths of stay |
| **Reparations Fund (a.k.a. Victims of Crime Fund)** | | | |
| Revenues | - 0 - | Negligible gain | Negligible gain |
| Expenditures | - 0 - | - 0 - | - 0 - |

Note: The state fiscal year is July 1 through July 30. For example, FY 2000 is July 1, 1999 – June 30, 2000 .

- The total annual inmate population in the custody of the Department of Rehabilitation and Correction (DRC) will rise as a result of offenders being sentenced to a term of imprisonment who would not otherwise have been shipped to prison and offenders who were headed for prison receiving longer sentences. DRC's annual incarceration costs will increase as a result, but the amount of that increase is uncertain. Also, as a result, the Adult Parole Authority will have a larger number of offenders to supervise after their release from imprisonment for a longer period of time. Annual post release control supervision costs will most certainly rise, but by an amount we are unable to determine.

- A negligible annual gain in revenue to the Reparations Fund is expected to result from some cases which were formerly treated as first-degree misdemeanors being elevated to fifth-degree felonies. The locally collected state court cost for a misdemeanor offense is $9, while that for a felony offense is $30.

## *Local Fiscal Highlights*

| LOCAL GOVERNMENT | FY 1999 | FY 2000 | FUTURE YEARS |
|---|---|---|---|
| **Counties** | | | |
| Revenues | Minimal gain | Minimal gain | Minimal gain |
| Expenditures | Increase, depending on number of affected cases | Increase, depending on number of affected cases | Increase, depending on number of affected cases |
| **Municipalities** | | | |
| Revenues | Minimal loss | Minimal loss | Minimal loss |
| Expenditures | Decrease, depending on number of affected cases | Decrease, depending on number of affected cases | Decrease, depending on number of affected cases |

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- It appears that existing cases involving the criminal exploitation of elderly or disabled persons could easily be in the number of one thousand or more annually. However, the absence of more detailed information makes it difficult to ascertain how many misdemeanor cases will be elevated to felony status, or how certain existing felony cases will be affected.

- Counties will pick up adjudication, prosecution, indigent defense, and offender sanctioning burdens as certain misdemeanor cases are elevated to felony status and some number of existing felony cases are made more problematic as a result of the bill's penalty enhancements. As the number of affected cases is unknown, the size of the increase in annual expenditures is uncertain. Counties will also experience a gain in revenues from court costs and fines, though we believe that gain annually will be at the most minimal.

- Some municipalities will be relieved of adjudication, prosecution, indigent defense, and offender sanctioning burdens as certain misdemeanor cases will be shifted into the felony system. As the number of affected misdemeanor cases is unknown, the size of the decrease in annual expenditures is indeterminate. Municipalities will also experience a loss in revenues from court costs and fines as certain misdemeanors are elevated to felony status, though we believe that annual loss will be at the most minimal.

## *Detailed Fiscal Analysis*

### Provisions of the Bill

This bill creates the offense of exploitation of an elderly person or disabled adult. This offense involves the offender obtaining or using "the funds, assets, or property of an elderly person or a disabled adult with the intent to temporarily or permanently defraud or deprive the elderly person" of this property. For the purposes of this bill, "elderly person" refers to individuals aged 65 and over.

The exploitation penalty enhancements resulting from the bill increase in severity as the property involved in the offense grows in value as follows:

- If the loss to the victim is under $500, the offense is a fifth-degree felony.
- If the loss is $500 or more and less than $5,000, the offense is a fourth-degree felony.
- If the loss is $5,000 or more and less than $25,000, the offense is a third-degree felony.
- If the loss is $25,000 or more and less than $100,000, the offense is a second-degree felony.
- If the loss is $100,000 or more, the offense is a first-degree felony.

**Exploiting Elderly & Disabled: The Numbers**

LBO assumes that most of the matters that will be handled as exploitation cases under the bill are being treated as theft offenses under current law. Additional cases may be charged under fraud statutes, but discussions with municipal police departments and county prosecutors indicate that the majority of affected offenses are currently dealt with as theft offenses. It is also assumed that, although a precise estimate is not possible, the number of existing criminal matters affected annually statewide by the bill could be relatively large. Criminal justice data specifically addressing the exploitation of elderly and disabled persons is not easily found. There is no statewide database from which such information can be extracted and then analyzed. What data is available, however, indicates that such offenses with elderly persons as victims are common.

That said, there is information available that is suggestive of the number of criminal matters that might be affected by the bill. For example, according to data from the Adult Protective Services Division of the Ohio Department of Human Services, 51 urban and rural county departments of human services reported a total of 432 cases of financial exploitation of senior citizens from January 1, 1997 through June 30, 1997. Given that this represents a six-month period, LBO assumes that Adult Protective Services receives reports involving over 800 incidents of financial exploitation of senior citizens annually. The Attorney General's Office estimates that they handle an additional 10 to 15 cases per year of this nature.

National data also provides another source of insight. According to data available from the federal Bureau of Justice Statistics (BJS), persons age 65 and older experienced a personal theft rate of approximately 2.1 incidents per 1,000 population, which theoretically allows us to estimate the total number of theft offenses where the victim is age 65 and older.

For 1994, BJS assumed a total national population of 213,747,400 individuals, with 31,184,180 over age 65. If we assume that Ohio's population is approximately 10.7 million, we can estimate in 1994 that there were approximately 1,561,000 persons age 65 and over in Ohio. ((31,184,180/213,747,400) x 10,700,000 = 1,561,052). When the 1,561,000 persons is multiplied by the national theft rate for that age group (.0021), we can arrive at a rough estimate of 3,278 theft offenses in 1994 for people age 65 and over in Ohio statewide.

