Diana C. Talarek *Legislative Service Commission*

H.B. 24

126th General Assembly
(As Introduced)

Rep. Blasdel

BILL SUMMARY

- Specifies that, in any case in which a person, while in Ohio, conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of Ohio and the other jurisdiction, the person is subject to criminal prosecution and punishment in Ohio for the conspiracy, attempt, or complicity, and for any resulting offense that is committed or completed in the other jurisdiction.

- Specifies that, in addition to other bases under which a person is subject to criminal prosecution and punishment in Ohio, a person also is subject to criminal prosecution and punishment in Ohio if the person, while in Ohio, kidnaps, abducts, unlawfully restrains, or commits criminal child enticement against another person, and the person carries, takes, removes, or entices the other person into another state or country and, while in the other state or country, commits or completes any offense of violence or theft offense against the other person (in any case in which a person engages in the conduct described in this paragraph, the person is subject to criminal prosecution and punishment for the offense of violence or theft offense in Ohio state in the same manner as if the offense of violence or theft offense had been committed within Ohio).

- Modifies the existing provision that specifies that, in homicide, the element occurring in Ohio that subjects the offender to Ohio criminal jurisdiction is either the act that causes death, or the physical contact that causes death, or the death itself to instead specify that, in homicide, the element includes, but is not limited to, the act that causes death, the physical contact that causes death, the death itself, or any other element that is set forth in the offense in question.

- Specifies that, when a person is subject to criminal prosecution and punishment in Ohio for an offense committed or completed outside of Ohio, the person is subject to all specifications for that offense that would be applicable if the offense had been committed within this state.

- Specifies that any act, conduct, or element that is a basis of a person being subject under the criminal jurisdiction statute to criminal prosecution and punishment in Ohio need not be committed personally by the person as long as it is committed by another person who is in complicity or conspiracy with the person.

- Specifies that the criminal jurisdiction section must be liberally construed, consistent with constitutional limitations, to allow Ohio the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting, Ohio.

- In the existing provision that specifies venue for a case when the offense is conspiracy, attempt, or complicity occurring in Ohio that results in an offense being committed outside of Ohio, adds new language that specifies that, if an offense resulted outside Ohio from the conspiracy, attempt, or complicity, that offense also may be tried in any jurisdiction in which the conspiracy, attempt, complicity, or any of the elements of the conspiracy, attempt, or complicity occurred.

- Specifies venue for the trial of an offender who is subject to criminal jurisdiction in Ohio under the bill's provision that confers jurisdiction over an offense of violence or theft offense committed by a person outside of Ohio when the person, while in Ohio, kidnaps, abducts, unlawfully restrains, or commits criminal child enticement against another person, and the person carries, takes, removes, or entices the other person into another state or country and, while in the other state or country, commits or completes the offense of violence or theft offense against the other person--when an offender is subject under this provision to criminal prosecution and punishment in Ohio for an offense committed or completed outside Ohio, the offender may be tried in any jurisdiction from which the victim was kidnapped, abducted, unlawfully restrained, or criminally enticed or in any other jurisdiction described in the criminal venue statute that is applicable regarding the case.

- States that the General Assembly declares that it intends by the amendments made in the bill to prospectively overrule the decision of the Ohio Supreme Court in *State v. Yarbrough* (2004), 104 Ohio St.3d 1.

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CONTENT AND OPERATION

Criminal jurisdiction

Existing law

Existing law provides that a person is subject to criminal prosecution and punishment in Ohio if any of the following occur: (1) the person commits an offense under the laws of Ohio, any element of which takes place in Ohio (see the next paragraph), (2) while in Ohio, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of this state and the other jurisdiction (hereafter, this clause is referred to as the "Ohio conspiracy/attempt/complicity jurisdictional basis"), (3) while out of Ohio, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in Ohio, (4) while out of this state, the person omits to perform a legal duty imposed by the laws of Ohio, which omission affects a legitimate interest of the state in protecting, governing, or regulating any person, property, thing, transaction, or activity in Ohio, (5) while out of Ohio, the person unlawfully takes or retains property and subsequently brings any of the unlawfully taken or retained property into Ohio, (6) while out of Ohio, the person unlawfully takes or entices another and subsequently brings the other person into Ohio, or (7) the person, by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, causes or knowingly permits any writing, data, image, or other telecommunication to be disseminated or transmitted into Ohio in violation of Ohio law (see **COMMENT** 1).

