

As Reported by the Senate Judiciary--Criminal Justice Committee

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Senator Cates

Cosponsors: Senators Schuring, Cafaro, Kearney, Schaffer, Faber

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A B I L L

To amend sections 2921.41, 2961.01, and 2961.02 of 1
the Revised Code to make existing laws prohibiting 2
a person who has been convicted of a felony, 3
including the offense of theft in office, from 4
holding public office and denying such person 5
other specified privileges applicable upon the 6
acceptance of the person's guilty plea or the 7
determination of the person's guilt. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2921.41, 2961.01, and 2961.02 of the 9
Revised Code be amended to read as follows: 10

Sec. 2921.41. (A) No public official or party official shall 11
commit any theft offense, as defined in division (K) of section 12
2913.01 of the Revised Code, when either of the following applies: 13

(1) The offender uses the offender's office in aid of 14
committing the offense or permits or assents to its use in aid of 15
committing the offense; 16

(2) The property or service involved is owned by this state, 17
any other state, the United States, a county, a municipal 18
corporation, a township, or any political subdivision, department, 19

or agency of any of them, is owned by a political party, or is 20
part of a political campaign fund. 21

(B) Whoever violates this section is guilty of theft in 22
office. Except as otherwise provided in this division, theft in 23
office is a felony of the fifth degree. If the value of property 24
or services stolen is five hundred dollars or more and is less 25
than five thousand dollars, theft in office is a felony of the 26
fourth degree. If the value of property or services stolen is five 27
thousand dollars or more, theft in office is a felony of the third 28
degree. 29

(C)(1) A public official or party official who ~~is convicted~~ 30
~~of or~~ pleads guilty to theft in office and whose plea is accepted 31
by the court or a public official or party official against whom a 32
verdict or finding of guilt for committing theft in office is 33
returned is forever disqualified from holding any public office, 34
employment, or position of trust in this state. 35

(2)(a) A court that imposes sentence for a violation of this 36
section based on conduct described in division (A)(2) of this 37
section shall require the public official or party official who is 38
convicted of or pleads guilty to the offense to make restitution 39
for all of the property or the service that is the subject of the 40
offense, in addition to the term of imprisonment and any fine 41
imposed. A court that imposes sentence for a violation of this 42
section based on conduct described in division (A)(1) of this 43
section and that determines at trial that this state or a 44
political subdivision of this state if the offender is a public 45
official, or a political party in the United States or this state 46
if the offender is a party official, suffered actual loss as a 47
result of the offense shall require the offender to make 48
restitution to the state, political subdivision, or political 49
party for all of the actual loss experienced, in addition to the 50
term of imprisonment and any fine imposed. 51

(b)(i) In any case in which a sentencing court is required to order restitution under division (C)(2)(a) of this section and in which the offender, at the time of the commission of the offense or at any other time, was a member of the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, or the state highway patrol retirement system; was an electing employee, as defined in section 3305.01 of the Revised Code, participating in an alternative retirement plan provided pursuant to Chapter 3305. of the Revised Code; was a participating employee or continuing member, as defined in section 148.01 of the Revised Code, in a deferred compensation program offered by the Ohio public employees deferred compensation board; was an officer or employee of a municipal corporation who was a participant in a deferred compensation program offered by that municipal corporation; was an officer or employee of a government unit, as defined in section 148.06 of the Revised Code, who was a participant in a deferred compensation program offered by that government unit, or was a participating employee, continuing member, or participant in any deferred compensation program described in this division and a member of a retirement system specified in this division or a retirement system of a municipal corporation, the entity to which restitution is to be made may file a motion with the sentencing court specifying any retirement system, any provider as defined in section 3305.01 of the Revised Code, and any deferred ~~compensation~~ compensation program of which the offender was a member, electing employee, participating employee, continuing member, or participant and requesting the court to issue an order requiring the specified retirement system, the specified provider under the alternative retirement plan, or the specified deferred compensation program, or, if more than one is specified in the motion, the applicable combination of these, to withhold the amount required as restitution from any payment

