Michael J. O'Neill *Legislative Service Commission*

Sub. H.B. 2

123rd General Assembly
(As Reported by H. Criminal Justice)

Reps. Tiberi, James, Thomas, Taylor, Patton, Grendell, Haines, Pringle, Vesper, Jones, Coughlin, Jerse, Lucas, Brading, Jacobson, Roman, Healy, O'Brien, Boyd, Mottley, Evans, Metelsky, Myers, Terwilleger, Opfer, Hoops, Young, Householder, Goodman, Callender, Damschroder, Corbin, Clancy, Buchy, Gardner, Krebs, Cates, Willamowski, Harris, Metzger, Jolivette, Olman, Womer Benjamin, Mead, Bateman, Schuler, Amstutz, Salerno, Maier, Ogg, Bender, Logan, Allen, D. Miller, Beatty, Wilson, Britton, Weston, Core, Perz, Buehrer, DePiero

BILL SUMMARY

- Enhances the penalties for the offenses of theft, unauthorized use of a vehicle, unauthorized use of property, misuse of credit cards in specified circumstances, forgery, and securing writings by deception when the victim of the offense is an elderly person or disabled adult who lacks the capacity to consent.

- Permits a court determining the degree of the offense for those six offenses to aggregate the value of all property, services, debts for which credit cards were held as security, and losses to the victims involved in violations comprising a course of conduct, if the offense for which the penalty is enhanced occurred as part of a course of conduct involving any of those offenses or attempts to commit, conspiracies to commit, or complicity in committing any of those offenses.

- Specifies that nothing in the statutes creating the following offenses imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but through no fault of the person's own has been unable to provide the assistance: theft, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of

credit cards, forgery, forging identification cards or selling or distributing forged identification cards, and securing writings by deception.

- Specifies that in the prosecution of any violation of the Theft Offense Chapter, if the lack of consent of the victim is an element of the violation, evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent.

- Expands the offense of theft to also prohibit a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services by intimidation.

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CONTENT AND OPERATION

Overview of enhanced penalty provisions

The bill enhances the penalties for the offenses of theft, unauthorized use of a vehicle, unauthorized use of property, misuse of credit cards in specified circumstances, forgery, and securing writings by deception when the victim of the offense is an elderly person or disabled adult who lacks the capacity to consent. The enhanced penalties range from a felony of the fifth degree to a felony of the first degree, depending on the amount involved in the offense. When determining the degree of the offense, if the offense occurred as part of a course of conduct involving other commissions of those offenses, attempts to commit, conspiracies to commit, and complicity in committing those offenses, the court may aggregate the value of all property, services, debts for which credit cards were held as security, and losses to the victims involved in the violations comprising that course of conduct.

Overview of good faith exception

The bill creates an exception to the offenses of unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of credit cards in certain circumstances, forgery, forging identification cards or selling or distributing forged identification cards, and securing writings by deception that specifies that nothing in those offenses imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but through no fault of the person's own has been unable to provide the assistance.

Evidence of lack of capacity to consent

The bill specifies that in the prosecution of any violation of the Theft Offense Chapter, if the lack of consent of the victim is an element of the violation, evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent (sec. 2913.73).

Definitions

For purposes of the enhanced penalty provisions in the bill, the bill defines the following terms (sec. 2913.01(CC), (DD), and (EE)):

"***Elderly person***" means a person who is 65 years of age or older.

"***Disabled adult***" means a person who is 18 years of age or older and has some impairment of body or mind that makes the person unfit to work at substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by an Ohio or federal agency that has the function of so classifying persons.

"***Lacks the capacity to consent***" means being impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person or the person's resources.

The bill also relocates cross reference to existing definitions that are referred to in the existing "theft" section (sec. 2913.01(FF), (GG), (HH), and (II) and 2913.02): firearm and dangerous ordnance (sec. 2923.11); motor vehicle (sec. 4501.01); dangerous drug (sec. 4729.01); and drug abuse offense (sec. 2925.01).

Theft

Existing law

Prohibition. Existing law prohibits a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services in any of the following ways (sec. 2913.02(A)):

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat.

