

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: Sub. S.B. 2 (LSC 123 0720-1)

DATE: April 21, 1999

STATUS: In Senate Judiciary

SPONSOR: Sen. Carnes

LOCAL IMPACT STATEMENT REQUIRED: No No local costs in the introduced version

CONTENTS: Clarifies that multiple theft offenses may be tried as a single offense when they are committed as part of a common scheme or plan to defraud multiple victims and modifies the law regarding criminal prohibitions related to solicitation of charitable contributions

State Fiscal Highlights

STATE FUND	FY 2000	FY 2001	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Minimal decrease	Minimal decrease	Minimal decrease
Reparations Fund (a.k.a. Victims of Crime Fund)			
Revenues	Negligible loss	Negligible loss	Negligible loss
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 decrease as fewer offenders will be prosecuted successfully at the felony level because the bill narrows the scope and elevates the standards under which theft offenses can be aggregated. However, some of this decrease in DRC costs will be offset as the number of offenders sentenced to prison for solicitation fraud likely will increase.
- A minimal annual decrease in revenue to the Reparations Fund is expected to result from some cases that formerly could be aggregated and prosecuted at the felony level being prosecuted as misdemeanors under the bill. The locally collected court cost for a misdemeanor offense is \$9, while that for a felony is \$30. This loss will be somewhat offset by the fact that some number of offenders will be convicted of felony solicitation fraud as opposed to misdemeanor solicitation fraud as would be the case under existing law.



Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	Factors gaining and losing money, with net minimal revenue loss	Factors gaining and losing money, with net minimal revenue loss	Factors gaining and losing money, with net minimal revenue loss
Expenditures	Factoring increasing and decreasing costs, with minimal net decrease	Factoring increasing and decreasing costs, with minimal net decrease	Factoring increasing and decreasing costs, with minimal net decrease
Municipalities			
Revenues	Factors gaining and losing money, with net negligible revenue gain	Factors gaining and losing money, with net negligible revenue gain	Factors gaining and losing money, with net negligible revenue gain
Expenditures	Factors increasing and decreasing costs, with minimal net increase	Factors increasing and decreasing costs, with minimal net increase	Factors increasing and decreasing costs, with minimal net increase

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

- Overall, case-processing costs for counties (law enforcement, adjudication, prosecution, indigent defense, and offender sanctioning) will decrease as the bill shifts move criminal matters over to municipally operated courts than it shifts from the latter to the former. As considerably more criminal matters will be transferred out of court jurisdictions financed by counties than will be transferred in as felony solicitation fraud violations, LBO believes that there will be a net minimal decrease on county criminal justice expenditures statewide. Conversely, we believe that the net fiscal effect on municipalities statewide will be to minimally increase annual criminal justice expenditures.
- Similarly, county and municipal court cost and fine revenue will be subjected to factors that will cause revenues to be gained in one instance and lost in another. We believe that the net annual fiscal effect of those varying influences will be that counties will lose a minimal amount of court cost and fine revenue, while municipalities will gain a minimal amount of court cost and fine revenue.

Detailed Fiscal Analysis

Provisions of the Bill

The bill proposes two sets of changes. With regard to section 2913.61 of the Revised Code concerning theft, the bill modifies language created by Am. Sub. H.B. 565 passed by the 122nd General Assembly and clarifies that multiple theft offenses may be tried as a single offense, and the value of the stolen property aggregated, when the offenses were committed as part of a “common scheme or plan to defraud multiple victims.”

A second set of changes will affect the criminal prohibitions regarding charitable solicitations. First, the bill changes the prohibition against unfair or deceptive act or practice by deleting the reference to unfair and defining deceptive act or practice. Second, the bill also creates a new prohibition against misleading any person as to any material fact concerning charitable solicitations. These violations are the only violations of Chapter 1716. that retain the title “solicitation fraud” under the bill. In addition, the bill enhances the penalty for solicitation fraud according to the value of the contribution(s) made in the violation, ranging from a first-degree misdemeanor (M1) to a third-degree felony (F3). The bill also specifically permits the aggregation of the value of all contributions involved in all offenses when an offender commits a series of offenses as part of a common scheme or plan to defraud multiple victims.

