

TITLE XIII: GENERAL OFFENSES

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CHAPTER 130: GENERAL PROVISIONS

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§ 130.01 APPLICATION OF TITLE XIII.

(A) Title XIII of this code of ordinances embodies and prescribes penalties for offenses against the municipality not classifiable in previous titles and chapters. The word “misdemeanors,” as used in this title, is not exhaustive and does not imply that offenses found elsewhere in this code of ordinances are not also misdemeanors and punishable as such.

(B) Each act or omission for which a fine, imprisonment or both is provided under this Title or elsewhere in this code, or each act or omission which is declared a violation of this code, is unlawful and is hereby made a misdemeanor. Upon conviction, the penalty or penalties so provided shall be imposed by the court.

(1985 Code, § 130.01) (Ord. 1306, passed 6-13-1977)

§ 130.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CONTRABAND. Any property that is illegal for a person to acquire or possess under a statute, ordinance or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. The term includes but is not limited to all of the following:

- (1) Any controlled substance, as defined in R.C. § 3719.01, or any device or paraphernalia related thereto;
- (2) Any unlawful gambling device or paraphernalia; and
- (3) Any dangerous ordnance or obscene material.

DANGEROUS OFFENDER. A person who has committed an offense, whose history, character and condition reveal a substantial risk that he or she will be a danger to others, and whose conduct has been characterized by a pattern of repetitive, compulsive or aggressive behavior with heedless indifference to the consequences.

DEADLY FORCE. Any force that carries a substantial risk that it will proximately result in the death of any person.

FORCE. Any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.

LAW ENFORCEMENT OFFICER. Any of the following:

- (1) A Sheriff, Deputy Sheriff, constable, police officer of a township or joint police district, Marshal, Deputy Marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under R.C. § 3735.31(D) or state highway patrol trooper;
- (2) An officer, agent or employee of the state or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority;

- (3) The Mayor, in a capacity as chief conservator of the peace within the municipality;
- (4) A member of an auxiliary police force organized by the county, township or municipal law enforcement authorities, within the scope of the member's appointment or commission;
- (5) A person lawfully called pursuant to R.C. § 311.07 to aid a Sheriff in keeping the peace, for the purposes and during the time when the person is called;
- (6) A person appointed by a Mayor pursuant to R.C. § 737.01 as a special patrolling officer during a riot or emergency, for the purposes and during the time when the person is appointed;
- (7) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;
- (8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or municipal prosecutor;
- (9) A veterans' home police officer appointed under R.C. § 5907.02;
- (10) A member of a police force employed by a regional transit authority under R.C. § 306.35(Y);
- (11) A special police officer employed by a port authority under R.C. § 4582.04 or 4582.28;
- (12) The House of Representatives Sergeant at Arms if the House of Representatives Sergeant at Arms has arrest authority pursuant to R.C. § 101.311(E)(1) and an Assistant House of Representatives Sergeant at Arms;
- (13) The Senate Sergeant at Arms and an Assistant Senate Sergeant at Arms; and
- (14) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in 14 C.F.R. § 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation as provided in 49 C.F.R. Parts 1542 and 1544, as amended.

NOT GUILTY BY REASON OF INSANITY. A person is ***NOT GUILTY BY REASON OF INSANITY*** relative to a charge of an offense only if the person proves, in the manner specified in R.C. § 2901.05, that at the time of the commission of the offense, he or she did not know, as a result of a severe mental disease or defect, the wrongfulness of his or her acts.

OFFENSE OF VIOLENCE.

- (1) A violation of R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03,

2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34 or 2923.161, division (A)(1), (A)(2) or (A)(3) of R.C. § 2911.12, or of division (B)(1), (B)(2), (B)(3) or (B)(4) of R.C. § 2919.22, or felonious sexual penetration in violation of former R.C. § 2907.12;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or of the United States, substantially equivalent to any section, division or offense listed in division (1) of this definition;

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or of the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons; or

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (1), (2) or (3) of this definition.

PERSON.

(1) (a) Subject to division (2) of this definition, as used in any section contained in Title XIII of this code that sets forth a criminal offense, the term includes all of the following:

1. An individual, corporation, business trust, estate, trust, partnership and association; and
2. An unborn human who is viable.

(b) As used in any section contained in Title XIII of this code that does not set forth a criminal offense, the term includes an individual, corporation, business trust, estate, partnership and association.

(c) As used in division (1)(a)2. of this definition, ***UNBORN HUMAN*** means an individual organism of the species *Homo sapiens* from fertilization until live birth. ***VIABLE*** means the stage of development of a human fetus at which there is a realistic probability of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (1)(a) of this definition, in no case shall the portion of the definition of the term ***PERSON*** that is set forth in division (1)(a)2. of this definition be applied or construed in any section contained in Title XIII of this code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (2)(a) of this definition, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions

described in the immediately preceding sentence may be punished as a violation of R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21 or 2903.22, or any substantially equivalent municipal ordinance, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence but that does violate R.C. § 2919.12, 2919.13(B), 2919.151, 2919.17 or 2919.18, or any substantially equivalent municipal ordinance, may be punished as a violation of such section, as applicable. Consent is sufficient under this division (2)(a) if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with R.C. § 2919.12.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

1. Her delivery of a stillborn baby;
2. Her causing, in any other manner, the death *in utero* of a viable, unborn human that she is carrying;
3. Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;
4. Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human; and
5. Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness or other psychological illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

PHYSICAL HARM TO PERSONS. Any injury, illness or other physiological impairment, regardless of its gravity or duration.

PHYSICAL HARM TO PROPERTY. Any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. The term does not include wear and tear occasioned by normal use.

PRIVILEGE. An immunity, license or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office or relationship, or growing out of necessity.

PROPERTY.

(1) Any property, real or personal, tangible or intangible, and any interest or license in that property. The term includes but is not limited to cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human-readable form, trade secrets, trademarks, copyrights, patents

and property protected by a trademark, copyright or patent. **FINANCIAL INSTRUMENTS ASSOCIATED WITH COMPUTERS** include but are not limited to checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities or any computer system representations of any of them.

(2) As used in this definition, “trade secret” has the same meaning as in R.C. § 1333.61, and “telecommunications service” and “information service” have the same meanings as in R.C. § 2913.01.

(3) As used in this definition and in the definition of “contraband” in this section, “cable television service,” “computer,” “computer network,” “computer software,” “computer system,” “data” and “telecommunications device” have the same meanings as in R.C. § 2913.01.

REPEAT OFFENDER. A person who has a history of persistent criminal activity and whose character and condition reveal a substantial risk that he or she will commit another offense. It is prima facie evidence that a person is a repeat offender if any of the following applies:

(1) Having been convicted of one or more offenses of violence, as defined in R.C. § 2901.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent offense of violence;

(2) Having been convicted of one or more sexually oriented offenses, as defined in R.C. § 2950.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent sexually oriented offense;

(3) Having been convicted of one or more theft offenses, as defined in R.C. § 2913.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent theft offense;

(4) Having been convicted of one or more felony drug abuse offenses, as defined in R.C. § 2925.01, and having been imprisoned pursuant to sentence for one or more of those offenses, he or she commits a subsequent felony drug abuse offense;

(5) Having been convicted of two or more felonies, and having been imprisoned pursuant to sentence for any such offense, he or she commits a subsequent offense; or

(6) Having been convicted of three or more offenses of any type or degree other than traffic offenses, alcoholic intoxication offenses or minor misdemeanors, and having been imprisoned pursuant to sentence for any such offense, he or she commits a subsequent offense.

RISK. A significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

SCHOOL. Has the same meaning as in R.C. § 2925.01.

SCHOOL ACTIVITY. Any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational or cooperative education school district; a governing authority of a community school established under R.C. Chapter 3314; a governing board of an educational service center; or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07.

SCHOOL BUILDING. Has the same meaning as in R.C. § 2925.01.

SCHOOL BUS. Has the same meaning as in R.C. § 4511.01.

SCHOOL PREMISES. Has the same meaning as in R.C. § 2925.01.

SCHOOL SAFETY ZONE. Consists of a school, school building, school premises, school activity and school bus.

SERIOUS PHYSICAL HARM TO PERSONS. Any of the following:

- (1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (2) Any physical harm that carries a substantial risk of death;
- (3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (4) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement; or
- (5) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

SERIOUS PHYSICAL HARM TO PROPERTY. Any physical harm to property that does either of the following:

- (1) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort or money to repair or replace; or
- (2) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time.

SUBSTANTIAL RISK. A strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(R.C. §§ 2901.01, 2935.36(E)) (1985 Code, § 130.02)

§ 130.03 CLASSIFICATION OF OFFENSES.

As used in this Title:

(A) Offenses include misdemeanors of the first, second, third and fourth degree, minor misdemeanors and offenses not specifically classified;

(B) Regardless of the penalty that may be imposed, any offense specifically classified as a misdemeanor is a misdemeanor;

(C) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty; and

(D) Any offense not specifically classified is a minor misdemeanor if the only penalty that may be imposed is one of the following:

(1) For an offense committed prior to January 1, 2004, a fine not exceeding \$100; and

(2) For an offense committed on or after January 1, 2004, a fine not exceeding \$150, community service under R.C. § 2929.27(D) or a financial sanction other than a fine under R.C. § 2929.28.

(R.C. § 2901.02) (1985 Code, § 130.03)

§ 130.04 COMMON LAW OFFENSES ABROGATED.

(A) No conduct constitutes a criminal offense against the municipality unless it is defined as an offense in this code.

(B) An offense is defined when one or more sections of this code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

(C) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment or decree.

(R.C. § 2901.03) (1985 Code, § 130.04)

§ 130.05 RULES OF CONSTRUCTION.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of this code defining offenses or penalties shall be strictly construed against the municipality and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of this code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy and sure administration of justice.

(C) Any provision of a section of this code that refers to a previous conviction of or plea of guilty to a violation of a section of this code, the Ohio Revised Code or a division of a section of this code or the Ohio Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this municipality, state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of this code that refers to a section, or to a division of a section, of this code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

(R.C. § 2901.04) (1985 Code, § 130.05)

§ 130.06 LIMITATION OF CRIMINAL PROSECUTIONS.

(A) (1) Except as provided in division (A)(2) or (A)(3) of this section or as otherwise provided in this section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

- (a) For a felony, six years;
- (b) For a misdemeanor other than a minor misdemeanor, two years; and
- (c) For a minor misdemeanor, six months.

(2) There is no period of limitation for the prosecution of a violation of R.C. § 2903.01 or R.C. § 2903.02.

(3) Except as otherwise provided in divisions (B) through (H) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within 20 years after the offense is committed:

(a) A violation of R.C. § 2903.03, 2903.04, 2905.01, 2905.32, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12 or 2917.02, a violation of R.C. § 2903.11 or 2903.12 if the victim is a peace officer, a violation of R.C. § 2903.13 that is a felony, or a violation of former R.C. § 2907.12; and

(b) A conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in division (A)(3)(a) of this section.

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(B) (1) Except as otherwise provided in division (B)(2) of this section, if the period of limitation provided in division (A)(1) or (A)(3) of this section has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of fiduciary duty within one year after discovery of the offense either by an aggrieved person or by the aggrieved person's legal representative who is not a party to the offense.

(2) If the period of limitation provided in division (A)(1) or (A)(3) of this section has expired, prosecution for a violation of R.C. § 2913.49 shall be commenced within five years after discovery of the offense either by an aggrieved person or the aggrieved person's legal representative who is not a party to the offense.

(C) (1) If the period of limitation provided in division (A)(1) or (A)(3) of this section has expired, prosecution shall be commenced for the following offenses during the following specified periods of time:

(a) For an offense involving misconduct in office by a public servant at any time while the accused remains a public servant, or within two years thereafter; and

(b) For an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant, at any time while that public servant remains a public servant, or within two years thereafter.

(2) As used in this division:

OFFENSE IS DIRECTLY RELATED TO THE MISCONDUCT IN OFFICE OF A PUBLIC SERVANT. The phrase includes but is not limited to a violation of R.C. § 101.71, 101.91, 121.61 or 2921.13, 102.03(F) or (H), 2921.02(A), 2921.43(A) or (B), or 3517.13(F) or (G), that is directly related to an offense involving misconduct in office of a public servant, or a violation of any municipal ordinance substantially equivalent to those Ohio Revised Code sections listed in this division (C)(2).

PUBLIC SERVANT. Has the same meaning as in R.C. § 2921.01.

(D) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

(E) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process unless reasonable diligence is exercised to execute the same.

(F) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

(G) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this municipality or conceals the accused's identity or whereabouts is prima facie evidence of the accused's purpose to avoid prosecution.

(H) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this state, even though the indictment, information, or process that commenced the prosecution is quashed or the proceedings on the indictment, information, or process are set aside or reversed on appeal.

(I) The period of limitation for a violation of this Title XIII or Title XXIX of the Ohio Revised Code that involves a physical or mental wound, injury, disability or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age shall not begin to run until either of the following occurs:

(1) The victim of the offense reaches the age of majority; or

(2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

(J) As used in this section, *PEACE OFFICER* has the same meaning as in R.C. § 2935.01. (R.C. § 2901.13) (1985 Code, § 130.06) (Ord. 1306, passed 6-13-1977)

§ 130.07 REQUIREMENTS FOR CRIMINAL LIABILITY; VOLUNTARY INTOXICATION.

(A) Except as provided in division (B) of this section, a person is not guilty of an offense unless both of the following apply:

(1) The person's liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing; and

(2) The person has the requisite degree of culpability for each element as to which a culpable mental state is specified by the section defining the offense.

(B) When the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.

(C) Voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense. Evidence that a person was voluntarily intoxicated may be admissible to show whether or not the person was physically capable of performing the act with which the person is charged.

(D) As used in this section:

CULPABILITY. Means purpose, knowledge, recklessness or negligence, as defined in R.C. § 2901.22.

INTOXICATION. Includes but is not limited to intoxication resulting from the ingestion of alcohol, a drug, or alcohol and a drug.

INVOLUNTARY ACTS. Means reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's volition are involuntary acts.

POSSESSION. Means a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of the possessor's control of the thing possessed for a sufficient time to have ended possession.

(R.C. § 2901.21) (1985 Code, § 130.07)

§ 130.08 CULPABLE MENTAL STATES.

(A) A person acts purposely when it is his or her specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his or her specific intention to engage in conduct of that nature.

(B) A person acts knowingly, regardless of his or her purpose, when he or she is aware that his or her conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he or she is aware that such circumstances probably exist.

(C) A person acts recklessly when, with heedless indifference to the consequences, he or she perversely disregards a known risk that his or her conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he or she perversely disregards a known risk that such circumstances are likely to exist.

(D) A person acts negligently when, because of a substantial lapse from due care, he or she fails to perceive or avoid a risk that his or her conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he or she fails to perceive or avoid a risk that such circumstances may exist.

(E) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element.

(R.C. § 2901.22) (1985 Code, § 130.08)

§ 130.09 ORGANIZATIONAL CRIMINAL LIABILITY.

(A) An organization may be convicted of an offense under any of the following circumstances:

(1) The offense is a minor misdemeanor committed by an officer, agent or employee of the organization acting in its behalf and within the scope of the officer's, agent's or employee's office or employment, except that if the section defining the offense designates the officers, agents or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, those provisions shall apply;

(2) A purpose to impose organizational liability plainly appears in the section defining the offense, and the offense is committed by an officer, agent or employee of the organization acting in its behalf and within the scope of the officer's, agent's or employee's office or employment, except that if the section defining the offense designates the officers, agents or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, those provisions shall apply;

(3) The offense consists of an omission to discharge a specific duty imposed by law on the organization; or

(4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated or performed by the board of directors, trustees, partners or by a high managerial officer, agent or employee acting in behalf of the organization and within the scope of such a board's or person's office or employment.

(B) If strict liability is imposed for the commission of an offense, a purpose to impose organizational liability shall be presumed, unless the contrary plainly appears.

(C) In a prosecution of an organization for an offense other than one for which strict liability is imposed, it is a defense that the high managerial officer, agent or employee having supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission. This defense is not available if it plainly appears inconsistent with the purpose of the section defining the offense.

(D) As used in this section, **ORGANIZATION** means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated nonprofit association, estate, trust or other

commercial or legal entity. The term does not include an entity organized as or by a governmental agency for the execution of a governmental program.

(R.C. § 2901.23) (1985 Code, § 130.09)

§ 130.10 PERSONAL ACCOUNTABILITY FOR ORGANIZATIONAL CONDUCT.

(A) An officer, agent or employee of an organization, as defined in R.C. § 2901.23, may be prosecuted for an offense committed by such organization, if he or she acts with the kind of culpability required for the commission of the offense, and any of the following apply:

(1) In the name of the organization or in its behalf, he or she engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he or she has direct responsibility; or

(2) He or she has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

(B) When a person is convicted of an offense by reason of this section, he or she is subject to the same penalty as if he or she had acted in his or her own behalf.

(R.C. § 2901.24) (1985 Code, § 130.10)

§ 130.11 ATTEMPT.

(A) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense.

(B) It is no defense to a charge under this section that, in retrospect, commission of the offense that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be.

(C) No person who is convicted of committing a specific offense, of complicity in the commission of an offense, or of conspiracy to commit an offense, shall be convicted of an attempt to commit the same offense in violation of this section.

(D) It is an affirmative defense to a charge under this section that the actor abandoned his or her effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose.

(E) (1) Whoever violates this section is guilty of an attempt to commit an offense. An attempt to commit aggravated murder, murder or an offense for which the maximum penalty is imprisonment for life is a felony of the first degree, to be prosecuted under appropriate state law. An attempt to commit

a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. An attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. In the case of an attempt to commit an offense other than a violation of R.C. Chapter 3734 that is not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. In the case of an attempt to commit a violation of any provision of R.C. Chapter 3734, other than R.C. § 3734.18, that relates to hazardous wastes, an attempt is a felony to be prosecuted under appropriate state law. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense under this section.

(2) In addition to any other sanctions imposed pursuant to division (E)(1) of this section for an attempt to commit aggravated murder or murder in violation of division (A) of this section, if the offender used a motor vehicle as the means to attempt to commit the offense, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege as specified in R.C. § 4510.02(A)(2).

(3) If a person is convicted of or pleads guilty to attempted rape and also is convicted of or pleads guilty to a specification of the type described in R.C. § 2941.1418, 2941.1419 or 2941.1420, the offender shall be sentenced to a prison term or term of life imprisonment pursuant to R.C. § 2971.03.

(F) As used in this section:

DRUG ABUSE OFFENSE. Has the same meaning as in R.C. § 2925.01.

MOTOR VEHICLE. Has the same meaning as in R.C. § 4501.01.
(R.C. § 2923.02) (1985 Code, § 130.11)

§ 130.12 COMPLICITY.

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

- (1) Solicit or procure another to commit the offense;
- (2) Aid or abet another in committing the offense;
- (3) Conspire with another to commit the offense in violation of R.C. § 2923.01; or
- (4) Cause an innocent or irresponsible person to commit the offense.

(B) It is no defense to a charge under this section that no person with whom the accused was in complicity has been convicted as a principal offender.

(C) No person shall be convicted of complicity under this section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of R.C. § 2923.02 or a substantially equivalent municipal ordinance.

(D) If an alleged accomplice of the defendant testifies against the defendant in a case in which the defendant is charged with complicity in the commission of or an attempt to commit an offense, an attempt to commit an offense, or an offense, the court shall charge the jury in accordance with R.C. § 2923.03(D).

(E) It is an affirmative defense to a charge under this section that, prior to the commission of or attempt to commit the offense, the actor terminated his or her complicity, under circumstances manifesting a complete and voluntary renunciation of his or her criminal purpose.

(F) Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he or she were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense.

(R.C. § 2923.03) (1985 Code, § 130.12) (Ord. 1306, passed 6-13-1977; Ord. 87-44, passed 9-8-1987)

§ 130.13 DISPOSITION OF PROPERTY HELD BY LAW ENFORCEMENT AGENCY.

(A) *Safekeeping of property in custody.*

(1) (a) Any property that has been lost, abandoned, stolen, seized pursuant to a search warrant or otherwise lawfully seized or forfeited and that is in the custody of the Police Department shall be kept safely by the Police Department, pending the time it no longer is needed as evidence or for another lawful purpose, and shall be disposed of pursuant to this section or R.C. §§ 2981.12 and 2981.13.

(b) This section does not apply to the custody and disposal of any of the following:

1. Vehicles subject to forfeiture under R.C. Title 45, except as provided in division (B)(1)(f) of this section;

2. Abandoned junk motor vehicles or other property of negligible value;

3. Property held by a department of rehabilitation and correction institution that is unclaimed, that does not have an identified owner, that the owner agrees to dispose of, or that is identified by the department as having little value;

4. Animals taken, and devices used in unlawfully taking animals, under R.C. § 1531.20;

5. Controlled substances sold by a peace officer in the performance of the officer's official duties under R.C. § 3719.141;

6. Property recovered by a township law enforcement agency under R.C. §§ 505.105 to 505.109; or

7. Property held and disposed of under an ordinance of the municipality or under R.C. §§ 737.29 to 737.33, except that if the municipality has received notice of a citizens' reward program as provided in division (B)(5) of this section and disposes of property under an ordinance shall pay 25% of any moneys acquired from any sale or auction to the citizens' reward program.

(2) (a) The Police Department shall adopt and comply with a written internal control policy that does all of the following:

1. Provides for keeping detailed records as to the amount of property acquired by the Police Department and the date property was acquired;

2. Provides for keeping detailed records of the disposition of the property, which shall include but not be limited to both of the following:

a. The manner in which it was disposed, the date of disposition, detailed financial records concerning any property sold, and the name of any person who received the property. The record shall not identify or enable identification of the individual officer who seized any item of property; and

b. The general types of expenditures made with amounts that are gained from the sale of the property and that are retained by the agency, including the specific amount expended on each general type of expenditure, except that the policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation.

3. Complies with R.C. § 2981.13 if the Police Department has a Law Enforcement Trust Fund or similar fund created under that section.

(b) The records kept under the internal control policy shall be open to public inspection during the Police Department's regular business hours. The policy adopted under this section is a public record open for inspection under R.C. § 149.43.

(3) The Police Department, with custody of property to be disposed of under this section or R.C. §§ 2981.12 or 2981.13, shall make a reasonable effort to locate persons entitled to possession of the property, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to possession, it is sufficient notice to advertise in a newspaper of general circulation in the county and to briefly describe the nature of the property in custody and inviting persons to view and establish their right to it.

(4) As used in this section:

CITIZENS' REWARD PROGRAM. Has the same meaning as in R.C. § 9.92.