Penalty. Generally, a violation of the "theft" prohibition is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is $500 or more and is less than $5,000 or if the property stolen is any of the property listed in section 2913.71 of the Revised Code, a violation of the "theft" prohibition is theft, a felony of the fifth degree. If the value of the property or services stolen is $5,000 or more and is less than $100,000 or if the property stolen is a firearm or dangerous ordnance, a violation of the "theft" prohibition is grand theft, a felony of the fourth degree. If the property stolen is a motor vehicle, a violation of the "theft" prohibition is grand theft of a motor vehicle, a felony of the fourth degree.

If the value of the property or services stolen is $100,000 or more, a violation of the "theft" prohibition is aggravated theft, a felony of the third degree. If the property stolen is any dangerous drug, a violation of the "theft" prohibition is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, a felony of the third degree. (Sec. 2913.02(B).)

Operation of the bill

Expansion of prohibition. The bill expands the "theft" prohibition to also prohibit a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services by "intimidation" (sec. 2913.02(A)(5)).

Good faith exception. The bill specifies that nothing in the section that contains the "theft" prohibition imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but who through no fault of the person's own has been unable to provide the assistance (sec. 2913.02(B)).

Enhanced penalty. If the victim of the offense is an elderly person or disabled adult who lacks the capacity to consent and except when the property stolen is a firearm or a dangerous ordnance, a motor vehicle, or a dangerous drug, a violation of the "theft" prohibition is "theft from an elderly person or disabled adult." "Theft from an elderly person or disabled adult" is whichever of the following is applicable (sec. 2913.02(C)(3)):

(1) If the value of the property or services stolen is less than $500, a felony of the fifth degree;

(2) If the value of the property or services stolen is $500 or more and is less than $5,000, a felony of the fourth degree;

(3) If the value of the property or services stolen is $5,000 or more and is less than $25,000, a felony of the third degree;

(4) If the value of the property or services stolen is $25,000 or more and is less than $100,000, a felony of the second degree;

(5) If the value of the property or services stolen is $100,000 or more, a felony of the first degree.

If these special penalty provisions apply and if the violation of the "theft" prohibition occurs as part of a course of conduct involving violations of, attempts to violate, conspiracies to violate, or complicity in violations of the "theft" prohibition, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of credit cards in specified circumstances, forgery, forging identification cards or selling or distributing forged identification cards, or securing writings by deception, the court, in determining the degree of the offense, may aggregate the value of all property, services, losses to the victims, and debts for which credit cards are held as security involved in the violations comprising that course of conduct. (Sec. 2913.02(C)(3).)

Unauthorized use of a vehicle

Existing law

Prohibition. Existing law prohibits a person from knowingly using or operating an aircraft, motor vehicle, motorcycle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.

Existing law also prohibits a person from knowingly using or operating an aircraft, motor vehicle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent, and either remove it from Ohio or keep possession of it for more than 48 hours. (Sec. 2913.03(A) and (B).)

Penalty. A person who violates either prohibition is guilty of unauthorized use of a vehicle. A violation of the first prohibition is a misdemeanor of the first degree. A violation of the second prohibition is a felony of the fifth degree. (Sec. 2913.03(D).)

Affirmative defenses. The following are affirmative defenses to a charge of violating either prohibition (sec. 2913.03(C)):

(1) At the time of the alleged offense, the actor, though mistaken, reasonably believed that the actor was authorized to use or operate the property.

(2) At the time of the alleged offense, the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property.

Operation of the bill

Good faith exception. The bill specifies that nothing in the section that prohibits the offense of unauthorized use of a vehicle imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but who through no fault of the person's own has been unable to provide the assistance (sec. 2913.03(D)).

Enhanced penalty. If the victim of the offense is an elderly person or disabled adult who lacks the capacity to consent and if the victim incurs a loss as a result of the offense, unauthorized use of a vehicle is whichever of the following is applicable (sec. 2913.03(E)(4)):

(1) If the loss to the victim is less than $500, a felony of the fifth degree;

(2) If the loss to the victim is $500 or more and is less than $5,000, a felony of the fourth degree;

(3) If the loss to the victim is $5,000 or more and is less than $25,000, a felony of the third degree;

(4) If the loss to the victim is $25,000 or more and is less than $100,000, a felony of the second degree;

(5) If the loss to the victim is $100,000 or more, a felony of the first degree.

