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Rolling the Dice on the Legality of Gambling Devices: Why "Purpose" has a Purpose

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ROLLING THE DICE ON THE LEGALITY OF GAMBLING DEVICES: WHY “PURPOSE” HAS A PURPOSE

STEVIE HOLBROOK*

ABSTRACT

Section 1955 of the United States Code (“Section 1955”), the federal law detailing prohibition on illegal gambling businesses, renders a defendant susceptible to prosecution if they are found to have violated the respective state’s gambling law and have a certain amount of people involved for a certain length of time. Today, the Sixth Circuit has identified Section 1955 as a general intent statute where it need not be shown that a defendant acted willfully in terms of intentionally violating state law. However, Ohio’s state gambling law has been interpreted as a specific intent statute that requires a purposeful act and, in turn, specific intent to violate the law. Thus, when Section 1955 intertwines with Ohio law, there is a discrepancy in interpretation between specific and general intent. At the federal level, this discrepancy has the ability to prevent a defendant from ever employing a mistake of law defense based on good faith and reasonable reliance. This Note contends that Section 1955, a statute giving deference to state law, should be interpreted as a specific intent statute when the allegedly illegal gambling business and defendants are subject to Ohio’s gambling law. Furthermore, as a specific intent statute, a defendant in Ohio should be able to present a defense based on lack of intent to violate the statute.

* J.D. expected May 2023, Cleveland State University, Cleveland State University College of Law. I would like to thank my *Cleveland State Law Review* team, the Cleveland State University College of Law professors, and the attorneys at Robert Fedor, Esq., L.L.C. who made writing this Note possible. Special thanks to Professor Jonathan Witmer-Rich for his valuable and meticulous direction, to Professor Sandra Kerber for introducing me to and guiding me through the world of legal writing, and to my family and friends for their constant support and compassion.

CONTENTS

I.	INTRODUCTION	242
II.	BACKGROUND.....	245
	A. Brief Overview of Specific and General Intent Statutes.....	245
	B. An Introduction to the Federal and State Gambling Statutes	246
	C. Current Interpretation of Section 1955 and Section 2915.02(A).....	248
	D. Various Mistakes of Law	249
	E. The Present Conflict	251
III.	ANALYSIS	252
	A. Specific Intent	253
	1. <i>Ables</i> and the Cases it Relies Upon are Distinguishable from a Section 1955 Case in Ohio Because of Ohio’s Specific Intent Nature	253
	2. Current Precedent Regarding Section 1955 Intertwined with Ohio Law is Misplaced Because it Relies on Cases Interpreting Section 1955 With States who Have General Intent Statutes.....	257
	3. When Compared to Other Specific and General Intent Statutes, Section 2915.02(A)(1)-(6) in Connection with (A)(7) More Resembles a Specific Intent Statute; Thus, the Specific Intent Element is Inserted into Section 1955, Making it a Specific Intent Federal Statute	259
	4. The Uniqueness of Section 2915.02(A)(7)’s Purpose Requirement.....	261
	B. Because Section 1955 is Considered a Specific Intent Crime When Intertwined with Section 2915.02(A), a Mistake of Law Defense Based on Good Faith and Reasonable Reliance Should be Permitted	261
	C. The Flipside: the Bad Faith Operator	262
	D. Final Considerations	264
IV.	CONCLUSION.....	264
V.	APPENDIX A.....	265

I. INTRODUCTION

Imagine you open a mom-and-pop shop in Ohio. Over time it expands, increasing in size, business partners, and customers. Now, in 2022, you start thinking of ways to increase profits and make the business more attractive to consumers. You consult with an attorney, inquiring about the legality of adding some gambling machines or devices to the corner of your establishment to draw people in. Your attorney gets back to you – it is doable, completely legal. So, you get them installed, profits spike, and customers start becoming regulars at your establishment. Life seems good; however, the police show up one afternoon telling you that you are in violation of state gambling laws.

Given the size of your operation and the number of people involved, prosecutors also look to indict you under federal law too. You try to tell them that you had a lawyer review everything, this must be a mistake. But it's futile; when you stand in court, they tell you that under the federal gambling statute, the fact that you relied on the advice of an attorney does not matter. Under the present federal gambling law, this is the current and unfortunate reality.

The availability and popularity of gambling, whether on a home computer or in a leather chair surrounded by slot machines in a casino, has greatly increased.¹ Given the increase, it is no surprise that a business owner would look to boost profits by lining their establishment with a few slot machines or other gambling devices.² Equally unsurprising, the crackdown on illegal gambling businesses at the federal and state levels has increased.³ In Ohio alone, it is estimated that 600 to 800 illegal gambling operators exist throughout the state.⁴ In 2020, Pennsylvania had potentially thousands of illegal gambling machines.⁵ However, the law surrounding these gambling devices is complex and requires a lengthy process to determine whether it is legal.⁶ This complexity also leads to high amounts of uncertainty and ambiguity

¹ See Will Yakowics, *U.S. Gambling Revenue to Break \$44 Billion Record in 2021*, FORBES (Aug. 10, 2021, 5:34 PM), <https://www.forbes.com/sites/willyakowicz/2021/08/10/us-gambling-revenue-to-break-44-billion-record-in-2021/?sh=79578df9677b> (giving an example of gambling revenues being the highest they've ever been); *Online Gambling Market Report 2021 – Global Growth, Trends, COVID-19 Impact, and Forecasts to 2026 with bet365, Entain, the Stars Group, Flutter Entertainment, and Kindred Dominating*, BUSINESSWIRE (Aug. 4, 2021, 8:16 AM), <https://www.businesswire.com/news/home/20210804005628/en>.

² Edward Bishop, *Heading into 2021, the Slot Machine Market is Going Higher and Higher*, MKT. BUS. NEWS (Jan. 15, 2021), <https://marketbusinessnews.com/the-slot-machine-market-is-going-higher-and-higher/256115/>; Robert McCoppin, *'Little Baby Casinos': Huge Growth in Video Gambling Boosts Illinois Gaming Revenue to Record Levels, but at What Cost?*, CHI. TRIB. (Nov. 15, 2018, 6:12 AM), <https://www.chicagotribune.com/news/ct-met-video-gambling-poker-machines-record-revenue-illinois-20181114-story.html>.

³ See, e.g., Zaira Perez, *Denton Police Launch Crackdown on Illegal Gambling Machines*, DENTON REC.–CHRON. (May 10, 2021), https://dentonrc.com/news/denton-police-launch-crackdown-on-illegal-gambling-machines/article_e42b064d-4212-5180-bf1a-e138c8079c20.html; Jack Suntrup, *Slot Machine Crackdown? Illegal Gambling Proposal Meets Resistance in Missouri Senate*, ST. LOUIS POST-DISPATCH (Feb. 18, 2020), https://www.stltoday.com/news/local/govt-and-politics/slot-machine-crackdown-illegal-gambling-proposal-meets-resistance-in-missouri-senate/article_22f7bc37-5be4-5b1f-b221-dee841c7bf80.html.

⁴ *Ohio Regulators Ban Skill-Game Machines Which are Seen as a Successor to Cyber-Cafes*, USPOKERSITES.COM, <http://www.uspokersites.com/poker-news/ohio-regulators-ban-skill-game-machines-which-are-seen-as-a-successor-to-cyber-cafes/5050> (last visited Oct. 24, 2021).

⁵ Chrissy Suttles, *Gaming Company Demands Crackdown on 'Unlawful' Gambling Amid Legal Ambiguity*, THE TIMES (Sept. 23, 2020, 5:40 PM), <https://www.timesonline.com/story/news/2020/09/23/pennsylvania-skill-demands-crackdown/3503164001/>.

⁶ Perez, *supra* note 3.

surrounding the law; thus, some states debate whether to bring charges forward.⁷ That being said, the question remains: how many of these gambling devices are illegally operated by those who believe they are complying with federal and state law? Will their intent make a difference if prosecution ensues? This Note will argue that it does.

In terms of federal law, gambling is governed under section 1955 of the United States Code (“Section 1955”).⁸ Under Section 1955, a defendant may be susceptible to prosecution under federal law if their operation, in addition to violating state law, involves a certain number of people and continues for a certain amount of time.⁹ Therefore, it follows that the business must be in violation of its respective state law in order to be deemed illegal at the federal level.¹⁰ In Ohio, gambling is governed under section 2915.02 of the Ohio Revised Code (“Section 2915.02”).¹¹ In the Sixth Circuit, those who are prosecuted under Section 1955 cannot defend themselves by arguing they did not intend to violate the law.¹²

This Note argues that Section 1955, a statute giving deference to state law, should be interpreted as a specific intent statute when the allegedly illegal gambling business and its owners reside in Ohio. Furthermore, as a specific intent statute, a defendant in Ohio should be able to present a defense based on lack of intent to violate the statute. Ultimately, acknowledging this deference to state law through statutory interpretation will eliminate ambiguity and confusion when it comes to prosecution in federal court and allow defendants to present a defense based on good faith and reasonable reliance.

Part II of this Note begins by providing a general overview of specific and general intent statutes, the current language and interpretation of Section 1955 and Section 2915.02(A), and an introduction to employing mistake of law defenses. Subsequently, Part III(A) will explain that Section 1955 should be interpreted as a specific intent statute based on: (i) distinguishing current authority such as *United States v. Ables* and the cases relied upon; (ii) Sixth Circuit cases decided in Ohio that were misplaced in terms of reasoning; (iii) comparison of the statutory construction of Section 2915.02(A)(7) with other specific and general intent statutes; and (iv) a portrayal of the uniqueness of Section 2915.02(A)(7)’s purpose requirement in comparison to other state statutes. Further, Part III(B) will conclude that a mistake of law defense based on good faith and reasonable reliance should be allowed because Section 1955, in connection with section 2915.02(A), is a specific intent statute. Lastly, Part III(C)

⁷ See *Gambling Laws, Regulation, and Licensing Authorities*, GAMBLINGSITES.ORG, <https://www.gamblingsites.org/laws/> (last visited Oct. 24, 2021) (explaining the complexity of gambling laws throughout the United States); Suttles, *supra* note 5.