LAW ENFORCEMENT AGENCY. Includes correctional institutions.

TOWNSHIP LAW ENFORCEMENT AGENCY. Means an organized police department of a township, a township police district, a joint police district, or the office of a township constable. (R.C. § 2981.11)

(B) *Disposition of unclaimed or forfeited property.*

(1) Unclaimed or forfeited property in the custody of the Police Department, other than property described in division (A)(1)(b) of this section, shall be disposed of by order of any court of record that has territorial jurisdiction over the municipality, as follows:

(a) Drugs shall be disposed of pursuant to R.C. § 3719.11 or placed in the custody of the Secretary of the Treasury of the United States for disposal or use for medical or scientific purposes under applicable federal law;

(b) Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collectors' items may be sold at public auction pursuant to division (B)(2) of this section. The Police Department may sell other firearms and dangerous ordnance to a federally licensed firearms dealer in a manner that the court considers proper. The Police Department shall destroy any firearms or dangerous ordnance not given to a law enforcement agency or sold or shall send them to the Bureau of Criminal Identification and Investigation for destruction by the Bureau;

(c) Obscene materials shall be destroyed;

(d) Beer, intoxicating liquor or alcohol seized from a person who does not hold a permit issued under R.C. Chapters 4301 and 4303 or otherwise forfeited to the state for an offense under R.C. § 4301.45 or R.C. § 4301.53 shall be sold by the Division of Liquor Control if the Division determines that it is fit for sale or shall be placed in the custody of the Investigations Unit in the Ohio Department of Public Safety and be used for training relating to law enforcement activities. The Ohio Department of Public Safety, with the assistance of the Division of Liquor Control, shall adopt rules in accordance with R.C. Chapter 119 to provide for the distribution to state or local law enforcement agencies upon their request. If any tax imposed under R.C. Title 43 has not been paid in relation to the beer, intoxicating liquor, or alcohol, any moneys acquired from the sale shall first be used to pay the tax. All other money collected under this division (B)(1)(d) shall be paid into the State Treasury. Any beer, intoxicating liquor or alcohol that the Division determines to be unfit for sale shall be destroyed;

(e) Money received by an inmate of a correctional institution from an unauthorized source or in an unauthorized manner shall be returned to the sender, if known, or deposited in the Inmates' Industrial and Entertainment Fund of the institution if the sender is not known;

(f) 1. Any mobile instrumentality forfeited under R.C. Chapter 2981 may be given to the law enforcement agency that initially seized the mobile instrumentality for use in performing its duties, if the agency wants the mobile instrumentality. The agency shall take the mobile instrumentality subject to any security interest or lien on the mobile instrumentality.

2. Vehicles and vehicle parts forfeited under R.C. §§ 4549.61 to 4549.63 may be given to a law enforcement agency for use in performing its duties. Those parts may be incorporated into any other official vehicle. Parts that do not bear vehicle identification numbers or derivatives of them may be sold or disposed of as provided by rules of the Director of Public Safety. Parts from which a vehicle identification number or derivative of it has been removed, defaced, covered, altered, or destroyed and that are not suitable for police work or incorporation into an official vehicle shall be destroyed and sold as junk or scrap.

(g) Computers, computer networks, computer systems, and computer software suitable for police work may be given to a law enforcement agency for that purpose or disposed of under division (B)(2) of this section; and

(h) Money seized in connection with a violation of R.C. § 2905.32, 2907.21, or 2907.22 shall be deposited in the Victims of Human Trafficking Fund created by R.C. § 5101.87.

(2) Unclaimed or forfeited property that is not described in division (B)(1) of this section or division (A)(1)(b) of this section, with court approval, may be used by the law enforcement agency in possession of it. If it is not used by the agency, it may be sold without appraisal at a public auction to the highest bidder for cash or disposed of in another manner that the court considers proper.

(3) Except as provided in divisions (B)(1) and (B)(5) of this section and after compliance with division (B)(4) of this section when applicable, any moneys acquired from the sale of property disposed of pursuant to this section shall be placed in the General Revenue Fund of the state, or the General Fund of the municipality.

(4) If the property was in the possession of the Police Department in relation to a delinquent child proceeding in a juvenile court, 10% of any moneys acquired from the sale of property disposed of under this section shall be applied to one or more community addiction treatment services providers that are certified by the Department of Mental Health and Addiction Services under R.C. § 5119.36. A juvenile court shall not specify a services provider, except as provided in this division, unless the services provider is in the same county as the court or in a contiguous county. If no certified services provider is located in any of those counties, the juvenile court may specify a certified services provider anywhere in Ohio. The remaining 90% of the proceeds or cash shall be applied as provided in division (B)(3) of this section.

(5) (a) If the Board of County Commissioners recognizes a citizens' reward program under R.C. § 9.92, the Board shall notify the Police Department of the recognition by filing a copy of its resolution conferring that recognition with the Police Department. When the Board recognizes a citizens'

reward program and the county includes a part, but not all, of the territory of the municipality, the Board shall so notify the Police Department of the recognition of the citizens' reward program only if the county contains the highest percentage of the municipality's population.

(b) Upon being so notified, the Police Department shall pay 25% of any forfeited proceeds or cash derived from each sale of property disposed of pursuant to this section to the citizens' reward program for use exclusively to pay rewards. No part of the funds may be used to pay expenses associated with the program. If a citizens' reward program that operates in more than one county or in another state in addition to this state receives funds under this section, the funds shall be used to pay rewards only for tips and information to law enforcement agencies concerning offenses committed in the county from which the funds were received.

(6) Any property forfeited under R.C. Chapter 2981 not be used to pay any fine imposed upon a person who is convicted of or pleads guilty to an underlying criminal offense or a different offense arising out of the same facts and circumstances.

(7) Any moneys acquired from the sale of personal effects, tools, or other property seized because the personal effects, tools, or other property were used in the commission of a violation of R.C. § 2905.32, 2907.21, or 2907.22 or derived from the proceeds of the commission of a violation of R.C. § 2905.32, 2907.21, or 2907.22 and disposed of pursuant to this division (B) shall be placed in the Victims of Human Trafficking Fund created by R.C. § 5101.87.
(R.C. § 2981.12)

(C) Disposition of contraband, proceeds, or instrumentalities. Except as otherwise provided in R.C. § 2981.13, property ordered forfeited as contraband, proceeds, or an instrumentality pursuant to R.C. Chapter 2981 shall be disposed of, used, or sold pursuant to division (B) of this section or R.C. § 2981.12. If the property is to be sold under division (B) of this section or R.C. § 2981.12, the prosecutor shall cause notice of the proposed sale to be given in accordance with law.
(R.C. § 2981.13(A)) (1985 Code, § 130.13) (Ord. 1670, passed 4-2-1984; Ord. 87-43, passed 9-8-1987)

Statutory reference:

Disposition of property held by law enforcement agencies, see R.C. § 2981.06

§ 130.14 PRESUMPTION OF INNOCENCE; PROOF OF OFFENSE; AFFIRMATIVE DEFENSE.

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(B) (1) Subject to division (B)(2) of this section, a person is presumed to have acted in self defense or defense of another when using defensive force that is intended or likely to cause death or great bodily harm to another if the person against whom the defensive force is used is in the process of unlawfully

and without privilege to do so entering, or has unlawfully and without privilege to do so entered, the residence or vehicle occupied by the person using the defensive force.

(2) (a) The presumption set forth in division (B)(1) of this section does not apply if the person against whom the defensive force is used has a right to be in, or is a lawful resident of, the residence or vehicle.

(b) The presumption set forth in division (B)(1) of this section does not apply if the person who uses the defensive force uses it while in a residence or vehicle and the person is unlawfully, and without privilege to be, in that residence or vehicle.

(3) The presumption set forth in division (B)(1) of this section is a rebuttable presumption and may be rebutted by a preponderance of the evidence.

(C) As part of its charge to the jury in a criminal case, the court shall read the definitions of reasonable doubt and proof beyond a reasonable doubt, contained in division (D) of this section.

(D) As used in this section:

AFFIRMATIVE DEFENSE. An affirmative defense is either of the following:

(a) A defense expressly designated as affirmative; or

(b) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.

DWELLING. Means a building or conveyance of any kind that has a roof over it and that is designed to be occupied by people lodging in the building or conveyance at night, regardless of whether the building or conveyance is temporary or permanent or is mobile or immobile. As used in this definition, a building or conveyance includes but is not limited to an attached porch, and a building or conveyance with a roof over it includes but is not limited to a tent.

PROOF BEYOND A REASONABLE DOUBT. Proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

REASONABLE DOUBT. Reasonable doubt is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reasonable and common sense. The term is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt.

RESIDENCE. Means a dwelling in which a person resides either temporarily or permanently or is visiting as a guest.

VEHICLE. Means a conveyance of any kind, whether or not motorized, that is designed to transport people or property.

(R.C. § 2901.05) (1985 Code, § 130.14)

§ 130.15 BATTERED WOMAN SYNDROME.

(A) The municipality hereby declares that it recognizes both of the following, in relation to the battered woman syndrome: that the syndrome currently is a matter of commonly accepted scientific knowledge; and that the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

(B) If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self defense, the person may introduce expert testimony of the battered woman syndrome and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of force in question. The introduction of any expert testimony under this division (B) shall be in accordance with the Ohio Rules of Evidence.

(R.C. § 2901.06) (1985 Code, § 130.15)

§ 130.16 DELINQUENCY ADJUDICATIONS DEEMED CONVICTIONS.

(A) If a person is alleged to have committed an offense and if the person previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, except as provided in division (B) of this section, the adjudication as a delinquent child or as a juvenile traffic offender is a conviction for a violation of the law for purposes of determining the offense with which the person should be charged and, if the person is convicted of or pleads guilty to an offense, the sentence to be imposed upon the person relative to the conviction or guilty plea.

(B) A previous adjudication of a person as a delinquent child or juvenile traffic offender for a violation of a law or ordinance is not a conviction for a violation of the law or ordinance for purposes of determining whether the person is a repeat violent offender, as defined in R.C. § 2929.01, or whether the person should be sentenced as a repeat violent offender under R.C. § 2929.14(B)(2) and R.C. § 2941.149.

(R.C. § 2901.08) (1985 Code, § 130.16)

§ 130.17 CRIMINAL LAW JURISDICTION.

(A) A person is subject to criminal prosecution and punishment in this municipality if any of the following occur:

(1) The person commits an offense under the laws of this municipality, any element of which takes place in this municipality;

(2) While in this municipality, the person attempts to commit, or is guilty of complicity in the commission of, an offense in another jurisdiction, which offense is an offense under both the laws of this municipality and the other jurisdiction, or, while in this municipality, the person conspires to commit an offense in another jurisdiction, which offense is an offense under both the laws of this municipality and the other jurisdiction, and a substantial overt act in furtherance of the conspiracy is undertaken in this municipality by the person or another person involved in the conspiracy, subsequent to the person's entrance into the conspiracy. In any case in which a person attempts to commit, is guilty of complicity in the commission of, or conspires to commit an offense in another jurisdiction as described in this division (A), the person is subject to criminal prosecution and punishment in this municipality for the attempt, complicity or conspiracy, and for any resulting offense that is committed or completed in the other jurisdiction;

(3) While out of this municipality, the person conspires or attempts to commit, or is guilty of complicity in the commission of, an offense in this municipality;

(4) While out of this municipality, the person omits to perform a legal duty imposed by the laws of this municipality, which omission affects a legitimate interest of the municipality in protecting, governing or regulating any person, property, thing, transaction or activity in this municipality;

(5) While out of this municipality, the person unlawfully takes or retains property and subsequently brings any of the unlawfully taken or retained property into this municipality;

(6) While out of this municipality, the person unlawfully takes or entices another person and subsequently brings the other person into this municipality; or

(7) The person, by means of a computer, computer system, computer network, telecommunication, telecommunications device, telecommunications service or information service, causes or knowingly permits any writing, data, image or other telecommunication to be disseminated or transmitted into this municipality in violation of the law of this state or municipality.

(B) In homicide, the element referred to in division (A)(1) of this section includes the act that causes death, the physical contact that causes death, the death itself or any other element that is set forth in the offense in question. If any part of the body of a homicide victim is found in this municipality, the death is presumed to have occurred within this municipality.

(C) (1) This municipality includes the land and water within its boundaries and the air space above that land and water, with respect to which this municipality has either exclusive or concurrent legislative jurisdiction. Where the boundary between this municipality and another jurisdiction is disputed, the disputed territory is conclusively presumed to be within this municipality for purposes of this section.

(2) The courts of common pleas of Adams, Athens, Belmont, Brown, Clermont, Columbiana, Gallia, Hamilton, Jefferson, Lawrence, Meigs, Monroe, Scioto and Washington counties have

jurisdiction beyond the north or northwest shore of the Ohio River extending to the opposite shore line, between the extended boundary lines of any adjacent counties or adjacent state. Each of those courts of common pleas has concurrent jurisdiction on the Ohio River with any adjacent court of common pleas that borders on that river and with any court of Kentucky or of West Virginia that borders on the Ohio River and that has jurisdiction on the Ohio River under the law of Kentucky or the law of West Virginia, whichever is applicable, or under federal law.

(D) When an offense is committed under the laws of this municipality, and it appears beyond a reasonable doubt that the offense or any element of the offense took place either in this municipality or in another jurisdiction or jurisdictions, but it cannot reasonably be determined in which it took place, the offense or element is conclusively presumed to have taken place in this municipality for purposes of this section.

(E) When a person is subject to criminal prosecution and punishment in this municipality for an offense committed or completed outside this municipality, the person is subject to all specifications for that offense that would be applicable if the offense had been committed within this municipality.

(F) Any act, conduct or element that is a basis of a person being subject under this section to criminal prosecution and punishment in this municipality need not be committed personally by the person as long as it is committed by another person who is in complicity or conspiracy with the person.

(G) This section shall be liberally construed, consistent with constitutional limitations, to allow this municipality the broadest possible jurisdiction over offenses and persons committing offenses in, or affecting, this municipality.

(H) For purposes of division (A)(2) of this section, an overt act is substantial when it is of a character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed.

(I) As used in this section, **COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK, INFORMATION SERVICE, TELECOMMUNICATION, TELECOMMUNICATIONS DEVICE, TELECOMMUNICATIONS SERVICE, DATA** and **WRITING** have the same meanings as in R.C. § 2913.01.

(R.C. § 2901.11) (1985 Code, § 130.17)

Statutory reference:

State criminal law jurisdiction, see R.C. § 2901.11

§ 130.18 IMPOSING SENTENCE FOR MISDEMEANOR.

(A) (1) Unless a mandatory jail term is required to be imposed by R.C. § 1547.99(G), 4510.14(B) or 4511.19(G), or any other provision of the Ohio Revised Code, or any municipal ordinance, a court that imposes a sentence under this chapter upon an offender for a misdemeanor or minor misdemeanor has discretion to determine the most effective way to achieve the purposes and principles of sentencing set forth in § 130.99(B).

(2) Unless a specific sanction is required to be imposed or is precluded from being imposed by the section setting forth an offense or the penalty for an offense or by any provision of § 130.99 or 133.99 of this code or R.C. §§ 2929.23 through 2929.28, a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under § 130.99(C) through (G). The court shall not impose a sentence that imposes an unnecessary burden on local government resources.

(B) (1) In determining the appropriate sentence for a misdemeanor, the court shall consider all of the following factors:

(a) The nature and circumstances of the offense or offenses;

(b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;

(c) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;

(d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;

(e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B)(1)(b) and (B)(1)(c) of this section;

(f) Whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses; and

(g) The offender's military service record.

(2) In determining the appropriate sentence for a misdemeanor, in addition to complying with division (B)(1) of this section, the court may consider any other factors that are relevant to achieving the purposes and principles of sentencing set forth in § 130.99(B).

(C) Before imposing a jail term as a sentence for a misdemeanor, a court shall consider the appropriateness of imposing a community control sanction or a combination of community control sanctions under § 130.99(D), (E), (F) and (G). A court may impose the longest jail term authorized under § 130.99(C) only upon offenders who commit the worst forms of the offense or upon offenders whose conduct and response to prior sanctions for prior offenses demonstrate that the imposition of the longest jail term is necessary to deter the offender from committing a future crime.

(D) (1) A sentencing court shall consider any relevant oral or written statement made by the victim, the defendant, the defense attorney, or the prosecuting authority regarding sentencing for a misdemeanor. This division does not create any rights to notice other than those rights authorized by R.C. Chapter 2930.

(2) At the time of sentencing for a misdemeanor or as soon as possible after sentencing, the court shall notify the victim of the offense of the victim's right to file an application for an award of reparations pursuant to R.C. §§ 2743.51 through 2743.72.
(R.C. § 2929.22) (1985 Code, § 130.18)

§ 130.19 MULTIPLE SENTENCES.

(A) Except as provided in division (B) of this section, R.C. § 2929.14(C), or R.C. § 2971.03(D) or (E), a prison term, jail term or sentence of imprisonment shall be served concurrently with any other prison term, jail term or sentence of imprisonment imposed by a court of this municipality, this state, another state or the United States. Except as provided in division (B)(2) of this section, a jail term or sentence of imprisonment for misdemeanor shall be served concurrently with a prison term or sentence of imprisonment for felony served in a state or federal correctional institution.

(B) (1) A jail term or sentence of imprisonment for a misdemeanor shall be served consecutively to any other prison term, jail term or sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of R.C. § 2907.322, 2921.34 or 2923.131. When consecutive sentences are imposed for misdemeanors under this division (B), the term to be served is the aggregate of the consecutive terms imposed, except that the aggregate term to be served shall not exceed 18 months.

(2) A jail term or sentence of imprisonment imposed for a misdemeanor violation of R.C. § 4510.11, 4510.14, 4510.16, 4510.21 or 4511.19, or a substantially equivalent municipal ordinance, shall be served consecutively to a prison term that is imposed for a felony violation of R.C. § 2903.06, 2903.07, 2903.08 or 4511.19 or a felony violation of R.C. § 2903.04 involving the operation of a motor vehicle by the offender and that is served in a state correctional institution when the trial court specifies that it is to be served consecutively. When consecutive jail terms or sentences of imprisonment and prison terms are imposed for one or more misdemeanors and one or more felonies under this division (B), the term to be served is the aggregate of the consecutive terms imposed, and the offender shall serve all terms imposed for a felony before serving any term imposed for a misdemeanor.
(R.C. § 2929.41) (1985 Code, § 130.19)

§ 130.20 APPREHENSION, DETENTION OR ARREST OF PERSONS ON BOND.

(A) No person, other than a law enforcement officer, shall apprehend, detain or arrest a principal on bond, wherever issued, unless that person meets all of the following criteria:

(1) The person is any of the following:

(a) Qualified, licensed and appointed as a surety bail bond agent under R.C. §§ 3905.83 through 3905.95;

(b) Licensed as a surety bail bond agent by the state where the bond was written;

(c) Licensed as a private investigator under R.C. Chapter 4749;

(d) Licensed as a private investigator by the state where the bond was written; or

(e) An off-duty peace officer, as defined in R.C. § 2921.51.

(2) The person, prior to apprehending, detaining or arresting the principal, has entered into a written contract with the surety or with a licensed surety bail bond agent appointed by the surety, which contract sets forth the name of the principal who is to be apprehended, detained or arrested. For purposes of this division (A)(2), *SURETY* has the same meaning as in R.C. § 3905.83.

(3) The person, prior to apprehending, detaining or arresting the principal, has notified the local law enforcement agency having jurisdiction over the area in which such activities will be performed and has provided any form or identification or other information requested by the law enforcement agency.

(B) No person shall represent the person's self to be a bail enforcement agent or bounty hunter, or claim any similar title, in this municipality.

(C) Whoever violates this section is guilty of illegal bail bond agent practices.

(1) A violation of division (A) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (A) of this section, or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law.

(2) A violation of division (B) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to two or more violations of division (B) of this section, or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law.

(R.C. § 2927.27) (1985 Code, § 130.20)

§ 130.21 SELF DEFENSE: LIMITATIONS ON DUTY TO RETREAT PRIOR TO USING FORCE.

(A) As used in this section, *RESIDENCE* and *VEHICLE* have the same meanings as in R.C. § 2901.05.

(B) For purposes of any section of this code that sets forth a criminal offense, a person who lawfully is in that person's residence has no duty to retreat before using force in self defense, defense of another or defense of that person's residence, and a person who lawfully is an occupant of that person's vehicle or who lawfully is an occupant in a vehicle owned by an immediate family member of the person has no duty to retreat before using force in self defense or defense of another.

(R.C. § 2901.09) (1985 Code, § 130.21)

§ 130.99 PENALTY FOR TITLE XIII.

(A) *Generally.* Except where otherwise specifically classified within the body of the section of a chapter of this title, a violation of such section shall be deemed a misdemeanor punishable upon conviction by a fine of not more than \$500, imprisonment of not more than six months, or both.

(R.C. § 715.67)

(B) *Considerations in misdemeanor sentencing.*

(1) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Ohio Revised Code, or of any municipal ordinance that is substantially equivalent to a misdemeanor or minor misdemeanor violation of a provision of the Ohio Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender and making restitution to the victim of the offense, the public or the victim and the public.

(2) A sentence imposed for a misdemeanor or minor misdemeanor violation of an Ohio Revised Code provision or for a violation of a municipal ordinance that is subject to division (B)(1) of this section shall be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in division (B)(1) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.

(3) A court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor violation of an Ohio Revised Code provision or for a violation of a municipal ordinance that is subject to division (B)(1) of this section shall not base the sentence upon the race, ethnic background, gender or religion of the offender.

(4) Divisions (B)(1) and (B)(2) of this section shall not apply to any offense that is disposed of by a traffic violations bureau of any court pursuant to Traffic Rule 13 and shall not apply to any violation of any provision of the Ohio Revised Code that is a minor misdemeanor and that is disposed of without a court appearance. Divisions (B)(1) through (B)(3) of this section do not affect any penalties established

by the municipality for a violation of its ordinances that are not substantially equivalent to a misdemeanor or minor misdemeanor violation of a provision of the Ohio Revised Code.

(R.C. § 2929.21)

(C) *Misdemeanor jail terms.*

(1) Except as provided in § 130.18 or 133.99 of this code or R.C. § 2929.22 or 2929.23 or division (C)(5) or (C)(6) of this section and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

- (a) For a misdemeanor of the first degree, not more than 180 days;
- (b) For a misdemeanor of the second degree, not more than 90 days;
- (c) For a misdemeanor of the third degree, not more than 60 days; or
- (d) For a misdemeanor of the fourth degree, not more than 30 days.

