
IN THE SUPREME COURT OF OHIO

GARY KIRSCH, Guardian for Jessica Jacobson,	:	Supreme Court Case No. 15-1340
	:	
Plaintiff-Appellee,	:	On Appeal from the Summit County Court of Appeals, Ninth Appellate District
	:	
v.	:	
	:	Court of Appeals
ELLEN KAFOREY, <i>et al.</i>	:	Case No. CA 26915
	:	
Defendants-Appellants.	:	
	:	

REPLY BRIEF OF APPELLANT ELLEN KAFOREY

Subodh Chandra (0069233)
Donald Screen (0044070)
The Chandra Law Firm, LLC
1265 West Sixth Street, Suite 400
Cleveland, Ohio 44113-1326
(216) 578-1700 – Phone
(216) 578-1800 – Fax
Subodh.Chandra@Chandralaw.com
Donald.Screen@Chandralaw.com
Counsel for Plaintiff-Appellee

Gregory Rossi (0047595)
Carol N. Tran (0089192)
Hanna Campbell & Powell, LLP
3737 Embassy Parkway, Suite 100
PO Box 5521
Akron, Ohio 44334
(330) 670-7300 – Phone
(330) 670-7478 – Fax
grossi@hcplaw.net
ctran@hcplaw.net
*Counsel for Defendant-Appellant
Akron Children’s Hospital*

Steven G. Janik (0021934)
Audrey K. Bentz (0081361)
(Counsel of Record)
Janik L.L.P.
9200 South Hills Blvd., Suite 300
Cleveland, Ohio 44147-3251
(440) 838-7600 – Phone
(440) 838-7601 – Fax
Steven.Janik@Janiklaw.com
Audrey.Bentz@Janiklaw.com
*Counsel for Defendant-Appellant
Ellen Kaforey*

Bret C. Perry (0073488)
Brian F. Lange (0080627)
Bonezzi Switzer Murphy Polito &
Hupp Co., LPA
1300 East 9th Street, Suite 1950
Cleveland, Ohio 44114
(216) 875-2767 – Phone
(216) 875-1570 – Fax
bperry@bsphlaw.com
blange@bhsplaw.com
*Counsel for Defendant-Appellant
Cleveland Clinic Children’s
Hospital for Rehabilitation*

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INTRODUCTION

Appellee's reading of R.C. § 2307.60 is contrary to the plain language of the statute, in opposition of the General Assembly's express intent and actions, and contradicts over almost forty (40) years of jurisprudence in the State of Ohio. There is no reason to disturb this precedent. Rather, Ms. Kaforey urges this Court to reinstate the General Assembly's original intention with R.C. § 2307.60 – to confirm that a civil action does not merge into a criminal prosecution. Therefore, Ms. Kaforey respectfully moves this Honorable Court to reverse the ruling of the Ninth District and affirm the trial court's dismissal of this matter in its entirety.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW: REVISED CODE § 2307.60 IS NOT AN INDEPENDENT CAUSE OF ACTION AND MERELY CODIFIES THAT A CIVIL ACTION IS NOT AUTOMATICALLY MERGED INTO A CRIMINAL PROCEEDING.

A. The Plain Language of R.C. § 2307.60 Demonstrates It Is Not an Independent Cause of Action

Appellee urges an interpretation of R.C. § 2307.60 that exceeds the scope of the statute. Specifically, Appellee asserts that the language of R.C. § 2307.60 that provides, “[a]nyone injured in person or property by a criminal act has, and may recover full damages in, a civil action ...” creates a clear and unequivocal civil cause of action for any criminal conduct. This is not so. The language of R.C. § 2307.60 instead demonstrates that it is purely jurisdictional.

In this regard, the General Assembly's use of the word “has” simply indicates that a civil cause of action is not automatically merged into a criminal prosecution. The fact that the General Assembly goes on to use the phrase “and may recover full damages” further demonstrates this principle. The General Assembly does not use the word “shall” when describing damages, which would indicate that damages are mandatory. Instead, the deliberate use of “has and may” by the General Assembly merely indicates that an injured person's civil

action is not automatically merged into the criminal prosecution and, in certain circumstances, that person may recover damages. A victim of a criminal act has no automatic cause of action for damages pursuant to the plain language of R.C. § 2307.60.