⁸ 18 U.S.C.A. § 1955.

⁹ *Id.*

¹⁰ *Id.*

¹¹ OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2021).

¹² *United States v. Ables*, 167 F.3d 1021, 1031 (6th Cir. 1999); *see also* *United States v. Sims*, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *18–19 (6th Cir. Oct. 19, 1995) (holding that section 1955 is a general intent crime); *United States v. Conley*, 859 F. Supp. 909, 930 (W.D. Pa. 1994) (explaining that an intentional violation is not necessary under Section 1955).

and (D) will address the policy of both sides of this argument and final considerations; specifically, there will be those who reasonably relied on the advice of their attorney in good faith while there remains the bad faith operator who is aware of the illegality and uses the lawyer's "advice" to continue.

II. BACKGROUND

A. *Brief Overview of Specific and General Intent Statutes*

Because the element of intent resides in nearly every crime, statutes are often determined as either general intent or specific intent in nature.¹³ Under specific intent crimes, it must be proven that the defendant "knowingly committed . . . an unlawful act, *purposefully* intending to violate the law."¹⁴ Thus, statutes imposing a specific intent requirement must be committed with the intent to not only commit the act, but also with the intention or *purpose* to violate the respective law.¹⁵ In terms of mental culpability, specific intent crimes require the establishment of "a defendant's criminal scienter to secure his conviction."¹⁶ Therefore, "a charge of knowingly or intentionally committing the alleged unlawful acts does not create a specific intent crime."¹⁷ Alternatively, a general intent crime is satisfied when one *knowingly* commits a wrongful act, regardless of whether they had purpose to or intended to violate the law.¹⁸

Although ambiguity exists in defining specific and general intent crimes, many courts employ these categories to determine culpability and analysis in prosecution.¹⁹ For example, the crime of burglary is a specific intent crime that exemplifies the "specified further purpose in mind."²⁰ Burglary requires breaking and entering with the *purpose* of committing a felony once inside.²¹ Without proof that one had this specified further purpose to commit a felony once inside, a defendant cannot be convicted of burglary.²²

¹³ Vivian M. Rodriguez, Note, *Special Topics in the Law of Evidence: The Admissibility of Other Crimes, Wrongs or Acts Under the Intent Provision of Federal Rule of Evidence 404(b): The Weighing of Incremental Probity and Unfair Prejudice*, 48 U. MIA. L. REV. 451, 456 (1993) (discussing specific and general intent crimes).

¹⁴ *Id.* at 460 (emphasis added).

¹⁵ *Id.* at 460–61; *see, e.g.*, Ohio Liquor Control Comm'n. v. Lytle, No. 1246, 1987 Ohio App. LEXIS 5804, at *6–7 (Ohio Ct. App. 1987) (requiring specific intent to violate a statute).

¹⁶ United States v. Mihalich, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *9 (N.D. Ohio Dec. 5, 2006).

¹⁷ Rodriguez, *supra* note 13, at 461.

¹⁸ *Id.* at 460–61.

¹⁹ *See id.* at 456; *see, e.g.*, United States v. Ables, 167 F.3d 1021, 1031 (6th Cir. 1999).

²⁰ SANFORD H. KADISH ET AL., CRIMINAL LAW AND ITS PROCESSES 247 (9th ed. 2012).

²¹ *Id.*

²² *Id.*

Meanwhile, the crime of trespass is an example of a general intent crime where a “defendant can be convicted if he did what in ordinary speech we would call an intentional action.”²³ If one enters another’s land or a building without permission, they acted intentionally and will be guilty of trespass, despite the absence of any further objective.²⁴ Thus, prosecution can occur under a general intent crime regardless of a defendant’s desire for any further consequence beyond his or her conduct.²⁵

B. *An Introduction to the Federal and State Gambling Statutes*

At the federal level, the prohibition of illegal gambling businesses is governed under Section 1955.²⁶ Under Section 1955, “[w]hoever conducts, finances, manages, supervises, directs, or owns all or part of an *illegal gambling business* shall be fined under this title or imprisoned not more than five years, or both.”²⁷ “*Illegal gambling business*” is satisfied under Section 1955 if the business is in violation of the state or political subdivision’s law, involves five or more persons, and has been in operation for over thirty days or carries a gross revenue of \$2,000 in one day.²⁸

Assuming a defendant is charged with violating Section 1955 and operated their business in Ohio, they can only be prosecuted if they are also in violation of Ohio law.²⁹ Specifically, Section 2915.02(A), Ohio’s state gambling law, sets forth multiple prohibited acts:

- (1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking;
- (2) Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;
- (3) Knowingly procure, transmit, exchange, or engage in conduct that facilitates the procurement, transmission, or exchange of information for use in establishing odds or determining winners in connection with bookmaking or with any game of chance conducted for profit or any scheme of chance;
- (4) Engage in betting or in playing any scheme or game of chance as a substantial source of income or livelihood;

²³ *Id.* at 247–48.

²⁴ *Id.* at 248.

²⁵ *Id.*

²⁶ *See generally* 18 U.S.C. § 1955.

²⁷ § 1955(a) (emphasis added).

²⁸ *See* § 1955(b)(1)(i)–(iii); *see, e.g.*, OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2021) (showing one state’s law that an Ohio defendant would have to be in violation of to be prosecuted under Section 1955).

²⁹ § 1955(b)(1)(i); *see* § 2915.02(A).

(5) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility and either:

(a) Give to another person any item described in division (VV)(1), (2), (3), or (4) of section 2915.01 of the Revised Code as a prize for playing or participating in a sweepstakes; or

(b) Give to another person any merchandise prize, or a redeemable voucher for a merchandise prize, the wholesale value of which is in excess of ten dollars and which is awarded as a single entry for playing or participating in a sweepstakes. Redeemable vouchers shall not be redeemable for a merchandise prize that has a wholesale value of more than ten dollars.

(6) Conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility without first obtaining a current annual “certificate of registration” from the attorney general as required by division (F) of this section;

(7) With purpose to violate division (A)(1), (2), (3), (4), (5), or (6) of this section, acquire, possess, control, or operate any gambling device.³⁰

Considering the broad scope of Ohio law and as specified under section 2915.02(A)(7), one who operates a gambling device within their business must have the *purpose* to violate divisions (A)(1) through (A)(6).³¹

Given the need for a violation of state law to commence federal prosecution, both statutes contain a multitude of stipulations, creating an immensely complex set of legal requirements.³² Section 1955 is purposely broad in scope and made to encompass almost every part involved in the operation, with the exception of mere bettors.³³ Congress specifically intended “to include all those who participated in the *operation* of a gambling business, regardless how minor their roles.”³⁴ Although many different

³⁰ § 2915.02(A)(1)–(7).

³¹ *Id.* It should also be noted that many prosecutions under Section 2915.02(A) typically consist of sections (A)(1)–(A)(6) in connection with section (A)(7). This is because those who run gambling operations usually have some sort of “gambling device” or “gambling devices” in connection with the actual acts as set forth in (A)(1)–(A)(6). The situation given for this argument relates to a business owner lining a corner of his store with gambling devices, so section (A)(7) would be applicable and one of the charges brought under an indictment. *See supra* Part I.

³² Suntrup, *supra* note 3; *see Gambling Laws, Regulation, and Licensing Authorities, supra* note 7.

³³ *United States v. Wall*, 92 F.3d 1444, 1452 (6th Cir. 1996) (quoting *Sanabria v. United States*, 437 U.S. 54, 71 n.26 (1978); *Sanabria*, 437 U.S. at 71 n.26; *see also United States v. Merrell*, 701 F.2d 53, 55 (6th Cir. 1983) (serving coffee to bettor and cleaning up was enough to prosecute under section 1955).

³⁴ *United States v. Hawes*, 529 F.2d 472, 482 (5th Cir. 1976); *see, e.g., Merrell*, 701 F.2d at 55.

acts can lead to prosecution, a few requirements remain consistent: the business must be in violation of its respective state law to be found guilty at the federal level.³⁵

C. *Current Interpretation of Section 1955 and Section 2915.02(A)*

As a matter of law in the Sixth Circuit, Section 1955 is considered a general intent crime where it need not be shown that a defendant acted willfully in terms of intentionally violating state law.³⁶ Thus, any time a defendant “knowingly does an act made unlawful by statute,” Section 1955 is satisfied and the defendant may be convicted.³⁷ Additionally, Section 1955’s plain language shows no requirement of purpose or knowledge, meaning that, on its face, the statute would be one of general intent nature.³⁸

However, Ohio’s state gambling law in connection with Section 2915.02(A)(7) appears to be that of *specific* intent.³⁹ For possession of a gambling device to be illegal, it must be acquired, possessed, controlled, or operated with the *purpose* to establish, promote, operate or *knowingly* engage in conduct that facilitates any scheme or game of chance for profit.⁴⁰ Section 2915.02(A)(7) institutes the requirement of “*purpose to violate*,” meaning a *specific intention* to cause a certain result.⁴¹ Thus, for a violation under Section 2915.02(A)(1)-(6) in connection with Section 2915.02(A)(7) to occur, the statute specifically requires a purposeful act and, in turn, specific intent to violate the section of that statute must exist.⁴²

³⁵ See 18 U.S.C. § 1955(1)(i).