Existing law specifies that in homicide, the element referred to in clause (1) of the preceding paragraph (i.e., the element that takes place in Ohio) is either the act that causes death, or the physical contact that causes death, or the death itself, and that, if any part of the body of a homicide victim is found in Ohio, the death is presumed to have occurred within Ohio (see **COMMENT** 1). (R.C. 2901.11(A) and (B).)

For purposes of the existing criminal jurisdiction provisions, "Ohio" includes the land and water within its boundaries and the air space above that land and water, with respect to which Ohio has either exclusive or concurrent legislative jurisdiction. Where the boundary between Ohio and another state or foreign country is disputed, the disputed territory is conclusively presumed to be within Ohio for purposes of the criminal jurisdiction section. Existing law gives the courts of common pleas of Adams, Athens, Belmont, Brown, Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, Meigs, Monroe, Scioto, and Washington counties jurisdiction beyond the north or northwest shore of the Ohio river extending to the opposite shore line, between the extended boundary lines of any adjacent counties or adjacent state. It specifies that each of those courts of common pleas has concurrent jurisdiction on the Ohio river with any adjacent court of common pleas that borders on that river and with any court of Kentucky or of West Virginia that borders on the Ohio river and that has jurisdiction on the Ohio river under Kentucky or West Virginia law, whichever is applicable, or under federal law. (R.C. 2901.11(C).)

Finally, existing law specifies that, when an offense is committed under the laws of Ohio, and it appears beyond a reasonable doubt that the offense or any element of the offense took place either in Ohio or in another jurisdiction or jurisdictions, but it cannot reasonably be determined in which it took place, the offense or element is conclusively presumed to have taken place in Ohio for purposes of the criminal jurisdiction section (R.C. 2901.11(D)).

Operation of the bill

The bill modifies the provisions that set forth Ohio's criminal jurisdiction in the following ways:

(1) It adds new language to the Ohio conspiracy/attempt/complicity jurisdictional basis, as described above in clause (1) of the first paragraph under "***Existing law***" that specifies that, in any case in which a person, while in Ohio, conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of Ohio and the other jurisdiction, *the person is subject to criminal prosecution and punishment in Ohio for the conspiracy, attempt, or complicity, and for any*

resulting offense that is committed or completed in the other jurisdiction (R.C. 2901.11(A)(2)).

(2) It adds a new provision that confers jurisdiction in circumstances not specifically addressed by existing law. The bill specifies that, in addition to the bases described above in the first paragraph under "***Existing law***" under which a person is subject to criminal prosecution and punishment in Ohio, a person also is subject to criminal prosecution and punishment in Ohio if the person, while in Ohio, kidnaps, abducts, unlawfully restrains, or commits criminal child enticement against another person, and the person carries, takes, removes, or entices the other person into another state or country and, while in the other state or country, commits or completes any "offense of violence" (see **COMMENT** 2) or "theft offense" (see **COMMENT** 3) against the other person. In any case in which a person engages in the conduct described in this division, the person is subject to criminal prosecution and punishment for the offense of violence or theft offense in Ohio in the same manner as if the offense of violence or theft offense had been committed within Ohio. (R.C. 2901.11(B)(1).)

(3) It modifies the existing provision that specifies that in homicide, the element referred to in clause (1) of the first paragraph under "***Existing law***" is either the act that causes death, or the physical contact that causes death, or the death itself to expand the events listed to include "any other element set forth in the offense in question" and to specify that the events listed are merely examples, and not an exclusive listing, of the element. Specifically, under the bill, the provision states that, in homicide, the element referred to in clause (1) *includes, but is not limited to*, the act that causes death, the physical contact that causes death, the death itself, *or any other element that is set forth in the offense in question*. The bill does not change the provision that states that, if any part of the body of a homicide victim is found in Ohio, the death is presumed to have occurred within Ohio. (R.C. 2901.11(B)(2).)