If these special penalty provisions apply and if the offense occurs as part of a course of conduct involving violations of, attempts to violate, conspiracies to violate, or complicity in violations of this offense, theft, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of credit cards in specified circumstances, forgery, forging identification cards or selling or distributing forged identification cards, or securing writings by deception, the court, in determining the degree of the offense, may aggregate the value of all property, services, losses to the victims, and debts for which credit cards are held as security involved in the violations comprising that course of conduct. (Sec. 2913.03(F).)

Unauthorized use of property and unauthorized use of computer property

Existing law

Prohibitions and penalties. Existing law prohibits a person from knowingly using or operating the property of another without the consent of the

owner or person authorized to give consent (sec. 2913.04(A)). A person who violates the prohibition is guilty of unauthorized use of property. Generally, unauthorized use of property is a misdemeanor of the fourth degree. If unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is whichever of the following is applicable (sec. 2913.04(D)):

(1) If the value of the property or services or the loss to the victim is less than $500, a misdemeanor of the first degree;

(2) If the value of the property or services or the loss to the victim is $500 or more and is less than $5,000, a felony of the fifth degree;

(3) If the value of the property or services or the loss to the victim is $5,000 or more and is less than $100,000, a felony of the fourth degree;

(4) If the value of the property or services or the loss to the victim is $100,000 or more, a felony of the third degree.

Existing law also prohibits a person from knowingly gaining access to, attempting to gain access to, or causing access to be gained to any computer, computer system, computer network, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, telecommunications devise, telecommunications service, or information service or other person authorized to give consent by the owner. A person who violates this prohibition is guilty of unauthorized use of computer or telecommunication property, a felony of the fifth degree. (Sec. 2913.04(B) and (E).)

Affirmative defenses. The following are affirmative defenses to a charge of violating either prohibition (sec. 2913.04(C) by reference to sec. 2913.03(C)):

(1) At the time of the alleged offense, the actor, though mistaken, reasonably believed that the actor was authorized to use or operate the property.

(2) At the time of the alleged offense, the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property.

Operation of the bill

Good faith exception. The bill specifies that nothing in the section that prohibits the offenses of unauthorized use of property and unauthorized use of

computer or telecommunication property imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but who through no fault of the person's own has been unable to provide the assistance (sec. 2913.04(D)).

Enhanced penalty. If the victim of unauthorized use of property is an elderly person or disabled adult who lacks the capacity to consent, unauthorized use of property is whichever of the following is applicable (sec. 2913.04(E)(4)):

(1) If the value of the property or services or loss to the victim is less than $500, a felony of the fifth degree;

(2) If the value of the property or services or loss to the victim is $500 or more and is less than $5,000, a felony of the fourth degree;

(3) If the value of the property or services or loss to the victim is $5,000 or more and is less than $25,000, a felony of the third degree;

(4) If the value of the property or services or loss to the victim is $25,000 or more and is less than $100,000, a felony of the second degree;

(5) If the value of the property or services or loss to the victim is $100,000 or more, a felony of the first degree.

If these special penalty provisions apply and if the unauthorized use of property occurs as part of a course of conduct involving violations of, attempts to violate, conspiracies to violate, or complicity in violations of unauthorized use of property, unauthorized use of computer or telecommunications property, theft, unauthorized use of a vehicle, misuse of credit cards in specified circumstances, forgery, forging identification cards or selling or distributing forged identification cards, or securing writings by deception, the court, in determining the degree of the offense, may aggregate the value of all property, services, losses to the victims, and debts for which credit cards are held as security involved the violations comprising that course of conduct. (Sec. 2913.04(G).)

Misuse of credit cards

Existing law

The existing offense of misuse of credit cards contains three sets of prohibitions.

First prohibition and penalty. The first prohibition prohibits a person from doing any of the following (sec. 2913.21(A)):

(1) Practicing deception for the purpose of procuring the issuance of a credit card, when a credit card is issued in actual reliance thereon;

(2) Knowingly buying or selling a credit card from or to a person other than the issuer.

