Dennis M. Papp *Legislative Service Commission*

S.B. 290*

126th General Assembly
(As Reported by S. Judiciary – Criminal Justice)

Sens. Schuring, Jacobson, Spada, Clancy, Amstutz, Zurz

BILL SUMMARY

- Authorizes a definite jail term of not more than one year for the offense of "petty theft" if the offender, within five years of the offense, previously has been convicted of two or more offenses of theft.

CONTENT AND OPERATION

Existing law--theft offense prohibition and petty theft

Existing law prohibits a person, with purpose to "deprive" the "owner" of "property" or "services" (see **COMMENT** 1 for definitions of the terms in quotation marks), from knowingly obtaining or exerting control over either the property or services in any of the following ways: (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" (see **COMMENT** 1 for definition), (4) by threat, or (5) by intimidation (R.C. 2913.02(A)).

A violation of the prohibition generally is named the offense of "theft." In certain specified circumstances, the violation is given a more specific name as described below. The penalties for the offense vary, depending on the value of the property or services stolen, the type of victim, the type of property or services stolen, and other factors. Except as otherwise described below in paragraphs (1) to (7) of "***Existing theft offense names and penalties for violation other than petty theft***," a violation of the prohibition is "petty theft," a misdemeanor of the first degree (under existing R.C 2929.24, not in the bill, the authorized incarceration for a misdemeanor of the first degree is a definite jail term of not

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* *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.*

more than 180 days). Note that, under the provision described below in paragraph (1) of "***Existing theft offense names and penalties for violation other than petty theft***," if the value of the property or services stolen is $500 or more, the offense is not petty theft (R.C. 2913.02(A) and (B)).

Operation of the bill

The bill increases, from a maximum of 180 days to a maximum of one year, the authorized jail term for a person who is convicted of or pleads guilty to "petty theft" and who, within five years of the offense, previously has been convicted of or pleaded guilty to two or more violations of the prohibition set forth in R.C. 2913.02, as described above in "***Existing law--theft offense prohibition and petty theft***." Specifically, the bill provides that, if an offender commits a violation of that prohibition that is "petty theft" and the offender within five years of the offense previously has been convicted of or pleaded guilty to two or more violations of that prohibition, the offense remains a misdemeanor of the first degree, but, notwithstanding the jail terms specified in the Misdemeanor Sentencing Law (R.C. 2929.21 to 2929.28) for a misdemeanor of the first degree, the court may sentence the offender for the petty theft to a definite jail term of not more than one year. (R.C. 2913.02(B)(2).)

Existing theft offense names and penalties for violation other than petty theft

The penalties and offense names for violations of R.C. 2913.02 (other than petty theft) under existing law are as follows (R.C. 2913.02(B) and (C)):

(1) 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 R.C. 2913.71 (see **COMMENT** 2), a violation of the 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, a violation of the prohibition is "grand theft," a felony of the fourth degree. If the value of the property or services stolen is $100,000 or more and is less than $500,000, a violation of the prohibition is "aggravated theft," a felony of the third degree. If the value of the property or services is $500,000 or more and is less than $1,000,000, a violation of the prohibition is "aggravated theft," a felony of the second degree. If the value of the property or services stolen is $1,000,000 or more, a violation of the prohibition is "aggravated theft of one million dollars or more," a felony of the first degree.

(2) Except as otherwise described in paragraphs (3) to (7), below, if the victim of the violation is an "elderly person" or "disabled adult" (as defined in existing R.C. 2913.01, not in the bill), a violation of the prohibition is "theft from an elderly person or disabled adult," and the penalties described in this paragraph apply. Except as otherwise described in this paragraph, "theft from an elderly

person or disabled adult" 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 of the property or services stolen is $5,000 or more and is less than $25,000, "theft from an elderly person or disabled adult" is a felony of the third degree. If the value of the property or services stolen is $25,000 or more and is less than $100,000, "theft from an elderly person or disabled adult" is a felony of the second degree. If the value of the property or services stolen is $100,000 or more, "theft from an elderly person or disabled adult" is a felony of the first degree.