(2) (a) A court that sentences an offender to a jail term under division (C) of this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in division (E)(2) of this section. The court retains jurisdiction over every offender sentenced to jail to modify the jail sentence imposed at any time, but the court shall not reduce any mandatory jail term.

(b) 1. If a prosecutor, as defined in R.C. § 2935.01, has filed a notice with the court that the prosecutor wants to be notified about a particular case and if the court is considering modifying the jail sentence of the offender in that case, the court shall notify the prosecutor that the court is considering modifying the jail sentence of the offender in that case. The prosecutor may request a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, and, if the prosecutor requests a hearing, the court shall notify the eligible offender of the hearing.

2. If the prosecutor requests a hearing regarding the court's consideration of modifying the jail sentence of the offender in that case, the court shall hold the hearing before considering whether or not to release the offender from the offender's jail sentence.

(3) If a court sentences an offender to a jail term under division (C) of this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to R.C. § 5147.30, the court shall specify, as part of the sentence, whether the offender may be considered for participation in the program. During the offender's term in the county jail, the court retains jurisdiction to modify its specification regarding the offender's participation in the county jail industry program.

(4) If a person sentenced to a jail term pursuant to division (C) of this section, the court may impose as part of the sentence pursuant to R.C. § 2929.28 a reimbursement sanction, and, if the local

detention facility in which the term is to be served is covered by a policy adopted pursuant to R.C. § 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56 or 2947.19 and R.C. § 2929.37, both of the following apply:

(a) The court shall specify both of the following as part of the sentence:

1. If the person is presented with an itemized bill pursuant to R.C. § 2929.37 for payment of the costs of confinement, the person is required to pay the bill in accordance with that section; and

2. If the person does not dispute the bill described in division (C)(4)(a)1. of this section and does not pay the bill by the times specified in R.C. § 2929.37, the Clerk of the court may issue a certificate of judgment against the person as described in that section.

(b) The sentence automatically includes any certificate of judgment issued as described in division (C)(4)(a)2. of this section.

(5) If an offender who is convicted of or pleads guilty to a violation of R.C. § 4511.19(B), or any substantially equivalent municipal ordinance, also is convicted of or also pleads guilty to a specification of the type described in R.C. § 2941.1414 and if the court imposes a jail term on the offender for the underlying offense, the court shall impose upon the offender an additional definite jail term of not more than six months. The additional jail term shall not be reduced pursuant to any provision of the Ohio Revised Code. The offender shall serve the additional jail term consecutively to and prior to the jail term imposed for the underlying offense and consecutively to any other mandatory term imposed in relation to the offense.

(6) (a) If an offender is convicted of or pleads guilty to a misdemeanor violation of R.C. § 2907.23, 2907.24, 2907.241 or 2907.25, or any substantially equivalent municipal ordinance, and to a specification of the type described in R.C. § 2941.1421 and if the court imposes a jail term on the offender for the misdemeanor violation, the court may impose upon the offender an additional definite jail term as follows:

1. Subject to division (C)(6)(a)2. of this section, an additional definite jail term of not more than 60 days; and

2. If the offender previously has been convicted of or pleaded guilty to one or more misdemeanor or felony violations of R.C. § 2907.22, 2907.23, 2907.24, 2907.241 or 2907.25, or any substantially equivalent municipal ordinance, and also was convicted of or pleaded guilty to a specification of the type described in R.C. § 2941.1421 regarding one or more of those violations, an additional definite jail term of not more than 120 days.

(b) In lieu of imposing an additional definite jail term under division (C)(6)(a) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional jail term

that the court could have imposed upon the offender under division (C)(6)(a) of this section. A sanction imposed under this division (C) shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the jail term imposed for the misdemeanor violation of R.C. § 2907.23, 2907.24, 2907.241 or 2907.25, or any substantially equivalent municipal ordinance, and any residential sanction imposed for the violation under division (E) of this section or R.C. § 2929.26. A sanction imposed under this division (C) shall be considered to be a community control sanction for purposes of division (D) or this section or R.C. § 2929.25, and all provisions of this code and the Ohio Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division (C), except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division (C), including the cost of the use of the monitoring device.

(7) If an offender is convicted of or pleads guilty to a misdemeanor violation of R.C. § 2903.13 and also is convicted of or pleads guilty to a specification of the type described in R.C. § 2941.1423 that charges that the victim of the violation was a woman whom the offender knew was pregnant at the time of the violation, the court shall impose on the offender a mandatory jail term that is a definite term of at least 30 days.

(8) If a court sentences an offender to a jail term under this division (C), the sentencing court retains jurisdiction over the offender and the jail term. Upon motion of either party or upon the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may substitute one or more community control sanctions under division (E) or (F) of this section for any jail days that are not mandatory jail days.

(R.C. § 2929.24)

(D) Misdemeanor community control sanctions.

(1) (a) Except as provided in §§ 130.18 and 133.99 of this code or R.C. §§ 2929.22 and 2929.23 or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following:

1. Directly impose a sentence that consists of one or more community control sanctions authorized by divisions (E), (F) or (G) of this section. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term; or

2. Impose a jail term under division (C) of this section from the range of jail terms authorized under that division for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under divisions (E), (F) or (G) of this section.

(b) The duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years.

(c) At sentencing, if a court directly imposes a community control sanction or combination of community control sanctions pursuant to division (D)(1)(a)1. of this section, the court shall state the duration of the community control sanctions imposed and shall notify the offender that if any of the conditions of the community control sanctions are violated the court may do any of the following:

1. Impose a longer time under the same community control sanction if the total time under all of the offender's community control sanctions does not exceed the five-year limit specified in division (D)(1)(b) of this section;
2. Impose a more restrictive community control sanction under division (E), (F) or (G) of this section, but the court is not required to impose any particular sanction or sanctions; or
3. Impose a definite jail term from the range of jail terms authorized for the offense under division (C) of this section.

(2) If a court sentences an offender to any community control sanction or combination of community control sanctions pursuant to division (D)(1)(a)1. of this section, the sentencing court retains jurisdiction over the offender and the period of community control for the duration of the period of community control. Upon the motion of either party or on the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may modify the community control sanctions or conditions of release previously imposed, substitute a community control sanction or condition of release for another community control sanction or condition of release previously imposed, or impose an additional community control sanction or condition of release.

(3) (a) If a court sentences an offender to any community control sanction or combination of community control sanctions authorized under division (E), (F) or (G) of this section, the court shall place the offender under the general control and supervision of the court or of a department of probation in the jurisdiction that serves the court for purposes of reporting to the court a violation of any of the conditions of the sanctions imposed. If the offender resides in another jurisdiction and a department of probation has been established to serve the municipal court or county court in that jurisdiction, the sentencing court may request the municipal court or the county court to receive the offender into the general control and supervision of that department of probation for purposes of reporting to the sentencing court a violation of any of the conditions of the sanctions imposed. The sentencing court retains jurisdiction over any offender whom it sentences for the duration of the sanction or sanctions imposed.

(b) The sentencing court shall require as a condition of any community control sanction that the offender abide by the law and not leave the state without the permission of the court or the offender's probation officer. In the interests of doing justice, rehabilitating the offender and ensuring the offender's good behavior, the court may impose additional requirements on the offender. The offender's compliance with the additional requirements also shall be a condition of the community control sanction imposed upon the offender.

(4) (a) If the court imposing sentence upon an offender sentences the offender to any community control sanction or combination of community control sanctions authorized under division

(E), (F) or (G) of this section, and the offender violates any of the conditions of the sanctions, the public or private person or entity that supervises or administers the program or activity that comprises the sanction shall report the violation directly to the sentencing court or to the department of probation or probation officer with general control and supervision over the offender. If the public or private person or entity reports the violation to the department of probation or probation officer, the department or officer shall report the violation to the sentencing court.

(b) If an offender violates any condition of a community control sanction, the sentencing court may impose upon the violator one or more of the following penalties:

1. A longer time under the same community control sanction if the total time under all of the community control sanctions imposed on the violator does not exceed the five-year limit specified in division (D)(1)(b) of this section;
2. A more restrictive community control sanction; and
3. A combination of community control sanctions, including a jail term.

(c) If the court imposes a jail term upon a violator pursuant to division (D)(4)(b) of this section, the total time spent in jail for the misdemeanor offense and the violation of a condition of the community control sanction shall not exceed the maximum jail term available for the offense for which the sanction that was violated was imposed. The court may reduce the longer period of time that the violator is required to spend under the longer sanction or the more restrictive sanction imposed under division (D)(4)(b) of this section by all or part of the time the violator successfully spent under the sanction that was initially imposed.

(5) Except as otherwise provided in this division (D), if an offender, for a significant period of time, fulfills the conditions of a community control sanction imposed pursuant to division (E), (F) or (G) of this section in an exemplary manner, the court may reduce the period of time under the community control sanction or impose a less restrictive community control sanction. Fulfilling the conditions of a community control sanction does not relieve the offender of a duty to make restitution under division (G) of this section.

(R.C. § 2929.25)

(E) *Community residential sanction.*

(1) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any community residential sanction or combination of community residential sanctions under this division (E). Community residential sanctions include but are not limited to the following:

(a) A term of up to 180 days in a halfway house or a term in a halfway house not to exceed the longest jail term available for the offense, whichever is shorter, if the political subdivision that would have responsibility for paying the costs of confining the offender in a jail has entered into a contract with the halfway house for use of the facility for misdemeanor offenders; and

(b) If the offender is an eligible offender, as defined in R.C. § 307.932, a term of up to 60 days in a community alternative sentencing center or district community alternative sentencing center established and operated in accordance with that section, in the circumstances specified in that section, with one of the conditions of the sanction being that the offender complete in the center the entire term imposed.

(2) A sentence to a community residential sanction under division (E)(1)(c) of this section shall be in accordance with R.C. § 307.932. In all other cases, the court that sentences an offender to a community residential sanction under this division (E) may do either or both of the following:

(a) Permit the offender to serve the offender's sentence in intermittent confinement, overnight, on weekends or at any other time or times that will allow the offender to continue at the offender's occupation or care for the offender's family; or

(b) Authorize the offender to be released so that the offender may seek or maintain employment, receive education or training, receive treatment, perform community service or otherwise fulfill an obligation imposed by law or by the court. A release pursuant to this division (E) shall be only for the duration of time that is needed to fulfill the purpose of the release and for travel that reasonably is necessary to fulfill the purposes of release.

(3) The court may order that a reasonable portion of the income earned by the offender upon a release pursuant to division (E)(2) of this section be applied to any financial sanction imposed under division (G) of this section.

(4) No court shall sentence any person to a prison term for a misdemeanor or to a jail term for a minor misdemeanor.

(5) If a court sentences a person who has been convicted of or pleaded guilty to a misdemeanor to a community residential sanction as described in division (E)(1) of this section, at the time of reception and at other times the person in charge of the operation of the halfway house, community alternative sentencing center, district community alternative sentencing center, or other place at which the offender will serve the residential sanction determines to be appropriate, the person in charge of the operation of the halfway house, community alternative sentencing center, district community alternative sentencing center or other place may cause the convicted offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B and C, and other contagious diseases. The person in charge of the operation of the halfway house, community alternative sentencing center, district community alternative sentencing center or other place at which the offender will serve the residential sanction may cause a convicted offender in the halfway house, community alternative sentencing center, district community alternative sentencing center or other place who refuses to be tested or treated for tuberculosis, HIV infection, hepatitis, including but not limited to hepatitis A, B and C, or another contagious disease to be tested and treated involuntarily.

(6) The municipality may enter into a contract with a halfway house for use of the halfway house to house misdemeanor offenders under a sanction imposed under division (E)(1)(a) of this section. (R.C. § 2929.26)

(F) *Nonresidential sanction where jail term is not mandatory.*

(1) Except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any nonresidential sanction or combination of nonresidential sanctions authorized under this division (F). Nonresidential sanctions include but are not limited to the following:

(a) A term of day reporting;

(b) A term of house arrest with electronic monitoring or continuous alcohol monitoring or both electronic monitoring and continuous alcohol monitoring, a term of electronic monitoring or continuous alcohol monitoring without house arrest, or a term of house arrest without electronic monitoring or continuous alcohol monitoring;

(c) A term of community service of up to 500 hours for misdemeanor of the first degree or 200 hours for a misdemeanor of the second, third or fourth degree;

(d) A term in a drug treatment program with a level of security for the offender as determined necessary by the court;

(e) A term of intensive probation supervision;

(f) A term of basic probation supervision;

(g) A term of monitored time;

(h) A term of drug and alcohol use monitoring, including random drug testing;

(i) A curfew term;

(j) A requirement that the offender obtain employment;

(k) A requirement that the offender obtain education or training;

(l) Provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation;

(m) If authorized by law, suspension of the offender's privilege to operate a motor vehicle, immobilization or forfeiture of the offender's motor vehicle, a requirement that the offender obtain a valid motor vehicle operator's license, or any other related sanction; and

(n) A requirement that the offender obtain counseling if the offense is a violation of R.C. § 2919.25 or a substantially equivalent municipal ordinance or a violation of R.C. § 2903.13 or a substantially equivalent municipal ordinance involving a person who was a family or household member at the time of the violation, if the offender committed the offense in the vicinity of one or more children

who are not victims of the offense, and if the offender or the victim of the offense is a parent, guardian, custodian or person in loco parentis of one or more of those children. This division (F) does not limit the court in requiring that the offender obtain counseling for any offense or in any circumstance not specified in this division (F).

(2) If the court imposes a term of community service pursuant to division (F)(1)(c) of this section, the offender may request that the court modify the sentence to authorize the offender to make a reasonable contribution, as determined by the court, to the General Fund of the county, municipality or other local entity that provides funding to the court. The court may grant the request if the offender demonstrates a change in circumstances from the date the court imposes the sentence or that the modification would otherwise be in the interests of justice. If the court grants the request, the offender shall make a reasonable contribution to the court, and the Clerk of the court shall deposit that contribution into the General Fund of the county, municipality or other local entity that provides funding to the court. If more than one entity provides funding to the court, the Clerk shall deposit a percentage of the reasonable contribution equal to the percentage of funding the entity provides to the court in that entity's General Fund.

(3) In addition to the sanctions authorized under division (F)(1) of this section, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, upon an offender who is not required to serve a mandatory jail term may impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.

(4) The court imposing a sentence for a minor misdemeanor may impose a term of community service in lieu of all or part of a fine. The term of community service imposed for a minor misdemeanor shall not exceed 30 hours. After imposing a term of community service, the court may modify the sentence to authorize a reasonable contribution, as determined by the court, to the appropriate General Fund as provided in division (F)(2) of this section.

(R.C. § 2929.27)

(G) Financial sanctions.

(1) In addition to imposing court costs pursuant to R.C. § 2947.23, the court imposing a sentence upon an offender for a misdemeanor, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this division (G). If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include but are not limited to the following.

(a) Restitution.

1. Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the Traffic Violations Bureau serving the court under Traffic Rule 13, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based upon the victim's economic loss. The court may not impose restitution as a sanction pursuant to this division (G) if the offense is a minor misdemeanor or could be disposed of by the Traffic Violations Bureau serving the

court under Traffic Rule 13. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the Clerk of the court on behalf of the victim.

2. If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

3. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. No person may introduce evidence of an award of restitution under this section in a civil action for purposes of imposing liability against an insurer under R.C. § 3937.18.

4. If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than 5% of the amount of the restitution otherwise ordered, to the entity responsible for collecting and processing restitution payments.

5. The victim or survivor of the victim may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(b) *Fines.* A fine of the type described in divisions (G)(1)(b)1. and (G)(1)(b)2. of this section payable to the appropriate entity as required by law:

1. A fine in the following amount:
 - a. For a misdemeanor of the first degree, not more than \$1,000;
 - b. For a misdemeanor of the second degree, not more than \$750;
 - c. For a misdemeanor of the third degree, not more than \$500;
 - d. For a misdemeanor of the fourth degree, not more than \$250; or
 - e. For a minor misdemeanor, not more than \$150.

2. A state fine or cost as defined in R.C. § 2949.111.

(c) *Reimbursement.*

1. Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including but not limited to the following:

- a. All or part of the costs of implementing any community control sanction, including a supervision fee under R.C. § 2951.021;

- b. All or part of the costs of confinement in a jail or other residential facility, including but not limited to a per diem fee for room and board, the costs of medical and dental treatment and the costs of repairing property damaged by the offender while confined; and

- c. All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under R.C. § 4510.13.

2. The amount of reimbursement under division (G)(1)(c)1. of this section shall not exceed the total amount of reimbursement the offender is able to pay and shall not exceed the actual cost of the sanctions. The court may collect any amount of reimbursement the offender is required to pay under that division. If the court does not order reimbursement under that division, confinement costs may be assessed pursuant to a repayment policy adopted under R.C. § 2929.37. In addition, the offender may be required to pay the fees specified in R.C. § 2929.38 in accordance with that section.

(2) (a) If the court determines a hearing is necessary, the court may hold a hearing to determine whether the offender is able to pay the financial sanction imposed pursuant to this division (G) or court costs or is likely in the future to be able to pay the sanction or costs.

(b) If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court shall consider imposing and may impose a term of community service under division (F)(1) of this section in lieu of imposing a financial sanction or court costs. If the court does not determine that the offender is indigent, the court may impose a term of community service under division (F)(1) of this section in lieu of or in addition to imposing a financial sanction under this division (G) and in addition to imposing court costs. The court may order community service for a minor misdemeanor pursuant to division (F)(4) of this section in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. If a person fails to pay a financial sanction or court costs, the court may order community service in lieu of the financial sanction or court costs.

(3) (a) The offender shall pay reimbursements imposed upon the offender pursuant to division (G)(1)(c) of this section to pay the costs incurred by a county pursuant to any sanction imposed under division (E), (F) or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section to the county treasurer. The county treasurer shall deposit the reimbursements in the county's General Fund. The county shall use the amounts deposited

in the fund to pay the costs incurred by the county pursuant to any sanction imposed under division (E), (F) or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section.

(b) The offender shall pay reimbursements imposed upon the offender pursuant to division (G)(1)(c) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under division (E), (F) or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in the municipal corporation's General Fund. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under division (E), (F) or (G) of this section or in operating a facility used to confine offenders pursuant to a sanction imposed under division (E) of this section.

(c) The offender shall pay reimbursements imposed pursuant to division (G)(1)(c) of this section for the costs incurred by a private provider pursuant to a sanction imposed under division (E), (F) or (G) of this section to the provider.

(4) (a) Except as otherwise provided in this division (G)(4), a financial sanction imposed under division (G)(1) of this section is a judgment in favor of the state or the political subdivision that operates the court that imposed the financial sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (G)(1)(c)1.a. of this section upon an offender is a judgment in favor of the entity administering the community control sanction, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (G)(1)(c)1.b. of this section upon an offender confined in a jail or other residential facility is a judgment in favor of the entity operating the jail or other residential facility, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (G)(1)(a) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (G)(4)(b)1. of this section, through execution as described in division (G)(4)(b)2. of this section or through an order as described in division (G)(4)(b)3. of this section and the offender shall be considered for purposes of the collection as a judgment debtor.

(b) Once a financial sanction is imposed as a judgment or order under this division (G), the victim, private provider, state or political subdivision may do any of the following:

1. Obtain from the Clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;

2. Obtain execution of the judgment or order through any available procedure, including any of the procedures identified in R.C. § 2929.18(D)(1) and (D)(2) or a substantially equivalent municipal ordinance; or

3. Obtain an order for the assignment of wages of the judgment debtor under R.C. § 1321.33 or a substantially equivalent municipal ordinance.

(5) The civil remedies authorized under division (G)(4) of this section for the collection of the financial sanction supplement, but do not preclude, enforcement of the criminal sentence.

(6) Each court imposing a financial sanction upon an offender under this division (G) may designate the Clerk of the court or another person to collect the financial sanction. The Clerk, or another person authorized by law or the court to collect the financial sanction may do the following:

(a) Enter into contracts with one or more public agencies or private vendors for the collection of amounts due under the sanction. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this division (G), a court shall comply with R.C. §§ 307.86 through 307.92;

(b) Permit payment of all or any portion of the sanction in installments, by financial transaction device if the court is a county court or a municipal court operated by a county, or by any other reasonable method, in any time, and on any terms that the court considers just, except that the maximum time permitted for payment shall not exceed five years. If the court is a county court or a municipal court operated by a county, the acceptance of payments by any financial transaction device shall be governed by the policy adopted by the board of county commissioners of the county pursuant to R.C. § 301.28. If the court is a municipal court not operated by a county, the Clerk may pay any fee associated with processing an electronic transfer out of public money or may charge the fee to the offender; and

(c) To defray administrative costs, charge a reasonable fee to an offender who elects a payment plan rather than a lump sum payment of any financial sanction.

(7) No financial sanction imposed under this division (G) shall preclude a victim from bringing a civil action against the offender.
(R.C. § 2929.28)

(H) *Organizational penalties.*

(1) Regardless of the other penalties provided in this section, an organization convicted of an offense pursuant to § 130.09 shall be fined by the court as follows:

- (a) For a misdemeanor of the first degree, not more than \$5,000;
- (b) For a misdemeanor of the second degree, not more than \$4,000;
- (c) For a misdemeanor of the third degree, not more than \$3,000;
- (d) For a misdemeanor of the fourth degree, not more than \$2,000;

- (e) For a minor misdemeanor, not more than \$1,000;
- (f) For a misdemeanor not specifically classified, not more than \$2,000; and
- (g) For a minor misdemeanor not specifically classified, not more than \$1,000.

(2) When an organization is convicted of an offense not specifically classified, and the section defining the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then such penalty shall be imposed in lieu of the penalty provided in this section.

(3) When an organization is convicted of an offense not specifically classified, and the penalty provided includes a higher fine than that provided in this section, then the penalty imposed shall be pursuant to the penalty provided for violation of the section defining the offense.

(4) This section does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to § 130.09, either in addition to or in lieu of a fine imposed pursuant to this section.

(R.C. § 2929.31)

(1985 Code, § 130.99)

Cross-reference:

Sentencing for sexually oriented offenses; sexual predators; registration, see § 133.99

Statutory reference:

Citation issuance and limitations on arrest for minor misdemeanors, see R.C. § 2935.26

Crime Victim's Reparations Fund, see R.C. § 2929.32

Habitual sex offender and sexual predator registration, see R.C. Chapter 2950

Reimbursement for costs of confinement, see R.C. §§ 2929.36 et seq.