In summary, LBO estimates that the number of cases potentially affected annually statewide by the penalty enhancements contained in this bill could conceivably range from as low as 800 (the Ohio Department of Human Services reported number) to as high as 3,300 cases (calculated using 1994 BJS data).

Keep in mind, though, that there is information crucial to improving the precision of this estimated range that is simply unavailable. First, these numbers reflect criminal episodes where the victims of exploitation were elderly persons. We have not provided an annual estimate of the number of disabled persons who might be criminally exploited. The absence of this data means that one would be undercounting the number of potential cases affected by the bill. Second, we have provided a count of the number of instances in which an elderly person was criminally exploited. Presumably, some number of these criminal events involved the same offender. Thus, if an offender criminally exploited five different elderly persons and they are apprehended, it is most likely that individual would face multiple charges all rolled into one case. Additionally, offenders perpetrate criminal acts for which they may never be caught. The presence of these factors means that, on the other hand, one would then be overcounting the number of potential cases affected by the bill.

### Sentences & Fines

Under the bill, an offender convicted of exploiting an elderly or disabled person would be subject to the penalty enhancements illustrated in the table below. The first two columns of the table display the felony penalties associated with losses of varying dollar values as proposed in the bill. The last two columns of the table display the theft penalties as they exist under current law.

**Table 1: Comparison of Penalties**

| *H.B. 632* | | *Existing Theft Statute (First Offense)* | |
|---|---|---|---|
| *Dollar amount of loss* | *Proposed Penalty* | *Dollar amount of loss* | *Current Penalty* |
| Under $500 | 5th Degree Felony | Under $300 | 1st Degree Misdemeanor |
| $500-$4,999 | 4th Degree Felony | $300-$4,999 | 5th Degree Felony |
| $5,000-$24,999 | 3rd Degree Felony | $5,000-$99,999 | 4th Degree Felony |
| $25,000-$99,999 | 2nd Degree Felony | | |
| $100,000 or more | 1st Degree Felony | $100,000 or more | 3rd Degree Felony |

All offenses addressed by this bill will be subject to a penalty enhancement of between one and two degrees. The following table displays the fines and penalties for the offenses described above.

**Table 2: Penalties & Fines**

| *Offense* | *Prison/Jail Term* | *Maximum Fine* | *Post-Release Control* |
|---|---|---|---|
| 1st Degree Misdemeanor | Up to 6 months (jail) | $1,000 | Not Applicable |
| 5th Degree Felony | 6-12 months (prison) | $2,500 | Up to 3 years |
| 4th Degree Felony | 6-18 months (prison) | $5,000 | Up to 3 years |
| 3rd Degree Felony | 1-5 years(prison) | $10,000 | Up to 3 years |
| 2nd Degree Felony | 2-8 years(prison) | $15,000 | 3 years |
| 1st Degree Felony | 3-10 years(prison) | $20,000 | 5 years |

## State Fiscal Effects

*Expenditures.* The primary effect on the Department of Rehabilitation and Correction (DRC) will be for the total annual inmate population to rise above what it would have been otherwise. The source of that increase will be twofold. First, some number of offenders who might not otherwise have been sentenced to a term of imprisonment will be shipped to prison. Second, some number of offenders who were already going to prison under current law will receive a longer sentence. DRC's annual incarceration costs will increase, but we are unable to determine what the size of that annual increase might be. DRC's annual post-release control supervision costs may rise as well. This involves the period of supervision by the Adult Parole Authority (APA) after an offender is released from imprisonment. As we do not know how terms of imprisonment for certain offenders will be affected by the bill, it is difficult to predict how much time may be added to their period of supervision that follows release from imprisonment.

*Revenues.* The Reparations Fund, a.k.a. Victims of Crime Fund, will likely experience a gain in annual revenue. Some number of criminal matters that were treated as misdemeanors under current law will become chargeable as felonies as a result of the bill. The locally collected state court cost for a misdemeanor offense is $9, while that for a felony offense is $30. Although we are unable to estimate the number of affected cases, it is our best guess that the elevation of certain criminal matters to felony status will generate a negligible gain in annual revenue deposited to the credit of the Reparations Fund.

## Local Fiscal Effects

*Counties.* County expenditures will be affected in two ways. First, some number of cases that would otherwise have been treated as misdemeanors will be enhanced to felonies. Second, the seriousness of some number of existing felony cases will elevate by a degree or two. The first effect adds criminal cases that will have to be processed by the felony system, while the second effect potentially makes existing felony cases more problematic to resolve. As a result, counties will most certainly incur added adjudication, prosecution, indigent defense, and offender sanctioning burdens. However, it is difficult to predict what those added burdens translate into as increased annual expenditures for counties since we are unable to estimate the number of misdemeanor cases that will be elevated to felony status or the number of existing felony cases that will become more problematic to resolve.

Counties also stand to collect additional court cost and fine revenue from the elevation of certain misdemeanors to felony status. And the enhancement of exiting felony penalties raises the maximum amount of money that a sentencing judge can assess against an offender convicted of exploiting an elderly or disabled person. Our best guess is that the gain in annual revenue will be at most minimal.

*Municipalities.* As some criminal matters that would otherwise have been treated as misdemeanors become chargeable as felonies, cases will shift out of municipal and county courts and into courts of common pleas. This means that some municipalities will shed the adjudication, prosecution, indigent defense, and offender sanctioning burdens associated with handling certain misdemeanor cases. As we are unable to ascertain the number of affected cases, it is pretty difficult to estimate the associated annual expenditure decrease with much precision. Thus, the annual expenditure decrease is indeterminate. These municipalities will also experience a loss in annual court cost and fine revenue as these cases shift to another level of local government. Our best guess is that the amount of this resulting annual revenue loss will be minimal.

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