(4) It enacts a provision that specifies that, when a person is subject to criminal prosecution and punishment in Ohio for an offense committed or completed outside of Ohio, the person is subject to all specifications for that offense (e.g., specifications for capital punishment aggravating circumstances set forth in R.C. 2929.04(A), specifications for firearm mandatory sentences set forth in R.C. 2929.14(D)(1), and specifications for repeat violent offender sentences set forth in R.C. 2929.14(D)(2)) that would be applicable if the offense had been committed within this state (R.C. 2901.11(E)).

(5) It enacts a provision that specifies that any act, conduct, or element that is a basis of a person being subject under the criminal jurisdiction section to criminal prosecution and punishment in Ohio need not be committed personally by

the person as long as it is committed by another person who is in complicity or conspiracy with the person (R.C. 2901.11(F)).

(6) It enacts a provision that specifies that the criminal jurisdiction section must be liberally construed, consistent with constitutional limitations, to allow Ohio the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting, Ohio (R.C. 2901.11(G)).

Venue for a trial in a criminal case

Existing law

Existing law provides that the trial of a criminal case in Ohio must be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed (R.C. 2901.12(A)). It also provides the following more detailed rules that govern offenses occurring in specified circumstances or specified types of offenses (R.C. 2901.12(B) to (J)):

(1) When the offense or any element of the offense was committed in an aircraft, motor vehicle, train, watercraft, or other vehicle, in transit, and it cannot reasonably be determined in which jurisdiction the offense was committed, the offender may be tried in any jurisdiction through which the aircraft, motor vehicle, train, watercraft, or other vehicle passed.

(2) When the offense involved the unlawful taking or receiving of property or the unlawful taking or enticing of another, the offender may be tried in any jurisdiction from which or into which the property or victim was taken, received, or enticed.

(3) When the offense is conspiracy, attempt, or complicity cognizable under the Ohio conspiracy/attempt/complicity jurisdictional basis described above in "***Existing law***" under "***Criminal jurisdiction***," the offender may be tried in any jurisdiction in which the conspiracy, attempt, complicity, or any of its elements occurred.

(4) When the offense is conspiracy or attempt occurring outside of Ohio that is within the criminal jurisdiction of Ohio as described above in "***Existing law***" under "***Criminal jurisdiction***," the offender may be tried in any jurisdiction in which the offense that was the object of the conspiracy or attempt, or any element of that offense, was intended to or could have taken place. When the offense is complicity occurring outside of Ohio that is within the criminal jurisdiction of Ohio as described above, the offender may be tried in any jurisdiction in which the principal offender may be tried.

(5) When an offense is considered to have been committed in Ohio while the offender was out of Ohio, and the jurisdiction in Ohio in which the offense or any material element of the offense was committed is not reasonably ascertainable, the offender may be tried in any jurisdiction in which the offense or element reasonably could have been committed.

(6) When it appears beyond a reasonable doubt that an offense or any element of an offense was committed in any of two or more jurisdictions, but it cannot reasonably be determined in which jurisdiction the offense or element was committed, the offender may be tried in any of those jurisdictions.

(7) When an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender may be tried for all of those offenses in any jurisdiction in which one of those offenses or any element of one of those offenses occurred. Without limitation on the evidence that may be used to establish the course of criminal conduct, any of the following is prima-facie evidence of a course of criminal conduct: (a) the offenses involved the same victim, or victims of the same type or from the same group, (b) the offenses were committed by the offender in the offender's same employment, or capacity, or relationship to another, (c) the offenses were committed as part of the same transaction or chain of events, or in furtherance of the same purpose or objective, (d) the offenses were committed in furtherance of the same conspiracy, (e) the offenses involved the same or a similar *modus operandi*, or (f) the offenses were committed along the offender's line of travel in Ohio, regardless of the offender's point of origin or destination.

(8) When the offense involves a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, the offender may be tried in any jurisdiction containing any location of the computer, computer system, or computer network of the victim of the offense, in any jurisdiction from which or into which, as part of the offense, any writing, data, or image is disseminated or transmitted by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service, or information service, or in any jurisdiction in which the alleged offender commits any activity that is an essential part of the offense.