Reports to health care licensing boards of criminal offenses, see R.C. § 2929.42

CHAPTER 131: OFFENSES AGAINST PROPERTY

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§ 131.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANHYDROUS AMMONIA. A compound formed by the combination of two gaseous elements, nitrogen and hydrogen, in the manner described below. ***ANHYDROUS AMMONIA*** is one part nitrogen to three parts hydrogen (NH₃). Anhydrous ammonia by weight is 14 parts nitrogen to three parts hydrogen, which is approximately 82% nitrogen to 18% hydrogen.

ASSISTANCE DOG. Has the same meaning as in R.C. § 955.011.

CABLE TELEVISION SERVICE. Any services provided by or through the facilities of any cable television system or other similar closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system.

COIN MACHINE. Any mechanical or electronic device designed to do both of the following:

- (1) Receive a coin or bill, or token made for that purpose; and
- (2) In return for the insertion or deposit of a coin, bill, or token, automatically dispense property, provide a service, or grant a license.

COMPUTER. An electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. The term includes but is not limited to all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature.

COMPUTER CONTAMINANT. Means a computer program that is designed to modify, damage, destroy, disable, deny or degrade access to, allow unauthorized access to, functionally impair, record or transmit information within a computer, computer system or computer network without the express or implied consent of the owner or other person authorized to give consent and that is of a type or kind described in divisions (1) through (4) of this definition or of a type or kind similar to a type or kind described in divisions (1) through (4) of this definition:

- (1) A group of computer programs commonly known as “viruses” and “worms” that are self-replicating or self-propagating and that are designed to contaminate other computer programs, compromise computer security, consume computer resources, modify, destroy, record or transmit data, or disrupt the normal operation of the computer, computer system or computer network;

(2) A group of computer programs commonly known as “Trojans” or “Trojan horses” that are not self-replicating or self-propagating and that are designed to compromise computer security, consume computer resources, modify, destroy, record or transmit data, or disrupt the normal operation of the computer, computer system or computer network;

(3) A group of computer programs commonly known as “zombies” that are designed to use a computer without the knowledge and consent of the owner, or other person authorized to give consent, and that are designed to send large quantities of data to a targeted computer network for the purpose of degrading the targeted computer’s or network’s performance, or denying access through the network to the targeted computer or network, resulting in what is commonly known as “denial of service” or “distributed denial of service” attacks; and

(4) A group of computer programs commonly known as “trap doors,” “back doors” or “root kits” that are designed to bypass standard authentication software and that are designed to allow access or use of a computer without the knowledge or consent of the owner, or other person authorized to give consent.

COMPUTER HACKING.

(1) The term means any of the following:

(a) Gaining access or attempting to gain access to all or part of a computer, computer system, or a computer network without express or implied authorization with the intent to defraud or with intent to commit a crime;

(b) Misusing computer or network services including but not limited to mail transfer programs, file transfer programs, proxy servers, and web servers by performing functions not authorized by the owner of the computer, computer system, or computer network or other person authorized to give consent. As used in this division, “misuse of computer and network services” includes but is not limited to the unauthorized use of any of the following:

1. Mail transfer programs to send mail to persons other than the authorized users of that computer or computer network;

2. File transfer program services or proxy servers to access other computers, computer systems, or computer networks; or

3. Web servers to redirect users to other web pages or web servers.

(c) 1. Subject to division (1)(c)2. of this definition, using a group of computer programs commonly known as “port scanners” or “probes” to intentionally access any computer, computer system, or computer network without the permission of the owner of the computer, computer system, or computer network or other person authorized to give consent. The group of computer programs referred to in this division includes but is not limited to those computer programs that use a computer network to access a computer, computer system, or another computer network to determine any of the

following: the presence or types of computers or computer systems on a network; the computer network's facilities and capabilities; the availability of computer or network services; the presence or versions of computer software including but not limited to operating systems, computer services, or computer contaminants; the presence of a known computer software deficiency that can be used to gain unauthorized access to a computer, computer system, or computer network; or any other information about a computer, computer system, or computer network not necessary for the normal and lawful operation of the computer initiating the access.

2. The group of computer programs referred to in division (1)(c)1. of this definition does not include standard computer software used for the normal operation, administration, management, and test of a computer, computer system, or computer network including but not limited to domain name services, mail transfer services, and other operating system services, computer programs commonly called "ping", "tcpdump", and "traceroute" and other network monitoring and management computer software, and computer programs commonly known as "nslookup" and "whois" and other systems administration computer software.

(d) The intentional use of a computer, computer system or a computer network in a manner that exceeds any right or permission granted by the owner of the computer, computer system, or computer network or other person authorized to give consent.

(2) The term does not include the introduction of a computer contaminant, as defined in this section, into a computer, computer system, computer program or computer network.

COMPUTER NETWORK. A set of related and remotely-connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities.

COMPUTER PROGRAM. An ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to process data.

COMPUTER SERVICES. Includes but is not limited to the use of a computer system, computer network, computer program, data that is prepared for computer use or data that is contained within a computer system or computer network.

COMPUTER SOFTWARE. Computer programs, procedures, and other documentation associated with the operation of a computer system.

COMPUTER SYSTEM. A computer and related devices, whether connected or unconnected, including but not limited to data input, output, and storage devices, data communications links and computer programs and data that make the system capable of performing specified special purpose data processing tasks.

COUNTERFEIT TELECOMMUNICATIONS DEVICE. A telecommunications device that, alone or with another telecommunications device, has been altered, constructed, manufactured or programmed to acquire, intercept, receive or otherwise facilitate the use of a telecommunications service or

information service without the authority or consent of the provider of the telecommunications service or information service. The phrase includes but is not limited to a clone telephone, clone microchip, tumbler telephone, or tumbler microchip; a wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of telecommunications service or information service without immediate detection; or a device, equipment, hardware or software designed for, or capable of, altering or changing the electronic serial number in a wireless telephone.

CREATE A SUBSTANTIAL RISK OF SERIOUS PHYSICAL HARM TO ANY PERSON. Includes the creation of a substantial risk of serious physical harm to any emergency personnel.

CREDIT CARD. Includes but is not limited to a card, code, device, or other means of access to a customer's account for the purpose of obtaining money, property, labor, or services on credit, or for initiating an electronic fund transfer at a point-of-sale terminal, an automated teller machine, or a cash dispensing machine. It also includes a county procurement card issued under R.C. § 301.29.

DANGEROUS DRUG. Has the same meaning as in R.C. § 4729.01.

DANGEROUS ORDNANCE. Has the same meaning as in R.C. § 2923.11.

DATA. A representation of information, knowledge, facts, concepts or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer, computer system, or computer network.

DECEPTION. To knowingly deceive another or cause another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact.

DEFRAUD. To knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another.

DEPRIVE. To do any of the following:

(1) To withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;

(2) To dispose of property so as to make it unlikely that the owner will recover it; or

(3) To accept, use, or appropriate money, property or services, with purpose not to give proper consideration in return for the money, property or services, and without reasonable justification or excuse for not giving proper consideration.

DISABLED ADULT. A person who is 18 years of age or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons.

DRUG ABUSE OFFENSE. Has the same meaning as in R.C. § 2925.01.

ELDERLY PERSON. A person who is 65 years of age or older.

ELECTRONIC FUND TRANSFER. Has the same meaning as in 92 Stat. 3728, 15 U.S.C. § 1693a, as amended.

EMERGENCY PERSONNEL. Means any of the following persons:

- (1) A peace officer, as defined in R.C. § 2935.01;
- (2) A member of a fire department or other firefighting agency of a municipal corporation, township, township fire district, joint fire district, other political subdivision or combination of political subdivisions;
- (3) A member of a private fire company, as defined in R.C. § 9.60, or a volunteer firefighter;
- (4) A member of a joint ambulance district or joint emergency medical services district;
- (5) An emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, ambulance operator or other member of an emergency medical service that is owned or operated by a political subdivision or a private entity;
- (6) The State Fire Marshal, the Chief Deputy State Fire Marshal or an assistant state fire marshal; or
- (7) A fire prevention officer of a political subdivision or an arson, fire or similar investigator of a political subdivision.

FEDERALLY-LICENSED FIREARMS DEALER. Has the same meaning as in R.C. § 5502.63.

FIREARM. Has the same meaning as in R.C. § 2923.11.

FORGE. To fabricate or create, in whole or in part and by any means, any spurious writing, or to make, execute, alter, complete, reproduce or otherwise purport to authenticate any writing, when the writing in fact is not authenticated by that conduct.

GAIN ACCESS. To approach, instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system, or computer network, or any cable service or cable system both as defined in R.C. § 2913.04.

INFORMATION SERVICE.

(1) Subject to division (2) of this definition, the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications, including but not limited to electronic publishing.

(2) The term does not include any use of a capability of a type described in division (1) of this definition for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

INTERNET. Has the same meaning as in R.C. § 341.42.

MOTOR VEHICLE. Has the same meaning as in R.C. § 4501.01.

OCCUPIED STRUCTURE. Means any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent or other structure, vehicle or shelter, or any portion thereof, to which any of the following applies:

(1) It is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present;

(2) At the time, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present;

(3) At the time, it is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; and

(4) At the time, any person is present or likely to be present in it.

OWNER. Unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful.

POLICE DOG OR HORSE. Has the same meaning as in R.C. § 2921.321.

POLITICAL SUBDIVISION. Has the same meaning as in R.C. § 2744.01.

RENTED PROPERTY. Personal property in which the right of possession and use of the property is for a short and possibly indeterminate term in return for consideration; the rentee generally controls the duration of possession of the property within any applicable minimum or maximum term; and the amount of consideration is generally determined by the duration of possession of the property.

SERVICES. Includes labor, personal services, professional services, rental services, public utility services including wireless service as defined in R.C. § 128.01(F)(1), common carrier services, and food, drink, transportation, entertainment, and cable television services and, for purposes of R.C. § 2913.04 or any substantially equivalent municipal ordinance, includes cable services as defined in that section.

SLUG. An object that, by virtue of its size, shape, composition, or other quality, is capable of being inserted or deposited in a coin machine as an improper substitute for a genuine coin, bill, or token made for that purpose.

STATE. Has the same meaning as in R.C. § 2744.01.

TELECOMMUNICATION. The origination, emission, dissemination, transmission or reception of data, images, signals, sounds or other intelligence or equivalence or intelligence of any nature over any communications system by any method, including but not limited to a fiber optic, electronic, magnetic, optical, digital or analog method.

TELECOMMUNICATIONS DEVICE. Any instrument, equipment, machine or other device that facilitates telecommunication, including but not limited to a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem or device that enables the use of a modem.

TELECOMMUNICATIONS SERVICE. The providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system.

THEFT OFFENSE. Any of the following:

(1) A violation of R.C. § 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, 2913.48, former R.C. § 2913.47 or 2913.48 or R.C. § 2913.51, 2915.05 or 2921.41;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or of the United States substantially equivalent to any section listed in division (1) of this definition, or a violation of R.C. § 2913.41, 2913.81 or 2915.06 as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or the United States involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit or fraud; and/or

(4) A conspiracy to commit, attempt to commit, or complicity in committing any offense under division (1), (2), or (3) of this definition.

UTTER. To issue, publish, transfer, use, put or send into circulation, deliver or display.

WRITING. Any computer software, document, letter, memorandum, note, paper, plate, data, film, or other thing having in or upon it any written, type-written, or printed matter, and any token, stamp, seal, credit card, badge, trademark, label or other symbol of value, right, privilege, license or identification.

(R.C. §§ 2909.01, 2913.01) (1985 Code, § 131.01)

§ 131.02 ARSON.

(A) No person, by means of fire or explosion, shall knowingly cause or create a substantial risk of physical harm to any property of another without the other person’s consent.

(B) Whoever violates this section is guilty of arson. Except as otherwise provided in this division (B), violation of this section is a misdemeanor of the first degree. If the value of the property or the amount of physical harm involved is \$1,000 or more, then the violation is a felony to be prosecuted under appropriate state law.

(R.C. § 2909.03) (1985 Code, § 131.02)

§ 131.03 CRIMINAL DAMAGING OR ENDANGERING; VEHICULAR VANDALISM.

(A) *Criminal damaging or endangering.*

(1) No person shall cause or create a substantial risk of physical harm to any property of another without the other person’s consent:

(a) Knowingly, by any means; or

(b) Recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.

(2) Whoever violates this division (A) is guilty of criminal damaging or endangering, a misdemeanor of the second degree. If violation of this division (A) creates a risk of physical harm to any person, criminal damaging or endangering is a misdemeanor of the first degree. If the property involved in a violation of this division (A) is an aircraft, an aircraft engine, propeller, appliance, spare part or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a risk of physical harm to any person, criminal damaging or endangering is a felony to be prosecuted under appropriate state law. If the property involved in a violation of this division (A) is an aircraft, an aircraft engine, propeller, appliance, spare part or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this division (A) is an

occupied aircraft, criminal damaging or endangering is a felony to be prosecuted under appropriate state law.

(R.C. § 2909.06)

(B) *Vehicular vandalism.*

(1) As used in this division (B):

ALLEY. Has the same meaning as in R.C. § 4511.01.

HIGHWAY. Means any highway as defined in R.C. § 4511.01 or any lane, road, street, alley, bridge or overpass.

STREET. Has the same meaning as in R.C. § 4511.01.

VEHICLE. Has the same meaning as in R.C. § 4511.01.

VESSEL. Has the same meaning as in R.C. § 1547.01.

WATERS IN THIS STATE. Has the same meaning as in R.C. § 1547.01.

(2) No person shall knowingly, and by any means, drop or throw any object at, onto or in the path of any of the following:

(a) Any vehicle on a highway; or

(b) Any boat or vessel on any of the waters in this state.

(3) Whoever violates this division (B) is guilty of vehicular vandalism. Except as otherwise provided in this division (B)(3), vehicular vandalism is a misdemeanor of the first degree. If the violation of this division (B) creates a substantial risk of physical harm to any person or the violation of this division (B) causes serious physical harm to property, vehicular vandalism is a felony to be prosecuted under appropriate state law. If the violation of this division (B) causes physical harm to any person or serious physical harm to any person, vehicular vandalism is a felony to be prosecuted under appropriate state law.

(R.C. § 2909.09)

(1985 Code, § 131.03) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 131.04 CRIMINAL MISCHIEF.

(A) No person shall:

(1) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper with the property of another;

(2) With purpose to interfere with the use or enjoyment of property of another, employ a tear gas device, stink bomb, smoke generator or other device releasing a substance that is harmful or offensive to persons exposed, or that tends to cause public alarm;

(3) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper with a bench mark, triangulation station, boundary marker or other survey station, monument or marker;

(4) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper with any safety device, the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose;

(5) With purpose to interfere with the use or enjoyment of the property of another, set a fire on the land of another or place personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure or personal property that is on that land; and

(6) Without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software or computer program, knowingly do any of the following:

(a) In any manner or by any means, including but not limited to computer hacking, alter, damage, destroy or modify a computer, computer system, computer network, computer software or computer program or data contained in a computer, computer system, computer network, computer software or computer program; and

(b) Introduce a computer contaminant into a computer, computer system, computer network, computer software or computer program.

(B) As used in this section, ***SAFETY DEVICE*** means any fire extinguisher, fire hose or fire axe, or any fire escape, emergency exit or emergency escape equipment, or any life line, life-saving ring, life preserver, or life boat or raft, or any alarm, light, flare, signal, sign or notice intended to warn of danger or emergency, or intended for other safety purposes, or any guard railing or safety barricade, or any traffic sign or signal, or any railroad grade crossing sign, signal or gate, or any first aid or survival equipment, or any other device, apparatus or equipment intended for protecting or preserving the safety of persons or property.

(C) Whoever violates this section is guilty of criminal mischief, and shall be punished as provided in division (C)(1) or (C)(2) of this section.

(1) Except as otherwise provided in this division (C), criminal mischief committed in violation of division (A)(1), (A)(2), (A)(3), (A)(4) or (A)(5) of this section is a misdemeanor of the third degree. Except as otherwise provided in this division (C), if the violation of division (A)(1), (A)(2), (A)(3), (A)(4) or (A)(5) of this section creates a risk of physical harm to any person, criminal mischief

committed in violation of division (A)(1), (A)(2), (A)(3), (A)(4) or (A)(5) of this section is a misdemeanor of the first degree. If the property involved in the violation of division (A)(1), (A)(2), (A)(3), (A)(4) or (A)(5) of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates any risk of physical harm to any person, or if the aircraft in question is an occupied aircraft, criminal mischief committed in violation of division (A)(1), (A)(2), (A)(3), (A)(4) or (A)(5) of this section is a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in this division (C), criminal mischief committed in violation of division (A)(6) of this section is a misdemeanor of the first degree. If the value of the computer, computer system, computer network, computer software, computer program or data involved in the violation of division (A)(6) of this section or the loss to the victim resulting from the violation is \$1,000 or more, or if the computer, computer system, computer network, computer software, computer program or data involved in the violation of division (A)(6) is used or intended to be used in the operation of an aircraft and the violation creates any risk of physical harm to any person, or if the aircraft in question is an occupied aircraft, criminal mischief committed in violation of division (A)(6) of this section is a felony to be prosecuted under appropriate state law.

(R.C. § 2909.07) (1985 Code, § 131.04) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977; Ord. 87-44, passed 9-8-1987)

§ 131.05 DETERMINING PROPERTY VALUE OR AMOUNT OF PHYSICAL HARM.

(A) The following criteria shall be used in determining the value of property or amount of physical harm involved in a violation of § 131.02.

(1) If the property is an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record or other thing that is either irreplaceable or is replaceable only on the expenditure of substantial time, effort or money, the value of the property or the amount of physical harm involved is the amount that would compensate the owner for its loss.

(2) If the property is not covered under division (A)(1) of this section, and the physical harm is such that the property can be restored substantially to its former condition, the amount of physical harm involved is the reasonable cost of restoring the property.

(3) If the property is not covered under division (A)(1) of this section, and the physical harm is such that the property cannot be restored substantially to its former condition, the value of the property, in the case of personal property, is the cost of replacing the property with new property of like kind and quality, and in the case of real property or real property fixtures, is the difference in the fair market value of the property immediately before and immediately after the offense.

(B) As used in this section, ***FAIR MARKET VALUE*** has the same meaning as in R.C. § 2913.61.

(C) Prima facie evidence of the value of property, as provided in R.C. § 2913.61(D), may be used to establish the value of property pursuant to this section.
(R.C. § 2909.11(B) - (D)) (1985 Code, § 131.05)

§ 131.06 CRIMINAL TRESPASS.

(A) No person, without privilege to do so, shall do any of the following:

(1) Knowingly enter or remain on the land or premises of another;

(2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard;

(3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access; or

(4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.

(B) It is no defense to a charge under this section that the land or premises involved was owned, controlled or in custody of a public agency.

(C) It is no defense to a charge under this section that the offender was authorized to enter or remain on the land or premises involved, when the authorization was secured by deception.

(D) (1) Whoever violates division (A) of this section is guilty of criminal trespass, a misdemeanor of the fourth degree.

(2) Notwithstanding R.C. § 2929.28, if the person, in committing the violation of this section, used a snowmobile, off-highway motorcycle or all-purpose vehicle, the court shall impose a fine of two times the usual amount imposed for the violation.

(3) If an offender previously has been convicted of or pleaded guilty to two or more violations of this section, R.C. § 2911.21 or a substantially equivalent municipal ordinance, and the offender, in committing each violation, used a snowmobile, off-highway motorcycle or all-purpose vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impound the certificate of registration of that snowmobile or off-highway motorcycle or the certificate of registration and license plate of that all-purpose vehicle for not less than 60 days. In such a case, R.C. § 4519.47 applies.

(E) Notwithstanding any provision of the Ohio Revised Code, if the offender, in committing the violation of this section, used an all-purpose vehicle, the Clerk of the court shall pay the fine imposed pursuant to this section to the State Recreational Vehicle Fund created by R.C. § 4519.11.

(F) As used in this section:

(1) *ALL-PURPOSE VEHICLE*, *OFF-HIGHWAY MOTORCYCLE* and *SNOWMOBILE*. Have the same meanings as in R.C. § 4519.01.

(2) *LAND* or *PREMISES*. Includes any land, building, structure or place belonging to, controlled by, or in custody of another, and any separate enclosure or room, or portion thereof. (R.C. § 2911.21) (Ord. 1306, passed 6-13-1977)

(G) Criminal trespass on a place of public amusement:

(1) As used in this division (G), *PLACE OF PUBLIC AMUSEMENT* means a stadium, theater or other facility, whether licensed or not, at which a live performance, sporting event or other activity takes place for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged;

(2) No person, without privilege to do so, shall knowingly enter or remain on any restricted portion of a place of public amusement and, as a result of that conduct, interrupt or cause the delay of the live performance, sporting event or other activity taking place at the place of public amusement after a printed written notice has been given as provided in division (G)(4)(a) of this section that the general public is restricted from access to that restricted portion of the place of public amusement. A restricted portion of a place of public amusement may include but is not limited to a playing field, an athletic surface or a stage located at the place of public amusement;

(3) An owner or lessee of a place of public amusement, an agent of the owner or lessee, or a performer or participant at a place of public amusement may use reasonable force to restrain and remove a person from a restricted portion of the place of public amusement if the person enters or remains on the restricted portion of the place of public amusement and, as a result of that conduct, interrupts or causes the delay of the live performance, sporting event or other activity taking place at the place of public amusement. This division (G) does not provide immunity from criminal liability for any use of force beyond reasonable force by an owner or lessee of a place of public amusement, an agent of either the owner or lessee, or a performer or participant at a place of public amusement;

(4) (a) Notice has been given that the general public is restricted from access to a portion of a place of public amusement if a printed written notice of the restricted access has been conspicuously posted or exhibited at the entrance to that portion of the place of public amusement. If a printed written notice is posted or exhibited as described in this division (G) regarding a portion of a place of public amusement, in addition to that posting or exhibition, notice that the general public is restricted from access to that portion of the place of public amusement also may be given, but is not required to be given, by either of the following means:

1. By notifying the person personally, either orally or in writing, that access to that portion of the place of public amusement is restricted; or

2. By broadcasting over the public address system of the place of public amusement an oral warning that access to that portion of the place of public amusement is restricted.

(b) If notice that the general public is restricted from access to a portion of a place of public amusement is provided by the posting or exhibition of a printed written notice as described in division (G)(4)(a) of this section, the municipality, in a criminal prosecution for a violation of division (G)(2) of this section, is not required to prove that the defendant received actual notice that the general public is restricted from access to a portion of a place of public amusement.

(5) (a) Whoever violates division (G)(2) of this section is guilty of criminal trespass on a place of public amusement, a misdemeanor of the first degree.