³⁶ United States v. Ables, 167 F.3d 1021, 1031 (6th Cir. 1999); see also United States v. Conley, 859 F. Supp. 909, 929–30 (W.D. Pa. 1994); United States v. Sims, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *7 (6th Cir. Oct. 19, 1995) (quoting *Conley*, 859 F. Supp. at 930).

³⁷ United States v. O’Brien, 131 F.3d 1428, 1430 (10th Cir. 1977); see also United States v. Cyprian, 23 F.3d 1189, 1199 (7th Cir. 1994); *Hawes*, 529 F.2d at 481 (quoting United States v. Thaggard, 477 F.2d 626, 631 (5th Cir. 1973)); United States v. Conley, 37 F.3d 970, 977 (3d Cir. 1994).

³⁸ See § 1955; *Ables*, 167 F.3d at 1031.

³⁹ See OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2021). It should be noted that precedent on illegal gambling business prosecution regarding “specific versus general intent” discussion is scarce and not many cases in the Sixth Circuit delve into interpretation of Ohio’s gambling statute.

⁴⁰ *Garono v. State*, 524 N.E.2d 496, 500 (Ohio 1988).

⁴¹ *State v. Kopoulos*, No. 10566, 1983 Ohio App. LEXIS 14369, at *8 (Ohio Ct. App. Jan. 5, 1985).

⁴² *State v. Miller*, No. 9201, 1979 Ohio App. LEXIS 11439, at *22–23 (Ohio Ct. App. Dec. 5, 1979); *Ohio Liquor Control Comm’n v. Lytle*, No. 1246, 1987 Ohio App. LEXIS 5804, at *7 (Ohio Ct. App. Feb. 6, 1987).

D. *Various Mistakes of Law*

In its broadest sense, a mistake of law occurs when someone knows what they are empirically doing but mistakenly believes the law does not prohibit it.⁴³ There are multiple mistake of law defenses that can occur within the legal realm.⁴⁴ First, a mistake of law can arise when the statute requires intent to violate the law⁴⁵ and the defendant lacks that specific intent, which can occur when a defendant reasonably relies on the advice of counsel in good faith.⁴⁶ Another type of mistake of law, mentioned later in this Note, is entrapment by estoppel.⁴⁷ Entrapment by estoppel occurs when a defendant relies on government conduct or a government official in believing that certain conduct is legal.⁴⁸

A mistake of law based on the statutory requirement of intent is available in most jurisdictions as a mistake of non-governing law regarding a legal element definition of the crime governed by another body of law.⁴⁹ In order for the defense to be available, (1) the legal element in question must be defined by another body of law, (2) there must be a mens rea that applies to that element, and (3) the mistake of law must negate the mens rea.⁵⁰ Specifically in terms of the mental scienter, “if a defendant believes erroneous advice regarding the legality of the offense conduct, whether the advice comes from the government, from a lawyer, or in a dream, the defendant is not

⁴³ Kenneth W. Simons, *Symposium: Punishment and Culpability: Article: Ignorance and Mistake of Criminal Law, Noncriminal Law, and Fact*, 9 OHIO ST. J. CRIM. L. 487, 495 (2012).

⁴⁴ *Id.* at 491.

⁴⁵ KADISH ET AL., *supra* note 20, at 318 (showing a view across most jurisdictions that there is a “limited defense for situations in which a defendant reasonably believes that his conduct does not constitute an offense”); *see also* MODEL PENAL CODE § 2.04(3) (“A belief that conduct does not legally constitute an offense is a defense to a prosecution . . .”).

⁴⁶ *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *10 (N.D. Ohio Dec. 5, 2006).

⁴⁷ *See generally* *United States v. Sims*, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *7 (6th Cir. Oct. 19, 1995).

⁴⁸ Don Samuel, *Entrapment by Estoppel*, CASETEXT (Sept. 1, 2015), <https://casetext.com/analysis/entrapment-by-estoppel>; *United States v. Conley*, 859 F. Supp. 909, 926 (W.D. Pa. 1994); *see also* KADISH ET AL., *supra* note 20, at 319 (“Under the label ‘entrapment by estoppel,’ the Supreme Court has held it a violation of due process to convict a defendant for conduct that governmental representatives, in their official capacity, had earlier stated was lawful.”).

⁴⁹ KADISH ET AL., *supra* note 20, at 312.

⁵⁰ *See id.* (“[T]he legal element involved is simply an aspect of attendant circumstances, with respect to which knowledge, recklessness or negligence, as the case may be, is required for culpability . . .”); *see, e.g., id.* at 312 (“A defendant who acts under the subjective belief that he has a lawful claim on property lacks the required felonious intent [and] . . . need not show his mistaken claim of right was reasonable, . . . so long as he can establish his claim was made in good faith.”).

guilty of the crime.”⁵¹ In its entirety, “a person unaware of what the law forbids or what custom deems blameworthy by definition harbors neither ill intent nor any purpose to violate a known legal duty.”⁵²

Under one scenario of this mistake of law defense, a defendant will lack the specific intent to violate the law when they reasonably rely in good faith on the advice of counsel.⁵³ This defense of good faith and reasonable reliance is available to a defendant who “can negate a charged crime’s specific intent element by establishing that he (1) fully disclosed all pertinent facts to his attorney and (2) relied on the attorney’s advice in good faith.”⁵⁴ Additionally, the advice relied upon must be reasonable and lawful.⁵⁵ However, this rule is limited to certain crimes: a defense based upon subjective good faith and reasonable reliance can only be a complete defense to *specific* intent crimes.⁵⁶

The Sixth Circuit has held that Section 1955 is a general intent crime; thus, it need not be shown that a defendant intentionally violated state law.⁵⁷ Meanwhile, specific intent crimes allow for a defense of good faith and reasonable reliance on the advice of counsel when the “defendant can negate a charged crime’s specific intent element.”⁵⁸ Therefore, in cases of specific intent statutes, belief in relation to lawfulness of one’s conduct and reliance on advice of counsel is relevant because “a defendant who is affirmatively misled will lack . . . the requisite criminal intent.”⁵⁹

⁵¹ *Conley*, 859 F. Supp. at 929. Essentially, many defendants will often lack the proper mens rea or mental scienter required for a crime. See Edwin Meese III & Paul J. Larkin, Jr., *Symposium on Overcriminalization: Reconsidering the Mistake of Law Defense*, 102 J. CRIM. L. & CRIMINOLOGY 725, 767–68 (2012) (noting that “the number of offenses that lack a properly defined scienter element has increased considerably” and there are a large “number of local, state, and federal criminal laws governing conduct that no reasonable person readily would believe is criminal”).

⁵² Meese & Larkin, *supra* note 51, at 764. Essentially, “[n]either party has the evil or nefarious intent that is the hallmark of culpability . . . so neither person should be subject to condemnation and sanction.” *Id.* at 762.

⁵³ *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *10–11 (N.D. Ohio Dec. 5, 2006).

⁵⁴ *Id.* at *10.

⁵⁵ *Id.* at *11.

⁵⁶ *Id.* at *10; see also *United States v. Ables*, 167 F.3d 1021, 1031 (6th Cir. 1999).

⁵⁷ *Ables*, 167 F.3d at 1031; see, e.g., *United States v. Lawson*, 677 F.3d 629, 652–53 (4th Cir. 2012) (citing *Ables*, 167 F.3d at 1031); *United States v. Mohammed Islam Uddin*, 365 F. Supp. 2d 825, 830 (E.D. Mich. 2005) (concluding that no proof of knowing violation of state law is required under section 1955 (citing *Ables*, 167 F.3d at 1031)).

⁵⁸ See *Mihalich*, 2006 U.S. Dist. LEXIS 87881, at *9 (introducing sections 1956 and 1957 as specific intent crimes).

⁵⁹ *United States v. Dixon*, No. 97-6088, 1999 U.S. App. LEXIS 1210, at *12 (6th Cir. Jan. 27, 1999) (quoting Sean Connelly, *Bad Advice: The Entrapment by Estoppel Doctrine in*

United States v. Ables is a Sixth Circuit case regarding prosecution under Section 1955 where a good faith and reliance defense was disallowed.⁶⁰ In *Ables*, Ables and other defendants were indicted based upon money laundering, engaging in money transactions in criminally derived property, and conducting an illegal gambling business under Section 1955.⁶¹ Ables requested a good-faith instruction, asserting that the government had to prove he knowingly violated the law of Kentucky.⁶² However, relying on other precedent,⁶³ Section 1955 was deemed a general intent crime where a good-faith instruction would not be permitted.⁶⁴ With this decision, the ability of a defendant to provide evidence of intent or purpose is disallowed, leaving many without recourse despite their good faith and reasonable reliance on the advice of counsel.

E. *The Present Conflict*

Following precedent and general interpretation of statutes as either specific or general intent, Section 1955, on its face, presents no further objective and appears to be general intent.⁶⁵ However, when a defendant is prosecuted under Section 1955 for operating an allegedly illegal gambling business in Ohio, Section 2915.02(A), which is specific intent in nature, must also be violated to sustain a conviction.⁶⁶ With this inclusion of specific intent in Ohio law, Section 1955's requirement that a defendant be in violation of state law introduces the specified further purpose or "purpose to violate" under Section 2915.02(A)(7).⁶⁷ Specifically, the defendant must now have the *purpose* to violate under Section 2915.02(A) in addition to the other requirements under Section 1955.⁶⁸ Therefore, when Section 1955 encompasses Ohio law, there is a discrepancy in interpretation between specific and general intent. At the federal level, this discrepancy and its interpretation as general intent has drastic effects on the

Criminal Law, 48 U. MIA. L. REV. 627, 641 (1994)); *see, e.g.*, 18 U.S.C. §§ 1956, 1957 (providing examples of specific intent crimes as mentioned in *Mihalich*).