Further, despite Appellee's interpretation of R.C. § 2307.60, it is missing the necessary language that would enable it to be considered a substantive statute – one intended to create an independent cause of action. In this regard, R.C. § 2307.60 as written leaves the following questions: (1) what does it mean to be “injured;” (2) what is a “criminal act;” (3) what elements must be proven to be successful under a claim; and (4) what are “full damages”? This is far from an unambiguous statute. Without this information, even by its plain meaning R.C. § 2307.60 cannot be interpreted to create a cause of action. Rather, a plain reading of the statute indicates that it is purely jurisdictional and intended to establish that a civil cause of action does not automatically merge into a criminal prosecution.

B. The Legislative Intent of R.C. § 2307.60 Confirms It Was Intended As A Jurisdictional Statute

At a minimum, R.C. § 2307.60 is subject to more than one reasonable interpretation rendering it ambiguous. *See Lang v. Dir., Ohio Dept. of Job & Family Servs.*, 134 Ohio St.3d 296, 300, 2012-Ohio-5366, 982 N.E.2d 636, 641, ¶ 14 (2012), *citing Clark v. Scarpelli*, 91 Ohio St.3d 271, 274, 744 N.E.2d 719 (2001). Pursuant to R.C. § 1.49, “[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters: (A) The object sought to be attained; (B) The circumstances under which the statute was enacted; (C) The legislative history; (D) The common law or former statutory provisions, including laws upon the same or similar subjects; (E) The consequences of a particular construction; and (F) The administrative construction of the statute.” In the present matter, the relevant items to be considered weigh in favor of finding that R.C. § 2307.60 is merely a jurisdictional statute.

1. The object sought to be attained, the circumstances under which the statute was enacted, and the legislative history

Appellee spends a substantial portion of his brief arguing that it was an error for countless courts for the past forty (40) years to find that R.C. § 2307.60, and its predecessor (R.C. § 1.16), were simply a codification of the common law in Ohio that a civil action was not merged into a criminal prosecution. In reaching this conclusion, Appellees trace the history of *Story v. Hammond*, 4 Ohio 376 (1831), and ultimately conclude that because *Story* was decided in 1831 it could not support such an argument. In that line of cases, Appellee points out that the matter of *Schmidt v. State Aerial Farm Statistics, Inc.*, 62 Ohio App.2d 48, 49, 403 N.E.2d 1026, 1027 (6th Dist. 1978), was the first case to cite *Story* in holding that no independent civil cause of action was created under R.C. § 1.16. The flaw in Appellee's argument is that the *Schmidt* Court did not only cite to *Story* in reaching this conclusion. Instead, the complete text provides:

The plaintiff's reliance upon [R.C. § 1.16] as creating a statutory tort action is misplaced. [R.C. § 1.16] is only a codification of the common law in Ohio that a civil action is not merged in a criminal prosecution which arose from the same act or acts. *Story v. Hammond* (1831), 4 Ohio 376, 378. ***For the legislative history of R.C. 1.16, see 74 Ohio Laws 243, Section 10; R.S. 6803; G.C. 12379.*** This Ohio common law rule, as codified by [R.C. § 1.16], was contrary to the English rule which stated that no civil action could be maintained for a criminal act, at least until criminal proceedings had been completed against the offender. See *Howk v. Minnick* (1869), 19 Ohio St. 462.

Schmidt, 62 Ohio App.2d at 49, 403 N.E.2d at 1027. (***emphasis*** added). Thus, the story does not end with *Story* as Appellee has led this Court to believe.

The additional support replied upon by the Sixth District consisted of the legislative history of R.C. § 1.16, which was found in Part Fourth of the Laws of Ohio. Part Fourth was the Penal Section and the preamble indicated the act was intended “[t]o amend, revise, and consolidate the statutes relating to crimes and offenses...” See 74 Ohio Laws 243 (Appx. 74). The specific legislative history for R.C. § 1.16 provided the following:

Nothing in Part Fourth contained shall be construed to prevent a party injured in person or property, by any criminal act, from recovering full damages...