A person who violates this prohibition is guilty of misuse of credit cards and is guilty of a misdemeanor of the first degree (sec. 2913.21(D)(1) and (2)).

Second prohibition and penalty. The second prohibition prohibits a person, with purpose to defraud, from doing any of the following (sec. 2913.21(B)):

(1) Obtaining control over a credit card as security for a debt;

(2) Obtaining property or services by the use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law;

(3) Furnishing property or services upon presentation of a credit card, knowing that the card is being used in violation of law;

(4) Representing or cause to be represented to the issuer of a credit card that property or services have been furnished, knowing that the representation is false.

A person who violates this prohibition also is guilty of misuse of credit cards. A violation of paragraph (1) is a misdemeanor of the first degree. Generally, a violation of paragraph (2), (3), or (4) is a misdemeanor of the first degree. A violation of any of those prohibitions is a felony of the fifth degree if the cumulative retail value of the property and services involved in one or more violations of paragraph (2), (3), or (4), which violations involve one or more credit card accounts and occur within a period of 90 consecutive days commencing on the date of the first violation, is $500 or more and is less than $5,000, a felony of the fourth degree if the cumulative retail value of the involved property and services is $5,000 or more and is less than $100,000, and a felony of the third degree if the cumulative retail value of the involved property and services is $100,000 or more. (Sec. 2913.21(D).)

Third prohibition and penalty. The third prohibition prohibits a person, with purpose to any of the above prohibitions, from receiving, possessing, controlling, or disposing of a credit card. A person who violates this prohibition also is guilty of misuse of credit cards and is guilty of a misdemeanor of the first degree. (Sec. 2913.21(C) and (D)(1) and (2).)

Operation of the bill

Good faith exception. The bill specifies that nothing in the section that prohibits the offense of misuse of credit cards imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but who through no fault of the person's own has been unable to provide the assistance (sec. 2913.21(D)).

Enhanced penalty. If the violation involves paragraph (1) or (2) of the second prohibition, and if the victim of the offense is an elderly person or disabled adult who lacks the capacity to consent, misuse of credit cards is whichever of the following is applicable (sec. 2913.21(E)(4)):

(1) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is less than $500, a felony of the fifth degree;

(2) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is $500 or more and is less than $5,000, a felony of the fourth degree;

(3) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is $5,000 or more and is less than $25,000, a felony of the third degree;

(4) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is $25,000 or more and is less than $100,000, a felony of the second degree;

(5) If the debt for which the card is held as security or the cumulative retail value of the property or services involved in the violation is $100,000 or more, a felony of the first degree.

If these special penalty provisions apply and if the violation occurs as part of a course of conduct involving violations of, attempts to violate, conspiracies to violate, or complicity in violations of paragraph (1) or (2) of the second prohibition or the offenses of theft, unauthorized use of a vehicle, unauthorized use of

property, unauthorized use of computer or telecommunications property, forgery, forging identification cards or selling or distributing forged identification cards, or securing writings by deception, the court, in determining the degree of the offense, may aggregate the value of all property, services, losses to the victims, and debts for which credit cards are held as security involved the violations comprising that course of conduct. (Sec. 2913.21(F).)

The bill does not change the offense for any of the other prohibitions.

Technical change. The bill makes a technical change in section 301.27(G) regarding a cross reference to section 2913.21.

Forgery and forging identification cards or selling or distributing forged identification cards

Existing law

Prohibitions and penalties. Existing law prohibits a person, with purpose to defraud or knowing that the person is facilitating a fraud, from doing any of the following (sec. 2913.31(A)):

(1) Forging any writing of another without the other person's authority;

(2) Forging any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;

(3) Uttering, or possessing with purpose to utter, any writing that the person knows to have been forged.

A person who violates this prohibition is guilty of forgery. Generally, forgery is a felony of the fifth degree. If property or services are involved in the offense or the victim suffers a loss and if the value of the property or services or the loss to the victim is $5,000 or more and is less than $100,000, forgery is a felony of the fourth degree. If property or services are involved in the offense or the victim suffers a loss and if the value of the property or services or the loss to the victim is $100,000 or more, forgery is a felony of the third degree. (Sec. 2913.31(C)(1).)