⁶⁰ *Ables*, 167 F.3d at 1031.

⁶¹ *Id.* at 1025.

⁶² *Id.* at 1026.

⁶³ *United States v. Sims*, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *18–19 (6th Cir. Oct. 19, 1995); *United States v. Conley*, 859 F. Supp. 909, 929–30 (W.D. Pa. 1994); *United States v. O'Brien*, 131 F.3d 1428, 1430 (10th Cir. 1977); *United States v. Hawes*, 529 F.2d 472, 481 (5th Cir. 1976) (quoting *United States v. Thaggard*, 477 F.2d 626, 631 (5th Cir. 1973)).

⁶⁴ *Ables*, 167 F.3d at 1031.

⁶⁵ *See generally* 18 U.S.C. § 1955.

⁶⁶ § 1955(b)(1)(i); OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2021); *see Ohio Liquor Control Comm'n v. Lytle*, No. 1246, 1987 Ohio App. LEXIS 5804, at *6 (Ct. App. Feb. 6, 1987).

⁶⁷ *See* § 1955(b)(1)(i); § 2915.02(A).

⁶⁸ *See* § 1955; § 2915.02(A).

outcome of a case: it prevents a defendant from ever employing a mistake of law defense based on good faith and reasonable reliance.

III. ANALYSIS

When a defendant in Ohio is prosecuted under Section 1955, Section 1955 should be interpreted as a specific intent statute. Although Section 1955 was created to be broad in scope, it specifically defers to state law.⁶⁹ With this deference, it should be interpreted as a specific intent statute when the underlying state law imposes a specific intent requirement.⁷⁰ Thus, as a specific intent statute, a defendant who operates their business in Ohio and is sitting in federal court should be able to present the complete defense of good faith and reasonable reliance to show that they did not have the specific intent to violate the law.⁷¹ Currently, *United States v. Ables* and precedent it relies on interpret Section 1955 as a general intent statute where no good faith and reasonable reliance on the advice of counsel defense is allowed.⁷² In considering these cases, they are readily distinguishable from a situation where one is indicted under Section 1955 in Ohio.⁷³ One of the few Ohio cases regarding Section 1955, *United States v. Mihalich*, relies on precedent such as *Ables*, whose analyses are based on other state law and incompatible with Section 2915.02(A)'s statutory construction.⁷⁴ Furthermore, Section 2915.02(A) more closely resembles other specific intent statutes.⁷⁵ Thus, when Ohio law is intertwined at the federal level with Section 1955, this specific intent element is included and should allow for a statutory interpretation of specific intent.

⁶⁹ See § 1955(b)(1)(i).

⁷⁰ See § 1955; § 2915.02(A); *United States v. O'Brien*, 131 F.3d 1428, 1430 (10th Cir. 1997).

⁷¹ See *O'Brien*, 131 F.3d at 1430; *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *10–11 (N.D. Ohio Dec. 5, 2006).

⁷² *United States v. Ables*, 167 F.3d 1021, 1031 (6th Cir. 1999); see generally *United States v. Sims*, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *2–3 (6th Cir. Oct. 19, 1995) (discussing 18 U.S.C. section 1955 pertaining to Tennessee state law); *United States v. Conley*, 859 F. Supp. 909, 929 (W.D. Pa. 1994) (discussing section 1955 pertaining to Pennsylvania state law); *O'Brien*, 131 F.3d at 1429 (10th Cir. 1997) (discussing section 1955 pertaining to Oklahoma state law); *United States v. Hawes*, 529 F.2d 472, 476 (5th Cir. 1976) (discussing section 1955 pertaining to Georgia state law).

⁷³ See generally *Sims*, 1995 U.S. App. LEXIS 35417, at *2–3; *Conley*, 859 F. Supp. at 929; *O'Brien*, 131 F.3d at 1429; *Hawes*, 529 F.2d at 476.

⁷⁴ *Mihalich*, 2006 U.S. Dist. LEXIS 87881, at *9–11; see *infra* Part III(A)(2); see, e.g., TENN. CODE ANN. § 39-17-502 et seq. (2020); 18 PA. CONS. STAT. § 5513(a)(1) (2019); OKLA. STAT. ANN. tit. 21, § 941 (West 2021); GA. CODE ANN. § 16-12-22 et seq. (2021).

⁷⁵ See, e.g., 18 U.S.C. §§ 1956, 1957.

A. *Specific Intent*1. *Ables* and the Cases it Relies Upon are Distinguishable from a Section 1955 Case in Ohio Because of Ohio's Specific Intent Nature

Currently, Section 1955 is a general intent crime “where a defendant need not be shown to have acted willfully in the sense of intentionally violating a known state legal duty.”⁷⁶ In *Ables*, the government had to establish that the gambling business violated Kentucky law, which is a material element under Section 1955.⁷⁷ In defense, *Ables* argued that the government had to prove he knowingly violated Kentucky law.⁷⁸ This argument was rejected because under general intent crimes, such as Section 1955, a defendant need not know they are violating state law.⁷⁹ Thus, a good-faith instruction was not permitted.⁸⁰ However, *Ables* is distinguishable from an individual in Ohio operating gambling devices based on reliance from advice of counsel that they were operating legally.⁸¹ First, *Ables* operated a business named Castle Bingo “under the guise that bingo proceeds . . . would be donated to one of several organizations exempt from tax.”⁸² Here, *Ables* is focused on the exemption under Section 1955(e), which specifically relates to the operation of bingo games instead of regular gambling businesses as a whole.⁸³ Thus, this case and the arguments presented are focused on a very narrow subset of the broad spectrum of issues that Section 1955 encompasses.

The distinction is further identified because the conviction under Section 1955 in *Ables* required a violation of *Kentucky* law.⁸⁴ Under Kentucky law, there is no requirement of intention or purpose to violate the law.⁸⁵ Thus, Kentucky's gambling law would most likely be that of general intent.⁸⁶ With Kentucky's gambling law being general intent, Section 1955 would, in turn, also be identified as general intent. In contrast, Ohio's gambling law specifically requires a “purpose to violate,” indicating

⁷⁶ *Ables*, 167 F.3d at 1031 (citing *Conley*, 859 F. Supp. at 929).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *See id.*; KY. REV. STAT. ANN. § 528 et seq. (LexisNexis 2021); OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2021).

⁸² *Ables*, 167 F.3d at 1024.

⁸³ *Id.* at 1028; 18 U.S.C. § 1955(e).

⁸⁴ *Ables*, 167 F.3d at 1023; *see* KY. REV. STAT. ANN. § 528 et seq. (LexisNexis 2021).

⁸⁵ *Id.*

⁸⁶ *See* § 528 et seq. It should also be noted that *Ables* never explicitly mentions the Kentucky state law nor attempts to interpret the nature of the state law. *Ables* merely focuses on the plain language of section 1955, which, when looking at other state statutory constructions, makes sense because the cases mainly appear to be general intent in nature.

that specific intent is necessary for a violation of Section 2915.02(A) to occur.⁸⁷ Because Ohio's gambling statute is a specific intent crime while Kentucky's gambling statute is a general intent crime, and Section 1955 is additionally dependent on violation of *state* law, this distinction indicates that *Ables* potentially held Section 1955 to be general intent based on the underlying assumption that Kentucky state law was also general intent in nature.⁸⁸ Thus, if Section 1955 were to be interpreted with regard to Ohio law, a specific intent requirement should be imposed.

In denying a good-faith instruction, *Ables* relied on four cases which are additionally distinguishable from a Section 1955 prosecution in Ohio.⁸⁹ First, *Sims*, a case centered on Tennessee state law, involved prosecution where Section 1955 was interpreted to be a general intent crime.⁹⁰ *Sims* specifically attempted to claim entrapment by estoppel because he had been told by representatives of the U.S. Treasury Department that "the federal government would not prosecute them if they purchased gambling stamps and paid a two percent federal excise tax."⁹¹ However, *Sims* also specified that it was "*uncontested that the business violated Tennessee law.*"⁹² Thus, there was no question as to whether state law had been violated; it had already been conceded that *Sims* violated Tennessee law.⁹³ Additionally, Tennessee's gambling statute appears to be a general intent crime.⁹⁴ Meanwhile, as established previously, violation of Section 2915.02(A) requires specific intent.⁹⁵ Furthermore, entrapment by estoppel is a completely separate defense from a mistake of law defense

⁸⁷ Ohio Liquor Control Comm'n. v. Lytle, No. 1246, 1987 Ohio App. LEXIS 5804, at *7 (Ohio Ct. App. Feb. 6, 1987).

⁸⁸ See § 528 et seq.

⁸⁹ *Ables*, 167 F.3d at 1031; see United States v. Sims, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *2-3 (6th Cir. Oct. 19, 1995) (discussing 18 U.S.C. section 1955 pertaining to Tennessee state law); United States v. Conley, 859 F. Supp. 909, 929 (W.D. Pa. 1994) (discussing section 1955 pertaining to Pennsylvania state law); United States v. O'Brien, 131 F.3d 1428, 1429 (10th Cir. 1977) (discussing section 1955 pertaining to Oklahoma state law); United States v. Hawes, 529 F.2d 472, 476 (5th Cir. 1976) (discussing section 1955 pertaining to Georgia state law).

