



Sub. S.B. 310*

127th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

Sens. Cates, Schuring, Cafaro, Kearney

BILL SUMMARY

- Provides that existing laws that make a person who has been convicted of a felony incompetent to be an elector or juror, to hold an office of honor, trust, or profit, or 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 apply when a person has pleaded guilty to a felony and the person's plea is accepted by the court or when a verdict or finding of guilt for committing a felony is returned against a person.
- Provides that an existing law that makes a person who has been convicted of a felony theft offense or a felony otherwise involving fraud, deceit, or theft incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the office or position or serving as the volunteer involves substantial management or control over the property of a governmental or private entity, applies when a person has pleaded guilty to such a felony and the person's plea is accepted by the court or when a verdict or finding of guilt for committing such a felony is returned, and the other existing criteria are satisfied.
- Provides that an existing provision that disqualifies any public official or party official who is convicted of or pleads guilty to the offense of "theft in office" applies when a public official or party official has pleaded guilty to theft in office and the official's plea is accepted by the court or

* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

when a verdict or finding of guilt for committing theft in office is returned against a public official or party official.

CONTENT AND OPERATION

Conviction of a felony--incompetence to be an elector, to hold office, or to circulate or witness election-related documents

Existing law

Under existing law, a person *who is convicted of* (see "*Concerning existing law*" under "*Supreme Court decisions relevant to the bill*," below) a felony under the laws of Ohio or any other state or the United States, unless the conviction is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. When any person *convicted of* a felony under any law of that type 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 (see **COMMENT 1** for definitions of the terms in quotation marks). The full pardon of a person *convicted of* a felony restores the rights and privileges forfeited under this provision, but a pardon does not release the person convicted of a felony from the costs of a conviction in Ohio, unless so specified.

Also under existing law, a person *who is convicted of* (see "*Supreme Court decisions relevant to the bill*," below) a felony under laws of Ohio or any other state or the United States 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. (R.C. 2961.01.)

Operation of the bill

The bill modifies the existing provisions regarding incompetency to be an elector or juror, to hold an office of honor, trust, or profit, or 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, so that they apply regarding a person *who pleads guilty to* (see "*Supreme Court decisions relevant to the bill*," below) a felony under the laws of Ohio 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* (R.C. 2961.01(A) and (B)).

The existing "restoration" provisions regarding a person who is incompetent to be an elector or juror or to hold an office of honor, trust, or profit as a result of *a conviction of a felony* and who is granted parole, judicial release, or a conditional pardon, who is released under a non-jail community control sanction or a post-release control sanction, or who is granted a full pardon, are amended by the bill so that they apply regarding any person who under the bill's provision described in the preceding paragraph is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. (R.C. 2961.01(A).)

Conviction of a disqualifying offense--incompetence to hold public office or position of public employment or to serve as a volunteer

Existing law

Existing law provides that any person *who is convicted of* (see "**Supreme Court decisions relevant to the bill,**" below) a "disqualifying offense" is incompetent to hold a public office or position of public employment or to serve as a "volunteer," if holding the public office or position of public employment or serving as the volunteer involves substantial management or control over the property of a "state agency," "political subdivision," or "private entity" (see **COMMENT 2** for definitions of the terms in quotation marks). This provision does not apply if *a conviction of a disqualifying offense* is reversed, expunged, or annulled. The full pardon of a person *convicted of a disqualifying offense* restores the privileges forfeited under the provision, but the pardon does not release the person from the costs of the person's *conviction* in Ohio, unless so specified. (R.C. 2961.02.)

Operation of the bill

The bill modifies the existing provision regarding incompetency to hold a public office or position of employment or to serve as a volunteer, so that it applies regarding a person *who pleads guilty to* (see "**Supreme Court decisions relevant to the bill,**" below) a disqualifying offense and whose plea is accepted by the court or a person *against whom a verdict or finding of guilt* for committing a qualifying offense *is returned*, when the other specified criteria are satisfied. (R.C. 2961.02(B).)

The existing "restoration" provisions regarding a person who is incompetent to hold a public office or position of employment or to serve as a volunteer as a result of *a conviction of a disqualifying offense* and whose conviction of the disqualifying offense is reversed, expunged, or annulled or who is granted a full pardon, are amended by the bill so that they apply regarding any person who under the bill's provision described in the preceding paragraph

otherwise is incompetent to hold a public office or position of employment or to serve as a volunteer. (R.C. 2961.02(C).)

Offense of "theft in office"

Existing law

Existing law prohibits a "public official" or "party official" (see **COMMENT 3** for definitions of the terms in quotation marks) from committing any "theft offense" (see **COMMENT 2(e)** for definition), when either of the following applies: (1) the offender uses the offender's office in aid of committing the offense or permits or assents to its use in aid of committing the offense, or (2) the property or service involved is owned by Ohio, any other state, the United States, a county, a municipal corporation, a township, or any political subdivision, department, or agency of any of them, is owned by a political party, or is part of a political campaign fund. A violation of this prohibition is the offense of "theft in office." Theft in office generally is a felony of the fifth degree, but if the value of property or services stolen is \$500 or more and is less than \$5,000, it is a felony of the fourth degree and if the value of property or services stolen is \$5,000 or more, it is a felony of the third degree. Special restitution, and public pension-related restitution provisions apply when a person is convicted of the offense.

Existing law also provides that a public official or party official *who is convicted of or pleads guilty to* (see "**Supreme Court decisions relevant to the bill**," below) theft in office is forever disqualified from holding any public office, employment, or position of trust in Ohio. (R.C. 2921.41.)