Id., Section 10 (*emphasis* added) Thus, the genesis of R.C. § 1.16 demonstrates that it was never intended as an independent cause of action. Rather, as pointed out by *Schmidt*, R.C. § 1.16 was only a codification of the common law that a civil action is not merged in a criminal prosecution. *Schmidt*, 62 Ohio App.2d at 49, 403 N.E.2d at 1027. As previously pointed out by Appellants, the legislative history for R.C. § 2307.60 set forth the General Assembly’s intent was to continue the purpose of R.C. § 1.16. See Sen. Armbruster, Bill Analysis: S.B. 107, Legislative Serv. Comm’n, 3 (“*Under continuing law*, anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action ...”) (*emphasis* added). Therefore, because R.C. § 2307.60 was only intended to continue the purpose of R.C. § 1.16, it similarly cannot be said to create an independent cause of action.

Appellee’s brief argues, “[w]hat Appellants need is some authoritative interpretation of R.C. §2307.60 (or even of its predecessor, § 1.16), one that cannot be traced to a “foundational” case [*Story*] that, on inspection, provides no support whatsoever.” (Appellee Brief pg. 23). Ms. Kafoney has not only provided support for her position, but has set forth the undeniable intention of the legislature. While Appellee urges this Honorable Court to discount all case law holding that R.C. § 2307.60 does not create an independent cause of action based on what he perceives as a “fallacy” created by *Story*, upon looking at the legislative history for the subject statutes there is no fallacy. Instead, *Schmidt* and its progeny stand for what Appellants have argued and all of the cases previously determining the scope and meaning of R.C. §2307.60 are properly before the Court. As Paul Harvey would say, “And now you know the rest of the story.”

2. The common law or former statutory provisions, including laws upon the same or similar subjects

Based upon the clear intent of the General Assembly in continuing the purposes behind R.C. § 1.16, the case law addressed by the Appellants in this appeal stands. While the cases will not be repeated in detail herein, the following districts have sided in favor of Ms. Kaforey's position, including the: First, Second, Third, Fifth, Sixth, Eighth, and Tenth Districts. Appellees have no counter to these cases outside of their erroneous arguments related to *Story*. On the other hand, the Ninth District's Opinion is an anomaly and is in conflict with the other districts in Ohio. While Appellee cites to a handful of cases that he believes support his position, those matters are easily distinguishable:

- In *Lazette v. Kulmatycki*, 949 F.Supp. 2d 748, 761-762 (N.D. Ohio 2013), the plaintiff's claim was in actuality based upon R.C. § 2307.61 – a statute created by the General Assembly to specifically permit a civil cause of action for theft.
- In *Tomas v. Nationwide Mut. Ins. Co.*, 79 Ohio App. 3d 624, 632, 607 N.E.2d 944, 949 (10th Dist. 1992) the Court of Appeals of Ohio for the Tenth District ("Tenth District") did not hold that R.C. 2307.60 created a cause of action. Rather, the Tenth District merely surmised it was "arguable" such a claim could exist but in any event, found that if a claim for intentional destruction of evidence was enforceable it would be grounded in R.C. § 2307.61.
- In *Gonzalez v. Spofford*, 2005 WL 1541016, 2005-Ohio-3415 (Ohio App. 8th Dist. June 30, 2005), the Court of Appeals of Ohio for the Eighth District was not directly faced with the issue of whether R.C. § 2307.60 created a private cause of action. Further, the claim in *Gonzalez* was a theft by deception claim that would be governed by R.C. § 2307.61.
- Similarly, in *Cartwright v. Batner*, 15 N.E. 3d 401, 2014-Ohio-2995 (2d Dist. 2014), the Court of Appeals of Ohio for the Second District was also addressing a claim stemming from an allegation of theft pursuant to R.C. § 2307.61.

The common denominator in all of these matters is the inclusion of a claim for some form of theft under R.C. § 2307.61. There is no question that R.C. § 2307.61 specifically creates a

civil cause of action for theft. However, the present matter does not involve a claim of theft rendering the above cases inapplicable. Additionally, while Appellee cites to *T.P. v. Weiss* in support of their position, the Court of Appeals of Ohio for the Fifth District (“Fifth District”) was not asked to directly address the issue of whether R.C. § 2307.60 created a civil cause of action. 990 N.E.2d 1098, 2013-Ohio-1402 (5th Dist. 2013). The thrust of *T.P.* involved the application of punitive damages. *Id.* Further, subsequently (in 2014) when the Fifth District was faced with the issue of whether R.C. § 2307.60 establishes an independent cause of action, it held that it did not and that R.C. § 2307.60 was purely jurisdictional. *See Simpkins v. Grace Brethren Church of Delaware*, 16 N.E.3d 687, 711, 2014-Ohio-3465, ¶ 98 (5th Dist. 2014).

