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Bill Analysis
Legislative Service Commission

Sub. H.B. 364*
123rd General Assembly
(As Reported by S. Judiciary)

Reps. Goodman, Tiberi, Peterson, O'Brien, Patton, Taylor, Bender, Trakas, Clancy, Flannery, Allen, Verich, Willamowski, Metzger, Harris, Evans, Brading, Myers, Salerno, Buchy, Mead, Olman, Widener

BILL SUMMARY

- Specifies that, if an offender commits a series of offenses under the "theft in office" statute in the offender's same employment, capacity, or relationship to another, all of those offenses may be tried as a single offense.
- Provides that, if a series of offenses under the "theft in office" statute are tried as a single offense as described in the preceding paragraph, the value of the property or services involved for purposes of the prosecution is the aggregate value of all property or services involved in all of the offenses in the series.

CONTENT AND OPERATION

Existing law

Prosecution, as a single offense, of a series of theft-related offenses

Offenses committed in the same employment, capacity, or relationship to another. Existing law provides that, when a series of offenses under R.C. 2913.02 (see **COMMENT 1**), or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of R.C. 1716.14(A)(1), 2913.02, 2913.03, 2913.04, 2913.21(B)(1) or (2), 2913.31, or 2913.43 (see **COMMENT 2**) involving a victim who is an elderly person or disabled adult, is committed by the offender in the offender's same employment, capacity, or

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

relationship to another, *all of those offenses must be tried as a single offense*. The value of the property or services involved in the series of offenses for the purpose of determining the value, as described below in "**Determination of value of property for prosecution of a theft offense**," is the aggregate value of all property and services involved in all offenses in the series.

In prosecuting a single offense under this provision, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses in the offender's same employment, capacity, or relationship to another. (R.C. 2913.61(C)(1) and (3).)

Offenses committed in a common course of conduct to defraud multiple victims or against one or more elderly or disabled victims. Existing law also provides that, if an offender commits a series of offenses under R.C. 2913.02 (see **COMMENT 1**) that involves a common course of conduct to defraud multiple victims, *all of the offenses may be tried as a single offense*. If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of R.C. 1716.14(A)(1), 2913.02, 2913.03, 2913.04, 2913.21(B)(1) or (2), 2913.31, or 2913.43 (see **COMMENT 2**), whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, *all of those offenses may be tried as a single offense*. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value, as described below in "**Determination of value of property for prosecution of a theft offense**," is the aggregate value of all property and services involved in all of the offenses in the course of conduct.

In prosecuting a single offense under this provision, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct. (R.C. 2913.61(C)(2) and (3).)

Determination of value of property for prosecution of a theft offense

Existing law specifies that, when a person is charged with a "theft offense" (see **COMMENT 3**), or with a violation of R.C. 1716.14(A)(1) involving a victim who is an elderly person or disabled adult that involves property or services valued at \$500 or more, property or services valued at \$500 or more and less than \$5,000, property or services valued at \$5,000 or more and less than \$25,000, property or services valued at \$25,000 or more and less than \$100,000, or property or services valued at \$100,000 or more, the jury or court trying the accused must determine

the value of the property or services as of the time of the offense and, if a guilty verdict is returned, must return the finding of value as part of the verdict. In any case in which the jury or court determines that the value of the property or services at the time of the offense was \$500 or more, it is unnecessary to find and return the exact value, and it is sufficient if the finding and return is to the effect that the value of the property or services involved was \$500 or more and less than \$5,000, was \$5,000 or more and less than \$25,000, was \$25,000 or more and less than \$100,000, or was \$100,000 or more.

If more than one item of property or services is involved in a theft offense or in a violation of R.C. 1716.14(A)(1) involving a victim who is an elderly person or disabled adult, the value of the property or services involved for the purpose of determining the value as described in the preceding paragraph is the aggregate value of all property or services involved in the offense.

Existing law sets forth a list of criteria that must be used in determining the value of property or services involved in a theft offense, and a series of evidentiary rules that, without limitation on the evidence that may be used to establish the value of property or services involved in a theft offense, are to be used in prosecuting a theft offense. (R.C. 2913.61(A), (B), (D), and (E).)

Offense of "theft in office"

Existing law prohibits a "public official" or "party official" (see **COMMENT 4**) from committing any "theft offense," (see **COMMENT 3**) 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 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 person who violates this prohibition is guilty of theft in office. Generally, theft in office is a felony of the fifth degree. If the value of property or services stolen is \$500 or more and is less than \$5,000, theft in office is a felony of the fourth degree. If the value of property or services stolen is \$5,000 or more, theft in office is a felony of the third degree. A public official or party official who is convicted of theft in office is forever disqualified from holding any public office, employment, or position of trust in Ohio. A court that imposes sentence for theft in office must require the offender to make restitution in a specified manner, in addition to the term of imprisonment and any fine imposed. (R.C. 2921.41.)

Operation of the bill

The bill enacts a new provision that, in specified circumstances, authorizes the prosecution as a single offense of a series of offenses committed under the "theft in office" statute (see **COMMENT 5**). It specifies that, when a series of two or more offenses under the "theft in office" statute is committed by an offender in the offender's same employment, capacity, or relationship to another, *all of those offenses may be tried as a single offense*. If the offenses are tried as a single offense, the value of the property or services involved for purposes of determining the value as required under the existing provisions described above in "Determination of value of property for prosecution of a theft offense," which the bill does not change, is the aggregate value of all property or services involved in all of the offenses in the series.

The bill provides that, in prosecuting a single offense under its provision described in the preceding paragraph, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more offenses under the "theft in office" statute in the offender's same employment, capacity, or relationship to another. (R.C. 2913.61(C)(3) and (4).)

