Fiscal Note & Local Impact Statement

123 rd General Assembly of Ohio

BILL: **H.B. 364** DATE: **December 9, 1999**

STATUS: **As Reported by House Criminal Justice** SPONSOR: **Rep. Goodman**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Increases the penalty for theft on office to a felony of the third degree**

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	No fiscal effect*	Increase, up to approximately $84,000	Increase, up to approximately $84,000

Note: The state fiscal year is July 1 through June 30. For example, FY 2000 is July 1, 1999 – June 30, 2000.
*Assumes that bill's fiscal effects will not be felt by the state until FY 2001.

- As a result of the bill, it is likely that up to 21 offenders annually who would not otherwise have gone to prison could do so under the bill. The resulting annual increase in the Department of Rehabilitation and Correction's marginal incarceration costs will be up to $84,000, plus post-release expenditures.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2000	FY 2001	FUTURE YEARS
Counties			
Revenues	Potential minimal gain	Potential minimal gain	Potential minimal gain
Expenditures	Potential minimal net effect, varying by jurisdiction	Potential minimal net effect, varying by jurisdiction	Potential minimal net effect, varying by jurisdiction

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

- A few counties may experience minimal gains in fine revenue through the penalty enhancements described in the bill.

- A few county jails will likely experience minimal decreases in incarceration expenditures by sending a few offenders to prison who would otherwise spend time in jail. In these jurisdictions, these decreases are expected to be partially or wholly offset by increases in adjudication and prosecution expenditures. The net effect is anticipated to vary by jurisdiction, but is anticipated to be minimal.

Detailed Fiscal Analysis

Provisions of the Bill

Under current law, theft in office is generally a fifth-degree felony, punishable by an imprisonment term between 6 and 12 months and/or a fine of up to $2,500, unless one of the following conditions is met:

- If the value of the property or services stolen is $500 or more, but less than $5,000, the offense is a fourth-degree felony, punishable by an imprisonment term in a DRC facility between 6 and 18 months and/or a fine up to $5,000;
- If the value of the property or services stolen is $5,000 or more, the offense is a third-degree felony, punishable by an imprisonment term in a DRC facility of between 1 and 5 years and/or a fine up to $10,000.

The bill would make all theft in office offenses third-degree felonies.

Prevalence of the Offense

In general, LBO believes that theft in office offenses are relatively rare. For example, according to the 1998 Franklin County Municipal Court Report, there were 3 charges filed for theft in office in that year. U.S. Census data indicates that Franklin County is approximately 9 percent of Ohio's total population. If we assume that these offenses are evenly distributed by population, we can assume that there are approximately 33 such charges statewide annually (3 charges ÷ .09 = 33.3 charges). This number may represent an overcount, as LBO anticipates that many offenders receive multiple charges.

The Department of Rehabilitation and Correction's (DRC's) Calendar Year 1997 Commitment Report shows that there were 12 offenders committed to DRC custody for theft in office, which represents a small percentage of the DRC intake for that year.

DRC's 1997 Time Served Report shows that the average time served for third-degree felony theft in office was 1.14 years (based on three theft in office offenders released in 1997), and that the average time served for fourth-degree theft in office was 1.01 years (based on one theft in office offender released in that year).

Based on this data, LBO makes several assumptions: (1) most offenders who are currently receiving third-degree felony penalties are committed to DRC, for a sentence slightly over one year; (2) some offenders who are currently receiving fourth-degree felony penalties are committed to DRC, for a sentence of one year; (3) the majority of offenders who are receiving fifth-degree felony penalties are being sanctioned locally.

State Fiscal Effects

If we assume that there are around 33 theft in office offenders annually (which assumes, of course, that there is one charge per offender, and would likely represent an overcount), and that 12 of those offenders in any given year would be sent to DRC, then approximately 21 offenders annually would likely be sent to DRC when they would not otherwise be sent. Generally, there is a presumption against sending offenders to prison for a felony of the fourth or fifth degree and no presumption for or against a prison sentence in the case of a felony of the third degree. However, the maximum amount of time that a felony offender may spend in a local jail is 6 months, the minimum possible penalty imposed on a third-degree felon. For the purposes of this analysis, LBO assumes that most of these offenders would be sent to DRC instead of being sanctioned locally.

LBO believes that DRC's current marginal cost of imprisonment is around $4,000 per offender. If up to 21 additional offenders are sent to DRC for approximately one year, then DRC would incur up to $84,000 in expenditures ($4,000 x 12 offenders = $84,000).

Local Fiscal Effects

By enhancing the penalties for theft in office, LBO anticipates that two competing fiscal effects will occur: (1) a few counties will experience some savings in sanctioning expenses by sending up to 21 offenders annually statewide to DRC custody instead of incarcerating them in local jails; and (2) these few counties will experience some increases in prosecution and adjudication expenditures by raising the stakes of criminal trials through lengthening prison terms that offenders face.

Incarceration Savings. LBO believes that the per diem cost to house an offender in a county jail is around $60. If a county were to house an offender for 6 months (the minimum penalty for a fifth-degree felony), the cost to a county would be around $10,800 ($50 x 180 days = $10,800). A few counties could save up to a few thousand dollars in incarceration expenditures by sending these offenders to DRC as third-degree felons. LBO does not anticipate dramatic savings on a statewide basis, as we believe it likely that some of the low-level felons are currently being sanctioned with fines.

Raising the Stakes of Criminal Trials. By effectively raising the stakes of criminal trials through the likelihood of longer imprisonment terms, LBO believes that a few counties may experience minimal increases in expenditures associated with increased prosecution and adjudication costs. These increases may be partially or totally offset by incarceration savings, but LBO anticipates that this will vary by jurisdiction.

Fine Revenue. Counties may experience some gains in fine revenue, up to a few thousand dollars, for a few offenders through the penalty enhancements in the bill. These gains will likely vary by prosecution and sentencing practices across jurisdictions.

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