⁹⁰ *Sims*, 1995 U.S. App. LEXIS 35417, at *3.

⁹¹ *Id.* at *2, *18-19.

⁹² *Id.* at *2 (emphasis added); see also United States v. Thaggard, 477 F.2d 626, 631 (5th Cir. 1973) (providing another example where the defendant conceded they were in violation of state law but attempted to argue they did not intend to violate federal law).

⁹³ *Sims*, 1995 U.S. App. LEXIS 35417, at *2.

⁹⁴ See TENN. CODE ANN. §§ 39-17-502 to -507 (2022) (requiring no intent beyond that making the acts purposeful).

⁹⁵ Ohio Liquor Control Comm'n. v. Lytle, No. 1246, 1987 Ohio App. LEXIS 5804, at *6 (Ohio Ct. App. Feb. 6, 1987).

based on intent within a statute or based on good faith and reasonable reliance.⁹⁶ Entrapment by estoppel is distinct in nature; it is noted by *Sims* that “if the gambling offense were a specific intent crime, the ‘entrapment by estoppel’ defense would not be available.”⁹⁷ Considering the statutory differences, the focus on entrapment by estoppel, and the concession that *Sims* violated Tennessee law, *Sims* is distinguishable from a defendant being prosecuted under Section 1955 in Ohio. Therefore, given the specific intent nature of Section 2915.02(A), a violation of Section 1955 should be treated as specific intent when the acts are committed in Ohio.⁹⁸ Thus, in Ohio, a good faith and reasonable reliance instruction should be permitted.

United States v. Conley notes that subjective good faith and reasonable reliance presents a complete defense in cases of specific intent crimes.⁹⁹ *Conley* is distinguishable from the present situation because of the difference in state statute.¹⁰⁰ Although *Conley* is another case where the defendant is prosecuted under Section 1955, it is centered on a violation of Pennsylvania law.¹⁰¹ Here, *Conley* clearly interprets the underlying state statute as general intent by identifying that “[w]hile the Pennsylvania law alleged to be violated in this case requires ‘actual intent to use, or actual use of, the video poker machine as a means of gambling,’ there is no requirement that a defendant have the intent to violate a *known* legal duty.”¹⁰²

Thus, the Pennsylvania gambling law is shown to be a general intent statute where a defendant is *not* required to intentionally or willfully violate the statute.¹⁰³ Because Pennsylvania’s gambling statute imposes a general intent requirement while Section 2915.02(A) is a specific intent crime, *Conley* is distinguishable.¹⁰⁴ Furthermore, *Conley* concedes that specific intent crimes allow for a complete defense based on subjective good faith and reasonable reliance.¹⁰⁵ Therefore, where a defendant is convicted under Section 1955 in Ohio and the state law is of specific intent nature,

⁹⁶ *United States v. Conley*, 859 F. Supp. 909, 929 (W.D. Pa. 1994) (indicating applicability of good faith and reliance defense makes entrapment by estoppel defense unnecessary).

⁹⁷ *Sims*, 1995 U.S. App. LEXIS 35417, at *19 (quoting *Conley*, 859 F. Supp. at 930).

⁹⁸ See OHIO REV. CODE ANN. § 2915.02(A)(7) (LexisNexis 2022) (requiring purpose to violate state gambling law).

⁹⁹ *Conley*, 859 F. Supp. at 929.

¹⁰⁰ Compare OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2022) (requiring intent to violate the provisions), with 18 PA. CONS. STAT. § 5513(a)-(a.1) (2022) (declaring intent to facilitate, permit, or host gambling sufficient to constitute a crime).

¹⁰¹ *Conley*, 859 F. Supp. at 929–30.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *id.*; Compare OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2022) (requiring intent to violate the provisions), with 18 PA. CONS. STAT. § 5513(a)-(a.1) (2022) (declaring intent to facilitate, permit, or host gambling sufficient to constitute a crime).

¹⁰⁵ *Conley*, 859 F. Supp. at 929.

Section 1955 should be interpreted as a specific intent crime and a good faith and reasonable reliance defense should be permitted.

United States v. O'Brien, another case relied on by *Ables*, is further distinguishable. In *O'Brien*, Section 1955 was ruled to be a general intent statute where a defendant need not know that the gambling business was in violation of state law.¹⁰⁶ Although Section 1955 was created to be broad and cover all who participate except mere bettors, the underlying state law necessary to convict *O'Brien* was Oklahoma law.¹⁰⁷ Based on the plain language of the Oklahoma statute, there is no requirement of intent to violate state law and it appears to be a general intent crime.¹⁰⁸ Meanwhile, Ohio's state gambling statute is one of specific intent where purpose to violate is necessary.¹⁰⁹ Because the underlying state statutes differ in construction and interpretation, Section 2915.02(A)'s specific intent nature should require that Section 1955 be interpreted as a specific intent statute where a good faith and reasonable reliance defense be permitted.

Ables lastly relies on *United States v. Hawes*, a Fifth Circuit case where Section 1955 is interpreted as a general intent statute.¹¹⁰ In *Hawes*, the underlying state law was based in Georgia, whose state statute on its face appears to lack any purpose requirement.¹¹¹ Furthermore, other cases in the Fifth Circuit have clearly explained the reasoning of Section 1955's general intent nature.¹¹² In *United States v. Davis*, Section 1955 was ruled to be a general intent crime.¹¹³ *Davis* centered on Texas law and specifically noted that because "neither 18 U.S.C. § 1955 nor the relevant *Texas gambling laws* require specific intent, the conspiracy charged here also does not require specific intent."¹¹⁴ As a result of both the federal and underlying state laws being general intent crimes, "a federal mistake-of-law defense [was] unavailable to the defendants."¹¹⁵ *Davis* is clearly distinguishable from the present case of a defendant being charged under Section 1955 in Ohio. While Texas gambling law was identified to be that of general intent, Section 2915.02(A) is identified as that of

¹⁰⁶ *United States v. O'Brien*, 131 F.3d 1428, 1430 (10th Cir. 1977).

¹⁰⁷ *Id.* (quoting *Sanabria v. United States*, 437 U.S. 54, 70 n. 26 (1978)).

¹⁰⁸ OKLA. STAT. ANN. tit. 21, § 941 (2022).

¹⁰⁹ OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2022).

¹¹⁰ *United States v. Hawes*, 529 F.2d 472, 481 (5th Cir. 1976).

¹¹¹ GA. CODE ANN. § 16-12-22(a) (2022).

¹¹² *See, e.g., United States v. Davis*, 690 F.3d 330, 340 (5th Cir. 2012) (citing *Hawes*, 529 F.2d at 481).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

specific intent.¹¹⁶ Thus, although Section 1955 on its face appears to be general intent, Ohio's specific intent requirement in its state law should create a specific intent requirement under Section 1955.¹¹⁷ Therefore, this specific intent requirement should permit a good faith and reasonable reliance defense when Section 1955 is intertwined with Section 2915.02(A).

When comparing Section 2915.02(A) to other state gambling statutes, the purpose requirement under section 2915.02(A)(7) is distinct and unique.¹¹⁸ Additionally, many cases that present good faith and reasonable reliance defenses do not address the underlying state statute's interpretation.¹¹⁹ When addressed, the state statute is typically identified as general intent in nature.¹²⁰

2. Current Precedent Regarding Section 1955 Intertwined with Ohio Law is Misplaced Because it Relies on Cases Interpreting Section 1955 With States who Have General Intent Statutes

Few cases exist that pertain to Section 1955 prosecutions for gambling businesses in Ohio.¹²¹ *Mihalich*, a district court decision within the Sixth Circuit where the defendant resided in Ohio, deemed Section 1955 to be a general intent crime where a good faith and reasonable reliance defense was disallowed.¹²² However, *Mihalich* also expressly noted that in the case of specific intent crimes, defenses of good faith and reasonable reliance are available.¹²³ In *Mihalich*, Mihalich was charged with a violation of Section 1955. In defense, he claimed that he relied on the advice of counsel in paying its managers using funds from an instant bingo parlor because it was a necessary expense.¹²⁴ Specifically, Mihalich requested a good faith and reasonable

¹¹⁶ *Id.* (citing *Legere v. State*, 82 S.W.3d 105, 109 (Tex. App. 2002)); OHIO REV. CODE ANN. § 2915.02(A) (2022); *Ohio Liquor Control Comm'n. v. Lytle*, No. 1246, 1987 Ohio App. LEXIS 5804, at *6–7 (Ohio Ct. App. 1987).

¹¹⁷ *See* 18 U.S.C. § 1955(b)(1)(i); OHIO REV. CODE ANN. § 2915.02(A)(7).

¹¹⁸ *See* OHIO REV. CODE ANN. § 2915.02(A) (2022) (requiring *purpose* to violate); APPENDIX A; *see also* ALA. CODE § 13A-12-20 (2022) (requiring only that one have the purpose to advance gambling activity).

¹¹⁹ *See* *United States v. Thaggard*, 477 F.2d 626, 631 (5th Cir. 1973) (conceding that the defendants were in violation of state law without further analysis); *United States v. Sims*, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *2 (6th Cir. Oct. 19, 1995) (specifying that it was uncontested that the business violated Tennessee law).

¹²⁰ *United States v. Conley*, 859 F. Supp. 909, 929–30 (W.D. Pa. 1994) (identifying that Pennsylvania law had no specific intent requirement); *United States v. Davis*, 690 F.3d 330, 340 (5th Cir. 2012) (explaining that Texas's state gambling law is one of general intent).