COMMENT

1. Existing R.C. 2913.02, not in the bill, 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: without the consent of the owner or person authorized to give consent; beyond the scope of the express or implied consent of the owner or person authorized to give consent; by deception; by threat; or by intimidation. A violation of the prohibition is "theft," and is punished as described in paragraphs (a) to (e), below:

(a) Subject to paragraphs (b) to (e), below, generally, the violation is "petty theft," a misdemeanor of the first degree. If the value of the property or services stolen is \$500 or more and less than \$5,000 or if the property stolen is any property listed in R.C. 2913.71, a violation is "theft," a felony of the fifth degree. If the value is \$5,000 or more and less than \$100,000, a violation is "grand theft," a felony of the fourth degree. If the value is \$100,000 or more, a violation is "aggravated theft," a felony of the third degree.

(b) If the victim of the offense is an elderly person or disabled adult, a violation is "theft from an elderly person or disabled adult," which generally is a felony of the fifth degree. If the value of the property or services stolen is \$500 or more and is less than \$5,000, theft from an elderly person or disabled adult is a

felony of the fourth degree. If the value is \$5,000 or more and less than \$25,000, theft from an elderly person or disabled adult is a felony of the third degree. If the value is \$25,000 or more, theft from an elderly person or disabled adult is a felony of the second degree.

(c) If the property stolen is a firearm or dangerous ordnance, a violation is "grand theft," a felony of the fourth degree.

(d) If the property stolen is a motor vehicle, a violation is "grand theft of a motor vehicle," a felony of the fourth degree.

(e) If the property stolen is any dangerous drug, a violation 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.

2. Under existing law, the listed offenses, not in the bill, are as follows: (a) R.C. 1716.14(A)(1) contains the offense of "solicitation fraud," (b) R.C. 2913.02 contains "theft" and is described above in **COMMENT 1**, (c) R.C. 2913.03 contains the offense of "unauthorized use of a vehicle," (d) R.C. 2913.04 contains the offenses of "unauthorized use of property" and "unauthorized use of computer or telecommunication property," (e) R.C. 2913.21(B)(1) and (B)(2) contain the offense of "misuse of credit cards" when it is based on the offender's obtaining control of a credit card as security for a debt or 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, (f) R.C. 2913.31 contains the offenses of "forgery" and "forging identification cards or selling or distributing forged identification cards," and (g) R.C. 2913.43 contains the offense of "securing writings by deception."

3. Under existing law, "theft offense" means any of the following (R.C. 2913.01(K)--not in the bill):

(a) Aggravated robbery (R.C. 2911.01), robbery (R.C. 2911.02), aggravated burglary (R.C. 2911.11), burglary (R.C. 2911.12), breaking and entering (R.C. 2911.13), safecracking (R.C. 2911.31), tampering with coin machines (R.C. 2911.32), petty theft, theft, grand theft, grand theft of a motor vehicle, aggravated theft, and theft of drugs (R.C. 2913.02), unauthorized use of a vehicle (R.C. 2913.03), unauthorized use of property and unauthorized use of computer property (R.C. 2913.04), possession of an unauthorized device and sale of an unauthorized device (R.C. 2913.041), telecommunications fraud (R.C. 2913.05), unlawful use of a telecommunications device (R.C. 2913.06), passing bad checks (R.C. 2913.11), misuse of credit cards (R.C. 2913.21), forgery and forging identification cards or selling or distributing forged identification cards

(R.C. 2913.31), criminal simulation (R.C. 2913.32), making or using slugs (R.C. 2913.33), trademark counterfeiting (R.C. 2913.34), Medicaid fraud (R.C. 2913.40), tampering with records (R.C. 2913.42), securing writings by deception (R.C. 2913.43), personating an officer (R.C. 2913.44), defrauding creditors (R.C. 2913.45), insurance fraud (R.C. 2913.47), receiving stolen property (R.C. 2913.51), cheating (R.C. 2915.05), corrupting sports (R.C. 2915.05), theft in office (R.C. 2921.41), the former offense of insurance fraud (former R.C. 2913.47), or the former offense of workers' compensation fraud (former R.C. 2913.48);

(b) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any section listed in clause (a) or defrauding a livery or hostelry (former R.C. 2913.41), denying access to a computer (R.C. 2913.81), or corrupting sports (R.C. 2915.06) as those offenses existed prior to July 1, 1996;

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

(d) A conspiracy to commit, attempt to commit, or complicity in committing any offense identified in clause (a), (b), or (c).

4. Under existing law, for purposes of 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.

5. The Ohio Supreme Court has held that the provisions of existing R.C. 2913.61(C)(1) that require the prosecution as a single offense of a series of offenses under R.C. 2913.02 that the offender commits in the offender's same employment, capacity, or relationship to another, as described above in "**Offenses committed in the same employment, capacity, or relationship to another**," do not apply to a series of offenses committed under R.C. 2921.41, the "theft in office" statute. The court stated that: (a) R.C. 2913.61(C)(1), by its specific, unambiguous terms, applies to "a series of offenses under section 2913.02," (b) the

R.C. 2913.61(C)(1) provisions do not mention an offense under R.C. 2921.41, (c) an offense under R.C. 2921.41 is a separate and distinct offense from an offense under R.C. 2913.02, and (d) even though an offense under R.C. 2921.41 is a "theft offense" (see **COMMENT 3**), it is not an offense under R.C. 2913.02, and, thus, the specific, unambiguous provisions of R.C. 2913.61(C)(1) do not apply to a series of offenses committed under R.C. 2921.41. *State v. Krutz* (1986), 28 Ohio St.3d 36.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-02-99	p. 753
Reported, H. Criminal Justice	12-08-99	p. 1437
Passed House (84-4)	12-09-99	pp. 1445-1446
Reported, S. Judiciary	---	---

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