

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: H.B. 277 DATE: November 8, 1999

STATUS: As Introduced SPONSOR: Rep. Beatty

LOCAL IMPACT STATEMENT REQUIRED: Yes

CONTENTS: To broaden the scope of the offense of ethnic intimidation, to designate ethnic intimidation by an organization as the offense of "domestic terrorism," and to enhance the penalty for offenses in which the victim or targeted property is selected on the basis of race, color, religion, gender, disability, sexual orientation, national origin, or ancestry

State Fiscal Highlights

| STATE FUND | FY 2000 | FY 2001 | FUTURE YEARS |
|---|--|--|--|
| General Revenue Fund | | | |
| Revenues | - 0 - | - 0 - | - 0 - |
| Expenditures | Increase, in the hundreds of thousands | Increase, in the hundreds of thousands | Increase, in the hundreds of thousands |
| Reparation Fund (a.k.a. Crime Victims Compensation Fund) | | | |
| Revenues | Negligible gain | Negligible gain | Negligible gain |
| Expenditures | - 0 - | - 0 - | - 0 - |

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

- Department of Rehabilitation and Correction intake, incarceration, and post-release control costs will likely increase as offenders sentenced under the bill's domestic terrorism provisions are sentenced to prison terms and as offenders who target victims property on the basis of race, color, religion, gender, disability, sexual orientation, national origin, or ancestry will face enhanced penalties including a mandatory additional five-year prison term under the bill. LBO estimates that the increase could reach as much as \$1 million annually.
- A negligible annual gain in revenue to the Reparations Fund is expected to result from some small number of cases formerly prosecuted as misdemeanors being elevated to the felony level under the bill. The locally collected court cost for a misdemeanor offense is \$9, while that for a felony is \$30.



Local Fiscal Highlights

| LOCAL GOVERNMENT | FY 2000 | FY 2001 | FUTURE YEARS |
|-------------------------|---|---|---|
| Counties | | | |
| Revenues | Negligible gain | Negligible gain | Negligible gain |
| Expenditures | Factors tending to increase and decrease, net increase in the hundreds of thousands | Factors tending to increase and decrease, net increase in the hundreds of thousands | Factors tending to increase and decrease, net increase in the hundreds of thousands |
| Municipalities | | | |
| Revenues | Factors tending to increase and decrease, net negligible gain | Factors tending to increase and decrease, net negligible gain | Factors tending to increase and decrease, net negligible gain |
| Expenditures | Factors tending to increase and decrease, net increase in the hundreds of thousands | Factors tending to increase and decrease, net increase in the hundreds of thousands | Factors tending to increase and decrease, net increase in the hundreds of thousands |

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

- Some counties will experience a negligible increase in court cost and fine revenue as a small number of cases formerly prosecuted as misdemeanor offenses will be elevated to felony status under the domestic terrorism provision and as additional fines may be imposed under the penalty enhancement provisions of the bill. As these revenues are subject to offenders' ability to pay, LBO estimates the magnitude of the increase will be negligible.
- County and municipal governments will experience factors tending to increase and decrease criminal justice expenditures, with the net effect being an increase in the hundreds of thousands of dollars. County and municipal governments may experience an increase in criminal justice expenditures as some offenders who otherwise would receive local community sanctions may be sentenced to jail terms and as judges may increase terms of those offenders who would receive jail terms in any event. This increase will be offset somewhat as some number of offenders will be sent to state prisons who would otherwise have received jail time or other local sanction.
- Some small number of cases formerly prosecuted as misdemeanor offenses will be elevated to felony status under the domestic terrorism provision of the bill. As a result, court processing costs (law enforcement, adjudication, prosecution, indigent defense, and offender sanctioning) for some counties will increase negligibly while municipal court processing costs will diminish minimally. Similarly, court cost and fine revenues will shift minimally from municipalities to some counties.

Detailed Fiscal Analysis

Provisions of the Bill

The bill proposes three changes to the criminal code with respect to offenses in which bias is involved. Specifically, the bill:

- 1) includes gender, disability, sexual orientation and ancestry among the bias factors covered under the state’s Ethnic Intimidation law (O.R.C. Section 2927.12);
- 2) designates as “domestic terrorism” any offense of ethnic intimidation when committed by an organization or any of its officers, agents, or employees acting on behalf of the organization; and
- 3) enhances the penalty for offenses in which the victim or property involved is selected on the basis of a bias factor listed in the ethnic intimidation law.

Fiscal Effects of the Bill

“Hate Crime” Incidence in Ohio. Data on the number of ethnic intimidation offenses, often referred to as “hate crimes,” that occur in Ohio is incomplete. The state maintains no data, however, the U.S. Department of Justice compiles annual state-by-state “Hate Crime Statistics” based on data voluntarily reported by local law enforcement agencies nationwide. In Ohio, the number of law enforcement agencies reporting such information actually declined from 405 in 1996 to 304 in 1997. Similarly, the percentage of Ohio’s population covered by these federal hate crime statistics also has decreased from 80 percent to 64 percent. The following table summarizes by offense category hate crime activity in Ohio in 1996 and 1997, the years for which most recent data is available.

| Hate Crime Activity in Ohio, 1996 - 1997 | | | | | | | | | |
|---|-------------------------------|-----------------------|----------------|--------------------|----------------|--------------|---------|----------|--------------------------------|
| Year | Population Covered (millions) | Percent of Total Pop. | Total Offenses | Aggravated Assault | Simple Assault | Intimidation | Robbery | Burglary | Destruction/ Damage/ Vandalism |
| 1996 | 8.87 | 79.5 | 282 | 11 | 63 | 132 | 2 | 0 | 74 |
| 1997 | 7.17 | 64.1 | 335 | 13 | 76 | 174 | 2 | 6 | 64 |