that is to be made under a pension, annuity, or allowance, under 85
an option in the alternative retirement plan, under a participant 86
account, as defined in section 148.01 of the Revised Code, or 87
under any other type of benefit, other than a survivorship 88
benefit, that has been or is in the future granted to the 89
offender, from any payment of accumulated employee contributions 90
standing to the offender's credit with that retirement system, 91
that provider of the option under the alternative retirement plan, 92
or that deferred compensation program, or, if more than one is 93
specified in the motion, the applicable combination of these, and 94
from any payment of any other amounts to be paid to the offender 95
upon the offender's withdrawal of the offender's contributions 96
pursuant to Chapter 145., 148., 742., 3307., 3309., or 5505. of 97
the Revised Code. A motion described in this division may be filed 98
at any time subsequent to the conviction of the offender or entry 99
of a guilty plea. Upon the filing of the motion, the clerk of the 100
court in which the motion is filed shall notify the offender, the 101
specified retirement system, the specified provider under the 102
alternative retirement plan, or the specified deferred 103
compensation program, or, if more than one is specified in the 104
motion, the applicable combination of these, in writing, of all of 105
the following: that the motion was filed; that the offender will 106
be granted a hearing on the issuance of the requested order if the 107
offender files a written request for a hearing with the clerk 108
prior to the expiration of thirty days after the offender receives 109
the notice; that, if a hearing is requested, the court will 110
schedule a hearing as soon as possible and notify the offender, 111
any specified retirement system, any specified provider under an 112
alternative retirement plan, and any specified deferred 113
compensation program of the date, time, and place of the hearing; 114
that, if a hearing is conducted, it will be limited only to a 115
consideration of whether the offender can show good cause why the 116
requested order should not be issued; that, if a hearing is 117

conducted, the court will not issue the requested order if the 118
court determines, based on evidence presented at the hearing by 119
the offender, that there is good cause for the requested order not 120
to be issued; that the court will issue the requested order if a 121
hearing is not requested or if a hearing is conducted but the 122
court does not determine, based on evidence presented at the 123
hearing by the offender, that there is good cause for the 124
requested order not to be issued; and that, if the requested order 125
is issued, any retirement system, any provider under an 126
alternative retirement plan, and any deferred compensation program 127
specified in the motion will be required to withhold the amount 128
required as restitution from payments to the offender. 129

(ii) In any case in which a sentencing court is required to 130
order restitution under division (C)(2)(a) of this section and in 131
which a motion requesting the issuance of a withholding order as 132
described in division (C)(2)(b)(i) of this section is filed, the 133
offender may receive a hearing on the motion by delivering a 134
written request for a hearing to the court prior to the expiration 135
of thirty days after the offender's receipt of the notice provided 136
pursuant to division (C)(2)(b)(i) of this section. If a request 137
for a hearing is made by the offender within the prescribed time, 138
the court shall schedule a hearing as soon as possible after the 139
request is made and shall notify the offender, the specified 140
retirement system, the specified provider under the alternative 141
retirement plan, or the specified deferred compensation program, 142
or, if more than one is specified in the motion, the applicable 143
combination of these, of the date, time, and place of the hearing. 144
A hearing scheduled under this division shall be limited to a 145
consideration of whether there is good cause, based on evidence 146
presented by the offender, for the requested order not to be 147
issued. If the court determines, based on evidence presented by 148
the offender, that there is good cause for the order not to be 149
issued, the court shall deny the motion and shall not issue the 150

requested order. If the offender does not request a hearing within 151
the prescribed time or if the court conducts a hearing but does 152
not determine, based on evidence presented by the offender, that 153
there is good cause for the order not to be issued, the court 154
shall order the specified retirement system, the specified 155
provider under the alternative retirement plan, or the specified 156
deferred compensation program, or, if more than one is specified 157
in the motion, the applicable combination of these, to withhold 158
the amount required as restitution under division (C)(2)(a) of 159
this section from any payments to be made under a pension, 160
annuity, or allowance, under a participant account, as defined in 161
section 148.01 of the Revised Code, under an option in the 162
alternative retirement plan, or under any other type of benefit, 163
other than a survivorship benefit, that has been or is in the 164
future granted to the offender, from any payment of accumulated 165
employee contributions standing to the offender's credit with that 166
retirement system, that provider under the alternative retirement 167
plan, or that deferred compensation program, or, if more than one 168
is specified in the motion, the applicable combination of these, 169
and from any payment of any other amounts to be paid to the 170
offender upon the offender's withdrawal of the offender's 171
contributions pursuant to Chapter 145., 148., 742., 3307., 3309., 172
or 5505. of the Revised Code, and to continue the withholding for 173
that purpose, in accordance with the order, out of each payment to 174
be made on or after the date of issuance of the order, until 175
further order of the court. Upon receipt of an order issued under 176
this division, the public employees retirement system, the Ohio 177
police and fire pension fund, the state teachers retirement 178
system, the school employees retirement system, the state highway 179
patrol retirement system, a municipal corporation retirement 180
system, the provider under the alternative retirement plan, and 181
the deferred compensation program offered by the Ohio public 182
employees deferred compensation board, a municipal corporation, or 183

a government unit, as defined in section 148.06 of the Revised Code, whichever are applicable, shall withhold the amount required as restitution, in accordance with the order, from any such payments and immediately shall forward the amount withheld to the clerk of the court in which the order was issued for payment to the entity to which restitution is to be made.

