

As Re-Referred by the House Rules and Reference Committee

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Am. S. B. No. 10

Senator Wilson

Cosponsors: Senators Peterson, Uecker, Coley, Hoagland, Gavarone, Antonio, Craig, Dolan, Eklund, Hackett, Hill, Hottinger, Huffman, M., Huffman, S., Kunze, Lehner, Maharath, McColley, Obhof, O'Brien, Roegner, Rulli, Sykes, Thomas, Williams Representatives Plummer, Leland, Crossman, Cupp, Galonski, Rogers, Smith, T., West

A BILL

To amend section 2921.41 of the Revised Code to
expand the penalties for theft in office based
on the amount stolen and to include as
restitution audit costs of the entity that
suffered the loss.

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

Section 1. That section 2921.41 of the Revised Code be
amended to read as follows:

Sec. 2921.41. (A) No public official or party official
shall commit any theft offense, as defined in division (K) of
section 2913.01 of the Revised Code, 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;

(2) The property or service involved is owned by this

state, 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.

(B) Whoever violates this section is guilty of theft in
office. Except as otherwise provided in this division, theft in
office is a felony of the fifth degree. If the value of property
or services stolen is one thousand dollars or more and is less
than seven thousand five hundred dollars, theft in office is a
felony of the fourth degree. If the value of property or
services stolen is seven thousand five hundred dollars or more
and is less than one hundred fifty thousand dollars, theft in
office is a felony of the third degree. If the value of property
or services stolen is one hundred fifty thousand dollars or more
and is less than seven hundred fifty thousand dollars, theft in
office is a felony of the second degree. If the value of
property or services stolen is seven hundred fifty thousand
dollars or more, theft in office is a felony of the first
degree.

(C) (1) A public official or party official who pleads
guilty to 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 is forever disqualified from holding any public office,
employment, or position of trust in this state.

(2) (a) (i) A court that imposes sentence for a violation of
this section based on conduct described in division (A) (2) of
this section shall require the public official or party official
who is convicted of or pleads guilty to the offense to make
restitution for all of the property or the service that is the

subject of the offense, in addition to the term of imprisonment 46
and any fine imposed. The amount of restitution imposed under 47
this division shall include any costs of auditing any of the 48
public entities specified in division (A) (2) of this section 49
that own the property or service involved in the conduct 50
described in that division that is a violation of this section. 51

(ii) A court that imposes sentence for a violation of this 52
section based on conduct described in division (A) (1) of this 53
section and that determines at trial that this state or a 54
political subdivision of this state if the offender is a public 55
official, or a political party in the United States or this 56
state if the offender is a party official, suffered actual loss 57
as a result of the offense shall require the offender to make 58
restitution to the state, political subdivision, or political 59
party for all of the actual loss experienced, in addition to the 60
term of imprisonment and any fine imposed. The amount of 61
restitution imposed under this division shall include any costs 62
of auditing the state, political subdivision, or political party 63
that suffered the actual loss based on conduct described in that 64
division that is a violation of this section. 65

(b) (i) In any case in which a sentencing court is required 66
to order restitution under division (C) (2) (a) of this section 67
and in which the offender, at the time of the commission of the 68
offense or at any other time, was a member of the public 69
employees retirement system, the Ohio police and fire pension 70
fund, the state teachers retirement system, the school employees 71
retirement system, or the state highway patrol retirement 72
system; was an electing employee, as defined in section 3305.01 73
of the Revised Code, participating in an alternative retirement 74
plan provided pursuant to Chapter 3305. of the Revised Code; was 75
a participating employee or continuing member, as defined in 76

section 148.01 of the Revised Code, in a deferred compensation 77
program offered by the Ohio public employees deferred 78
compensation board; was an officer or employee of a municipal 79
corporation who was a participant in a deferred compensation 80
program offered by that municipal corporation; was an officer or 81
employee of a government unit, as defined in section 148.06 of 82
the Revised Code, who was a participant in a deferred 83
compensation program offered by that government unit, or was a 84
participating employee, continuing member, or participant in any 85
deferred compensation program described in this division and a 86
member of a retirement system specified in this division or a 87
retirement system of a municipal corporation, the entity to 88
which restitution is to be made may file a motion with the 89
sentencing court specifying any retirement system, any provider 90
as defined in section 3305.01 of the Revised Code, and any 91
deferred compensation program of which the offender was a 92
member, electing employee, participating employee, continuing 93
member, or participant and requesting the court to issue an 94
order requiring the specified retirement system, the specified 95
provider under the alternative retirement plan, or the specified 96
deferred compensation program, or, if more than one is specified 97
in the motion, the applicable combination of these, to withhold 98
the amount required as restitution from any payment that is to 99
be made under a pension, annuity, or allowance, under an option 100
in the alternative retirement plan, under a participant account, 101
as defined in section 148.01 of the Revised Code, or under any 102
other type of benefit, other than a survivorship benefit, that 103
has been or is in the future granted to the offender, from any 104
payment of accumulated employee contributions standing to the 105
offender's credit with that retirement system, that provider of 106
the option under the alternative retirement plan, or that 107
deferred compensation program, or, if more than one is specified 108