Fiscal Effects of the Bill

Aggregating Theft Charges. Amended Substitute House Bill 565 enacted by the 122nd General Assembly in December 1998 provided for: (1) aggregation of the value of goods and services involved in multiple thefts; and (2) prosecution as a single offense in cases when an offender committed a series of offenses. Specifically, under current law, aggregating is permitted in two situations: 1) when an offender commits a series of offenses in the offender’s same employment, capacity, or relationship to another; or 2) if an offender commits a series of offenses against more than one victim pursuant to a scheme or course of conduct.

The bill elevates the standard required for aggregating thefts and their prosecution as a single offense in the second of the two circumstances currently permitted in law. Under the bill, aggregation and single prosecution are permitted if the offender commits a series of offenses as part of a common scheme or plan to defraud multiple victims, rather than when the offender commits a series of offenses against more than one victim pursuant to a scheme or course of conduct. This proposed change only affects multiple theft offenses involving attempts to deprive multiple victims of property or services by defrauding them.

Although LBO is unable to determine the exact number of cases affected by this revision to existing law, the Ohio Prosecuting Attorneys’ Association has suggested that several hundred cases could be affected annually statewide. Because the bill narrows the scope of the aggregating circumstance (applying it to theft by fraud only), and because it elevates the standard required for aggregating (specifying the violation occurred as part of a common scheme or plan as opposed to a scheme or course of conduct), the bill will likely reduce the number of cases that can be aggregated and prosecuted as a single offense. This does not mean, however, that fewer offenders

will be prosecuted for thefts. As a practical matter, in our view, it means that some offenders will most likely be charged and convicted of less serious offenses that would have been the case under current law.

Essentially, some existing theft cases will be pushed down the structure of the state's judicial system from the jurisdiction of common pleas courts and into the caseload of municipal and county courts. For non-county operated municipal courts, this change will likely increase case processing costs (law enforcement, adjudication, prosecution, indigent defense, and offender sanctioning) for municipalities as more misdemeanor cases are created and fewer cases will be aggregated to felony status and handled directly by county common pleas courts. Additionally, some court cost and fine revenue may be generated for municipalities.

Although case-processing costs of county-operated municipal courts and county courts will also rise, the counties funding those costs may actually experience a net expenditure decrease, as they will also be processing fewer felonies. Felonies are generally speaking more expensive to process than are misdemeanors. Fine revenue in this specific instance may be lost as some individuals will be convicted of less serious offenses.

Overall, the sanctioning burdens of counties and municipalities may drop as some offenders are convicted of offenses that command lesser punishments than would have been the case under existing law.

The Department of Rehabilitation and Correction's (DRC) annual intake, incarceration, and post-release control costs will decrease as fewer felony offenders will be sentenced to prison and those that are may receive shorter prison terms. We believe, however, that the number of affected offenders will be relatively small, thus the annual decrease in DRC's GRF operating expenses will be minimal.

Charitable Solicitations. The proposed changes in the bill concerning charitable solicitations would increase the number of cases successfully prosecuted at the felony level. According to the Attorney General's Office (AGO), the bill will affect 12 to 24 cases involving charitable contributions annually in Ohio. The addition of a new prohibition against misleading any person as to any material fact concerning charitable solicitations will improve the ability of prosecutors to prosecute successfully those who solicit contributions under names similar to reputable charities and in other ways misrepresent their organizations.

The penalty enhancement provisions of the charitable solicitation section of the bill mirror the four-tier penalty structure currently in theft law. As a result of the bill's penalty enhancement provision, and its provision permitting aggregation of the value of all contributions involved in a series of offenses, the bill will likely elevate some number of cases from misdemeanors to felonies.

The effect of this provision of the bill is the exact opposite of the bill's provision with respect to the aggregating of theft offenses. The changes in charitable solicitations will push some criminal matters up-and-out of municipal and county courts and into common pleas courts. The practical effect of this will to save municipalities some case processing costs (law enforcement, adjudication, prosecution, indigent, and offender sanctioning). Municipalities will lose court cost revenue and possibly some fine revenue as well. Conversely, county case processing costs will increase and court cost and fine revenue will be generated.

The Department of Rehabilitation and Correction's (DRC) annual intake, incarceration, and post-release control costs may increase as some felony offenders will be sentenced to prison who might not have otherwise and those that are may longer prison terms. We believe, however, that not more than a handful of offenders may be so affected, thus the annual increase in DRC's GRF operating expenses would be virtually imperceptible.

□ *LBO Staff: Eric J. Karolak, Budget/Policy Analyst*

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