Existing law also prohibits a person from knowingly doing either of the following (sec. 2913.31(C)(1)):

(1) Forging an identification card;

(2) Selling or otherwise distributing a card that purports to be an identification card, knowing it to have been forged.

A person who violates this prohibition is guilty of forging identification cards or selling or distributing forged identification cards. Generally, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree. If the offender previously has been convicted of the offense, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree, and, in addition, the court must impose upon the offender a fine of not less than $250. (Sec. 2913.31(B).)

Operation of the bill

Good faith exception. The bill specifies that nothing in the section that prohibits the offenses of forgery and forging identification cards or selling or distributing forged identification cards imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but who through no fault of the person's own has been unable to provide the assistance (sec. 2913.31(C)).

Enhanced penalty. If the victim of the offense of forgery is an elderly person or disabled adult who lacks the capacity to consent, the bill creates special penalty provisions that apply. Generally, forgery when it is committed under these conditions is a felony of the fifth degree. If property or services are involved in the offense or if the victim suffers a loss, forgery when it is committed under these conditions is one of the following (sec. 2913.31(D)(1)(b)):

(1) If the value of the property or services or the loss to the victim is $500 or more and is less than $5,000, a felony of the fourth degree;

(2) If the value of the property or services or the loss to the victim is $5,000 or more and is less than $25,000, a felony of the third degree;

(3) If the value of the property or services or the loss to the victim is $25,000 or more and is less than $100,000, a felony of the second degree;

(4) If the value of the property or services or the loss to the victim is $100,000 or more, a felony of the first degree.

If these special penalty provisions apply and if the forgery occurs as part of a course of conduct involving violations of, attempts to violate, conspiracies to violate, or complicity in violations of forgery, forging identification cards or selling or distributing forged identification cards, theft, unauthorized use of a

vehicle, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of credit cards in certain circumstances, or securing writings by deception, the court, in determining the degree of the offense, may aggregate the value of all property, services, losses to the victims, and debts for which credit cards are held as security involved the violations comprising that course of conduct. (Sec. 2913.31(D)(1)(d).)

Securing writings by deception

Existing law

Existing law prohibits a person, by deception, from causing another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred. A person who violates this prohibition is guilty of securing writings by deception. Generally, securing writings by deception is a misdemeanor of the first degree. If the value of the property or the obligation involved is $500 or more and less than $5,000, securing writings by deception is a felony of the fifth degree. If the value of the property or the obligation involved is $5,000 or more and is less than $100,000, securing writings by deception is a felony of the fourth degree. If the value of the property or the obligation involved is $100,000 or more, securing writings by deception is a felony of the third degree. (Sec. 2913.43.)

Operation of the bill

Good faith exception. The bill specifies that nothing in the section that prohibits the offense of securing writings by deception imposes criminal liability on a person who has made a good faith effort to assist an elderly person or disabled adult in the management of the elderly person's or disabled adult's property but who through no fault of the person's own has been unable to provide the assistance (sec. 2913.43(B)).

Enhanced penalty. If the victim of the offense is an elderly person or disabled adult who lacks the capacity to consent, the bill increases the penalty for securing writings by deception, and securing writings by deception is whichever of the following is applicable (sec. 2913.43(C)(3)):

(1) If the value of the property or obligation involved is less than $500, a felony of the fifth degree;

(2) If the value of the property or obligation involved is $500 or more and is less than $5,000, a felony of the fourth degree;

(3) If the value of the property or obligation involved is $5,000 or more and is less than $25,000, a felony of the third degree;

(4) If the value of the property or obligation involved is $25,000 or more and is less than $100,000, a felony of the second degree;

(5) If the value of the property or obligation involved is $100,000 or more, a felony of the first degree.

If these special penalty provisions apply and if the offense occurs as part of a course of conduct involving other violations of, attempts to violate, conspiracies to violate, or complicity in violations of this offense or theft, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer or telecommunications property, misuse of credit cards in certain circumstances, forgery, or forging identification cards or selling or distributing forged identification cards, the court, in determining the degree of the offense, may aggregate the value of all property, services, losses to the victims, and debts for which credit cards are held as security involved the violations comprising that course of conduct. (Sec. 2913.43(D)(3).)

HISTORY

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