(b) In addition to any jail term, fine or other sentence, penalty or sanction it imposes upon the offender pursuant to division (G)(5)(a) of this section, a court may require an offender who violates this section to perform not less than 30 and not more than 120 hours of supervised community service work.

(R.C. § 2911.23)

(1985 Code, § 131.06)

§ 131.07 AGGRAVATED TRESPASS.

(A) No person shall enter or remain on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to him or her; and

(B) Whoever violates this section is guilty of aggravated trespass, a misdemeanor of the first degree.

(R.C. § 2911.211)

(1985 Code, § 131.061)

§ 131.08 TAMPERING WITH COIN MACHINES.

(A) No person, with purpose to commit theft or to defraud, shall knowingly enter, force an entrance into, tamper with or insert any part of an instrument into any coin machine.

(B) Whoever violates this section is guilty of tampering with coin machines, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section or of any theft offense as defined in R.C. § 2913.01, tampering with coin machines is a felony to be prosecuted under appropriate state law.

(R.C. § 2911.32) (1985 Code, § 131.07)

§ 131.09 THEFT.

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

- (1) Without the consent of the owner or person authorized to give consent;
- (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
- (3) By deception;
- (4) By threat; or
- (5) By intimidation.

(B) Whoever violates this section is guilty of theft. Except as otherwise provided in this division, a violation of this section is petty theft, a misdemeanor of the first degree. If any of the following criteria are met, then a violation of this section is a felony to be prosecuted under appropriate state law:

- (1) If the value of the property or services is \$1,000 or more;
- (2) If the property stolen is any of the property listed in R.C. § 2913.71;
- (3) If the victim of the offense is an elderly person or disabled adult;
- (4) If the property stolen is a firearm or dangerous ordnance;
- (5) If the property stolen is a motor vehicle;
- (6) If the property stolen is any dangerous drug, or if the offender previously has been convicted of a felony drug abuse offense;
- (7) If the property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog;
- (8) If the property stolen is anhydrous ammonia; or
- (9) If the property stolen is a special purpose article as defined in R.C. § 4737.04 or is a bulk merchandise container as defined in R.C. § 4737.012.

(C) In addition to the penalties described in division (B) of this section, if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is

offered for retail sale without the offender making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following:

(1) Unless division (C)(2) of this section applies, suspend for not more than six months the offenders driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege;

(2) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to division (C)(1) of this section, or any other substantially equivalent state or local law, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in R.C. § 4510.02(A)(7), provided that the suspension shall be at least six months; or

(3) The court, in lieu of suspending the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege pursuant to division (C)(1) or (C)(2) of this section, instead may require the offender to perform community service for a number of hours determined by the court.

(D) In addition to the penalties described in division (B) of this section, if the offender committed the violation by stealing rented property or rental services, the court may order that the offender make restitution pursuant to R.C. § 2929.18 or R.C. § 2929.28. Restitution may include, but is not limited to, the cost of repairing or replacing the stolen property, or the cost of repairing the stolen property and any loss of revenue resulting from deprivation of the property due to theft of rental services that is less than or equal to the actual value of the property at the time it was rented. Evidence of intent to commit theft of rented property or rental services shall be determined pursuant to the provisions of R.C. § 2913.72.

(E) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under division (C) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with R.C. Chapter 4510.
(R.C. § 2913.02) (1985 Code, § 131.08)

§ 131.10 UNAUTHORIZED USE OF A VEHICLE.

(A) No person shall knowingly use or operate an aircraft, motor vehicle, motorcycle, motorboat or other motor-propelled vehicle without the consent of the owner or person authorized to give consent.

(B) No person shall knowingly use or operate an aircraft, motor vehicle, motorboat or other motor-propelled vehicle without the consent of the owner or person authorized to give consent, and either remove it from this state, or keep possession of it for more than 48 hours.

(C) The following are affirmative defenses to a charge under this section.

(1) At the time of the alleged offense, the actor, though mistaken, reasonably believed that he or she was authorized to use or operate the property.

(2) At the time of the alleged offense, the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property.

(D) Whoever violates this section is guilty of unauthorized use of a vehicle.

(1) Except as otherwise provided in this division (D)(1), a violation of division (A) of this section is a misdemeanor of the first degree. If the victim of the offense is an elderly person or disabled adult and if the victim incurs a loss as a result of the violation, a violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) A violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(R.C. § 2913.03) (1985 Code, § 131.09)

§ 131.11 UNAUTHORIZED USE OF PROPERTY; UNAUTHORIZED USE OF COMPUTER OR TELECOMMUNICATION PROPERTY.

(A) No person shall knowingly use or operate the property of another without the consent of the owner or person authorized to give consent.

(B) No person, in any manner and by any means, including but not limited to computer hacking, shall knowingly gain access to, attempt to gain access to, or cause access to be gained to any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service or information service or other person authorized to give consent.

(C) No person shall knowingly gain access to, attempt to gain access to, cause access to be granted to, or disseminate information gained from access to the law enforcement automated database system created pursuant to R.C. § 5503.10 without the consent of, or beyond the scope of the express or implied consent of, the chair of the Law Enforcement Automated Data System Steering Committee.

(D) No person shall knowingly gain access to, attempt to gain access to, cause access to be granted to, or disseminate information gained from access to the Ohio law enforcement gateway established and operated pursuant to R.C. § 109.57(C)(1) without the consent of, or beyond the scope of the express or implied consent of, the Superintendent of the Bureau of Criminal Identification and Investigation.

(E) The affirmative defenses contained in R.C. § 2913.03(C) are affirmative defenses to a charge under this section.

(F) Whoever violates division (A) of this section is guilty of unauthorized use of property. Except as otherwise provided in this division (F), unauthorized use of property is a misdemeanor of the fourth degree.

(1) If unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is whichever of the following is applicable:

(a) Except as otherwise provided below, unauthorized use of property is a misdemeanor of the first degree; and

(b) If the value of the property or services or the loss to the victim is \$1,000 or more, it is a felony to be prosecuted under appropriate state law.

(2) If the victim of the offense is an elderly person or disabled adult, unauthorized use of property is a felony to be prosecuted under appropriate state law.

(G) Whoever violates division (B) of this section is guilty of unauthorized use of computer, cable or telecommunication property, a felony to be prosecuted under appropriate state law.

(H) Whoever violates division (C) of this section is guilty of unauthorized use of the law enforcement automated database system, a felony to be prosecuted under appropriate state law.

(I) Whoever violates division (D) of this section is guilty of unauthorized use of the Ohio law enforcement gateway, a felony to be prosecuted under appropriate state law.

(J) As used in this section:

CABLE OPERATOR. Means any person or group of persons that does either of the following:

(a) Provides cable service over a cable system and directly through one or more affiliates owns a significant interest in that cable system; or

(b) Otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

CABLE SERVICE. Means any of the following:

(a) The one-way transmission to subscribers of video programming or of information that a cable operator makes available to all subscribers generally;

(b) Subscriber interaction, if any, that is required for the selection or use of video programming or of information that a cable operator makes available to all subscribers generally, both as described in division (a) of this definition; or

- (c) Any cable television service.

CABLE SYSTEM. Means any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. The term does not include any of the following:

(a) Any facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) Any facility that serves subscribers without using any public right-of-way;

(c) Any facility of a common carrier that, under 47 U.S.C. § 522(7)(c), is excluded from the term **CABLE SYSTEM** as defined in 47 U.S.C. § 522(7);

(d) Any open video system that complies with 47 U.S.C. § 573; or

(e) Any facility of any electric utility used solely for operating its electric utility system. (R.C. § 2913.04) (1985 Code, § 131.10) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977; Ord. 87-44, passed 9-8-1987)

§ 131.12 PASSING BAD CHECKS.

(A) As used in this section:

CHECK. Includes any form of debit from a demand deposit account, including but not limited to any of the following:

(a) A check, bill of exchange, draft, order of withdrawal or similar negotiable or non-negotiable instrument; or

(b) An electronic check, electronic transaction, debit card transaction, check card transaction, substitute check, web check or any form of automated clearing house transaction.

ISSUE A CHECK. Means causing any form of debit from a demand deposit account.

(B) No person, with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored or knowing that a person has ordered or will order stop payment on the check or other negotiable instrument.

(C) For purposes of this section, a person who issues or transfers a check or other negotiable instrument is presumed to know that it will be dishonored if either of the following occurs:

(1) The drawer has no account with the drawee at the time of issue or the stated date, whichever is later; or

(2) The check or other negotiable instrument was properly refused payment for insufficient funds upon presentment within 30 days after issue or the stated date, whichever is later, and the liability of the drawer, indorser or any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor.

(D) For purposes of this section, a person who issues or transfers a check, bill of exchange or other draft is presumed to have the purpose to defraud if the drawer fails to comply with R.C. § 1349.16 by doing any of the following when opening a checking account intended for personal, family or household purposes at a financial institution:

(1) Falsely stating that he or she has not been issued a valid driver's or commercial driver's license or identification card issued under R.C. § 4507.50;

(2) Furnishing the license or card, or another identification document that contains false information; and

(3) Making a false statement with respect to the drawer's current address or any additional relevant information reasonably required by the financial institution.

(E) In determining the value of the payment for purposes of division (F) of this section, the court may aggregate all checks and other negotiable instruments that the offender issued or transferred or caused to be issued or transferred in violation of division (B) of this section within a period of 180 consecutive days.

(F) Whoever violates this section is guilty of passing bad checks. Except as otherwise provided in this division (F), passing bad checks is a misdemeanor of the first degree. If the check or checks or other negotiable instrument or instruments are issued or transferred to a single vendor or single other person for the payment of \$1,000 or more, or if the check or checks or other negotiable instrument or instruments are issued or transferred to multiple vendors or persons for the payment of \$1,500 or more, passing bad checks is a felony to be prosecuted under appropriate state law.

(R.C. § 2913.11) (1985 Code, § 131.11)

§ 131.13 MISUSE OF CREDIT CARDS.

(A) No person shall do any of the following:

(1) Practice deception for the purpose of procuring the issuance of a credit card, when a credit card is issued in actual reliance thereon; or

(2) Knowingly buy or sell a credit card from or to a person other than the issuer.

(B) No person, with purpose to defraud, shall do any of the following:

(1) Obtain control over a credit card as security for a debt;

(2) Obtain property or services by the use of a credit card, in one or more transactions, knowing or having reasonable cause to believe that the card has expired or been revoked, or was obtained, is retained, or is being used in violation of law;

(3) Furnish property or services upon presentation of a credit card, knowing that the card is being used in violation of law; or

(4) Represent or cause to be represented to the issuer of a credit card that property or services have been furnished, knowing that the representation is false.

(C) No person, with purpose to violate this section, shall receive, possess, control or dispose of a credit card.

(D) Whoever violates this section is guilty of misuse of credit cards.

(1) Except as otherwise provided in division (D)(3) of this section, a violation of division (A), (B)(1) or (C) of this section is a misdemeanor of the first degree.

(2) Except as otherwise provided in this division (D)(2) or division (D)(3) of this section, a violation of division (B)(2), (B)(3) or (B)(4) of this section is a misdemeanor of the first degree. If the cumulative retail value of the property and services involved in one or more violations of division (B)(2), (B)(3) or (B)(4) of this section which violations involve one or more credit card accounts and occur within a period of 90 consecutive days commencing on the date of the first violation, is \$1,000 or more, misuse of credit cards is a felony to be prosecuted under appropriate state law.

(3) If the victim of the offense is an elderly person or disabled adult, and if the offense involves a violation of division (B)(1) or (B)(2) of this section, misuse of credit cards is a felony to be prosecuted under appropriate state law.

(R.C. § 2913.21) (1985 Code, § 131.12) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977; Ord. 1632, passed 4-18-1983; Ord. 87-44, passed 9-8-1987)

§ 131.14 MAKING OR USING SLUGS.

(A) No person shall do any of the following:

(1) Insert or deposit a slug in a coin machine, with purpose to defraud; or

(2) Make, possess or dispose of a slug, with purpose of enabling another to defraud by inserting or depositing it in a coin machine.

(B) Whoever violates this section is guilty of making or using slugs, a misdemeanor of the second degree.

(R.C. § 2913.33) (1985 Code, § 131.13) (Ord. 1306, passed 6-13-1977)

§ 131.15 PRIMA FACIE EVIDENCE OF PURPOSE TO DEFRAUD.

In a prosecution of a person for a theft offense that alleges that the person, with purpose to defraud or knowing that he or she was facilitating a fraud, hired or rented an aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy or other property or equipment, kept or operated any of the same that has been hired or rented, or engaged accommodations at a hotel, motel, inn, campground or other hostelry, it is prima facie evidence of purpose to defraud if the person did any of the following:

(A) Used deception to induce the rental agency to furnish the person with the aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy or other property or equipment, or used deception to induce the hostelry to furnish the person with accommodations;

(B) Hired or rented any aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper, trailer, horse, buggy or other property or equipment, or engaged accommodations, knowing that he or she is without sufficient means to pay the hire or rental;

(C) Absconded without paying the hire or rental;

(D) Knowingly failed to pay the hire or rental as required by the contract of hire or rental, without reasonable excuse for the failure; or

(E) Knowingly failed to return hired or rented property as required by the contract of hire or rental, without reasonable excuse for the failure.

(R.C. § 2913.41) (1985 Code, § 131.14)

§ 131.16 TAMPERING WITH RECORDS.

(A) No person, knowing that he or she has no privilege to do so, and with purpose to defraud or knowing that he or she is facilitating a fraud, shall do any of the following:

(1) Falsify, destroy, remove, conceal, alter, deface or mutilate any writing, computer software, data or record; or

(2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.

(B) Whoever violates this section is guilty of tampering with records.

(1) Except as provided in division (B)(3) of this section, if the offense does not involve data or computer software, tampering with records is whichever of the following is applicable:

(a) If division (B)(1)(b) of this section does not apply, it is a misdemeanor of the first degree; or

(b) If the writing or record is a will unrevoked at the time of the offense, it is a felony to be prosecuted under appropriate state law.

(2) Except as provided in division (B)(3) of this section, if the offense involves a violation of division (A) of this section involving data or computer software, tampering with records is whichever of the following is applicable:

(a) Except as otherwise provided in division (B)(2)(b) of this section, it is a misdemeanor of the first degree; or

(b) If the value of the data or computer software involved in the offense or the loss to the victim is \$1,000 or more or if the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services and the value of the property or services or the loss to the victim is \$7,500 or more, it is a felony to be prosecuted under appropriate state law.

(3) If the writing, data, computer software or record is kept by or belongs to a local, state or federal governmental entity, it is a felony to be prosecuted under appropriate state law.

(R.C. § 2913.42) (1985 Code, § 131.15) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977; Ord. 87-44, passed 9-8-1987)

§ 131.17 SECURING WRITINGS BY DECEPTION.

(A) No person, by deception, shall cause another to execute any writing that disposes of or encumbers property, or by which a pecuniary obligation is incurred.

(B) Whoever violates this section is guilty of securing writings by deception. Except as otherwise provided in this division (B), securing writings by deception is a misdemeanor of the first degree. If the value of the property or the obligation involved is \$1,000 or more, securing writings by deception is a felony to be prosecuted under appropriate to state law. If the victim of the offense is an elderly person or disabled adult, securing writings by deception is a felony to be prosecuted under appropriate state law. (R.C. § 2913.43) (1985 Code, § 131.16)

§ 131.18 DEFRAUDING CREDITORS.

(A) No person, with purpose to defraud one or more of his or her creditors, shall do any of the following:

(1) Remove, conceal, destroy, encumber, convey or otherwise deal with any of his or her property; or

(2) Misrepresent or refuse to disclose to a fiduciary appointed to administer or manage his or her affairs or estate, the existence, amount or location of any of his or her property, or any other information regarding the property which he or she is legally required to furnish to the fiduciary.

(B) Whoever violates this section is guilty of defrauding creditors. Except as otherwise provided in this division (B), defrauding creditors is a misdemeanor of the first degree. If the value of the property involved is \$1,000 or more, defrauding creditors is a felony to be prosecuted under appropriate state law. (R.C. § 2913.45) (1985 Code, § 131.17)

§ 131.19 RECEIVING STOLEN PROPERTY.

(A) No person shall receive, retain or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

(B) It is not a defense to a charge of receiving stolen property in violation of this section that the property was obtained by means other than through the commission of a theft offense if the property was explicitly represented to the accused person as being obtained through the commission of a theft offense.

(C) Whoever violates this section is guilty of receiving stolen property. Except as otherwise provided in this division, receiving stolen property is a misdemeanor of the first degree. If any of the following criteria are met, then a violation of this section is a felony to be prosecuted under appropriate state law:

- (1) The value of the property involved is \$1,000 or more;
- (2) The property involved is any of the property listed in R.C. § 2913.71;
- (3) The property involved is a firearm or dangerous ordnance, as defined in R.C. § 2923.11;
- (4) The property involved is a motor vehicle as defined in R.C. § 4501.01;
- (5) The property involved is any dangerous drug, as defined in R.C. § 4729.01; or

(6) The property involved in violation of this section is a special purchase article as defined in R.C. § 4737.04 or a bulk merchandise container as defined in R.C. § 4737.012. (R.C. § 2913.51) (1985 Code, § 131.18) (Ord. 1306, passed 6-13-1977; Ord. 1632, passed 4-18-1983; Ord. 87-44, passed 9-8-1987)

§ 131.20 VALUE OF STOLEN PROPERTY.

(A) If more than one item of property or services is involved in a theft offense or in a violation of R.C. § 1716.14(A) involving a victim who is an elderly person or disabled adult, or any substantially equivalent municipal ordinance, the value of the property or services involved for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property or services involved in the offense.

(B) (1) When a series of offenses under R.C. § 2913.02, or a series of violations of, attempts to commit a violation of, conspiracies to violate or complicity in violations of R.C. § 1716.14(A), R.C. § 2913.02, 2913.03 or 2913.04, R.C. § 2913.21(B)(1) or (B)(2) or R.C. § 2913.31 or 2913.43 involving a victim who is an elderly person or disabled adult, or any substantially equivalent municipal ordinance to any of these offenses, is committed by the offender in the offender's same employment, capacity or relationship to another, all of those offenses shall be tried as a single offense. The value of the property or services involved in the series of offenses for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property and services involved in all offenses in the series.

(2) If an offender commits a series of offenses under R.C. § 2913.02 that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate or complicity in violations of R.C. § 1716.14(A), R.C. § 2913.02, 2913.03, or 2913.04, R.C. § 2913.21(B)(1) or (B)(2), or R.C. § 2913.31 or 2913.43, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, or any substantially equivalent municipal ordinance to any of these offenses, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property and services involved in all of the offenses in the course of conduct.

(3) When a series of two or more offenses under R.C. § 2913.40, 2913.48 or 2921.41 is committed by the offender in the offender's same employment, capacity or relationship to another, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value as required by R.C. § 2913.61(A) is the aggregate value of all property and services involved in all of the offenses in the series of two or more offenses.

(4) In prosecuting a single offense under division (B)(1), (B)(2) or (B)(3) of this section, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses or violations of R.C. § 2913.40, 2913.48 or 2921.41 in the offender's same employment, capacity or relationship to another as described in division (B)(1) or (B)(3) of this section, or committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in division (B)(2) of this section. While it is not necessary to separately allege and prove each offense in the series in order to prosecute a single offense under division (B)(1), (B)(2)

or (B)(3) of this section, it remains necessary in prosecuting them as a single offense to prove the aggregate value of the property or services in order to meet the requisite statutory offense level sought by the prosecution.

(C) The following criteria shall be used in determining the value of property or services involved in a theft offense:

(1) The value of an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record or other thing that has intrinsic worth to its owner and that either is irreplaceable or is replaceable only on the expenditure of substantial time, effort or money, is the amount which would compensate the owner for its loss;

(2) The value of personal effects and household goods, and of materials, supplies, equipment and fixtures used in the profession, business, trade, occupation or avocation of its owner, which property is not covered under division (C)(1) of this section, and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing such property with new property of like kind and quality; and

(3) The value of any real or personal property that is not covered under division (C)(1) or (C)(2) of this section, and the value of services, is the fair market value of the property or services. As used in this section, ***FAIR MARKET VALUE*** is the money consideration which a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act.

(D) Without limitation on the evidence which may be used to establish the value of property or services involved in a theft offense:

(1) When the property involved is personal property held for sale at wholesale or retail, the price at which the property was held for sale is prima facie evidence of its value;

(2) When the property involved is a security or commodity traded on an exchange, the closing price or, if there is no closing price, the asked price, given in the latest marked quotation prior to the offense, is prima facie evidence of the value of the security or commodity;

(3) When the property involved is livestock, poultry or raw agricultural products for which a local market price is available, the latest local market price prior to the offense is prima facie evidence of the value of the livestock, poultry or products;

(4) When the property involved is a negotiable instrument, the face value is prima facie evidence of the value of the instrument;

(5) When the property involved is a warehouse receipt, bill of lading, pawn ticket, claim check or other instrument entitling the holder or bearer to receive property, the face value or, if there is no face

value, the value of the property covered by the instrument less any payment necessary to receive the property, is prima facie evidence of the value of the instrument;

(6) When the property involved is a ticket of admission, ticket for transportation, coupon, token or other instrument entitling the holder or bearer to receive property or services, the face value or, if there is no face value, the value of the property or services which may be received by the instrument is prima facie evidence of the value of the instrument;

(7) When the services involved are gas, electricity, water, telephone, transportation, shipping or other services for which the rate is established by law, the duly established rate is prima facie evidence of the value of the services; and

(8) When the services involved are services for which the rate is not established by law, and the offender has been notified prior to the offense of the rate for the services, either in writing, or orally, or by posting in a manner reasonably calculated to come to the attention of potential offenders, the rate contained in the notice is prima facie evidence of the value of the services.

(R.C. § 2913.61(B) - (E)) (1985 Code, § 131.19)

§ 131.21 DEGREE OF OFFENSE WHEN CERTAIN PROPERTY INVOLVED.

Regardless of the value of the property involved, and regardless of whether the offender previously has been convicted of a theft offense, a violation of § 131.08 or § 131.18 is a felony to be prosecuted under appropriate state law if the property involved is any of the following:

(A) A credit card;

(B) A printed form for a check or other negotiable instrument, that on its face identifies the drawer or maker for whose use it is designed or identifies the account on which it is to be drawn, and that has not been executed by the drawer or maker or on which the amount is blank;

(C) A motor vehicle identification license plate as prescribed by R.C. § 4503.22, a temporary license placard or windshield sticker as prescribed by R.C. § 4503.182 or any comparable license plate, placard or sticker as prescribed by the applicable law of another state or the United States;

(D) A blank form for a certificate of title or a manufacturer's or importer's certificate to a motor vehicle, as prescribed by R.C. § 4505.07; or

(E) A blank form for any license listed in R.C. § 4507.01.