Operation of the bill

The bill modifies the existing provision regarding disqualification from holding any public office, employment, or position of trust so that it applies regarding a public official or party official *who pleads guilty to* ("**Supreme Court decisions relevant to the bill**," below) theft in office and whose plea is accepted by the court or a public official or party official *against whom a verdict or finding of guilt* for committing theft in office *is returned*. (R.C. 2921.41(C)(1).)

Supreme Court decisions relevant to the bill

Four hundred eighty Revised Code provisions refer, in various contexts, to a person *who has been convicted of* a criminal offense, without including a corresponding reference to a person who has pleaded guilty to the criminal offense. A decision of the Ohio Supreme Court that interpreted the meaning of "convicted of" when used in that manner in one of those contexts held that, where an accused has entered a plea of guilty to an offense but has not been sentenced by

the court for the offense, the offender has not been "convicted" of the offense and that, to constitute a "conviction" for the offense, there must be a judgment of conviction as defined in Criminal Rule 32(B), which subsequent to the decision was redesignated as Criminal Rule 32(C). *State v. Henderson* (1979), 58 Ohio St.2d 171; also *State v. Carter* (1992), 64 Ohio St.3d 218. Criminal Rule 32(C), in relevant part, states that a judgment of conviction must set forth *the plea, the verdict or findings, and the sentence*.

Four hundred ninety six Revised Code provisions refer, in various contexts, to a person *who has been convicted of or pleaded guilty to* a criminal offense. A decision of the Ohio Supreme Court that interpreted the meaning of that phrase in one of those contexts held that the phrase places a "conviction" on an equal footing with a guilty plea and that, therefore, when used in such a phrase, the word "convicted" logically refers only to a determination of guilt and does not include sentencing upon that determination. *State ex rel. Watkins v. Fiorenzo* (1994), 71 Ohio St.3d 259.

COMMENT

1. Under existing law, unchanged by the bill, as used in R.C. 2961.01 (R.C. 2961.01(C)):

(a) "Community control sanction" means a sanction that is not a prison term and that is described in R.C. 2929.15, 2929.16, 2929.17, or 2929.18 or a sanction that is not a jail term and that is described in R.C. 2929.26, 2929.27, or 2929.28. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004. (By reference to existing R.C. 2929.01, not in the bill.)

(b) "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.

(c) "Post-release control" means a period of supervision by the Adult Parole Authority after a prisoner's release from imprisonment that includes one or more post-release control sanctions imposed under R.C. 2967.28 and "post-release control sanction" means a sanction that is authorized under R.C. 2929.16 to 2929.18 and that is imposed upon a prisoner upon the prisoner's release from a prison term (by reference to existing R.C. 2967.01, not in the bill).

2. Under existing law, unchanged by the bill, as used in R.C. 2961.02 (R.C. 2961.02(A)):

(a) "Disqualifying offense" means an offense that has both of the following characteristics:

(i) It is a "theft offense" (see **COMMENT 2(e)**, below) that is a felony, or it is a felony under the laws of Ohio, another state, or the United States, that is not a theft offense that is a felony and that involves fraud, deceit, or theft.

(ii) It is an offense for which the laws of Ohio, 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 R.C. 2921.41(C)(1).

(b) "Political subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under R.C. 339.14, board of hospital commissioners appointed for a municipal hospital under R.C. 749.04, board of hospital trustees appointed for a municipal hospital under R.C. 749.22, regional planning commission created pursuant to R.C. 713.21, county planning commission created pursuant to R.C. 713.22, joint planning council created pursuant to R.C. 713.231, interstate regional planning commission created pursuant to R.C. 713.30, port authority created pursuant to R.C. 4582.02 or 4582.26 or in existence on December 16, 1964, regional council established by political subdivisions pursuant to R.C. Chapter 167., emergency planning district and joint emergency planning district designated under R.C. 3750.03, joint emergency medical services district created pursuant to R.C. 307.052, fire and ambulance district created pursuant to R.C. 505.375, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under R.C. 343.01 or 343.012, community school established under R.C. Chapter 3314., the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under R.C. 2301.51 to 2301.58, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated (by reference to existing R.C. 2744.01, not in the bill).

(c) "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.

(d) "State agency" means, except as otherwise provided in R.C. Title I, every organized body, office, or agency established by the laws of the state for the exercise of any function of state government (by reference to existing R.C. 1.60, not in the bill).

(e) "Theft offense" means any of the following (by reference to existing R.C. 2913.01, not in the bill):

(i) A violation of R.C. 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, or 2913.47, former R.C. 2913.47 or 2913.48, or R.C. 2913.51, 2915.05, or 2921.41;

(ii) A violation of an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to any section listed in **COMMENT 2(e)(i)** or a violation of R.C. 2913.41, 2913.81, or 2915.06 as it existed prior to July 1, 1996;

(iii) An offense under an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;

(iv) A conspiracy or attempt to commit, or complicity in committing, any offense listed or identified in **COMMENT 2(e)(i)**, (ii), or (iii).

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

3. Under existing law, which is not in the bill, as used in R.C. Chapter 2921. (R.C. 2921.01):

(a) "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

(b) "Party official" means any person who holds an elective or appointive post in a political party in the United States or Ohio, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

HISTORY

ACTION	DATE
Introduced	03-27-08
Reported, S. Judiciary - Criminal Justice	---

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