(9) When the offense involves the death of a person, and it cannot reasonably be determined in which jurisdiction the offense was committed, the offender may be tried in the jurisdiction in which the dead person's body or any part of the dead person's body was found.

Under existing law, notwithstanding any other requirement for the place of trial, venue may be changed, upon motion of the prosecution, the defense, or the

court, to any court having jurisdiction of the subject matter outside the county in which trial otherwise would be held, when it appears that a fair and impartial trial cannot be held in the jurisdiction in which trial otherwise would be held, or when it appears that trial should be held in another jurisdiction for the convenience of the parties and in the interests of justice (R.C. 2901.12(K)).

Operation of the bill

The bill modifies the provisions that set forth the venue for trials of criminal cases in the following ways:

(1) It adds new language to the existing provision that specifies venue for a case when the offense is conspiracy, attempt, or complicity cognizable under the Ohio conspiracy/attempt/complicity jurisdictional basis described above in "***Existing law***" under "***Criminal jurisdiction***." The new language specifies that, *if an offense resulted outside Ohio from the conspiracy, attempt, or complicity, that offense also may be tried in any jurisdiction in which the conspiracy, attempt, complicity, or any of the elements of the conspiracy, attempt, or complicity occurred*. Thus, under the bill, the offender may be tried for the conspiracy, attempt, or complicity that occurred in Ohio in any jurisdiction in which the conspiracy, attempt, complicity, or any of its elements occurred, and may be tried for an offense that was committed outside of Ohio but resulted from the Ohio conspiracy, attempt, or complicity in any jurisdiction in which the conspiracy, attempt, complicity, or any of the elements of the conspiracy, attempt, or complicity occurred. (R.C. 2901.12(D).)

(2) It enacts a new provision that specifies venue for the trial of an offender who is subject to criminal jurisdiction in Ohio under the bill's provision that confers jurisdiction over an offense of violence or theft offense committed by a person outside of Ohio when the person, while in Ohio, kidnaps, abducts, unlawfully restrains, or commits criminal child enticement against another person, and the person carries, takes, removes, or entices the other person into another state or country and, while in the other state or country, commits or completes the offense of violence or theft offense against the other person (see "***Operation of the bill***" under "***Criminal jurisdiction***"). Under the bill, when an offender is subject under this provision to criminal prosecution and punishment in Ohio for an offense committed or completed outside Ohio, the offender may be tried in any jurisdiction from which the victim was kidnapped, abducted, unlawfully restrained, or criminally enticed or in any other jurisdiction described in the criminal venue statute that is applicable regarding the case. (R.C. 2901.12(K).)

Intent of General Assembly in enacting the bill

The bill states that the General Assembly declares that it intends by the amendments made in the bill to prospectively overrule the decision of the Ohio

Supreme Court in *State v. Yarbrough* (2004), 104 Ohio St.3d 1 (see **COMMENT** 1). (Section 3.)

COMMENT

1. In *State v. Yarbrough* (2004), 104 Ohio St.3d 1, the Ohio Supreme Court addressed the application of the Ohio criminal venue statute to a case involving multi-state criminal conduct. Briefly, in *Yarbrough*, the defendant and an accomplice kidnapped two students in Ohio, stole their car, committed other related crimes in Ohio, drove the students to Pennsylvania, and killed the students while in Pennsylvania. The defendant and the accomplice were charged in Ohio for all the crimes, including the homicides that they committed in Pennsylvania (the homicide charges were aggravated murder charges under Ohio law, with the defendant's charges including death penalty specifications of multiple aggravating circumstances). The defendant was convicted of the aggravated murder and the death penalty specifications and sentenced to death; he also was convicted of many of the other offenses and received a total prison sentence of 59 years for those crimes. In *Yarbrough*, the Supreme Court vacated the defendant's convictions of aggravated murder and dismissed those charges for lack of subject-matter jurisdiction in Ohio under R.C. 2901.11, which sets forth the criminal jurisdiction of Ohio. The Court let stand the convictions of the defendant of the other offenses and the resulting 59-year prison sentence.