Finally, in *Wesaw v. City of Lancaster*, 2005 WL 3448034 (N.D. Ohio Dec. 15, 2005), the United States District Court for the Northern District of Ohio (“Northern District”) did side with Appellee’s position. In reaching its conclusion, however, the Northern District conducted no analysis or rationale as to why it was appropriate to ignore all other precedent and the language of R.C. § 2307.60. Subsequently, several federal courts to examine the issue have found on the opposite of *Wesaw*. *See Jasar Recycling, Inc. v. Major Max Management Corp.*, 2010 WL 395212 (N.D. Ohio Jan. 22, 2010); *Jones v. Graley*, 2008 WL 343087 (S.D. Ohio Feb. 6, 2008); *Replogle v. Montgomery County, Ohio*, 2009 WL 1406686 (S.D. Ohio May 19, 2009) (R.C. § 2307.60 does not create a civil cause of action). When addressed with the issue more recently, none of the federal courts have relied upon *Wesaw* and in fact have held the opposite of *Wesaw* rendering it an anomaly. Therefore, this Honorable Court should follow the overwhelming majority in holding that R.C. § 2307.60 does not create an independent civil cause of action.

3. The consequences of a particular construction

As set forth previously, substantial confusion and inconsistent results would occur if R.C. § 2307.60 creates an independent cause of action and Appellee's attempts to dilute these concerns are ineffective. While Ms. Kaforey will not repeat all of the ways Appellee's interpretation of R.C. § 2307.60 would create confusion for litigants and the judiciary, it is worth noting a few items.

First, Appellee cites to *Choby v. Aylsworth* in support of the proposition that the burden in a civil case is not beyond a reasonable doubt. 2007 WL 1881503 *6, 2007-Ohio-3375, ¶ 55 (Ohio App. 11th Dist. June 29, 2007). However, *Choby* actually supports Ms. Kaforey's position that the risk of confusion is a real concern. While *Choby* cited to several cases that indicated the burden of proof in a civil case for certain crimes is preponderance of the evidence – *Choby* provides no rationale for how it arrives at the conclusion that the burden in a civil case is not beyond a reasonable doubt. Rather, *Choby* simply cites to several statutes that specifically create civil causes of action for certain, specific criminal acts. *Id.* at ¶ 55. A review of each of those statutes demonstrates that in order to succeed, a plaintiff must prove a violation of the respective criminal statute. While *Choby* reaches a cursory conclusion that the burden in the civil case must be less than the criminal standard, nothing within *Choby* reconciles how a plaintiff establishes a violation of a criminal statute without the necessary criminal burden of proof. Further, even if those statutes can stand for the proposition that the burden is preponderance of the evidence, the statutes at issue in *Choby* specifically created civil causes of action. In the present matter it is undisputed the General Assembly has created no civil cause of action for unlawful restraint, child enticement, or kidnapping.

Second, while Appellee's insist that any conflict between R.C. § 2307.60 and other statutory schemes can be easily overcome, the judiciary in Ohio has already spoken out regarding the confusion and conflict that would occur. This is demonstrated by the dissent to the Ninth District's Opinion in which Judge Carr identifies the concerns she, as a member of the judiciary, perceives would exist if R.C. § 2307.60 was to be construed as an open-ended civil catch-all. Further, the Fifth District has held that pursuant to R.C. § 1.51 the only way to construe R.C. § 2307.60 along with Ohio's damage cap statute, R.C. § 2315.18, was to find that R.C. § 2307.60 did not create any substantive rights. *See Simpkins*, 16 N.E.3d at 711, 2014-Ohio-3465 at ¶¶97-98. The implication of the Fifth District's ruling is that if R.C. § 2307.60 did in fact create a separate cause of action there would indeed be a conflict between the statutory provisions.