¹²¹ *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *9 (N.D. Ohio Dec. 5, 2006).

¹²² *Id.* at *9–10.

¹²³ *Id.* at *10.

¹²⁴ *Id.* at *6–7.

reliance defense.¹²⁵ However, *Mihalich* relied on *Ables* in its conclusion that a defense based on advice of counsel was disallowed, as the Sixth Circuit recognizes Section 1955 as a general intent crime.¹²⁶

Mihalich was erroneously decided and is inconsistent and distinguishable from the current analysis previously mentioned in *Ables*. Further, the holding in *Ables* should not apply to the facts in *Mihalich* because *Ables* relies on Kentucky law in concluding that Section 1955 is a general intent crime.¹²⁷ In a case incorporating Ohio law such as *Mihalich*, Section 1955 should not be treated as a general intent crime when violation of the respective state statute is an element and Ohio's gambling law has a specific intent requirement.¹²⁸ Thus, *Mihalich's* reasoning and reliance on *Ables* is inapplicable because Section 1955, with regard to Kentucky law, will result in a different outcome than a case in Ohio.

Furthermore, *Mihalich* solely discusses the charitable bingo exemption under section 2915.02(D) as opposed to the main gambling sections under Section 2915.02(A).¹²⁹ Thus, it relies on a very narrow element of the law and, in essence, admits or relinquishes any potential ruling regarding the rest of the statute.¹³⁰ *Mihalich* never interprets the elements of the statute or discusses the possibility of a good faith and reasonable reliance defense pertaining to the rest of the statute.¹³¹

Additionally, *Mihalich* is one of the few cases dealing with Section 1955 under Ohio law where a good faith and reasonable reliance defense was argued and discussed.¹³² Because *Mihalich* relies on a Sixth Circuit case in Kentucky and never addresses Section 2915.02(A)'s specific intent nature, Section 1955 convictions in connection with Ohio law should still be interpreted with regard to specific intent and allow for a good faith and reasonable reliance defense.¹³³

Also worth noting is the constitutionality argument in *United States v. Acquino* that addresses Section 1955's inconsistency between states.¹³⁴ Essentially, something can be deemed illegal in one state while the same act is considered legal in another

¹²⁵ *Id.* at *6.

¹²⁶ *Id.* at *10.

¹²⁷ *United States v. Ables*, 167 F.3d 1021, 1032 (6th Cir. 1999).

¹²⁸ *See generally* *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *4 (N.D. Ohio Dec. 5, 2006); 18 U.S.C. § 1955(b)(1)(i); OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2022).

¹²⁹ *See generally* *Mihalich*, 2006 U.S. Dist. LEXIS 87881 at *12–13; *see* OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2022).

¹³⁰ *See generally* *Mihalich*, 2006 U.S. Dist. LEXIS 87881 at *12–13.

¹³¹ *See generally id.*

¹³² *See generally id.*

¹³³ *Id.* at *8.; *see* *United States v. Ables*, 167 F.3d 1021, 1031 (6th Cir. 1999).

¹³⁴ *United States v. Aquino*, 336 F. Supp. 737, 740 (E.D. Mich. 1972).

state.¹³⁵ It is reasonable and conceded within this Note that this inconsistency would not make the statute unconstitutional, as *Aquino* stated.¹³⁶ However, this identified inconsistency gives weight to the argument that Section 1955 could be interpreted as a specific intent statute in some states.¹³⁷ Just as the same act under Section 1955 could be interpreted as illegal in one state while legal in another, Section 1955 could also be interpreted as general intent in one state, like Texas,¹³⁸ while specific intent in another, like Ohio.¹³⁹ Following this logic, if Section 1955's inconsistency based on deference to state law could make the statute general intent in one state while specific intent in another, a good faith and reasonable reliance defense could be allowed in Ohio while disallowed in other states.

3. When Compared to Other Specific and General Intent Statutes, Section 2915.02(A)(1)-(6) in Connection with (A)(7) More Resembles a Specific Intent Statute; Thus, the Specific Intent Element is Inserted into Section 1955, Making it a Specific Intent Federal Statute

Assuming the current precedent interpreting Section 2915.02(A) as specific intent was given no deference by a court, Section 2915.02(A)'s construction more closely resembles other specific intent statutes as opposed to general intent statutes.¹⁴⁰ First, some background to the following statutes should be identified. *Mihalich* noted that the Sixth Circuit identifies crimes such as sections 1956 and 1957 as specific intent statutes "under which the Government must establish a defendant's criminal scienter to secure his conviction."¹⁴¹ Essentially, if the advice of counsel relied upon is

¹³⁵ *Id.* at 739–40 (“[W]hat is legal in Nevada may be illegal in Michigan.”).

¹³⁶ *Id.* at 740; *see also* *United States v. Curcio*, 310 F. Supp. 351, 358 (D. Conn. 1970) (upholding constitutionality based on well-established principle that state criminal laws may be incorporated into federal criminal law); *see, e.g.*, *Clark Distilling Co. v. W. Md. R.R. Co.*, 242 U.S. 311, 326 (1917) (showcasing another example of upholding a federal statute that incorporates and gives deference to state law).

¹³⁷ *Aquino*, 336 F. Supp. at 740; *see also Curcio*, 310 F. Supp. at 358 (upholding constitutionality based on well-established principle that state criminal laws may be incorporated into federal criminal law); *see, e.g., W. Md. R.R. Co.*, 242 U.S. at 326 (showcasing another example of upholding a federal statute that incorporates and gives deference to state law).

¹³⁸ *See United States v. Davis*, 690 F.3d 330, 340 (5th Cir. 2012) (identifying Texas and Section 1955 as general intent statutes).

¹³⁹ *See State v. Georgekopoulos*, No. 10566, 1983 Ohio App. LEXIS 14369, at *8 (Ohio Ct. App. Jan. 5, 1983) (identifying Section 2915.02 as a specific intent statute).

¹⁴⁰ *See, e.g.*, 18 U.S.C. §§ 1956–57; OHIO REV. CODE ANN. § 2911.12 (LexisNexis 2022).

¹⁴¹ *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *9 (N.D. Ohio Dec. 5, 2006); *see generally* 18 U.S.C. §§ 1956–57.

reasonable and lawful, prosecutions of any specific intent crime allow for defense of good faith and reasonable reliance on advice of counsel.¹⁴²

The federal money laundering statute mentioned in *Mihalich*, section 1956, requires that the defendant, among other things, have “the intent to promote the carrying on of specified unlawful activity” or “intent to engage in conduct constituting a violation of section 7201 or 7206.”¹⁴³ This is similar to the language under Section 2915.02(A) requiring that a defendant have the “purpose to violate division (A)(1), (2), (3), (4), (5), or (6).”¹⁴⁴ Although Section 1955 does not have this language, it incorporates state law by requiring proof of violation of the state law where the defendant operates the gambling device.¹⁴⁵ Because it encompasses state law, its application when tied to Ohio law would inherently require that a defendant prosecuted under Section 1955 would also have to violate Ohio law, which requires the *purpose* to violate one of the specified divisions.¹⁴⁶

Therefore, following the similarities in construction between other specific intent statutes and Ohio’s gambling law,¹⁴⁷ Ohio’s law is specific intent in nature. Before even resorting to precedent, which clearly sets forth that Ohio’s gambling statute is of a specific intent nature,¹⁴⁸ Section 2915.02 is a specific intent statute based on its plain language.¹⁴⁹ Because Section 1955 requires that a defendant be in violation of state law, it follows that this specific intent requirement under Section 2915.02(A) is placed within the confines of the federal law.¹⁵⁰ As such, Section 1955 should be interpreted as a specific intent statute in its entirety when the case is brought in a state, like Ohio, where the gambling statute imposes a specific intent requirement. Thus, an Ohio defendant prosecuted at the federal level for operating an allegedly illegal gambling business should be able to present a defense based on good faith and reasonable reliance.

¹⁴² *Mihalich*, 2006 U.S. Dist. LEXIS 87881, at *10–11; *see, e.g.*, *United States v. Dixon*, 1999 WL 98578, at *4 (6th Cir. 1999); *see also* *United States v. Moss*, 2003 U.S. App. LEXIS 14247, at *24–25 (6th Cir. 2003) (requiring that advice of counsel be reasonable and lawful).

¹⁴³ 18 U.S.C. § 1956.

¹⁴⁴ § 2915.02(A)(7).

¹⁴⁵ 18 U.S.C.A. § 1955.

¹⁴⁶ *See* § 2915.02(A)(7).

¹⁴⁷ *See, e.g.*, § 1956 (“[W]ith the intent to promote the carrying on of specified unlawful activity”). This is also comparable with the language for the crime of burglary: “with the purpose of committing a felony once inside.” *KADISH ET AL.*, *supra* note 20.

¹⁴⁸ *State v. Miller*, No. 9201, 1979 Ohio App. LEXIS 11439, at *22–23 (Ohio Ct. App. Dec. 5, 1979); *Ohio Liquor Control Comm’n v. Lytle*, No. 1246, 1987 Ohio App. LEXIS 5804, at *6–8 (Ohio Ct. App. Feb. 6, 1987).

¹⁴⁹ *See* OHIO REV. CODE ANN. § 2915.02(A)(7) (LexisNexis 2022).

¹⁵⁰ *See id.*; 18 U.S.C. § 1955(b)(1)(i) (“[I]llegal gambling business’ means a gambling business which . . . is a violation of the law of a State or political subdivision in which it is conducted[.]”).