in the motion, the applicable combination of these, and from any 109
payment of any other amounts to be paid to the offender upon the 110
offender's withdrawal of the offender's contributions pursuant 111
to Chapter 145., 148., 742., 3307., 3309., or 5505. of the 112
Revised Code. A motion described in this division may be filed 113
at any time subsequent to the conviction of the offender or 114
entry of a guilty plea. Upon the filing of the motion, the clerk 115
of the court in which the motion is filed shall notify the 116
offender, the specified retirement system, the specified 117
provider under the alternative retirement plan, or the specified 118
deferred compensation program, or, if more than one is specified 119
in the motion, the applicable combination of these, in writing, 120
of all of the following: that the motion was filed; that the 121
offender will be granted a hearing on the issuance of the 122
requested order if the offender files a written request for a 123
hearing with the clerk prior to the expiration of thirty days 124
after the offender receives the notice; that, if a hearing is 125
requested, the court will schedule a hearing as soon as possible 126
and notify the offender, any specified retirement system, any 127
specified provider under an alternative retirement plan, and any 128
specified deferred compensation program of the date, time, and 129
place of the hearing; that, if a hearing is conducted, it will 130
be limited only to a consideration of whether the offender can 131
show good cause why the requested order should not be issued; 132
that, if a hearing is conducted, the court will not issue the 133
requested order if the court determines, based on evidence 134
presented at the hearing by the offender, that there is good 135
cause for the requested order not to be issued; that the court 136
will issue the requested order if a hearing is not requested or 137
if a hearing is conducted but the court does not determine, 138
based on evidence presented at the hearing by the offender, that 139
there is good cause for the requested order not to be issued; 140

and that, if the requested order is issued, any retirement 141
system, any provider under an alternative retirement plan, and 142
any deferred compensation program specified in the motion will 143
be required to withhold the amount required as restitution from 144
payments to the offender. 145

(ii) In any case in which a sentencing court is required 146
to order restitution under division (C) (2) (a) of this section 147
and in which a motion requesting the issuance of a withholding 148
order as described in division (C) (2) (b) (i) of this section is 149
filed, the offender may receive a hearing on the motion by 150
delivering a written request for a hearing to the court prior to 151
the expiration of thirty days after the offender's receipt of 152
the notice provided pursuant to division (C) (2) (b) (i) of this 153
section. If a request for a hearing is made by the offender 154
within the prescribed time, the court shall schedule a hearing 155
as soon as possible after the request is made and shall notify 156
the offender, the specified retirement system, the specified 157
provider under the alternative retirement plan, or the specified 158
deferred compensation program, or, if more than one is specified 159
in the motion, the applicable combination of these, of the date, 160
time, and place of the hearing. A hearing scheduled under this 161
division shall be limited to a consideration of whether there is 162
good cause, based on evidence presented by the offender, for the 163
requested order not to be issued. If the court determines, based 164
on evidence presented by the offender, that there is good cause 165
for the order not to be issued, the court shall deny the motion 166
and shall not issue the requested order. If the offender does 167
not request a hearing within the prescribed time or if the court 168
conducts a hearing but does not determine, based on evidence 169
presented by the offender, that there is good cause for the 170
order not to be issued, the court shall order the specified 171

retirement system, the specified provider under the alternative 172
retirement plan, or the specified deferred compensation program, 173
or, if more than one is specified in the motion, the applicable 174
combination of these, to withhold the amount required as 175
restitution under division (C) (2) (a) of this section from any 176
payments to be made under a pension, annuity, or allowance, 177
under a participant account, as defined in section 148.01 of the 178
Revised Code, under an option in the alternative retirement 179
plan, or under any other type of benefit, other than a 180
survivorship benefit, that has been or is in the future granted 181
to the offender, from any payment of accumulated employee 182
contributions standing to the offender's credit with that 183
retirement system, that provider under the alternative 184
retirement plan, or that deferred compensation program, or, if 185
more than one is specified in the motion, the applicable 186
combination of these, and from any payment of any other amounts 187
to be paid to the offender upon the offender's withdrawal of the 188
offender's contributions pursuant to Chapter 145., 148., 742., 189
3307., 3309., or 5505. of the Revised Code, and to continue the 190
withholding for that purpose, in accordance with the order, out 191
of each payment to be made on or after the date of issuance of 192
the order, until further order of the court. Upon receipt of an 193
order issued under this division, the public employees 194
retirement system, the Ohio police and fire pension fund, the 195
state teachers retirement system, the school employees 196
retirement system, the state highway patrol retirement system, a 197
municipal corporation retirement system, the provider under the 198
alternative retirement plan, and the deferred compensation 199
program offered by the Ohio public employees deferred 200
compensation board, a municipal corporation, or a government 201
unit, as defined in section 148.06 of the Revised Code, 202
whichever are applicable, shall withhold the amount required as 203

restitution, in accordance with the order, from any such 204
payments and immediately shall forward the amount withheld to 205
the clerk of the court in which the order was issued for payment 206
to the entity to which restitution is to be made. 207

(iii) Service of a notice required by division (C) (2) (b) 208
(i) or (ii) of this section shall be effected in the same manner 209
as provided in the Rules of Civil Procedure for the service of 210
process. 211

(c) Consistent with the ruling of the supreme court of the 212
United States in Kelly v. Robinson, 479 U.S. 36 (1986), 213
restitution imposed under division (C) (2) (a) of this section is 214
not dischargeable under Chapter 7 of the United States 215
Bankruptcy Code pursuant to 11 U.S.C. 523, as amended. 216

(D) Upon the filing of charges against a person under this 217
section, the prosecutor, as defined in section 2935.01 of the 218
Revised Code, who is assigned the case shall send written notice 219
that charges have been filed against that person to the public 220
employees retirement system, the Ohio police and fire pension 221
fund, the state teachers retirement system, the school employees 222
retirement system, the state highway patrol retirement system, 223
the provider under an alternative retirement plan, any municipal 224
corporation retirement system in this state, and the deferred 225
compensation program offered by the Ohio public employees 226
deferred compensation board, a municipal corporation, or a 227
government unit, as defined in section 148.06 of the Revised 228
Code. The written notice shall specifically identify the person 229
charged. 230

Section 2. That existing section 2921.41 of the Revised 231
Code is hereby repealed. 232