

**As Reported by the Senate Government Oversight and Reform
Committee**

132nd General Assembly

**Regular Session
2017-2018**

S. B. No. 268

Senator Wilson

Cosponsors: Senators Bacon, Coley

A BILL

To amend section 2921.41 of the Revised Code to 1
expand the increased penalties for theft in 2
office based on the amount of property or 3
services stolen and to include as restitution 4
certain audit costs of the entity that suffered 5
the loss involved in the offense. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2921.41 of the Revised Code be 7
amended to read as follows: 8

Sec. 2921.41. (A) No public official or party official 9
shall commit any theft offense, as defined in division (K) of 10
section 2913.01 of the Revised Code, when either of the 11
following applies: 12

(1) The offender uses the offender's office in aid of 13
committing the offense or permits or assents to its use in aid 14
of committing the offense; 15

(2) The property or service involved is owned by this 16
state, any other state, the United States, a county, a municipal 17

corporation, a township, or any political subdivision, 18
department, or agency of any of them, is owned by a political 19
party, or is part of a political campaign fund. 20

(B) Whoever violates this section is guilty of theft in 21
office. Except as otherwise provided in this division, theft in 22
office is a felony of the fifth degree. If the value of property 23
or services stolen is one thousand dollars or more and is less 24
than seven thousand five hundred dollars, theft in office is a 25
felony of the fourth degree. If the value of property or 26
services stolen is seven thousand five hundred dollars or more 27
and is less than one hundred fifty thousand dollars, theft in 28
office is a felony of the third degree. If the value of property 29
or services stolen is one hundred fifty thousand dollars or more 30
and is less than seven hundred fifty thousand dollars, theft in 31
office is a felony of the second degree. If the value of 32
property or services stolen is seven hundred fifty thousand 33
dollars or more, theft in office is a felony of the first 34
degree. 35

(C) (1) A public official or party official who pleads 36
guilty to theft in office and whose plea is accepted by the 37
court or a public official or party official against whom a 38
verdict or finding of guilt for committing theft in office is 39
returned is forever disqualified from holding any public office, 40
employment, or position of trust in this state. 41

(2) (a) (i) A court that imposes sentence for a violation of 42
this section based on conduct described in division (A) (2) of 43
this section shall require the public official or party official 44
who is convicted of or pleads guilty to the offense to make 45
restitution for all of the property or the service that is the 46
subject of the offense, in addition to the term of imprisonment 47

and any fine imposed. The amount of restitution imposed under 48
this division shall include any costs of auditing any of the 49
public entities specified in division (A) (2) of this section 50
that own the property or service involved in the conduct 51
described in that division that is a violation of this section. 52

(ii) A court that imposes sentence for a violation of this 53
section based on conduct described in division (A) (1) of this 54
section and that determines at trial that this state or a 55
political subdivision of this state if the offender is a public 56
official, or a political party in the United States or this 57
state if the offender is a party official, suffered actual loss 58
as a result of the offense shall require the offender to make 59
restitution to the state, political subdivision, or political 60
party for all of the actual loss experienced, in addition to the 61
term of imprisonment and any fine imposed. The amount of 62
restitution imposed under this division shall include any costs 63
of auditing the state, political subdivision, or political party 64
that suffered the actual loss based on conduct described in that 65
division that is a violation of this section. 66

(b) (i) In any case in which a sentencing court is required 67
to order restitution under division (C) (2) (a) of this section 68
and in which the offender, at the time of the commission of the 69
offense or at any other time, was a member of the public 70
employees retirement system, the Ohio police and fire pension 71
fund, the state teachers retirement system, the school employees 72
retirement system, or the state highway patrol retirement 73
system; was an electing employee, as defined in section 3305.01 74
of the Revised Code, participating in an alternative retirement 75
plan provided pursuant to Chapter 3305. of the Revised Code; was 76
a participating employee or continuing member, as defined in 77
section 148.01 of the Revised Code, in a deferred compensation 78

program offered by the Ohio public employees deferred 79
compensation board; was an officer or employee of a municipal 80
corporation who was a participant in a deferred compensation 81
program offered by that municipal corporation; was an officer or 82
employee of a government unit, as defined in section 148.06 of 83
the Revised Code, who was a participant in a deferred 84
compensation program offered by that government unit, or was a 85
participating employee, continuing member, or participant in any 86
deferred compensation program described in this division and a 87
member of a retirement system specified in this division or a 88
retirement system of a municipal corporation, the entity to 89
which restitution is to be made may file a motion with the 90
sentencing court specifying any retirement system, any provider 91
as defined in section 3305.01 of the Revised Code, and any 92
deferred compensation program of which the offender was a 93
member, electing employee, participating employee, continuing 94
member, or participant and requesting the court to issue an 95
order requiring the specified retirement system, the specified 96
provider under the alternative retirement plan, or the specified 97
deferred compensation program, or, if more than one is specified 98
in the motion, the applicable combination of these, to withhold 99
the amount required as restitution from any payment that is to 100
be made under a pension, annuity, or allowance, under an option 101
in the alternative retirement plan, under a participant account, 102
as defined in section 148.01 of the Revised Code, or under any 103
other type of benefit, other than a survivorship benefit, that 104
has been or is in the future granted to the offender, from any 105
payment of accumulated employee contributions standing to the 106
offender's credit with that retirement system, that provider of 107
the option under the alternative retirement plan, or that 108
deferred compensation program, or, if more than one is specified 109
in the motion, the applicable combination of these, and from any 110

