

**As Re-Referred by the House Rules and Reference Committee**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**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**

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**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.

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**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:

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**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:

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(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;

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

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state, any other state, the United States, a county, a municipal 16  
corporation, a township, or any political subdivision, 17  
department, or agency of any of them, is owned by a political 18  
party, or is part of a political campaign fund. 19

(B) Whoever violates this section is guilty of theft in 20  
office. Except as otherwise provided in this division, theft in 21  
office is a felony of the fifth degree. If the value of property 22  
or services stolen is one thousand dollars or more and is less 23  
than seven thousand five hundred dollars, theft in office is a 24  
felony of the fourth degree. If the value of property or 25  
services stolen is seven thousand five hundred dollars or more 26  
and is less than one hundred fifty thousand dollars, theft in 27  
office is a felony of the third degree. If the value of property 28  
or services stolen is one hundred fifty thousand dollars or more 29  
and is less than seven hundred fifty thousand dollars, theft in 30  
office is a felony of the second degree. If the value of 31  
property or services stolen is seven hundred fifty thousand 32  
dollars or more, theft in office is a felony of the first 33  
degree. 34

(C) (1) A public official or party official who pleads 35  
guilty to theft in office and whose plea is accepted by the 36  
court or a public official or party official against whom a 37  
verdict or finding of guilt for committing theft in office is 38  
returned is forever disqualified from holding any public office, 39  
employment, or position of trust in this state. 40

(2) (a) (i) A court that imposes sentence for a violation of 41  
this section based on conduct described in division (A) (2) of 42  
this section shall require the public official or party official 43  
who is convicted of or pleads guilty to the offense to make 44  
restitution for all of the property or the service that is the 45

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