Assuming these figures can be extrapolated to the remainder of Ohio’s population for which official records do not exist, an estimated 355 hate crimes were committed in 1996 and an estimated 523 were committed in 1997 statewide. This approach is problematic in that most crimes involving ethnic intimidation occur in urban areas; of the eight largest cities in the state, all but the smallest did not report hate crime data in 1996 (Akron and Canton) and in 1997 (Akron, Canton, and Toledo). Because data reported to the Department of Justice is not reported by offense category, it is not possible to estimate the misdemeanor-felony breakdown of hate crimes. Taking this likely undercounting into account, LBO projects that between 500 and 600 cases statewide will be affected by the penalty enhancement provisions of the bill annually.

In addition, by adding gender, disability, and sexual orientation to the list of bias factors included in the ethnic intimidation law, the bill may increase the number of offenses eligible for the existing penalty enhancement specified in the ethnic intimidation law (which makes the offense one degree higher). These

offenses would also be eligible for the new, additional enhancement proposed in the bill and discussed below.

Fiscal Impact of the Penalty Enhancement. The bill specifies additional, mandatory prison/jail terms which range from up to 1 year to up to 5 years beyond the penalty associated with the offense in question, for offenders who targeted victims or property on the basis of a bias factor listed in the ethnic intimidation law. The penalty enhancement provisions of the bill are summarized in the following table:

| Penalty Enhancements Proposed in H.B. 277 | | | | |
|--|--|--|-----------------------------|---|
| OFFENSE CATEGORY | PRISON/JAIL SENTENCE | | FINE PENALTY | |
| | Current Sentences | Proposed Sentences | Current Maximum Fine | Proposed Fine |
| Murder | Indefinite term of 15 years to life (or life imprisonment without parole if sexual motivation specification) | Increases minimum term by an additional, definite period of 1-5 years | \$15,000 | Increases the maximum fine by an amount not to exceed \$5,000 |
| Aggravated Murder | Death or life imprisonment without parole | | \$25,000 | |
| Other Felony | F1 3, 4, 5, 6, 7, 8, 9, or 10 years, presumption for prison | Imposes the maximum prison term for the felony in question, increased by an additional, definite period of 1-5 years | \$20,000 | Imposes the maximum fine for the felony in question, increased by an amount not to exceed \$5,000 |
| | F2 2, 4, 5, 6, 7, or 8 years, presumption for prison | | \$15,000 | |
| | F3 1, 2, 3, 4, or 5 years | | \$10,000 | |
| | F4 Definite term of 6 to 18 months, guidance against prison | | \$5,000 | |
| | F5 Definite term of 6 to 12 months, guidance against prison | | \$2,500 | |
| First-degree Misdemeanor | Maximum term of 6 months | Permits judges to impose a definite term of up to 2 years | \$1,000 | Permits judges to impose a fine of up to \$10,000 |
| Other Misdemeanor, including minor | Maximum terms ranging from 30 to 90 days (excluding minor misdemeanors for which no sentence applies) | Permits judges to impose a definite term of up to 1 year | Ranging from \$100 to \$750 | Permits judges to impose a fine of up to \$10,000 |

Although the hate crime penalty enhancement provisions of the bill do not shift any offenses from the misdemeanor to the felony level or shift offenses within the misdemeanor or felony level, these penalty enhancements will affect state and local government finances. Specifically, three fiscal effects will result from these penalty enhancements:

1. Department of Rehabilitation and Correction (DRC) will experience an increase in incarceration expenditures, as the bill will increase felony offenders lengths of stay. Given

DRC's \$50 per diem cost per inmate and the incidence data reported above, assuming conservatively that 50 felony offenders will receive additional sentences, LBO estimates additional costs approaching \$1 million annually.

2. County and municipal governments may experience an increase in criminal justice expenditures as some offenders who otherwise would receive local community sanctions may be sentenced to jail terms, and as judges may increase the term of some offenders who would receive jail terms. Although a precise estimate is difficult to determine, based on incidence data reported above and estimates of jail costs LBO believes these increases will be in the hundreds of thousands of dollars.
3. Counties and municipal governments may experience an increase in fine revenue, subject to the ability of offenders to pay fines imposed. LBO estimates that this increase will be minimal.

“Domestic Terrorism.” The existing ethnic intimidation law applies to *persons* who commit certain offenses by reason of the race, color, religion, or national origin of another person or group of persons. The bill designates as “domestic terrorism” any offense of ethnic intimidation when committed by an *organization* or any of its officers, agents, or employees acting on behalf of the organization. Domestic terrorism, like ethnic intimidation, would be an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation.

Under this provision of the bill, some number of cases may be elevated from the misdemeanor level to felony status, thus increasing case processing costs (adjudication, prosecution, and, if applicable, indigent defense) for some county common pleas courts while municipal courts would experience a similar decline in case processing costs. In addition, some number of felony cases may be elevated by one degree, possibly shifting sanctioning costs from local governments to the state.

Federal Department of Justice hate crime statistics do not indicate if offenders acted in their capacity as officers of or on behalf of an organization, but LBO believes the number of cases so affected will be small and the magnitude of any increase or decrease in expenditures or revenues will be negligible.

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