In *Yarbrough*, the Court identified several reasons why it believed that the language of R.C. 2901.11 did not give Ohio jurisdiction over the homicides in the case that occurred in Pennsylvania. It then stated that the Ohio Constitution gives the General Assembly the power to decide the scope of the jurisdiction of the common pleas courts, that (in R.C. 2901.11) the General Assembly chose to set special limits on the power of those courts to hear homicide cases, and that the Court must respect that choice, for its role was "to interpret, not legislate." A summary of the reasons given, and the determinations made, by the Court in *Yarbrough* follows:

(a) First, the Court held that the "any element" provision of R.C. 2901.11(A)(1), which specifies that a person may be tried for an offense in Ohio if the person commits any element of the offense within Ohio's boundaries, did not apply in the case. In arriving at this determination, the Court stated that: (i) R.C. 2901.11(B), which describes "the element" referred to in R.C. 2901.11(A)(1) for homicide cases, narrows the scope of the "any element" provision in homicide cases to "either the act that causes death, or the physical contact that causes death, or the death itself," (ii) although the felony portion of the aggravated murder charges against the defendant in the case occurred in Ohio (i.e., the kidnapping, robbery, etc.), undisputed evidence established that the two victims were killed in Pennsylvania, and (iii) the act causing the deaths, the physical contact causing the

deaths, and the deaths themselves all occurred in Pennsylvania and, as a result, under a plain reading of R.C. 2901.11, Ohio did not have statutory jurisdiction over the homicides of the two victims.

(b) Second, the Court stated that R.C. 2901.11 does not include a "course of conduct" provision that grants Ohio jurisdiction over a criminal offense that occurs outside of Ohio but that is part of a "course of conduct" including one or more offense committed in Ohio. The Court noted that the prosecutor and trial judge in the case apparently applied a portion of R.C. 2901.12, the state's venue statute, that includes "course of conduct" language as the purported basis of Ohio's jurisdiction in the case, but the Court stated that this application was erroneous because R.C. 2901.12 does not grant criminal jurisdiction to Ohio *but presupposes that the state has jurisdiction* to try a case and is irrelevant if the state does not have that jurisdiction.

(c) Third, the Court determined that the complicity provision of R.C. 2901.11(A), which specifies that a person may be tried in Ohio for an offense the person commits in another jurisdiction if, while in Ohio, the person is guilty of complicity in the commission of the offense in the other jurisdiction, which offense is an offense under both the laws of Ohio and the other jurisdiction, did not apply in the case. In arriving at this determination, the Court again referred to R.C. 2901.11(B), holding that: (i) R.C. 2901.11(B) is an "express and distinct provision governing jurisdiction in homicide prosecutions" that "trumps the general language in the statute about Ohio courts' jurisdiction to hear conspiracy, attempt, and complicity charges involving myriad crimes," and (ii) under R.C. 2901.11, a murderer acting alone who plans his or her crime in Ohio but carries it out in another state cannot be tried in Ohio for the crime, the Court could "find nothing in the statutes that would produce a different result when the murderer plans the crime in Ohio with others before leaving the state to commit the homicide itself," and the "state is not permitted, in other words, to evade the express jurisdictional limit on homicide cases by recasting a homicide case as a complicity-to-commit homicide case."

2. Existing R.C. 2901.01, not in the bill, provides that, as used in the Revised Code, "offense of violence" means any of the following:

(a) A violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211 [2903.21.1], 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1), (2), or (3), or 2919.22(B)(1), (2), (3), or (4) or felonious sexual penetration in violation of former R.C. 2907.12;

(b) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any section, division, or offense listed in **COMMENT** 2(a), above;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense identified in **COMMENT** 2(a), (b), or (c), above.

3. As used in the bill's criminal jurisdiction provisions, "theft offense" means any of the following (existing R.C. 2913.01, not in the bill, by reference in R.C. 2901.11(H)):

(a) 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, 2913.47, former R.C. 2913.47 or 2913.48, or R.C. 2913.51, 2915.05, or 2921.41;

(b) 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** 3(a), above or a violation of R.C. 2913.41, 2913.82, or 2915.06 as it existed prior to July 1, 1996;

(c) 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;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense identified in **COMMENT** 3(a), (b), or (c), above.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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