(R.C. § 2913.71) (1985 Code, § 131.20)

§ 131.22 INJURING VINES, BUSHES, TREES OR CROPS.

(A) No person, without privilege to do so, shall recklessly cut down, destroy, girdle or otherwise injure a vine, bush, shrub, sapling, tree or crop standing or growing on the land of another or upon public land.

(B) In addition to the penalty provided in division (C) of this section, whoever violates this section is liable in treble damages for the injury caused.

(R.C. § 901.51)

(C) Whoever violates this section is guilty of a misdemeanor of the fourth degree.

(R.C. § 901.99(A)) (1985 Code, § 131.21) (Ord. 1306, passed 6-13-1977)

§ 131.23 TAMPERING WITH OR REMOVING MUNICIPAL PROPERTY.

(A) It shall be unlawful to maliciously tamper with, injure, destroy, steal or remove any lamp, lantern, lamppost, pole, cable, electric line, tool, hose, pipe, conduit, road material, earth, stone, ordinance or other posted notice, street sign or any other property or material owned or under the supervision or control of this municipality or any department thereof.

(B) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the first degree.

(1985 Code, § 131.22) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 131.24 TAMPERING WITH HYDRANT, PIPE OR METER.

(A) No person shall maliciously open, adjust or interfere with a fire hydrant, valve, regulator, gauge, gate, disc, curb cock, stopcock, meter or other regulator, operating or measuring device, or appliance in or attached to the wells, tanks, reservoirs conduits, pipes, mains, service pipes, house pipes, or other pipes or apparatus of a water company or furnisher of water, with intent to cause the escape of water or to injure or destroy such property.

(B) No person shall tap, sever, open, or make unauthorized connections with a main or pipe used or intended for the transmission of water. This section does not apply to the agent or employee, for that purpose, of the owner or operator of the appliances referred to in this section, and does not apply to anything done by or under authority of the fire department.

(C) Whoever violates the provisions of this section shall be guilty of tampering with a hydrant, pipe or meter, a misdemeanor of the fourth degree.

(R.C. § 4933.22) (1985 Code, § 131.23) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 131.25 POSSESSION OF PROPERTY BELONGING TO THE MUNICIPALITY.

Whoever, without being duly authorized, shall have in his or her control or possession any equipment, tools, implements or other property belonging to the municipality shall be guilty of a minor misdemeanor.

(1985 Code, § 131.24) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 131.26 DAMAGING OR ENDANGERING AIRCRAFT, AIRPORT OPERATIONS.

(A) As used in this section:

AIR GUN. Means a hand pistol or rifle that propels its projectile by means of releasing compressed air, carbon dioxide or other gas.

AIRPORT OPERATIONAL SURFACE. Means any surface of land or water that is developed, posted or marked so as to give an observer reasonable notice that the surface is designed and developed for the purpose of storing, parking, taxiing or operating aircraft, or any surface of land or water that is actually being used for any of those purposes.

FIREARM. Has the same meaning as in R.C. § 2923.11.

SPRING-OPERATED GUN. Means a hand pistol or rifle that propels a projectile not less than four or more than five millimeters in diameter by means of a spring.

(B) No person shall do either of the following:

(1) Knowingly throw an object at, or drop an object upon, any moving aircraft; or

(2) Knowingly shoot with a bow and arrow, or knowingly discharge a firearm, air gun or spring-operated gun, at or toward any aircraft.

(C) No person shall knowingly or recklessly shoot with a bow and arrow, or shall knowingly or recklessly discharge a firearm, air gun or spring-operated gun, upon or over any airport operational surface. This division (C) does not apply to the following:

(1) An officer, agent or employee of this or any other state or of the United States, or a law enforcement officer, authorized to discharge firearms and acting within the scope of his or her duties; or

(2) A person who, with the consent of the owner or operator of the airport operational surface or the authorized agent of either, is lawfully engaged in any hunting or sporting activity or is otherwise lawfully discharging a firearm.

(D) Whoever violates division (B) of this section is guilty of endangering aircraft, a misdemeanor of the first degree. If the violation creates any risk of physical harm to any person, or if the aircraft that is the subject of the violation is occupied, endangering aircraft is a felony to be prosecuted under appropriate state law.

(E) Whoever violates division (C) of this section is guilty of endangering airport operations, a misdemeanor of the second degree. If the violation creates a risk of physical harm to any person or substantial risk of serious harm to any person, endangering airport operations is a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for the violation, the hunting license or permit of a person who violates division (C) of this section while hunting shall be suspended or revoked pursuant to R.C. § 1533.68.

(R.C. § 2909.08(A) - (E)) (1985 Code, § 131.25)

§ 131.27 MOTION PICTURE PIRACY.

(A) As used in this section:

AUDIOVISUAL RECORDING FUNCTION. Means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology existing on, or developed after, March 9, 2004.

FACILITY. Means a movie theater.

(B) No person, without the written consent of the owner or lessee of the facility and of the licensor of the motion picture, shall knowingly operate an audiovisual recording function of a device in a facility in which the motion picture is being shown.

(C) Whoever violates division (B) of this section is guilty of motion picture piracy, a misdemeanor of the first degree on the first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.

(D) This section does not prohibit or restrict a lawfully authorized investigative, law enforcement, protective or intelligence gathering employee or agent of the government of this state or a political subdivision of this state, or of the federal government, when acting in an official capacity, from operating an audiovisual recording function of a device in any facility in which a motion picture is being shown.

(E) Division (B) of this section does not limit or affect the application of any other prohibition in this code or the Ohio Revised Code. Any act that is a violation of both division (B) of this section and another provision of this code or the Ohio Revised Code may be prosecuted under this section, under the other provision of this code or the Ohio Revised Code, or under both this section and the other provision of this code or the Ohio Revised Code.

(R.C. § 2913.07) (1985 Code, § 131.26)

§ 131.28 DIMINISHING OR INTERFERING WITH FORFEITABLE PROPERTY.

(A) No person shall destroy, damage, remove or transfer property that is subject to forfeiture or otherwise take any action in regard to property that is subject to forfeiture with purpose to do any of the following:

(1) Prevent or impair the state's or political subdivision's lawful authority to take the property into its custody or control under R.C. Chapter 2981 or to continue holding the property under its lawful custody or control;

(2) Impair or defeat the court's continuing jurisdiction over the person and property; or

(3) Devalue property that the person knows, or has reasonable cause to believe, is subject to forfeiture proceedings under R.C. Chapter 2981.

(B) Whoever violates this section is guilty of interference with or diminishing forfeitable property. Except as otherwise provided in this division (B), interference with or diminishing forfeitable property is a misdemeanor of the first degree. If the value of the property is \$1,000 or more, interference with or diminishing forfeitable property is a felony to be prosecuted under appropriate state law. (R.C. § 2981.07) (1985 Code, § 131.27)

§ 131.29 DETENTION AND ARREST OF SHOPLIFTERS AND THOSE COMMITTING MOTION PICTURE PIRACY; PROTECTION OF INSTITUTIONAL PROPERTY.

(A) As used in this section:

ARCHIVAL INSTITUTION. Means any public or private building, structure or shelter in which are stored historical documents, devices, records, manuscripts or items of public interest, which historical materials are stored to preserve the materials or the information in the materials, to disseminate the information contained in the materials, or to make the materials available for public inspection or for inspection by certain persons who have a particular interest in, use for or knowledge concerning the materials.

AUDIOVISUAL RECORDING FUNCTION. Has the same meaning as in R.C. § 2913.07.

FACILITY. Has the same meaning as in R.C. § 2913.07.

MUSEUM. Means any public or private nonprofit institution that is permanently organized for primarily educational or aesthetic purposes, owns or borrows objects or items of public interest, and cares for and exhibits to the public the objects or items.

PRETRIAL DIVERSION PROGRAM. Means a rehabilitative, educational program designed to reduce recidivism and promote personal responsibility that is at least four hours in length and that has been approved by any court in this state.

(B) A merchant, or an employee or agent of a merchant, who has probable cause to believe that things offered for sale by a mercantile establishment have been unlawfully taken by a person, may, for the purposes set forth in division (D) below, detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity.

(C) Any officer, employee or agent of a library, museum or archival institution may, for the purposes set forth in division (D) below or for the purpose of conducting a reasonable investigation of a belief that the person has acted in a manner described in divisions (C)(1) and (C)(2) below, detain a person in a reasonable manner for a reasonable length of time within, or in the immediate vicinity of, the library, museum or archival institution, if the officer, employee or agent has probable cause to believe that the person has:

(1) Without privilege to do so, knowingly moved, defaced, damaged, destroyed or otherwise improperly tampered with property owned by or in the custody of the library, museum or archival institution; or

(2) With purpose to deprive the library, museum or archival institution of property owned by it or in its custody, knowingly obtained or exerted control over the property without the consent of the owner or person authorized to give consent, beyond the scope of the express or implied consent of the owner or person authorized to give consent, by deception or by threat.

(D) An officer, agent or employee of a library, museum or archival institution pursuant to division (C) above or a merchant or an employee or agent of a merchant pursuant to division (B) above may detain another person for any of the following purposes:

(1) To recover the property that is the subject of the unlawful taking, criminal mischief or theft;

(2) To cause an arrest to be made by a peace officer;

(3) To obtain a warrant of arrest; or

(4) To offer the person, if the person is suspected of the unlawful taking, criminal mischief or theft and notwithstanding any other provision of this code or the Ohio Revised Code, an opportunity to complete a pretrial diversion program and to inform the person of the other legal remedies available to the library, museum, archival institution or merchant.

(E) The owner or lessee of a facility in which a motion picture is being shown, or the owner's or lessee's employee or agent, who has probable cause to believe that a person is or has been operating an audiovisual recording function of a device in violation of R.C. § 2917.07 may, for the purpose of causing an arrest to be made by a peace officer or of obtaining an arrest warrant, detain the person in a reasonable manner for a reasonable length of time within the facility or its immediate vicinity.

(F) The officer, agent or employee of the library, museum or archival institution, the merchant or an employee or agent of a merchant, or the owner, lessee, employee or agent of the facility acting under divisions (B), (C) or (E) above shall not search the person detained, search or seize any property

belonging to the person detained without the person's consent, or use undue restraint upon the person detained.

(G) Any peace officer may arrest without a warrant any person that the officer has probable cause to believe has committed any act described in divisions (C)(1) or (C)(2) above, that the officer has probable cause to believe has committed an unlawful taking in a mercantile establishment, or that the officer has reasonable cause to believe has committed an act prohibited by R.C. § 2913.07. An arrest under this division (G) shall be made within a reasonable time after the commission of the act or unlawful taking.

(R.C. § 2935.041)

Statutory reference:

Arrest without a warrant generally, see R.C. § 2935.03

Probable cause, see R.C. § 2933.22

§ 131.30 INSURANCE FRAUD; WORKERS' COMPENSATION FRAUD; MEDICAID FRAUD.

(A) *Insurance fraud.*

(1) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall do either of the following:

(a) Present to, or cause to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive; or

(b) Assist, aid, abet, solicit, procure or conspire with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive.

(2) Whoever violates this division (A) is guilty of insurance fraud. Except as otherwise provided in this division (A), insurance fraud is a misdemeanor of the first degree. If the amount of the claim that is false or deceptive is \$1,000 or more, insurance fraud is a felony to be prosecuted under appropriate state law.

(3) This division (A) shall not be construed to abrogate, waive or modify R.C. § 2317.02(A).

(4) As used in this division (A):

DATA. Has the same meaning as in R.C. § 2913.01 and additionally includes any other representation of information, knowledge, facts, concepts or instructions that are being or have been prepared in a formalized manner.

DECEPTIVE. Means that a statement, in whole or in part, would cause another to be deceived because it contains a misleading representation, withholds information, prevents the acquisition of information, or by any other conduct, act or omission creates, confirms or perpetuates a false impression, including but not limited to a false impression as to law, value, state of mind or other objective or subjective fact.

INSURER. Means any person that is authorized to engage in the business of insurance in this state under R.C. Title 39, the Ohio Fair Plan Underwriting Association created under R.C. § 3929.43, any health insuring corporation, and any legal entity that is self-insured and provides benefits to its employees or members.

POLICY. Means a policy, certificate, contract or plan that is issued by an insurer.

STATEMENT. Includes but is not limited to any notice, letter or memorandum; proof of loss; bill of lading; receipt for payment; invoice, account or other financial statement; estimate of property damage; bill for services; diagnosis or prognosis; prescription; hospital, medical or dental chart or other record; x-ray, photograph, videotape or movie film; test result; other evidence of loss, injury or expense; computer-generated document; and data in any form.

(R.C. § 2913.47)

(B) *Workers' compensation fraud.*

(1) No person, with purpose to defraud or knowing that the person is facilitating a fraud shall do any of the following:

(a) Receive workers' compensation benefits to which the person is not entitled;

(b) Make or present or cause to be made or presented a false or misleading statement with the purpose to secure payment for goods or services rendered under R.C. Chapter 4121, 4123, 4127 or 4131 or to secure workers' compensation benefits;

(c) Alter, falsify, destroy, conceal or remove any record or document that is necessary to fully establish the validity of any claim filed with, or necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or is requested from the Bureau of Workers' Compensation, or a self-insuring employer under R.C. Chapter 4121, 4123, 4127 or 4131;

(d) Enter into an agreement or conspiracy to defraud the Bureau of Workers' Compensation or a self-insuring employer by making or presenting or causing to be made or presented a false claim for workers' compensation benefits;

(e) Make or present or cause to be made or presented a false statement concerning manual codes, classification or employees, payroll, paid compensation or number of personnel, when information of that nature is necessary to determine the actual workers' compensation premium or assessment owed to the Bureau by an employer;

(f) Alter, forge or create a workers' compensation certificate or falsely show current or correct workers' compensation coverage; or

(g) Fail to secure or maintain workers' compensation coverage as required by R.C. Chapter 4123 with the intent to defraud the Bureau of Workers' Compensation.

(2) Whoever violates this division (B) is guilty of workers' compensation fraud. Except as otherwise provided in this division (B), workers' compensation fraud is a misdemeanor of the first degree. If the value of premiums and assessments unpaid pursuant to actions described in divisions (B)(1)(e), (B)(1)(f) or (B)(1)(g) of this section, or goods, services, property or money stolen is \$1,000 or more, workers' compensation fraud is a felony to be prosecuted under appropriate state law.

(3) Upon application of the governmental body that conducted the investigation and prosecution of a violation of this division (B), the court shall order the person who is convicted of the violation to pay the governmental body its costs of investigating and prosecuting the case. These costs are in addition to any other costs or penalty provided under federal, state or local law.

(4) The remedies and penalties provided in this division (B) are not exclusive remedies and penalties and do not preclude the use of any other criminal or civil remedy or penalty for any act that is in violation of this division (B).

(5) As used in this division (B):

CLAIM. Means any attempt to cause the Bureau of Workers' Compensation, an independent third party with whom the administrator or an employer contracts under R.C. § 4121.44, or a self-insuring employer to make payment or reimbursement for workers' compensation benefits.

EMPLOYEE. Has the same meaning as in R.C. § 4123.01.

EMPLOYER. Has the same meaning as in R.C. § 4123.01.

EMPLOYMENT. Means participating in any trade, occupation, business, service or profession for substantial gainful remuneration.

FALSE. Means wholly or partially untrue or deceptive.

GOODS. Includes but is not limited to medical supplies, appliances, rehabilitative equipment and any other apparatus or furnishing provided or used in the care, treatment or rehabilitation of a claimant for workers' compensation benefits.

RECORDS. Means any medical, professional, financial or business record relating to the treatment or care of any person, to goods or services provided to any person, or to rates paid for goods or services provided to any person, or any record that the administrator of workers' compensation requires pursuant to rule.

REMUNERATION. Includes but is not limited to wages, commissions, rebates and any other reward or consideration.

SELF-INSURING EMPLOYER. Has the same meaning as in R.C. § 4123.01.

SERVICES. Includes but is not limited to any service provided by any health care provider to a claimant for workers' compensation benefits and any and all services provided by the Bureau as part of workers' compensation insurance coverage.

STATEMENT. Includes but is not limited to any oral, written, electronic, electronic impulse or magnetic communication notice, letter, memorandum, receipt for payment, invoice, account, financial statement or bill for services; a diagnosis, prognosis, prescription, hospital, medical or dental chart or other record; and a computer generated document.

WORKERS' COMPENSATION BENEFITS. Means any compensation or benefits payable under R.C. Chapter 4121, 4123, 4127 or 4131.
(R.C. § 2913.48)

(C) *Medicaid fraud.*

(1) No person shall knowingly make or cause to be made a false or misleading statement or representation for use in obtaining reimbursement from the Medicaid program.

(2) No person, with purpose to commit fraud or knowing that the person is facilitating a fraud, shall do either of the following:

(a) Contrary to the terms of the person's provider agreement, charge, solicit, accept or receive for goods or services that the person provides under the Medicaid program any property, money or other consideration in addition to the amount of reimbursement under the Medicaid program and the person's provider agreement for the goods or services and any cost-sharing expenses authorized by R.C. § 5162.20 or rules adopted by the Medicaid Director regarding the Medicaid program; or

(b) Solicit, offer or receive any remuneration, other than any cost-sharing expenses authorized by R.C. § 5162.20 or rules adopted by the Medicaid Director regarding the Medicaid program, in cash or in kind, including but not limited to a kickback or rebate, in connection with the furnishing of goods or services for which whole or partial reimbursement is or may be made under the Medicaid program.

(3) No person, having submitted a claim for or provided goods or services under the Medicaid program, shall do either of the following for a period of at least six years after a reimbursement pursuant to that claim, or a reimbursement for those goods or services, is received under the Medicaid program:

(a) Knowingly alter, falsify, destroy, conceal or remove any records that are necessary to fully disclose the nature of all goods or services for which the claim was submitted, or for which reimbursement was received, by the person; or

(b) Knowingly alter, falsify, destroy, conceal or remove any records that are necessary to disclose fully all income and expenditures upon which rates of reimbursements were based for the person.

(4) Whoever violates this division (C) is guilty of Medicaid fraud. Except as otherwise provided in this division, Medicaid fraud is a misdemeanor of the first degree. If the value of the property, services or funds obtained in violation of this section is \$1,000 or more, Medicaid fraud is a felony to be prosecuted under appropriate State law.

(5) Upon application of the governmental agency, office or other entity that conducted the investigation and prosecution in a case under this section, the court shall order any person who is convicted of a violation of this section for receiving any reimbursement for furnishing goods or services under the Medicaid program to which the person is not entitled to pay to the applicant its cost of investigating and prosecuting the case. The costs of investigation and prosecution that a defendant is ordered to pay pursuant to this division shall be in addition to any other penalties for the receipt of that reimbursement that are provided in this section, R.C. § 2913.40 or 5164.35, or any other provision of law.

(6) The provisions of this section are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy for any act that is in violation of this section.

(7) As used in this division (C):

PROVIDER. Means any person who has signed a provider agreement with the Department of Medicaid to provide goods or services pursuant to the Medicaid program or any person who has signed an agreement with a party to such a provider agreement under which the person agrees to provide goods or services that are reimbursable under the Medicaid program.

PROVIDER AGREEMENT. Has the same meaning as in R.C. § 5164.01.

RECIPIENT. Means any individual who receives goods or services from a provider under the Medicaid program.

RECORDS. Means any medical, professional, financial or business records relating to the treatment or care of any recipient, to goods or services provided to any recipient, or to rates paid for goods or services provided to any recipient, and any records that are required by the rules of the Medicaid Director to be kept for the Medicaid program.

STATEMENT or REPRESENTATION. Means any oral, written, electronic, electronic impulse or magnetic communication that is used to identify an item of goods or a service for which reimbursement may be made under the Medicaid program or that states income and expense and is or may be used to determine a rate of reimbursement under the Medicaid program.

(R.C. § 2913.40)

(D) *Medicaid eligibility fraud.*

(1) No person shall knowingly do any of the following in an application for enrollment in the Medicaid program or in a document that requires a disclosure of assets for the purpose of determining eligibility for the Medicaid program:

(a) Make or cause to be made a false or misleading statement;

(b) Conceal an interest in property;

(c) 1. Except as provided in division (D)(1)(c)2. of this section, fail to disclose a transfer of property that occurred during the period beginning 36 months before submission of the application or document and ending on the date the application or document was submitted; or

2. Fail to disclose a transfer of property that occurred during the period beginning 60 months before submission of the application or document and ending on the date the application or document was submitted and that was made to an irrevocable trust a portion of which is not distributable to the applicant for or recipient of Medicaid or to a revocable trust.

(2) (a) Whoever violates this division (D) is guilty of Medicaid eligibility fraud. Except as otherwise provided in this division, a violation of this division (D) is a misdemeanor of the first degree. If the value of the Medicaid services paid as a result of the violation is \$1,000 or more, a violation of this division (D) is a felony to be prosecuted under appropriate state law.

(b) In addition to imposing a sentence under division (D)(2)(a) of this section, the court shall order that a person who is guilty of Medicaid eligibility fraud make restitution in the full amount of any Medicaid services paid on behalf of an applicant for or recipient of Medicaid for which the applicant or recipient was not eligible, plus interest at the rate applicable to judgments on unreimbursed amounts from the date on which the Medicaid services were paid to the date on which restitution is made.

(c) The remedies and penalties provided in this division (D) are not exclusive and do not preclude the use of any other criminal or civil remedy for any act that is in violation of this division (D).

(3) This division (D) does not apply to a person who fully disclosed in an application for Medicaid or in a document that requires a disclosure of assets for the purpose of determining eligibility for Medicaid all of the interests in property of the applicant for or recipient of Medicaid, all transfers of property by the applicant for or recipient of Medicaid, and the circumstances of all those transfers.

(4) Any amounts of Medicaid services recovered as restitution under this division (D) and any interest on those amounts shall be credited to the General Revenue Fund, and any applicable federal share shall be returned to the appropriate agency or department of the United States.

(5) As used in this division (D):

MEDICAID SERVICES. Has the same meaning as in R.C. § 5164.01.

PROPERTY. Means any real or personal property or other asset in which a person has any legal title or interest.
(R.C. § 2913.401)

§ 131.31 EVIDENCE OF INTENT TO COMMIT THEFT OF RENTED PROPERTY OR RENTAL SERVICES; EVIDENCE OF LACK OF CAPACITY TO CONSENT.