The implications of holding R.C. § 2307.60 creates an independent cause of action are not insignificant and the fact they have already been recognized by the Ohio judiciary should not be overlooked. On the other hand, the consequence of construing R.C. § 2307.60 as proposed by Appellants returns the statute to status quo and ensures that it will continue to be interpreted in the same manner that it has for the past several decades. As such interpretation is consistent with the General Assembly's intent and purpose, Ms. Kaforey respectfully moves this Honorable Court to reverse the ruling of the Ninth District and affirm the Trial Court's dismissal of all claims in their entirety.

C. The General Assembly's Actions Establish The Intent Was Not To Use R.C. § 2307.60 To Create An Independent Cause of Action

Another flaw in Appellee's argument is that the General Assembly has gone out of its way to make certain that some criminal acts have a corresponding civil remedy. *See, e.g.*, R.C. § 2307.44 (civil liability for hazing); R.C. § 2307.50 (civil action for depriving adult of parental or

guardianship interest in minor); R.C. § 2307.51 (civil cause of action for violation of [trafficking in persons]); R.C. § 2307.52 (civil action for terminating or attempting to terminate a human pregnancy after viability); R.C. § 2307.65 (civil action for Medicaid eligibility fraud); R.C. § 2307.70 (civil liability for vandalism, desecration, or ethnic intimidation; parental liability for minor child's acts).¹ Such action would be duplicative and unnecessary if R.C. § 2307.60 was intended to serve as an independent civil claim for any criminal act. Further, the General Assembly has created corresponding tort actions for certain other criminal acts that can be pursued (ex. assault and battery, false imprisonment, wrongful death).

On the other hand, it is well-settled that there are several crimes that have no corresponding civil remedy. *See, e.g., Duer v. Henderson*, 2009-Ohio-6815, ¶ 72, 2009 WL 4985475, *10 (Dec. 23, 2009) (while R.C. § 2917.01 criminalizes “inciting violence” Ohio does not recognize a corresponding civil tort); *Edwards v. Madison Twp.*, 10th Dist. Franklin No. 97APE06-819, 1997 WL 746415, *7 (Nov. 25, 1997), *appeal not allowed*, 81 Ohio St.3d 1495 (1998) (there is no civil action for coercion or obstruction of official business); *Sherlock v. Myers*, 2004 WL 2244102 at *2, 2004-Ohio-5178 at ¶ 7 (Ohio App. 9th Dist. Sept. 29, 2004) (perjury is a strictly criminal act which may not be the subject of a civil suit); *McNichols v. Rennicker*, 2002 AP 04 0026, 2002-Ohio-7215, ¶ 17 (5th Dist. Dec. 18, 2002) (no corresponding civil action existed for “menacing by stalking” or “telephone harassment”).² The fact that the legislature acted to create certain civil actions for criminal acts, but not other, cannot be ignored. Rather, the General Assembly has maintained its selective creation of civil causes of action as discussed above. Here, the legislature has never authorized a civil cause of action for the crimes

¹ This list is not all encompassing, but intended for illustrative purposes.

² Similarly, this list is not all encompassing of all crimes that do not have a civil counterpart.

of unlawful restraint, child enticement, and kidnapping. As the legislature has had the opportunity to act and it has chosen not to act, this is dispositive on the issue.

The most telling demonstration of the fact that the legislature never intended R.C. § 2307.60 to create an independent cause of action is that as recent as 2014 the General Assembly specifically took action to create a civil cause of action for victims of identity theft. *See* R.C. § 2307.611 (effective September 16, 2014). Had the legislature intended R.C. § 2307.60 to be its own independent cause of action, there would have been absolutely no need for the legislature to create this statute because victims could simply have based their claims on R.C. § 2307.60. Rather, the legislature’s affirmative act as recently as 2014 of creating a designated civil cause of action for victims of identity theft yet again the legislature never intended for R.C. § 2307.60 to be a standalone cause of action.³ Appellee provides no explanation for why the General Assembly would specifically create a civil cause of action for some criminal acts, but not others. Appellee attempts to overcome this critical flaw in his logic by arguing that R.C. § 2307.60 was in essence intended to be a “catch-all” provision for all of the other crimes that “fall through the cracks.” However, by the plain language of R.C. § 2307.60 it is apparent it was never intended as a catch-all. While Appellee urges the Court to find that the General Assembly acted with a specific intent and purpose of creating a civil action for every criminal act, the overwhelming evidence indicates otherwise and is belied by the General Assembly’s own actions.

