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Blog Entry: Plus Feature: Ohio Supreme Court Holds That Crimes Are Torts

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Crimes are crimes. And torts are torts. And now, in Ohio, crimes are also torts.

Let me explain. In Ohio, as elsewhere, crimes are subject to criminal prosecution and rules of criminal procedure. The government prosecutes crimes and asks courts to impose criminal penalties.

Torts, on the other hand, are purely civil affairs. They are subject to rules of civil procedure and are usually prosecuted by private citizens. Plaintiffs in tort actions seek civil remedies; most often, money damages.

All crimes in Ohio are statutory. Common law crimes do not exist. When the government charges someone in Ohio with a state crime, it does so by invoking the criminal statutes that were allegedly violated. Those crimes are codified in Title 29 of the Ohio Revised Code.

Can a litigant in an Ohio *civil* action sue for violation of those *criminal* statutes? Can he or she seek damages by alleging that someone violated a criminal statute?

Yes to both. On December 28, 2016, the Ohio Supreme Court resolved a split among several intermediate appellate courts and held that the unambiguous language of Ohio Revised Code § 2307.60 authorizes civil actions for damages caused by criminal acts, unless otherwise prohibited by law. That means that unless a particular statute explicitly bars such an action, private civil litigants may sue defendants for violating criminal statutes.

A new realm of actionable torts has materialized in Ohio.

Here are the facts of the case: Plaintiff sued an individual and two pediatric hospitals in Ohio state court asserting, among other things, civil claims against defendants for violating three Ohio criminal statutes: unlawful restraint, kidnapping, and child enticement. Specifically, plaintiff contended that defendants “unlawfully restrained her by keeping her mother from visiting her while [she] was hospitalized in 2001 at the age of seven.” She also alleged that the individual defendant, with the aid of one of the hospitals, “kidnapped her by arranging without authority to have her sent that year to live with a family member in Florida,” and that defendants unlawfully enticed her onto the plane to Florida without obtaining her mother’s legal permission.

Plaintiff brought these claims pursuant to Ohio Revised Code § 2307.60, which provides that

[a]nyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney’s fees if authorized by any provision of the Rules of Civil Procedure or another section of

the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code.

Defendants moved to dismiss for failure to state claims upon which relief can be granted, and the trial court granted their motion, holding that "Ohio courts have established that civil actions for damages may not be predicated upon alleged violation of a criminal statute."

Plaintiff then appealed, and the appeals court reversed, holding that plaintiff's claims were authorized under the plain language of Ohio Revised Code § 2307.60.

Upon issuing that ruling, the appeals court noted that its decision conflicted with those of other Ohio intermediate appellate courts, so it certified that conflict to the Ohio Supreme Court, which accepted jurisdiction, affirmed the court of appeals, and held as follows:

We must answer the straightforward question certified to us by the court of appeals: 'Does the current version of R.C. 2307.60 independently authorize a civil action for damages caused by criminal acts, unless otherwise prohibited by law?' We hold that it does.

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R.C. 2307.60(A)(1), by its plain and unambiguous terms, creates a statutory cause of action for damages resulting from any criminal act.

What are the implications? The Ohio Supreme Court went out of its way *not* to say:

We make no ruling today beyond answering the certified-conflict question. Any ensuing issues regarding how the statute operates or what a plaintiff must do to prove a claim under R.C. 2307.60(A)(1) are beyond the scope of this appeal. Resolution of issues of that type by this court must await an appeal in a case in which the issues are properly before the court.

That means that lower Ohio courts will first have to sort through these issues, which undoubtedly they will, now that plaintiffs are legally eligible to seek damages in civil actions for alleged violations of criminal statutes. But this much is clear: plaintiffs will seek to capitalize on this decision to expand their range of claims in civil cases, defendants will likely present these claims to their insurance carriers for defense and indemnification, and a new body of case law on "Ohio criminal torts" will emerge.

Unless the Ohio Legislature abrogates the statute.

The case is *Jacobson v. Kaforey*, Ohio Supreme Court, case no. 2015-1340, 2016-Ohio-8434, and the decision can be found at http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-Ohio-8434.pdf.