4. The Uniqueness of Section 2915.02(A)(7)'s Purpose Requirement

As mentioned previously, Section 2915.02(A)'s requirement that a defendant have the "purpose to violate division (A)(1), (2), (3), (4), (5), or (6)"¹⁵¹ is distinct and unique in comparison to other state gambling laws.¹⁵² In comparison to precedent relating to Section 1955, states like Pennsylvania, Texas, and others have clearly set forth state gambling statutes as general intent in nature.¹⁵³ Appendix A further identifies state statutes that are distinguishable from Section 2915.02(A)'s specific intent requirement.¹⁵⁴ Thus, Section 1955 in connection with Section 2915.02(A) should be interpreted as a specific intent crime.

B. Because Section 1955 is Considered a Specific Intent Crime When Intertwined with Section 2915.02(A), a Mistake of Law Defense Based on Good Faith and Reasonable Reliance Should be Permitted

With regard to the initial scenario presented,¹⁵⁵ a case may arise where a defendant reasonably relied in good faith on the advice of an attorney when they placed gambling machines or devices in their establishment.¹⁵⁶ Under current precedent, this good faith and reasonable reliance will be inapplicable in federal court because Section 1955 is considered a general intent statute.¹⁵⁷ This will leave the defendant without the opportunity to present proof evincing their mental culpability.

As mentioned previously, there are multiple types of mistake of law defenses.¹⁵⁸ Given the analysis set forth in this Note, Section 1955 in connection with Ohio's gambling statute, Section 2915.02(A), should be interpreted as a specific intent crime. As such, a mistake of law defense should be permitted based on the holding that with any "specific intent crimes, defenses of good faith and reasonable reliance on the advice of counsel are available."¹⁵⁹ Therefore, Section 1955 as a specific intent statute

¹⁵¹ § 2915.02(A)(7) (requiring *purpose* to violate).

¹⁵² See *supra* note 118, Part III(A)(1); APPENDIX A; see also Ala. Code § 13(A)-12-20 (requiring only that one have the purpose to advance gambling activity).

¹⁵³ 18 PA. CONS. STAT. § 5513 (2022); TEX. PENAL CODE ANN. § 47.02-.06 (West 2021); *United States v. Davis*, 690 F.3d 330, 340 (5th Cir. 2012) (citing *Legere v. State*, 82 S.W.3d 105, 109 (Tex. App. 2002); *United States v. Conley*, 859 F. Supp. 909, 929–30 (W.D. Pa. 1994).

¹⁵⁴ See APPENDIX A.

¹⁵⁵ See *supra* Part I.

¹⁵⁶ See *id.*

¹⁵⁷ *United States v. Ables*, 167 F.3d 1021, 1031 (6th Cir. 1999).

¹⁵⁸ See *supra* Part II(C).

¹⁵⁹ *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *10–11 (N.D. Ohio Dec. 5, 2006). However, keep in mind that the specific intent element is only negated if the defendant disclosed *all* pertinent facts to counsel and relied in good faith on their advice. *Id.*

in relation to Ohio should allow for a mistake of law defense as described in precedent such as *Ables*, *Mihalich*, and otherwise.¹⁶⁰

C. *The Flipside: the Bad Faith Operator*

Although many defendants may be able to provide valid arguments of good faith, it is possible that some will attempt to use this specific intent interpretation unethically. Consider the argument within this Note: Section 1955 is a specific intent crime when intertwined with Ohio's gambling law, Section 2915.02(A), and thus, a mistake of law defense based on good faith and reasonable reliance should be permitted. This means that some defendants will exist who are aware of the illegality of their actions and merely use the lawyer's "advice" to their advantage. Although this possibility exists, it is important to note: (1) a mistake of law based on good faith and reasonable reliance has multiple, strict requirements that are fairly difficult to prove, and (2) this is a very narrow subset of the law, meaning this will not arise in every case related to illegal gambling.

As aforementioned, there are many strict requirements in place when presenting a mistake of law based on good faith and reasonable reliance. First, in order to argue that a defendant reasonably relied on the advice of counsel in good faith, the defendant must disclose *all* pertinent facts to the lawyer.¹⁶¹ This eliminates the potential issue of "gray areas" that defendants may attempt to utilize in arguments and also assists attorneys in proving true intent.¹⁶² For example, in *Mihalich*, Mihalich attempted to argue that he relied on his attorney pertaining to a "gray" area in the law regarding payment to a store manager.¹⁶³ However, the court was quick to point out the plain language under Section 2915.02(D), showing that it was not a "gray area" as argued,

¹⁶⁰ *Ables*, 167 F.3d at 1031 (denying good-faith instruction due to § 1955's general intent requirement); *Mihalich*, 2006 U.S. Dist. LEXIS 87881 at *10–11 (explaining that a good-faith belief and reliance on counsel's advice will only be a defense with regard to specific intent crimes); see *United States v. Duncan*, 850 F.2d 1104, 1115–19 (6th Cir. 1988) (vacating and remanding for failure to instruct jury on defense of good-faith reliance on advice from tax accountant regarding specific intent tax statute); see also Meese & Larkin, *supra* note 51, at 745 ("[I]gnorance or mistake-of-law are generally not valid defenses, except perhaps for a specific intent crime that requires knowing violation." (quoting CHRISTOPHER L. BELL ET AL., ENVIRONMENTAL LAW HANDBOOK 102 (Thomas F. P. Sullivan ed., 21st ed. 2011))). It is also worth mentioning that one of the main points of this Note is to highlight the fact that someone who relied on the advice of counsel in good faith could face immense prosecution without the availability of the mistake of law defense, despite the fact that they are "morally blameless." See *id.* at 768 ("[I]mprisoning a person who is morally blameless not only violates longstanding principles of fairness, not only engenders disrespect for the criminal law, and not only fails to promote the retributive or deterrent purposes of the criminal law, but it also creates a risk of a haphazard or lottery-like system of enforcement, one in which there is no rational basis for distinguishing the few who are caught from the rest for whom ignorance is not just bliss but freedom." (citing Henry M. Hart, Jr., *The Aims of the Criminal Law*, 23 LAW & CONTEMP. PROBS. 401, 428–29 (1958))).

¹⁶¹ *Mihalich*, 2006 U.S. Dist. LEXIS 87881 at *10.

¹⁶² *Id.* at *6.

¹⁶³ *Id.*

but instead, plain.¹⁶⁴ Although this does not relate precisely to the same law under Section 2915.02(A), the main point is analogous.¹⁶⁵ The pertinent facts must be disclosed and the court will examine the plain language of the statute to see if the proscribed “purpose to violate” is present.

Furthermore, *United States v. Duncan* points out that a complete defense under good faith requires strict guidelines.¹⁶⁶ Specifically, “a defendant will not be willfully doing wrong if he relied in good faith on an accountant whom he honestly believed competent, made a full and complete disclosure to his accountant of all material facts of which he had knowledge, and then acted strictly in accordance with the advice given to him by his accountant.”¹⁶⁷ Here, a defendant will have to show this honest belief, full disclosure of all pertinent facts, act in accordance to the advice, and then offer evidence of good faith, which can be shown in a multitude of ways.¹⁶⁸ For example, in *Duncan*, Duncan offered evidence of the transactions in question, his relationship to the person he relied upon, “specific testimony about the preparation of the returns in question . . . [and] his own hearsay statements of reliance”¹⁶⁹ Thus, following cases such as *Mihalich* and *Duncan*, a defendant will not be able to merely *say* he relied on an attorney’s advice in order to secure a complete defense under Section 1955.¹⁷⁰ Instead, they will have to offer evidence of not only their own actions, but also evidence of good faith and acts that strictly align with the advice.¹⁷¹

Second, Section 1955 in connection with Section 2915.02(A) is a very narrow subset of gambling laws. Although Section 1955 was created to be broad, its intertwinement with Ohio law under Section 2915.02(A) will render it inapplicable in a variety of cases.¹⁷² With consideration to much of the precedent identified in this Note, many of the facts centered on charitable bingo exemptions,¹⁷³ conceded that the state law was violated,¹⁷⁴ or had clear state laws where no “purpose to violate” was

¹⁶⁴ *Id.* at *7.

¹⁶⁵ OHIO REV. CODE ANN. § 2915.02 (LexisNexis 2022).

¹⁶⁶ *United States v. Duncan*, 850 F.2d 1104, 1115 (1988).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 1115.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 1116; *United States v. Mihalich*, No. 1:06-CR-345, 2006 U.S. Dist. LEXIS 87881, at *10 (N.D. Ohio Dec. 5, 2006).

¹⁷¹ *Duncan*, 850 F.2d at 1115; *Mihalich*, 2006 U.S. Dist. LEXIS 87881, at *10–11.

¹⁷² 18 U.S.C. § 1955; OHIO REV. CODE ANN. § 2915.02 (LexisNexis 2022).

¹⁷³ *Mihalich*, 2006 U.S. Dist. LEXIS 87881, at *6; *United States v. Ables*, 167 F.3d 1021, 1023 (6th Cir. 1999).

¹⁷⁴ *United States v. Sims*, Nos. 95-5009/95-5010, 1995 U.S. App. LEXIS 35417, at *2 (6th Cir. Oct. 19, 1995).

contemplated in the plain language.¹⁷⁵ Thus, bringing forth a mistake of law defense within the confines of this Note will not be overly prevalent as to bring forth vexatious litigation or undue burden on the courts.

D. Final Considerations

The federal gambling statute and its deference to various state laws creates a complex and complicated statutory scheme within the realm of gambling businesses. As such, there are always competing interests and considerations at play. Furthermore, decisions by the legislature often require trade-offs. If the Ohio legislature voted to include a specific intent element into their gambling law, they must have had a reason for doing so. This distinct “purpose” requirement embedded in Ohio’s gambling statute evinces that the legislature may have had different motivations in constructing Section 2915.02(A) as compared to other states.