³ Further, based upon the effective date of R.C. § 2307.611, i.e. September 16, 2014, this also debunks the Ninth District’s opinion that the intent and purpose of R.C. § 2307.60 differed from the prior version, R.C. § 1.16, which the Ninth District appeared to acknowledge was in fact a jurisdictional provision.

CONCLUSION

As the legislature has made the decision not to create a civil remedy for unlawful restraint, kidnapping, and child enticement, R.C. § 2307.60 should not be construed to authorize such a claim. Rather, as has long been the law in Ohio, R.C. § 2307.60 cannot serve as the basis for an independent cause of action. Based on the foregoing, Ms. Kaforey respectfully moves this Honorable Court to reverse the ruling of the Ninth District and affirm the Trial Court's dismissal of all claims in their entirety.

Respectfully submitted,

/s/Audrey K. Bentz

STEVEN G. JANIK (0021934)

AUDREY K. BENTZ (0081361) (Counsel of
Record)

JANIK L.L.P.

9200 South Hills Blvd., Suite 300

Cleveland, Ohio 44147-3251

(440) 838-7600 – Main | (440) 838-7601 – Fax

Email: Steven.Janik@Janiklaw.com

Audrey.Bentz@Janiklaw.com

Counsel for Defendant-Appellant Ellen Kaforey

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2016, a copy of the foregoing *Reply Brief of Appellant Ellen Kaforey* was filed electronically with the Court pursuant to Civ. R. 5(B)(2)(f). Notice of this filing will be sent via operation of the Court's electronic system and sent via email to:

Subodh Chandra
Donald Screen
The Chandra Law Firm, LLC
1265 West Sixth Street, Suite 400
Cleveland, Ohio 44113-1326
(216) 578-1700 – Phone
(216) 578-1800 – Fax
Subodh.Chandra@Chandralaw.com
Donald.Screen@Chandralaw.com
Counsel for Plaintiff-Appellee

Gregory Rossi
Carol N. Tran
Hanna Campbell & Powell, LLP
3737 Embassy Parkway, Suite 100
PO Box 5521
Akron, Ohio 44334
grossi@hcplaw.net
ctran@hcplaw.net
Counsel for Defendant-Appellant Akron Children's Hospital

Bret C. Perry
Brian F. Lange
Bonezzi Switzer Murphy Polito & Hupp Co., LPA
1300 East 9th Street, Suite 1950
Cleveland, Ohio 44114
bperry@bsphlaw.com
blange@bhsplaw.com
Counsel for Defendant-Appellant Cleveland Clinic Children's Hospital for Rehabilitation

/s/Audrey K. Bentz
STEVEN G. JANIK (0021934)
AUDREY K. BENTZ (0081361)
JANIK L.L.P.
Counsel for Defendant-Appellee Ellen C. Kaforey

PART FOURTH.

PENAL.

-
- TITLE I. CRIMES AND OFFENSES.
 - TITLE II. CRIMINAL PROCEDURE.
 - TITLE III. JAILS AND THE PENITENTIARY.
-

AN ACT

To amend, revise and consolidate the statutes relating to crimes and offenses, and to repeal certain acts therein named; to be known as title one, crimes and offenses, part four, of the act to revise and consolidate the general statutes of Ohio.

Be it enacted by the General Assembly of the State of Ohio:

TITLE I. CRIMES AND OFFENSES.

- CHAPTER 1. GENERAL PROVISIONS.
- CHAPTER 2. OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.
- CHAPTER 3. OFFENSES AGAINST THE PERSON.
- CHAPTER 4. OFFENSES AGAINST PROPERTY.
- CHAPTER 5. OFFENSES AGAINST PUBLIC PEACE.
- CHAPTER 6. OFFENSES AGAINST PUBLIC JUSTICE.
- CHAPTER 7. OFFENSES AGAINST PUBLIC HEALTH.
- CHAPTER 8. OFFENSES AGAINST PUBLIC POLICY.
- CHAPTER 9. OFFENSES AGAINST CHASTITY AND MORALITY.
- CHAPTER 10. OFFENSES AGAINST THE RIGHT OF SUFFRAGE.
- CHAPTER 11. FRAUDS, FORGERY, AND COUNTERFEITING.
- CHAPTER 12. ACTS REPEALED.