(iii) Service of a notice required by division (C)(2)(b)(i) or (ii) of this section shall be effected in the same manner as provided in the Rules of Civil Procedure for the service of process.

(D) Upon the filing of charges against a person under this section, the prosecutor, as defined in section 2935.01 of the Revised Code, who is assigned the case shall send written notice that charges have been filed against that person to the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, the state highway patrol retirement system, the provider under an alternative retirement plan, any municipal corporation retirement system in this state, and the deferred compensation program offered by the Ohio public employees deferred compensation board, a municipal corporation, or a government unit, as defined in section 148.06 of the Revised Code. The written notice shall specifically identify the person charged.

Sec. 2961.01. (A)(1) A person ~~convicted of~~ who pleads guilty to a felony under the laws of this or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned, unless the ~~conviction~~ plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. ~~When~~

(2) When any person convicted of a felony under any law of that type who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction, the person is competent to be an elector during the period of community control, parole, post-release control, or release or until the conditions of the pardon have been performed or have transpired and is competent to be an elector thereafter following final discharge. The full pardon of a person ~~convicted of a felony~~ who under division (A)(1) of this section is incompetent to be an elector or juror or to hold an office of honor, trust, or profit restores the rights and privileges so forfeited under ~~this~~ division (A)(1) of this section, but a pardon shall not release the person ~~convicted of a felony~~ from the costs of a conviction in this state, unless so specified.

(B) A person ~~convicted of~~ who pleads guilty to a felony under laws of this state or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned is incompetent to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition.

(C) As used in this section:

(1) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(2) "Non-jail community control sanction" means a community control sanction that is neither a term in a community-based correctional facility nor a term in a jail.

(3) "Post-release control" and "post-release control sanction" have the same meanings as in section 2967.01 of the Revised Code. 246
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Sec. 2961.02. (A) As used in this section: 249

(1) "Disqualifying offense" means an offense that has both of the following characteristics: 250
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(a) It is one of the following: 252

(i) A theft offense that is a felony; 253

(ii) A felony under the laws of this state, another state, or the United States, that is not covered by division (A)(1)(a)(i) of this section and that involves fraud, deceit, or theft. 254
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(b) It is an offense for which the laws of this state, another state, or the United States do not otherwise contain a provision specifying permanent disqualification, or disqualification for a specified period, from holding a public office or position of public employment, or from serving as an unpaid volunteer, as a result of conviction of the offense, including, but not limited to, a provision such as that in division (C)(1) of section 2921.41 of the Revised Code. 257
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(2) "Political subdivision" has the same meaning as in section 2744.01 of the Revised Code. 265
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(3) "Private entity" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association that receives any funds from a state agency or political subdivision to perform an activity on behalf of the state agency or political subdivision. 267
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(4) "State agency" has the same meaning as in section 1.60 of the Revised Code. 272
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(5) "Theft offense" has the same meaning as in section 274

2913.01 of the Revised Code. 275

(6) "Volunteer" means a person who serves as a volunteer 276
without compensation with a state agency or political subdivision 277
or who serves as a volunteer without compensation with a private 278
entity, including, but not limited to, an uncompensated auxiliary 279
police officer, auxiliary deputy sheriff, or volunteer 280
firefighter. 281

(B) Any person who ~~is convicted of~~ pleads guilty to a 282
disqualifying offense and whose plea is accepted by the court or 283
any person against whom a verdict or finding of guilt for 284
committing a disqualifying offense is returned is incompetent to 285
hold a public office or position of public employment or to serve 286
as a volunteer, if holding the public office or position of public 287
employment or serving as the volunteer involves substantial 288
management or control over the property of a state agency, 289
political subdivision, or private entity. 290

(C) Division (B) of this section does not apply if a 291
~~conviction of plea, verdict, or finding of the type described in~~ 292
that division regarding a disqualifying offense is reversed, 293
expunged, or annulled. The full pardon of a person ~~convicted of~~ 294
who has pleaded guilty to a disqualifying offense and whose plea 295
was accepted by the court or a person against whom a verdict or 296
finding of guilt for committing a disqualifying offense was 297
returned restores the privileges forfeited under division (B) of 298
this section, but the pardon does not release the person from the 299
costs of the person's conviction in this state, unless so 300
specified. 301

Section 2. That existing sections 2921.41, 2961.01, and 302
2961.02 of the Revised Code are hereby repealed. 303