

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: Sub. S.B. 2 DATE: April 28, 1999
STATUS: As Report by Senate Judiciary SPONSOR: Sen. Carnes
LOCAL IMPACT STATEMENT REQUIRED: No Minimal cost
CONTENTS: Clarifies that multiple theft offenses may be tried as a single offense when they involve a common course of conduct 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	Negligible increase	Negligible increase	Negligible increase
Reparations Fund (a.k.a. Victims of Crime 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 negligibly as a small number of offenders who would otherwise be prosecuted as misdemeanants may be prosecuted at the felony level under the bill's solicitation fraud provisions and, if convicted, sentenced to prison.
- 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 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	Negligible gain	Negligible gain	Negligible gain
Expenditures	Negligible increase	Negligible increase	Negligible increase
Municipalities			
Revenues	Negligible loss	Negligible loss	Negligible loss
Expenditures	Negligible decrease	Negligible decrease	Negligible decrease

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 increase negligibly as the bill shifts a small number of criminal matters from municipal to county courts. Conversely, depending upon local charging practices, certain municipalities will shed case processing costs, which will create a negligible decrease in their annual 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. The annual fiscal effect of those varying influences will be that counties will gain a negligible amount of court cost and fine revenue, while municipalities will lose a negligible 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 “involve a common course of conduct 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 clarifies the language concerning when certain theft offenses may be aggregated. Under the bill, aggregation and single prosecution are permitted if the offender commits a series of offenses involving a common course of conduct 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. According to the Attorney General’s Office, the bill clarifies existing language, but does not measurably alter the circumstances under which prosecutors may aggregate offenses and pursue single prosecution. LBO believes this clarification should have no practical effect on county and municipal case processing costs or on court cost and fine revenue.

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 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 be 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. LBO believes, 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.

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