payment of any other amounts to be paid to the offender upon the 111
offender's withdrawal of the offender's contributions pursuant 112
to Chapter 145., 148., 742., 3307., 3309., or 5505. of the 113
Revised Code. A motion described in this division may be filed 114
at any time subsequent to the conviction of the offender or 115
entry of a guilty plea. Upon the filing of the motion, the clerk 116
of the court in which the motion is filed shall notify the 117
offender, the specified retirement system, the specified 118
provider under the alternative retirement plan, or the specified 119
deferred compensation program, or, if more than one is specified 120
in the motion, the applicable combination of these, in writing, 121
of all of the following: that the motion was filed; that the 122
offender will be granted a hearing on the issuance of the 123
requested order if the offender files a written request for a 124
hearing with the clerk prior to the expiration of thirty days 125
after the offender receives the notice; that, if a hearing is 126
requested, the court will schedule a hearing as soon as possible 127
and notify the offender, any specified retirement system, any 128
specified provider under an alternative retirement plan, and any 129
specified deferred compensation program of the date, time, and 130
place of the hearing; that, if a hearing is conducted, it will 131
be limited only to a consideration of whether the offender can 132
show good cause why the requested order should not be issued; 133
that, if a hearing is conducted, the court will not issue the 134
requested order if the court determines, based on evidence 135
presented at the hearing by the offender, that there is good 136
cause for the requested order not to be issued; that the court 137
will issue the requested order if a hearing is not requested or 138
if a hearing is conducted but the court does not determine, 139
based on evidence presented at the hearing by the offender, that 140
there is good cause for the requested order not to be issued; 141
and that, if the requested order is issued, any retirement 142

system, any provider under an alternative retirement plan, and 143
any deferred compensation program specified in the motion will 144
be required to withhold the amount required as restitution from 145
payments to the offender. 146

(ii) In any case in which a sentencing court is required 147
to order restitution under division (C) (2) (a) of this section 148
and in which a motion requesting the issuance of a withholding 149
order as described in division (C) (2) (b) (i) of this section is 150
filed, the offender may receive a hearing on the motion by 151
delivering a written request for a hearing to the court prior to 152
the expiration of thirty days after the offender's receipt of 153
the notice provided pursuant to division (C) (2) (b) (i) of this 154
section. If a request for a hearing is made by the offender 155
within the prescribed time, the court shall schedule a hearing 156
as soon as possible after the request is made and shall notify 157
the offender, the specified retirement system, the specified 158
provider under the alternative retirement plan, or the specified 159
deferred compensation program, or, if more than one is specified 160
in the motion, the applicable combination of these, of the date, 161
time, and place of the hearing. A hearing scheduled under this 162
division shall be limited to a consideration of whether there is 163
good cause, based on evidence presented by the offender, for the 164
requested order not to be issued. If the court determines, based 165
on evidence presented by the offender, that there is good cause 166
for the order not to be issued, the court shall deny the motion 167
and shall not issue the requested order. If the offender does 168
not request a hearing within the prescribed time or if the court 169
conducts a hearing but does not determine, based on evidence 170
presented by the offender, that there is good cause for the 171
order not to be issued, the court shall order the specified 172
retirement system, the specified provider under the alternative 173

retirement plan, or the specified deferred compensation program, 174
or, if more than one is specified in the motion, the applicable 175
combination of these, to withhold the amount required as 176
restitution under division (C) (2) (a) of this section from any 177
payments to be made under a pension, annuity, or allowance, 178
under a participant account, as defined in section 148.01 of the 179
Revised Code, under an option in the alternative retirement 180
plan, or under any other type of benefit, other than a 181
survivorship benefit, that has been or is in the future granted 182
to the offender, from any payment of accumulated employee 183
contributions standing to the offender's credit with that 184
retirement system, that provider under the alternative 185
retirement plan, or that deferred compensation program, or, if 186
more than one is specified in the motion, the applicable 187
combination of these, and from any payment of any other amounts 188
to be paid to the offender upon the offender's withdrawal of the 189
offender's contributions pursuant to Chapter 145., 148., 742., 190
3307., 3309., or 5505. of the Revised Code, and to continue the 191
withholding for that purpose, in accordance with the order, out 192
of each payment to be made on or after the date of issuance of 193
the order, until further order of the court. Upon receipt of an 194
order issued under this division, the public employees 195
retirement system, the Ohio police and fire pension fund, the 196
state teachers retirement system, the school employees 197
retirement system, the state highway patrol retirement system, a 198
municipal corporation retirement system, the provider under the 199
alternative retirement plan, and the deferred compensation 200
program offered by the Ohio public employees deferred 201
compensation board, a municipal corporation, or a government 202
unit, as defined in section 148.06 of the Revised Code, 203
whichever are applicable, shall withhold the amount required as 204
restitution, in accordance with the order, from any such 205

payments and immediately shall forward the amount withheld to 206
the clerk of the court in which the order was issued for payment 207
to the entity to which restitution is to be made. 208

(iii) Service of a notice required by division (C) (2) (b) 209
(i) or (ii) of this section shall be effected in the same manner 210
as provided in the Rules of Civil Procedure for the service of 211
process. 212

(D) Upon the filing of charges against a person under this 213
section, the prosecutor, as defined in section 2935.01 of the 214
Revised Code, who is assigned the case shall send written notice 215
that charges have been filed against that person to the public 216
employees retirement system, the Ohio police and fire pension 217
fund, the state teachers retirement system, the school employees 218
retirement system, the state highway patrol retirement system, 219
the provider under an alternative retirement plan, any municipal 220
corporation retirement system in this state, and the deferred 221
compensation program offered by the Ohio public employees 222
deferred compensation board, a municipal corporation, or a 223
government unit, as defined in section 148.06 of the Revised 224
Code. The written notice shall specifically identify the person 225
charged. 226

Section 2. That existing section 2921.41 of the Revised 227
Code is hereby repealed. 228