CHAPTER 1.

GENERAL PROVISIONS.

<p>SECTION</p> <p>1. Meaning of certain terms and words in Part Fourth.</p> <p>2. What are felonies, and what are misdemeanors.</p> <p>3. Value of written instruments.</p> <p>4. For what crimes convict disfranchised unless pardoned.</p> <p>5. Convicts of other states disfranchised.</p> <p>6. Sentence, judgment, and execution against penitentiary convicts.</p>	<p>SECTION</p> <p>7. Courts may sentence to hard labor in county jail.</p> <p>8. Jail limits, and avails of convict labor.</p> <p>9. All fines to be paid into county treasury.</p> <p>10. Civil recovery not barred; record of conviction not evidence.</p> <p>11. Aiders and abettors.</p> <p>12. Limitation of prosecutions for certain offenses.</p>
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SECTION 1. In the interpretation of Part Fourth the term "anything of value" includes money, bank bills or notes, United States treasury notes, and other bills, bonds, or notes issued by lawful authority, and intended to pass and circulate as money; goods and chattels; any promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money; any receipt given for the payment of money or other property; any right in action [S. & S. 263, § 7; 66 v. 341, § 1; 66 v. 29, § 1]; things which savor of the realty, and are, at the time they are taken, a part of the freehold, whether they be of the substance or produce thereof, or affixed thereto, although there be no interval between the severing and the taking away [69 v. 67, § 1]; and every other thing of any value whatever [68 v. 87, § 1]; the words "person" and "another," when used to designate the owner of any property the subject of any offense, include not only natural persons, but every other owner of property; the word "writing" includes printing; the word "oath" includes an affirmation; the word "bond" includes an undertaking; words in the present include the future tense, and in the masculine include the feminine and neuter genders, and in the singular include the plural, and in the plural include the singular number [66 v. 324, §§ 227-8-9]; "and" may be read "or," and "or" read "and," if the sense requires it; and the word "imprisoned," when the context does not otherwise require, shall be construed to mean imprisoned in the county jail.

Meaning of certain words and terms in Part Fourth.

Sec. 2. Offenses which may be punished by death, or by imprisonment in the penitentiary, are felonies; all other offenses are misdemeanors. [66 v. 324, § 230.]

What are felonies, and what are misdemeanors.

Sec. 3. When any evidence of debt, or written instrument, the subject of a criminal act, the amount of money due thereon, or secured thereby, or the amount of money or the value of property affected thereby, shall be deemed the value thereof.

Value of written instruments.

Sec. 4. A person sentenced to be punished for felony

For what crimes convict disfranchised unless pardoned.

(when sentence has not been reversed or annulled), is incompetent to be an elector or juror, or to hold any office of honor, trust, or profit within this state, unless he shall have received a pardon, when he shall be restored to all his civil rights and privileges; but no pardon shall release a convict from the costs of his conviction, unless so stated therein. [S. & C. 417, § 41.]

Convict of other state disfranchised.

SEC. 5. A person who has been actually imprisoned in the penitentiary of any other state of the United States, under sentence for the commission of any crime punishable by the laws of this state by imprisonment in the penitentiary, is incompetent to be an elector or juror, or to hold any office of honor, trust, or profit, within this state, unless he shall have received a general pardon from the governor of the state in which he may have been imprisoned, agreeably to the laws thereof. [S. & C. 418, § 45.]

The sentence, judgment, and execution against penitentiary convicts.

SEC. 6. When any person is sentenced to imprisonment in the penitentiary, the court shall declare in its sentence for what period he shall be kept at hard labor, and for what period, if any, he shall be kept in solitary confinement without labor; and in all cases of conviction of an offense the court shall render judgment against the defendant for the costs of prosecution. [S. & C. 416, § 38.]

Courts may sentence to hard labor in county jail.

SEC. 7. In lieu of imprisonment in the county jail, the court may, upon the recommendation of the prosecuting attorney, sentence a convict to hard labor in the jail of the county for any length of time not exceeding six months, and not exceeding the length of time for which he might be imprisoned [S. & C. 424, § 75]; and a person committed to jail for non-payment of fines or costs, may be required to labor therein not exceeding six months, and until the value of his labor, at the rate of one dollar and fifty cents a day, equals the amount of fines and costs, or the amount shall be otherwise paid, or secured to be paid, when he shall be discharged [71 v. 33, § 1]; but this section does not affect the chapter of this statute relating to work-houses. [66 v. 195, §§ 271-282; 73 v. 211, § 1; 67 v. 75, § 271.]