(3) If the property stolen is a "firearm" or "dangerous ordnance" (as defined in existing R.C. 2913.01 and 2923.11, not in the bill), a violation of the prohibition is "grand theft," a felony of the third degree, there is a presumption in favor of the court imposing a prison term for the offense, and the offender must serve a prison term imposed for the offense consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If the property stolen is a "motor vehicle" (as defined in existing R.C. 2913.01 and 4501.01, not in the bill), a violation of the prohibition section is "grand theft of a motor vehicle," a felony of the fourth degree.

(5) If the property stolen is any "dangerous drug" (as defined in existing R.C. 2913.01 and 2925.01, not in the bill), a violation of the 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" (as defined in existing R.C. 2913.01 and 2925.01, not in the bill), a felony of the third degree.

(6) If the property stolen is a "police dog or horse" or an "assistance dog" (as defined in existing R.C. 955.011 and 2913.01, not in the bill) and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog, a violation of the prohibition is "theft of a police dog or horse or assistance dog," a felony of the third degree (note that the provision described in this paragraph results from Am. Sub. H.B. 530 of the 126th General Assembly and will be in effect on and after June 30, 2006; the language set forth in the bill, in R.C. 2913.02(B)(7), that refers to a "service dog" is the pre-H.B. 530 language that currently is in effect and that will be replaced on June 30, 2006).

(7) If the property stolen is "anhydrous ammonia" (as defined in existing R.C. 2913.01, not in the bill), a violation of the prohibition is "theft of anhydrous ammonia," a felony of the third degree.

(8) In addition to the penalties described above in paragraph (1), if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender

making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following: (a) unless clause (b) of this paragraph applies, suspend for not more than six months the offender's driver's or commercial driver's license or permit or nonresident operating privilege, or (b) if the offender's driver's or commercial driver's license or permit or nonresident operating privilege has previously been suspended pursuant to the provision described in clause (a) of this paragraph, impose a Class seven suspension of the offender's license, permit, or privilege from the range specified in R.C. 4510.02(A)(7), provided that the suspension must be for at least six months. The court may grant the offender limited driving privileges during the period of the suspension in accordance with R.C. Chapter 4510.

COMMENT

1. Existing R.C. 2913.01, not in the bill, defines a series of terms for purposes of R.C. Chapter 2913. Existing R.C. 2901.01, not in the bill, defines a series of terms for purposes of the Revised Code. The definitions in those sections that are relevant to the bill are:

(a) "Deception," which means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact (R.C. 2913.01(A)).

(b) "Deprive," which means to do any of the following: (i) withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration, (ii) dispose of property so as to make it unlikely that the owner will recover it, or (iii) accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration (R.C. 2913.01(C)).

(c) "Owner," which means, unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful (R.C. 2913.01(D)).

(d) "Property," which means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is

not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them. "Trade secret" has the same meaning as in R.C. 1333.61, not in the bill, and "telecommunications service," "information service," "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in R.C. 2913.01, not in the bill. (R.C. 2901.01(A)(10).)

(e) "Services," which include labor, personal services, professional services, public utility services including wireless service, common carrier services, and food, drink, transportation, entertainment, and cable television services and, for purposes of R.C. 2913.04, include cable services as defined in that section (R.C. 2913.01(E)).

2. Existing R.C. 2913.71, not in the bill, provides that, regardless of the value of the property involved and regardless of whether the offender previously has been convicted of a theft offense, a violation of R.C. 2913.02 or 2913.51, not in the bill, is a felony of the fifth degree if the property involved is any of the following: (a) a credit card, (b) a printed form for a check or other negotiable instrument, that on its face identifies the drawer or maker for whose use it is designed or identifies the account on which it is to be drawn, and that has not been executed by the drawer or maker or on which the amount is blank, (c) a motor vehicle identification license plate as prescribed by R.C. 4503.22, not in the bill, a temporary license placard or windshield sticker as prescribed by R.C. 4503.182, not in the bill, or any comparable license plate, placard, or sticker as prescribed by the applicable law of another state or the United States, (d) a blank form for a certificate of title or a manufacturer's or importer's certificate to a motor vehicle, as prescribed by R.C. 4505.07, not in the bill, or (e) a blank form for any license listed in R.C. 4507.01, not in the bill.

HISTORY

ACTION	DATE
Introduced	03-14-06
Reported, S. Judiciary – Criminal Justice	---

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