It is possible that most states are more concerned with the overall crackdown on illegal gambling businesses, which lead to money laundering and other crimes,¹⁷⁶ with less concern regarding the culpability of the defendant. While their goal may have been to effectively ban illegal gambling, their focus may have pertained to the law without regard for the defendant’s mental scienter. On the other hand, Ohio may have wanted to effectively ban illegal gambling – with concern for those who specifically have the *requisite* culpability. Regardless, dire consequences exist if no mistake of law defense is allowed; notwithstanding whether the defendant implicitly believed they were in compliance with the law due to reasonable reliance on the advice of counsel, they will be disallowed from asserting it in court as the current precedent stands.

IV. CONCLUSION

In its entirety, Section 1955 was created to be broad in scope; as such, it is important to understand the narrow issues that are involved. As a federal statute that specifically gives deference to state law, Section 1955 requires a defendant to be in violation of its respective state law.¹⁷⁷ In Ohio, a state with a gambling statute that presents a specific intent requirement, one who violates the state law must have the specific purpose to violate the law.¹⁷⁸ When intertwined with Section 1955, this “purpose” requirement carries over. Thus, when a defendant is prosecuted under Section 1955 with regard to Ohio law, the federal statute must be interpreted as one of specific intent nature. Interpreting Section 1955 as a specific intent statute, a defendant who reasonably relied on the advice of counsel in good faith and did not have the specific intent to violate Section 2915.02(A) should be enabled to present a mistake of law defense based on good faith and reasonable reliance when prosecuted.

¹⁷⁵ United States v. Conley, 859 F. Supp. 909, 929–30 (W.D. Pa. 1994); United States v. Davis, 690 F.3d 330, 340 (5th Cir. 2012).

¹⁷⁶ *Intersection Between Illegal Gambling and Organized Crime*, HG.ORG, <https://www.hg.org/legal-articles/intersection-between-illegal-gambling-and-organized-crime-50429> (last visited Feb. 15, 2022) (describing further illegal activity within illegal gambling such as bypassing taxes, defrauding the government, and more).

¹⁷⁷ 18 U.S.C. § 1955.

¹⁷⁸ OHIO REV. CODE ANN. § 2915.02(A) (LexisNexis 2022).

V. APPENDIX A

State	Statute	Language / General Notes
Ohio	OHIO REV. CODE ANN. § 2915.02(A)(7) (West 2022).	<p>“with <i>purpose</i> to violate division (A)(1), (2), (3), (4), (5), or (6) of this section”</p> <p>This purpose requirement under division (7) is clear and distinct, showing its specific intent nature when a violation occurs in connection with sections (A)(1)-(6).</p>
Tennessee	TENN. CODE ANN. § 39-17-502 et seq. (West 2022).	<p>Provision of a narrow affirmative defense when “a person reasonably and in good faith relied upon the representations of a gambling promoter that a gambling activity was lawful because it was an “<i>authorized annual event pursuant to title 3, chapter 17.</i>” § 39-17-502 (emphasis added).</p> <p>Other than this narrow exception, no requirement of purpose is present. Knowingly engaging in the specified acts is sufficient.</p>
Pennsylvania	18 PA. CONS. STAT. § 5513 (2022).	Pennsylvania’s statute includes the mens rea “purpose” but solely directs it at purposeful actions. No mention of purpose to violate the law is included.
Oklahoma	OKLA. STAT. ANN. tit. 21, § 941 (West 2022).	Again, no mention of purpose or intent within the statute exists. This is most likely a general intent statute; thus, when in connection with Section 1955, this would be considered a general intent statute in its entirety.
Georgia	GA. CODE ANN. § 16-12-22 et seq. (West 2022).	<p>No mention of purpose or intent is included.</p> <p><i>See also</i> Wilson v. State, 197 S.E. 48 (1938) (mentioning that under this state gambling statute, an intentional act was sufficient regardless of whether the defendant knew he was violating the law).</p>
Kentucky	KY. REV. STAT. ANN. § 528 et seq. (LexisNexis 2022).	There is a mention of “knowingly” committing acts; however, no requirement of purpose to violate the statute exists. This signifies that without the purpose requirement, the Kentucky statute would be considered a general intent statute, rendering Section 1955 as general intent in nature.

State	Statute	Language / General Notes
Texas	TEX. PENAL CODE ANN. § 47.01 (West 2021).	<p>Texas has one of the most strict and extensive gambling statutes in the United States. <i>See</i> TXK Today Staff, <i>Texas has the Strictest Gambling Laws in the Country, but could the State Benefit from Changing its Outlook?</i>, TXK Today (Dec. 27, 2019), https://txktoday.com/news/texas-has-the-strictest-gambling-laws-in-the-country-but-could-the-state-benefit-from-changing-its-outlook/.</p> <p>However, <i>United States v. Davis</i>, 690 F.3d 330 (5th Cir. 2012) makes it clear that both federal and Texas law were <i>both</i> general intent statutes.</p>
Alabama	ALA. CODE § 13A-12-22 (LexisNexis 2022).	<p>“(a) A person commits the crime of promoting gambling if he knowingly advances or profits from unlawful gambling activity otherwise than as a player.” Knowingly advancing unlawful gambling activity is slightly different from doing so with the direct purpose to violate the statute.</p> <p>However, possession of a gambling device includes a small section under § 13A-12-27(a)(2): “with the intention that it be used in the advancement of unlawful gambling activity.” Alabama may be another state where this Note’s argument could be made, depending on the circumstances.</p>
Arizona	ARIZ. REV. STAT. § 13-3303 (LexisNexis 2022).	<p>“A. Except for amusement, regulated or social gambling, a person commits promotion of gambling if he knowingly does either of the following for a benefit:</p> <ol style="list-style-type: none"> 1. Conducts, organizes, manages, directs, supervises or finances gambling. 2. Furnishes advice or assistance for the conduct, organization, management, direction, supervision, or financing of gambling.” <p>Overall, there is no requirement of purpose or intent as long as he or she knowingly commits the specified actions.</p>
Alaska	ALASKA STAT. ANN. §§ 11.66.200,	“(a) A person commits the offense of gambling if the person engages in unlawful gambling.”

State	Statute	Language / General Notes
	05.15.680 (West 2022).	Under the penalties provision, “[a] person who knowingly violates or aids or solicits a person to violate this chapter is guilty” The mens rea of “knowingly” is slightly distinguishable from having the specific intent to violate the law, as proscribed under Ohio’s gambling law.
Arkansas	ARK. CODE ANN. §§ 5-66-103, 5-66-104 (West 2022).	Arkansas has a very strict statutory scheme regarding gambling and gambling houses. Devices in general in this state are specifically prohibited. After reviewing the statutes, neither of the specified sections mention any language requiring purpose or intent. In its entirety, it is unlawful for a person “to set up, keep, or exhibit any gaming table or gambling device” or other acts as specified under section 5-66-103.
California	CAL. PENAL CODE § 330.1 (Deering 2021).	There is no mention of purpose or intent within this specified section of the California Penal Code. Anyone who “manufactures, owns, stores, keeps, possesses . . . any slot machine or device” will be guilty.
Colorado	COLO. REV. STAT. § 18-10-105 (2022).	Under Colorado law, “a person who owns, manufactures, sells, transports, or engages in any transaction . . . of a gambling device or gambling record, knowing that it is to be used in professional gambling, commits possession of a gambling device or record.” Although there is a requirement that the defendant know the gambling device or record be used in professional gambling, there is no requirement of purpose of intent to violate the statute.
Florida	FLA. STAT. ANN. § 849.01 (LexisNexis 2021).	Under section 849.01, titled “keeping gambling houses, etc.,” there is no mention of purpose or intent as necessary to consider it a specific intent statute.
Indiana	IND. CODE ANN. § 35-45-	Under Indiana law, one who “knowingly or intentionally engages in gambling commits

State	Statute	Language / General Notes
	5-2 (LexisNexis 2022).	unlawful gambling.” Thus, the intentional or knowing engagement is enough; purpose to specifically violate the statute is not required.
Minnesota	MINN. STAT. §§ 609.755, 609.761 (2021).	Under Minnesota law, anyone who possesses a gambling device is guilty unless another statute authorizes it. This statute is far shorter than most state gambling laws and is vastly different from Ohio law.
Maryland	MD. CODE ANN., CRIM. LAW § 12-104 (West 2022).	Under Maryland law, a person may not “manage a gaming device or a building, vessel, or place for gambling.” There is no mention of purpose or requisite intent throughout the statute and is clearly meant to be general intent in nature.
New York	N.Y. PENAL LAW § 225.30 (Consol. 2022).	Under New York law, “a person is guilty of possession of a gambling device when, <i>with knowledge of the character thereof</i> , he or she manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of” various devices. This is a statute more similar to Ohio’s, as the defendant must “[believe] that the same is to be used in the advancement of unlawful gambling activity.” There may be room to make an argument here. However, in <i>United States v. Gotti</i> , 459 F.3d 296, 340–41 (2d Cir. 2006), one advances gambling activity when they engage in conduct “which materially aids any form of gambling activity.” Thus, violation of New York law is most likely general intent in nature depending on whether a defendant is engaging in gambling conduct or possessing a gambling device.
South Carolina	S.C. CODE ANN. § 12-21- 2710 (2022).	Essentially, possession of any type of gambling machine or device will render a defendant guilty without consideration to purpose of intent.