Jail may extend throughout the county.

SEC. 8. Persons committed to jail by a court or magistrate for non-payment of fines or costs, or convicts sentenced to hard labor in the jail of the county, which for this purpose extends throughout the county, shall perform labor under the direction of the commissioners of the county, who may adopt such orders, rules, and regulations, in relation thereto, as they may deem best, and the sheriff or other officer having the custody of such persons or convicts shall be governed thereby; and the sheriff of the county shall collect, and pay into the treasury, the avails of the labor of such convicts, and take the treasurer's duplicate receipts therefor, and forthwith deposit one of the same with the county auditor. [S. & C. 424, §§ 76-7; 72 v. 165, § 2.]

Avails of labor to be paid into treasury.

SEC. 9. An officer who collects any fine shall, unless otherwise required by law, within twenty days after the receipt

thereof, pay the same into the treasury of the county in which such fine was assessed, to the credit of the county general fund, and shall take the treasurer's duplicate receipts therefor, and forthwith deposit one of the same with the county auditor. [35 v. 87, § 28; S. & C. 814.]

Sec. 10. Nothing in Part Fourth contained shall be construed to prevent a party injured in person or property, by any criminal act, from recovering full damages; but no record of a conviction, unless the same was obtained by confession in open court, shall be used as evidence in an action brought for such purpose.

Sec. 11. Whoever aids, abets, or procures another to commit any offense, may be prosecuted and punished as if he were the principal offender. [S. & S. 266, § 14; S. & C. 421, § 66; S. & C. 422, § 68; S. & S. 281, § 281; S. & C. 407, § 16; 73 v. 207; S. & C. 435, § 141; 71 v. 115; 73 v. 19; 73 v. 59; 66 v. 123; S. & S. 269, §§ 25-6; S. & S. 273, § 34; S. & C. 449; §§ 192-4; S. & C. 422, §§ 70-1; S. & C. 406, § 12; S. & S. 267; § 19; S. & C. 457a, § 240; 71 v. 114, § 9; 72 v. 15, § 3; 73 v. 249, § 1; 73 v. 116, § 675; 73 v. 207, § 2; 73 v. 158, § 1; 73 v. 129, §§ 1, 2, 4; S. & S. 266, § 12; S. & S. 271, § 1; S. & C. 75, §§ 42, 48; S. & C. 420, § 4; S. & C. 412, § 25; S. & C. 405, § 10; S. & C. 457, § (235); 68 v. 9, § 1; 70 v. 155, § 1; S. & C. 437, § 1; S. & C. 544, § 9; 67 v. 57, § 1; 73 v. 249, § 1; 73 v. 116, § 1; 54 v. 127, §§ 1, 2; S. & C. 750; 66 v. 71, § 2.]

Sec. 12. No person shall be indicted, or criminally prosecuted, for any offense, felonies excepted, the prosecution of which is not specially limited by law, unless such indictment be found, or such prosecution commenced, within three years from the time such offense was committed. [S. & C. 424, § 74.]

All fines to be paid into the county treasury within twenty days after collection. Civil recovery not barred: but record of conviction not evidence.

Aiders and abettors.

Limitation of prosecutions for certain offenses.

CHAPTER 2.

OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

SECTION
1. Treason.

SECTION
2. Misprision of treason.

SECTION 1. Whoever levies war against this state, or the United States, or knowingly adheres to the enemies of either, giving them aid and comfort, is guilty of treason against the state of Ohio, and shall be imprisoned in the penitentiary during life. [58 v. 110, § 1; S. & S. 261.]

Treason.

Sec. 2. Whoever, having knowledge that any person has committed treason, or is about to commit treason, willfully omits or refuses to give information thereof to the governor, or some judge of the state, or to the president of the United States, is guilty of misprision of treason, and shall be imprisoned in the penitentiary not more than twenty nor less than ten years. [58 v. 110, § 2; S. & S. 261.]

Misprision of treason.