(A) *Evidence of intent to commit theft of rented property or rental services.*

(1) As used in this division (A):

RENTER. Means a person who owns rented property.

RENTEE. Means a person who pays consideration to a renter for the use of rented property.

(2) Each of the following shall be considered evidence of intent to commit theft of rented property or rental services:

(a) At the time of entering into the rental contract, the rentee presented the renter with identification that was materially false, fictitious or not current with respect to name, address, place of employment or other relevant information; and

(b) After receiving a notice demanding the return of the rented property as provided in division (A)(3) of this section, the rentee neither returned the rented property nor made arrangements acceptable with the renter to return the rented property.

(3) To establish that a rentee has an intent to commit theft of rented property or rental services under division (A)(2)(b) above, a renter may issue a notice to a rentee demanding the return of the rented property. The renter shall mail the notice by certified mail, return receipt requested, to the rentee at the address the rentee gave when the rental contract was executed, or to the rentee at the last address the rentee or the rentee's agent furnished in writing to the renter.

(4) A demand for the return of the rented property is not a prerequisite for the prosecution of a rentee for theft of rented property or rental services. The evidence specified in division (A)(2) above does not constitute the only evidence that may be considered as evidence of intent to commit theft of rented property or rental services.

(R.C. § 2913.72)

(B) *Evidence of lack of capacity to consent.*

(1) In a prosecution for any alleged violation of § 131.08 through 131.20, 131.23, 131.25 through 131.29 or 132.11, if the lack of consent of the victim is an element of the provision that allegedly was violated, evidence that, at the time of the alleged violation, the victim lacked the capacity to give consent is admissible to show that the victim did not give consent.

(2) As used in this section, **LACKS THE CAPACITY TO CONSENT** means being impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person or the person's resources.
(R.C. § 2913.73)

§ 131.32 FORGERY OF IDENTIFICATION CARDS.

(A) No person shall knowingly do either of the following:

(1) Forge an identification card; or

(2) Sell or otherwise distribute a card that purports to be an identification card, knowing it was forged.

(B) As used in this section, **IDENTIFICATION CARD** means a card that includes personal information or characteristics of an individual, a purpose of which is to establish the identity of the bearer described on the card, whether the words "identity," "identification," "identification card," or other similar words appear on the card.

(C) Whoever violates this section is guilty of forging identification cards or selling or distributing forged identification cards. Except as otherwise provided in this division (C), forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (A) of this section or a substantially equivalent state law or municipal ordinance, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree and, in addition, the court shall impose upon the offender a fine not less than \$250.

(R.C. § 2913.31(B), (C)(2))

Statutory reference:

Forgery, felony provisions, see R.C. § 2913.31(A) and (C)(1)

Forgery of originating address or other routing information in connection with the transmission of an electronic mail advertisement, felony provisions, see R.C. § 2307.64

§ 131.33 CRIMINAL SIMULATION.

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

(1) Make or alter any object so that it appears to have value because of antiquity, rarity, curiosity, source or authorship, which it does not in fact possess;

(2) Practice deception in making, retouching, editing or reproducing any photograph, movie film, video tape, phonograph record or recording tape;

(3) Falsely or fraudulently make, simulate, forge, alter or counterfeit any wrapper, label, stamp, cork or cap prescribed by the Liquor Control Commission under R.C. Chapters 4301 and 4303, falsely or fraudulently cause to be made, simulated, forged, altered or counterfeited any wrapper, label, stamp, cork or cap prescribed by the Liquor Control Commission under R.C. Chapters 4301 and 4303, or use more than once any wrapper, label, stamp, cork or cap prescribed by the Liquor Control Commission under R.C. Chapters 4301 and 4303; or

(4) Offer, or possess with the purpose to offer, any object that the person knows to have been simulated as provided in divisions (A)(1), (A)(2) or (A)(3) of this section.

(B) Whoever violates this section is guilty of criminal simulation. Except as otherwise provided in this division (B), criminal simulation is a misdemeanor of the first degree. If the loss to the victim is \$1,000 or more, criminal simulation is a felony to be prosecuted under appropriate state law.
(R.C. § 2913.32)

§ 131.34 TRADEMARK COUNTERFEITING.

(A) No person shall knowingly do any of the following:

(1) Attach, affix or otherwise use a counterfeit mark in connection with the manufacture of goods or services, whether or not the goods or services are intended for sale or resale;

(2) Possess, sell or offer for sale tools, machines, instruments, materials, articles or other items of personal property with the knowledge that they are designed for the production or reproduction of counterfeit marks;

(3) Purchase or otherwise acquire goods, and keep or otherwise have the goods in the person's possession, with the knowledge that a counterfeit mark is attached to, affixed to or otherwise used in connection with the goods and with the intent to sell or otherwise dispose of the goods;

(4) Sell, offer for sale or otherwise dispose of goods with the knowledge that a counterfeit mark is attached to, affixed to or otherwise used in connection with the goods; or

(5) Sell, offer for sale or otherwise provide services with the knowledge that a counterfeit mark is used in connection with that sale, offer for sale or other provision of the services.

(B) Whoever violates this section is guilty of trademark counterfeiting.

(1) A violation of division (A)(1) of this section is guilty of a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in this division (B), a violation of division (A)(2) of this section is a misdemeanor of the first degree. If the circumstances of the violation indicate that the tools, machines, instruments, materials, articles or other items of personal property involved in the violation were intended for use in the commission of a felony, a violation of division (A)(2) is a felony to be prosecuted under appropriate state law.

(3) Except as otherwise provided in this division (B)(3), a violation of division (A)(3), (A)(4) or (A)(5) of this section is a misdemeanor of the first degree. If the cumulative sales price of the goods or services to which or in connection with which the counterfeit mark is attached, affixed or otherwise used in the offense is \$1,000 or more, a violation of division (A)(3), (A)(4) or (A)(5) is a felony to be prosecuted under appropriate state law.

(C) A defendant may assert as an affirmative defense to a charge of a violation of this section, defenses, affirmative defenses and limitations on remedies that would be available in a civil, criminal or administrative action or proceeding under the Lanham Act, being 15 U.S.C. §§ 1051 through 1127, as amended, the Trademark Counterfeiting Act of 1984, being 18 U.S.C. § 2320, as amended, R.C. Chapter 1329 or another section of the Ohio Revised Code, or common law.

(D) (1) Law enforcement officers may seize pursuant to Criminal Rule 41, R.C. Chapter 2933 or R.C. Chapter 2981 either of the following:

(a) Goods to which or in connection with which a person attached, affixed, otherwise used or intended to attach, affix or otherwise use a counterfeit mark in violation of this section; or

(b) Tools, machines, instruments, materials, articles, vehicles or other items of personal property that are possessed, sold, offered for sale or used in a violation of this section or in an attempt to commit or complicity in the commission of a violation of this section.

(2) Notwithstanding any contrary provision of R.C. Chapter 2981, if a person is convicted of or pleads guilty to a violation of this section, an attempt to violate this section or complicity in a violation of this section, the court involved shall declare that the goods described in division (D)(1)(a) of this section and the personal property described in division (D)(1)(b) of this section are contraband and are forfeited. Prior to the court's entry of judgment under Criminal Rule 32, the owner of a registered trademark or service mark that is the subject to the counterfeit mark may recommend a manner in which the forfeited goods and forfeited personal property should be disposed of. If that owner makes a timely recommendation of a manner of disposition, the court is not bound by the recommendation. If that owner makes a timely recommendation of a manner of disposition, the court may include in its entry of judgment an order that requires appropriate persons to dispose of the forfeited goods and forfeited personal property in the recommended manner. If the owner fails to make a timely recommendation of a manner of disposition or if that owner makes a timely recommendation of a manner of disposition but

the court determines to not follow the recommendation, the court shall include in its entry of judgement an order that requires the law enforcement agency that employs the law enforcement officer who seized the forfeited goods or the forfeited personal property to destroy them or cause their destruction.

(E) This section does not affect the rights of an owner of a trademark or service mark, or the enforcement in a civil action or in administrative proceedings of the rights of an owner or a trademark or service mark under the Lanham Act, being 15 U.S.C. §§ 1051 through 1127, as amended, the Trademark Counterfeiting Act of 1984, being 18 U.S.C. § 2320, as amended, R.C. Chapter 1329, or another section of the Ohio Revised Code or common law.

(F) As used in this section:

COUNTERFEIT MARK.

(a) Except as provided in division (b) of this definition, the term means a spurious trademark or a spurious service mark that satisfies both of the following:

1. It is identical with or substantially indistinguishable from a mark that is registered on the principal register in the United States Patent and Trademark Office for the same goods or services as the goods or services to which or in connection with which the spurious trademark or spurious service mark is attached, affixed or otherwise used, or from a mark that is registered with the Secretary of State pursuant to R.C. §§ 1329.54 through 1329.67 for the same goods or services as the goods or services to which or in connection with which the spurious trademark or spurious service mark is attached, affixed or otherwise used, and the owner of the registration uses that registered trademark, whether or not the offender knows that the mark is registered in a manner described in this division (a)1.; and

2. Its use is likely to cause confusion or mistake or to deceive other persons.

(b) The term does not include a mark or other designation that is attached to, affixed to or otherwise used in connection with goods or services if the holder of the right to use the mark or other designation authorizes the manufacturer, producer or vendor of those goods or services to attach, affix or otherwise use the mark or other designation in connection with those goods or services at the time of their manufacture, production or sale.

CUMULATIVE SALES PRICE. Means the product of the lowest single unit sales price charged or sought to be charged by an offender for goods to which or in connection with which a counterfeit mark is attached, affixed or otherwise used or of the lowest single service transaction price charged or sought to be charged by an offender for services in connection with which a counterfeit mark is used, multiplied by the total number of those goods or services, whether or not units of goods are sold or are in an offender's possession, custody or control.

REGISTERED TRADEMARK OR SERVICE MARK. Means a trademark or service mark that is registered in a manner described in division (a) of the definition of counterfeit mark.

SERVICE MARK. Has the same meaning as in R.C. § 1329.54.

TRADEMARK. Has the same meaning as in R.C. § 1329.54.
(R.C. § 2913.34)

§ 131.35 RECORDING CREDIT CARD, TELEPHONE OR SOCIAL SECURITY NUMBERS.

(A) No person shall record or cause to be recorded either of the following:

(1) A credit card account number of the other party to a transaction, when a check, bill of exchange or other draft is presented for payment; or

(2) The telephone number or Social Security account number of the other party to a transaction, when payment is made by credit card charge agreement, check, bill of exchange or other draft.

(B) Division (A) of this section does not apply to a transaction, if all of the following conditions are met:

(1) The credit card account number, Social Security account number or telephone number is recorded for a legitimate business purpose, including collection purposes;

(2) The other party to the transaction consents to the recording of the credit card account number, Social Security account number or telephone number; and

(3) The credit card account number, Social Security account number or telephone number that is recorded during the course of the transaction is not disclosed to any third party for any purposes other than collection purposes and is not used to market goods or services unrelated to the goods or services purchased in the transaction.

(C) Nothing in this section prohibits the recording of the number of a credit card account when given in lieu of a deposit to secure payment in the event of default, loss, damage or other occurrence, or requires a person to accept a check presented for payment, if the other party to the transaction refuses to consent to the recording of the number of the party's Social Security account or license to operate a motor vehicle.

(R.C. § 1349.17)

(D) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor.
(R.C. § 1349.99)

§ 131.36 PROSECUTIONS FOR THEFT OF UTILITIES.

(A) In a prosecution for a theft offense, as defined in R.C. § 2913.01, that involves alleged tampering with a gas, electric, steam or water meter, conduit or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit or attachment of a utility has been tampered with

is prima facie evidence that the person who is obligated to pay for the service rendered through the meter, conduit or attachment, and who is in possession or control of the meter, conduit or attachment at the time the tampering occurred has caused the tampering with intent to commit a theft offense.

(B) In a prosecution for a theft offense, as defined in R.C. § 2913.01, that involves the alleged reconnection of a gas, electric, steam or water meter, conduit or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit or attachment disconnected by a utility has been reconnected without the consent of the utility is prima facie evidence that the person in possession or control of the meter, conduit or attachment at the time of the reconnection has reconnected the meter, conduit or attachment with intent to commit a theft offense.

(C) As used in this section:

TAMPER. Means to interfere with, damage or bypass a utility meter, conduit or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so as to reduce the amount of utility service that is registered on the meter.

UTILITY. Means any electric light company, gas company, natural gas company, pipe-line company, waterworks company or heating or cooling company, as defined in R.C. § 4905.03(C), (D), (E), (F), (G) or (H), its lessees, trustees or receivers, or any similar utility owned or operated by a political subdivision.

(R.C. § 4933.18)

(D) Each electric light company, gas company, natural gas company, pipeline company, waterworks company or heating or cooling company, as defined by R.C. § 4905.03(C), (D), (E), (F), (G) or (H), or its lessees, trustees or receivers, and each similar utility owned or operated by a political subdivision, shall notify its customers, on an annual basis, that tampering with or bypassing a meter constitutes a theft offense that could result in the imposition of criminal sanctions.

(R.C. § 4933.19)

CHAPTER 132: OFFENSES AGAINST PUBLIC PEACE

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GENERAL PROVISIONS

§ 132.01 RIOT.

(A) No person shall participate with four or more others in a course of disorderly conduct in violation of R.C. § 2917.11 or a substantially equivalent municipal ordinance:

(1) With purpose to commit or facilitate the commission of a misdemeanor, other than disorderly conduct;

(2) With purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede or obstruct a function of government; or

(3) With purpose to hinder, impede or obstruct the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at the institution.

(B) No person shall participate with four or more others with purpose to do an act with unlawful force or violence, even though the act might otherwise be lawful.

(C) Whoever violates this section is guilty of riot, a misdemeanor of the first degree.
(R.C. § 2917.03)

(D) For the purposes of prosecuting violations of this section, the prosecution is not required to allege or prove that the offender expressly agreed with four or more others to commit any act that constitutes a violation this section prior to or while committing those acts.

(R.C. § 2917.031) (1985 Code, § 132.01)

Statutory reference:

Aggravated riot, felony provisions, see R.C. § 2917.02

§ 132.02 FAILURE TO DISPERSE.

(A) Where five or more persons are participating in a course of disorderly conduct in violation of R.C. § 2917.11 or a substantially equivalent municipal ordinance, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance or alarm, a law enforcement officer or other public official may order the participants and the other persons to disperse. No person shall knowingly fail to obey the order.

(B) Nothing in this section requires persons to disperse who are peaceably assembled for a lawful purpose.

(C) (1) Whoever violates this section is guilty of failure to disperse.

(2) Except as otherwise provided in division (C)(3) of this section, failure to disperse is a minor misdemeanor.

(3) Failure to disperse is a misdemeanor of the fourth degree if the failure to obey the order described in division (A) of this section creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot or emergency of any kind.

(R.C. § 2917.04) (1985 Code, § 132.02)

§ 132.03 JUSTIFIABLE USE OF FORCE TO SUPPRESS RIOT.

A law enforcement officer or firefighter engaged in suppressing a riot or in protecting persons or property during a riot:

(A) Is justified in using force, other than deadly force, when and to the extent he or she has probable cause to believe such force is necessary to disperse or apprehend rioters; and

(B) Is justified in using force, including deadly force, when and to the extent he or she has probable cause to believe such force is necessary to disperse or apprehend rioters whose conduct is creating a substantial risk of serious physical harm to persons.

(R.C. § 2917.05) (1985 Code, § 132.03)

§ 132.04 DISORDERLY CONDUCT.

(A) No person shall recklessly cause inconvenience, annoyance or alarm to another, by doing any of the following:

(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

(2) Making unreasonable noise or an offensively coarse utterance, gesture or display, or communicating unwarranted and grossly abusive language to any person;

(3) Insulting, taunting or challenging another, under circumstances in which that conduct is likely to provoke a violent response;

(4) Hindering or preventing the movement of persons on a public street, road, highway or right-of-way, or to, from, within or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender; or

(5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

(B) No person while voluntarily intoxicated shall do either of the following:

(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance or alarm to persons of ordinary sensibilities, which conduct the offender, if he or she were not intoxicated, should know is likely to have such effect on others; or

(2) Engage in conduct or create a condition that presents a risk of physical harm to himself, herself or another, or to the property of another.

(C) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft or other vehicle while under the influence of alcohol or any drug of abuse is not a violation of division (B) of this section.

(D) If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that the person is voluntarily intoxicated for purposes of division (B) of this section.

(E) Whoever violates this section is guilty of disorderly conduct.

(1) Except as otherwise provided in division (E)(2) of this section, disorderly conduct is a minor misdemeanor.

(2) Disorderly conduct is a misdemeanor of the fourth degree if any of the following applies:

(a) The offender persists in disorderly conduct after reasonable warning or request to desist;

(b) The offense is committed in the vicinity of a school or in a school safety zone;

(c) The offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot or emergency of any kind; or

(d) The offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.

(F) As used in this section:

COMMITTED IN THE VICINITY OF A SCHOOL. Has the same meaning as in R.C. § 2925.01.

EMERGENCY FACILITY. Has the same meaning as in R.C. § 2909.04.

EMERGENCY FACILITY PERSON. Is the singular of "emergency facility personnel" as defined in R.C. § 2909.04.

EMERGENCY MEDICAL SERVICES PERSON. Is the singular of "emergency medical services personnel" as defined in R.C. § 2133.21.
(R.C. § 2917.11) (1985 Code, § 132.04) (Ord. 1169, passed 6-10-1974)

§ 132.05 DISTURBING A LAWFUL MEETING.

(A) No person, with purpose to prevent or disrupt a lawful meeting, procession or gathering, shall do either of the following:

- (1) Do any act which obstructs or interferes with the due conduct of the meeting, procession or gathering; or
- (2) Make any utterance, gesture or display which outrages the sensibilities of the group.

(B) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree.

(R.C. § 2917.12) (1985 Code, § 132.05) (Ord. 1169, passed 6-10-1974)

§ 132.06 MISCONDUCT AT AN EMERGENCY.

(A) No person shall knowingly do any of the following:

(1) Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person or other authorized person engaged in the person's duties at the scene of a fire, accident, disaster, riot or emergency of any kind;

(2) Hamper the lawful activities of any emergency facility person who is engaged in the person's duties in an emergency facility; or

(3) Fail to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot or emergency of any kind.

(B) Nothing in this section shall be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.

(C) Whoever violates this section is guilty of misconduct at an emergency. Except as otherwise provided in this division (C), misconduct at an emergency is a misdemeanor of the fourth degree. If violation of this section creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the first degree.

(D) As used in this section:

EMERGENCY FACILITY. Has the same meaning as in R.C. § 2909.04.

EMERGENCY FACILITY PERSON. Is the singular of "emergency facility personnel" as defined in R.C. § 2909.04.

EMERGENCY MEDICAL SERVICES PERSON. Is the singular of "emergency medical services personnel" as defined in R.C. § 2133.21.
(R.C. § 2917.13) (1985 Code, § 132.06)

§ 132.07 TELECOMMUNICATIONS HARASSMENT.

(A) No person shall knowingly make or cause to be made a telecommunication, or knowingly permit a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:

(1) Fails to identify the caller to the recipient of the telecommunication and makes the telecommunication with purpose to harass or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient;

(2) Describes, suggests, requests or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made;

(3) During the telecommunication, violates R.C. § 2903.21 or a substantially equivalent municipal ordinance;

(4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting or ensures the property that will be destroyed or damaged; or

(5) Knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.

(B) No person shall make or cause to be made a telecommunication or permit a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten or harass another person.

(C) (1) Whoever violates divisions (A) or (B) of this section is guilty of telecommunications harassment.

(2) A violation of division (A)(1), (A)(2), (A)(3) or (A)(5) or (B) of this section is a misdemeanor of the first degree on a first offense and a felony on each subsequent offense, which shall be prosecuted under appropriate state law.

(3) Except as otherwise provided in this division (C)(3), a violation of division (A)(4) of this section is a misdemeanor of the first degree on a first offense and a felony on each subsequent offense, to be prosecuted under appropriate state law. If a violation of division (A)(4) of this section results in economic harm of \$1,000 or more, telecommunications harassment is a felony to be prosecuted under appropriate state law.

(D) No cause of action may be assessed in any court of this municipality against any provider of a telecommunications service or information service, or against any officer, employee or agent of a telecommunications service or information service, for any injury, death or loss to person or property that allegedly arises out of the provider's, officer's, employee's or agent's provision of information, facilities or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section. A provider of a telecommunications service or information service, or an officer, employee or agent of a telecommunications service or information service, is immune from any civil or criminal liability for injury, death or loss to person or property that allegedly arises out of the provider's, officer's, employee's or agent's provision of information, facilities or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section.

(E) As used in divisions (A) through (D) of this section:

CALLER. Means the person described in division (A) of this section who makes or causes to be made a telecommunication or who permits a telecommunication to be made from a telecommunications device under that person's control.

ECONOMIC HARM. Means all direct, incidental and consequential pecuniary harm suffered by a victim as a result of the criminal conduct. The term includes but is not limited to all of the following:

- (a) All wages, salaries or other compensation lost as a result of the criminal conduct;
- (b) The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;
- (c) The overhead costs incurred from the time that a business is shut down as a result of the criminal conduct; and
- (d) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

SEXUAL ACTIVITY. Has the same meaning as in R.C. § 2907.01.

TELECOMMUNICATION. Has the same meaning as in R.C. § 2913.01.

TELECOMMUNICATIONS DEVICE. Has the same meaning as in R.C. § 2913.01.

(F) Nothing in this section prohibits a person from making a telecommunication to a debtor that is in compliance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, as amended, or the Telephone Consumer Protection Act, 47 U.S.C. § 227, as amended. (R.C. § 2917.21) (1985 Code, § 132.07)

§ 132.08 INDUCING PANIC.

(A) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following:

- (1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that the report or warning is false;
- (2) Threatening to commit any offense of violence; or
- (3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

(B) Division (A)(1) of this section does not apply to any person conducting an authorized fire or emergency drill.

(C) (1) Whoever violates this section is guilty of inducing panic.

(2) Except as otherwise provided in division (C)(3), inducing panic is a misdemeanor of the first degree.

(3) If a violation of this section results in physical harm to any person, inducing panic is a felony to be prosecuted under appropriate state law. If a violation of this section results in economic harm of \$1,000 or more, inducing panic is a felony to be prosecuted under appropriate state law. If the public place involved in a violation of division (A)(1) is a school or an institution of higher education, inducing panic is a felony to be prosecuted under appropriate state law. If a violation of this section pertains to a purported, threatened or actual use of a weapon of mass destruction, inducing panic is a felony to be prosecuted under appropriate state law.

(D) (1) It is not a defense to a charge under this section that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction.

(2) Any act that is a violation of this section and any other section of the Ohio Revised Code or this code may be prosecuted under this section, the other section, or both sections.

(E) As used in this section:

BIOLOGICAL AGENT. Has the same meaning as in R.C. § 2917.33.

ECONOMIC HARM. Means any of the following:

(a) All direct, incidental and consequential pecuniary harm suffered by a victim as a result of the criminal conduct. **ECONOMIC HARM** as described in this definition includes but is not limited to all of the following:

1. All wages, salaries or other compensation lost as a result of the criminal conduct;
2. The cost of all wages, salaries or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;
3. The overhead costs incurred from the time that a business is shut down as a result of the criminal conduct; and
4. The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

(b) All costs incurred by the state or any political subdivision as a result of, or in making any response to, the criminal conduct that constituted the violation of this section or R.C. § 2917.32, or any substantially equivalent municipal ordinance, including but not limited to all costs so incurred by any law enforcement officers, firefighters, rescue personnel or emergency medical services personnel of the state or the political subdivision.

EMERGENCY MEDICAL SERVICES PERSONNEL. Has the same meaning as in R.C. § 2133.21.

INSTITUTION OF HIGHER EDUCATION. Means any of the following:

(a) A state university or college as defined in R.C. § 3345.12(A)(1), community college, state community college, university branch or technical college;

(b) A private, nonprofit college, university or other post-secondary institution located in this state that possesses a certificate of authorization issued by the Ohio Board of Regents pursuant to R.C. Chapter 1713; or

(c) A post-secondary institution with a certificate of registration issued by the State Board of Career Colleges and Schools pursuant to R.C. Chapter 3332.

SCHOOL. Means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07, whether or not any instruction, extracurricular activities or training provided by the school is being conducted at the time a violation of this section is committed.

WEAPON OF MASS DESTRUCTION. Means any of the following:

(a) Any weapon that is designed or intended to cause death or serious physical harm through the release, dissemination or impact of toxic or poisonous chemicals, or other precursors;

(b) Any weapon involving a disease organism or biological agent;

(c) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life; or

(d) Any of the following, except to the extent that the item or device in question is expressly excepted from the definition of destructive device pursuant to 18 U.S.C. § 921(a)(4) and regulations issued under that section:

1. Any explosive, incendiary or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine or similar device; and

2. Any combination of parts either designed or intended for use in converting any item or device into any item or device described in division (d)1. of this definition and from which an item or device described in that division may be readily assembled.

(R.C. § 2917.31) (1985 Code, § 132.08)

§ 132.09 MAKING FALSE ALARMS.

(A) No person shall do any of the following:

(1) Initiate or circulate a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm;

(2) Knowingly cause a false alarm of fire or other emergency to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of physical harm to persons or property; or

(3) Report to any law enforcement agency an alleged offense or other incident within its concern, knowing that the offense did not occur.

(B) This section does not apply to any person conducting an authorized fire or emergency drill.

(C) Whoever violates this section is guilty of making false alarms. Except as otherwise provided in this division (C), making false alarms is a misdemeanor of the first degree. If a violation of this section results in economic harm of \$1,000 or more, making false alarms is a felony to be prosecuted under appropriate state law. If a violation of this section pertains to a purported, threatened or actual use of a weapon of mass destruction, making false alarms is a felony to be prosecuted under appropriate state law.

(D) (1) It is not a defense to a charge under this section that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction.

(2) Any act that is a violation of this section and any other section of the Ohio Revised Code or this code may be prosecuted under this section, the other section, or both sections.

(E) As used in this section, *ECONOMIC HARM* and *WEAPON OF MASS DESTRUCTION* have the same meaning as in R.C. § 2917.31.

(R.C. § 2917.32) (1985 Code, § 132.09) (Ord. 1169, passed 6-10-1974)

§ 132.10 IMPROPER ACTIVATION OF ALARM SYSTEM.

(A) No person, firm or corporation, being the owner or person in charge, shall allow an alarm system to become a public nuisance by doing any of the following:

(1) Permit conditions to exist that allow an alarm system to activate more than two false alarms in a calendar month;

(2) Permit conditions to exist that allow an alarm system to activate more than 12 false alarms in a calendar year; or

(3) Fail to notify the Police Department, the Fire Department or the Hamilton County Communication Center prior to any service, test, repair, maintenance, adjustment, alteration or installation which might activate a false alarm.

(B) It is prima facie evidence that a violation of this offense has occurred if the system activates for reasons other than its intended purpose.

(C) It is an affirmative defense to a charge under this section that, when the system was activated there appeared to be a need for assistance.

(D) Whoever violates this section is guilty of allowing an alarm system to become a public nuisance, a minor misdemeanor.

(1985 Code, § 132.091) (Ord. 90-65, passed 9-17-1990)

§ 132.11 PERSONATING AN OFFICER.

(A) No person, with purpose to defraud or knowing that he or she is facilitating a fraud, or with purpose to induce another to purchase property or services, shall personate a law enforcement officer, or an inspector, investigator or agent of any governmental agency.

(B) Whoever violates this section is guilty of personating an officer, a misdemeanor of the first degree.

(R.C. § 2913.44) (1985 Code, § 132.10)

Cross-reference:

Impersonating an officer (non-fraud offense), see § 132.13

§ 132.12 UNLAWFUL DISPLAY OF LAW ENFORCEMENT EMBLEM.

(A) No person who is not entitled to do so shall knowingly display on a motor vehicle the emblem of a law enforcement agency or an organization of law enforcement officers.

(B) Whoever violates this section is guilty of the unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, a minor misdemeanor.

(R.C. § 2913.441) (1985 Code, § 132.11)

§ 132.13 IMPERSONATING A PEACE OFFICER.

(A) As used in this section:

FEDERAL LAW ENFORCEMENT OFFICER. Means an employee of the United States who serves in a position the duties of which are primarily the investigation, apprehension or detention of individuals suspected or convicted of offenses under the criminal laws of the United States.

IMPERSONATE. Means to act the part of, assume the identity of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons.

INVESTIGATOR OF THE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION. Has the same meaning as in R.C. § 2903.11.

PEACE OFFICER. A Sheriff, Deputy Sheriff, Marshal, Deputy Marshal, member of the organized Police Department of a municipal corporation or township constable, who is employed by a political subdivision of this state; a member of a police force employed by a metropolitan housing authority under R.C. § 3735.31(D); a member of a police force employed by a regional transit authority under R.C. § 306.35(Y); a state university law enforcement officer appointed under R.C. § 3345.04; a veterans' home police officer appointed under R.C. § 5907.02; a special police officer employed by a port authority under R.C. § 4582.04 or 4582.28; an officer, agent or employee of the state or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority; or a state highway patrol trooper whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances or rules of the state or any of its political subdivisions.

PRIVATE POLICE OFFICER. Means any security guard, special police officer, private detective or other person who is privately employed in a police capacity.

(B) No person shall impersonate a peace officer, private police officer, investigator of the Bureau of Criminal Identification and Investigation or federal law enforcement officer.

(C) No person, by impersonating a peace officer, private police officer, investigator of the Bureau of Criminal Identification and Investigation, or federal law enforcement officer, shall arrest or detain any person, search any person or search the property of any person.

(D) No person, with purpose to commit or facilitate the commission of an offense, shall impersonate a peace officer, private police officer, federal law enforcement officer, an officer, agent or employee of the municipality or the state or investigator of the Bureau of Criminal Identification and Investigation.

(E) No person shall commit a felony while impersonating a peace officer, private police officer, federal law enforcement officer, an officer, agent or employee of the municipality or of the state or investigator of the Bureau of Criminal Identification and Investigation.

(F) It is an affirmative defense to a charge under division (B) of this section that the impersonation of the peace officer, private police officer, federal law enforcement officer, an officer, agent or employee of the municipality or of the state, or investigator of the Bureau of Criminal Identification and Investigation was for a lawful purpose.

(G) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates division (C) or (D) of this section is guilty of a misdemeanor of the first degree. If the purpose of a violation of division (D) of this section is to commit or facilitate the commission of a felony, a violation of division (D) is a felony to be prosecuted under appropriate state law. Whoever violates division (E) of this section is guilty of a felony to be prosecuted under appropriate state law.

(R.C. § 2921.51) (1985 Code, § 132.12)

Cross-reference:

Personating an officer (fraud offense), see § 132.11

§ 132.14 CORDONING EMERGENCY AREAS.

(A) The Manager, Mayor or Vice-Mayor of the city, when engaged in suppressing riot or civil commotion in the city, or when there is a clear and present danger of riot or civil commotion occurring within the city, or in case of fire, accident, disaster or emergency of any kind, shall have the authority to cordon the area or areas within the city in which any such riot or civil commotion is taking place or in which any such fire or other emergency exists, and any area or areas within the city relative to which such danger or riot or civil commotion exists or in which any such accident or disaster has occurred; to prohibit persons from entering or leaving any such cordoned area except persons seeking to enter or leave for the purpose of carrying on necessary and lawful pursuits; and to prohibit the selling, offering for sale, dispensing, carrying or transporting of firearms or other dangerous weapons, or of ammunition, dynamite or dangerous explosives of any kind, or of intoxicating beverages, into, within or from any such cordoned area. They may exercise such authority through any Sheriff, police officer, deputy or other law enforcement officer on duty in the city.

(B) No person shall willfully fail promptly to obey a lawful order of the Manager, Mayor or Vice-Mayor, or of any Sheriff, police officer, deputy or other law enforcement officer, given under the authority of or pursuant to this section.

(C) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the first degree.

(1985 Code, § 132.13) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 132.15 DISTURBING CHURCH CONGREGATIONS OR SCHOOLS.

Whoever shall sell or offer for sale, or give or offer to give, or attempt in any manner to distribute any pamphlets, circulars, dodgers or printed matter of any kind at any entrance or exit of any church or

schoolhouse or upon any public street within 100 feet of any such church or schoolhouse, during any services in or during the hour preceding or an hour following any such services in any such church, or during hours of instruction or recess in any such school, or during an hour preceding or an hour following such hours of instruction, shall be guilty of a minor misdemeanor.

(1985 Code, § 132.14) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 132.16 SCATTERING ITCHING POWDER AND THE LIKE.

Any person who shall distribute, spread, scatter or set free in any theater, hall or other place of public assemblage, any one or more of the articles known as itching powders, sneezing powders, stink bombs or any article used for the purpose of producing itching, sneezing by irritation or nauseous or annoying smells or odors, shall on conviction thereof, be guilty of a minor misdemeanor.

(1985 Code, § 132.15) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 132.17 LOUD NOISES.

(A) No person shall operate or cause to be operated any whistle, rattle, bell, gong, clapper, hammer, drum, horn, player piano, calliope, radio, phonograph or other sound producing or sound amplifying instrument, or in any other way create noise or sound in such manner and to such extent as to disturb the peace and quiet of two or more separate residences between the hours of 6:00 a.m. and 11:00 p.m.

(B) It shall be prima facie evidence of a violation of this section for any such person to permit or for any such person to engage in any such creation of noise or sound on or about any premises during the night hours beginning at 11:00 p.m. and ending at 6:00 a.m.

(Ord. 1551, passed 9-21-1981)

(C) In every charge of violation of this section the affidavit shall state the hour at which the offense is alleged to have occurred.

(D) Any person, association, firm or corporation violating this section shall be guilty of a minor misdemeanor.

(Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

(1985 Code, § 132.16)

§ 132.18 LOUD NOISES OF LOCOMOTIVES.

(A) No person shall make or cause an unnecessary noise with any whistle, bell or signal device upon any locomotive passing through the city limits.

(B) Whoever shall violate any of the provisions of this section shall be guilty of a minor misdemeanor.

(1985 Code, § 132.17) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 132.19 BEGGING PROHIBITED.

Whoever shall solicit alms or charity, either in person or by letter, shall be guilty of a minor misdemeanor.

(1985 Code, § 132.18) (Ord. 1306, passed 6-13-1977)

§ 132.20 LIMITATION OF HOURS OF CONSTRUCTION AND DEVELOPMENT ACTIVITIES.

(A) *Background, purpose and intent.* Certain construction and development activities such as clearing, excavation, loading and unloading of construction materials, equipment and supplies, machine tools, construction, repair and demolition create traffic, noise and other related impacts within the city and upon residents of the city. The city believes it is in the best interest of this community to regulate the hours of performance of certain construction and development activities in order to protect the health, safety and welfare of residents of the city. The purpose and intent of this section is to limit excessive construction noise that interferes with the comfortable enjoyment of life, property, recreation or conduct of business within the city. The requirements contained herein are designed to encourage managed development and construction. The city regulates noise pollution pursuant to Chapter 132 of the code of ordinances. It has been determined that Chapter 132 does not contain clearly defined language to regulate construction times or noise. Excessive noise is a serious hazard to the public health and welfare and the quality of life in any residential community. Each resident of the city has the right to an environment reasonably free from noise which jeopardizes health, welfare or which unduly interferes with a property owner's right to the use or enjoyment of their property. It is recognized that residential land uses are more noise sensitive than commercial land uses. The city also recognizes that continued development and construction are essential to economic vitality of our community and that certain noise producing equipment, including those for construction activities, are essential to the quality of life and should be allowed to continue at reasonable levels with moderate regulation. Therefore, the Council has determined that it is in the best interests of the residents of our community to promote an environment free from excessive noise, otherwise properly called "noise pollution," which unnecessarily jeopardizes the health and welfare and degrades the quality of lives of our residents, without unduly prohibiting, limiting or otherwise regulating the function of certain noise-producing equipment used in construction activities. The City Council finds that limiting the hours within which certain construction noise may originate will benefit the city's residential neighborhoods by ensuring tranquility and calm during sensitive hours, while simultaneously preserving a sufficient opportunity for necessary construction activities to occur.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY MANAGER. The City Manager of the City of Madeira, or his or her designee.

CONSTRUCTION AND DEVELOPMENT ACTIVITIES. Activities such as excavation; clearing; earth moving; construction; repair; maintenance; demolition; loading or unloading of construction materials; equipment and supplies; operation of construction tools, vehicles and equipment; and operation of power tools; where said activities have a total estimated cost exceeding \$250,000.

(C) *Limitation on hours of construction and development activities.*

(1) Except as otherwise provided in this section, construction and development activities as defined in division (B) of this section shall be undertaken within the city only during the following hours:

(a) Monday through Friday: 7:00 a.m. to 7:00 p.m.; and

(b) Saturdays: 8:00 a.m. to 4:00 p.m.

(2) No construction and development activities as defined in division (B) of this section shall be permitted on Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day.

(D) *Exceptions.* The limitations stated in division (C) shall not apply to the following:

(1) Construction and development activities to remedy or avoid a problem related to the health or safety of persons or property, or related to sewer, water, power utility or telephone interruptions;

(2) Construction and development activities undertaken by or on behalf of any public body (including the city) or agency for the benefit of the public. The City Manager may attach to any such waiver, all conditions he or she deems necessary to protect the public health, safety or welfare; and

(3) Construction and development activities as defined in division (B) of this section approved in writing by the City Manager to be conducted at times and/or days other than those permitted in division (C) of this section after consideration of factors including but not limited to the following:

(a) Whether construction noise in the vicinity of the proposed work site would be less objectionable at hours other than those specified in division (C) of this section because of the unique nature of the population levels, population distribution and surrounding neighborhood activities;

(b) Whether obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at hours other than those specified in division (C) of this section;

(c) Whether the kind of work to be performed emits noises at such a low level as to not cause significant disturbance of the peaceful enjoyment of their property by the neighbors in the vicinity of the work site;

(d) Whether the neighborhood of the proposed work site is primarily residential in character such that the sleep of the residents would be disturbed;

(e) Whether great economic hardship would occur if the work were spread over a longer time;

(f) Whether the work will abate or prevent hazards to life or property, or whether the work provides a unique benefit to the public at large or is in the general public interest; and

(g) Any other similar relevant factors.

(E) *Enforcement.*

(1) *Warning.* Upon receipt of a complaint, or upon observation of construction and development activities that are conducted other than as permitted in this section, the City Manager, any police officer and any city building official may investigate the matter and inform the property owner or persons doing construction on the site regarding the permitted hours for such construction and development activities. However, actual notice of the alleged violation is not necessary to invoke the enforcement of this section.

(2) *Enforcement.*

(a) The City Manager or the building official may issue a stop work order regarding all construction on a site where construction and development activities are being conducted in violation of this section.

(b) Each separate occurrence of a violation of this section shall constitute a separate violation.

(c) The city reserves the right to enforce violations of this section by all means available pursuant to the civil and criminal codes. The city may enforce such violation by initiating one or more of the following actions:

1. Issuance of a citation, subject to applicable fines as set forth in this section; and

2. Initiation of a civil court proceeding, including but not limited to a demand for injunctive relief, or any other lawful process pursuant to the Ohio Revised Code.

(d) Any person violating any of the provisions of this section for a second time during any 30-day period shall be guilty of a misdemeanor of the fourth degree and subject to a fine of not more than \$250 for each violation.

(e) Any person violating any of the provisions of this section for three or more times during any 60-day period shall be guilty of a misdemeanor of the third degree and subject to a fine of not more than \$500 for each violation.

(1985 Code, § 132.19) (Ord. 08-31, passed 10-27-2008)

§ 132.21 INCITING TO VIOLENCE.

(A) No person shall knowingly engage in conduct designed to urge or incite another to commit any offense of violence when either of the following apply:

(1) The conduct takes place under circumstances that create a clear and present danger that any offense of violence will be committed; or

(2) The conduct proximately results in the commission of any offense of violence.

(B) Whoever violates this section is guilty of inciting to violence. If the offense of violence that the other person is being urged or incited to commit is a misdemeanor, inciting to violence is a misdemeanor of the first degree. If the offense of violence that the other person is being urged or incited to commit is a felony, inciting to violence is a felony to be prosecuted under appropriate state law.

(R.C. § 2917.01)

§ 132.22 SAFETY OF CROWDS ATTENDING LIVE ENTERTAINMENT PERFORMANCES.

(A) As used in this section:

CONCERT. Means a musical performance of which the primary component is a presentation by persons singing or playing musical instruments, that is intended by its sponsors mainly, but not necessarily exclusively, for the listening enjoyment of the audience, and that is held in a facility. The term does not include any performance in which music is a part of the presentation and the primary component of which is acting, dancing, a motion picture, a demonstration of skills or talent other than singing or playing an instrument, an athletic event, an exhibition or a speech.

FACILITY. Means any structure that has a roof or partial roof and that has walls that wholly surround the area on all sides, including but not limited to a stadium, hall, arena, armory, auditorium, ballroom, exhibition hall, convention center or music hall.

LIVE ENTERTAINMENT PERFORMANCE. Means any live speech; any live musical performance, including a concert; any live dramatic performance; any live variety show; and any other live performance with respect to which the primary intent of the audience can be construed to be viewing the performers. The term does not include any form of entertainment with respect to which the person purchasing a ticket routinely participates in amusements as well as views performers.

PERSON. Includes, in addition to an individual or entity specified in R.C. § 1.59(C), any governmental entity.

RESTRICTED ENTERTAINMENT AREA. Means any wholly or partially enclosed area, whether indoors or outdoors, that has limited access through established entrances or established turnstiles or similar devices.

(B) (1) No person shall sell, offer to sell or offer in return for a donation, any ticket that is not numbered and that does not correspond to a specific seat for admission to either of the following:

(a) A live entertainment performance that is not exempted under division (D) of this section, that is held in a restricted entertainment area, and for which more than 8,000 tickets are offered to the public; or

(b) A concert that is not exempted under division (D) of this section and for which more than 3,000 tickets are offered to the public.

(2) No person shall advertise any live entertainment performance as described in division (B)(1)(a) of this section or any concert as described in division (B)(1)(b) of this section, unless the advertisement contains the words "Reserved Seats Only."

(C) Unless exempted by division (D)(1) of this section, no person who owns or operates any restricted entertainment area shall fail to open, maintain and properly staff at least the number of entrances designated under division (E) of this section for a minimum of 90 minutes prior to the scheduled start of any live entertainment performance that is held in the restricted entertainment area and for which more than 3,000 tickets are sold, offered for sale or offered in return for a donation.

(D) (1) A live entertainment performance, other than a concert, is exempted from the provisions of divisions (B) and (C) of this section if both of the following apply:

(a) The restricted entertainment area in which the performance is held has at least eight entrances or, if both entrances and separate admission turnstiles or similar devices are used, has at least eight turnstiles or similar devices; and

(b) The eight entrances or, if applicable, the eight turnstiles or similar devices, are opened, maintained and properly staffed at least one hour prior to the scheduled start of the performance.

(2) (a) The officer responsible for public safety in the municipality may, upon application of the sponsor of a concert covered by division (B) of this section, exempt the concert from the provisions of that division if such officer finds that the health, safety and welfare of the participants and spectators would not be substantially affected by failure to comply with the provisions of that division. In determining whether to grant an exemption, the officer shall consider the following factors: the size and design of the facility in which the concert is scheduled; the size, age and anticipated conduct of the crowd expected to attend the concert; and the ability of the sponsor to manage and control the expected crowd. If the sponsor of any concert desires to obtain an exemption under this division (D), the sponsor shall

apply to the appropriate official on a form prescribed by that official. The official shall issue an order that grants or denies the exemption within five days after receipt of the application. The sponsor may appeal any order that denies an exemption to the court of common pleas of the county in which the facility is located.

(b) If an official grants an exemption under division (D)(2)(a) of this section, the official shall designate an on-duty law enforcement officer to be present at the concert. The designated officer has authority to issue orders to all security personnel at the concert to protect the health, safety and welfare of the participants and spectators.

(3) Notwithstanding division (D)(2) of this section, in the case of a concert held in a facility located on the campus of an educational institution covered by R.C. § 3345.04, a state university law enforcement officer appointed pursuant to R.C. §§ 3345.04 and 3345.21 shall do both of the following:

(a) Exercise the authority to grant exemptions provided by division (D)(2)(a) of this section in lieu of an official designated in that division; and

(b) If the officer grants an exemption under division (D)(3)(a) of this section, designate an on-duty state university law enforcement officer to be present at the concert. The designated officer has authority to issue orders to all security personnel at the concert to protect the health, safety and welfare of the participants and spectators.

(E) (1) Unless a live entertainment performance is exempted by division (D)(1) of this section, the officer responsible for public safety within the municipality shall designate, for purposes of division (C) of this section, the minimum number of entrances required to be opened, maintained and staffed at each live entertainment performance so as to permit crowd control and reduce congestion at the entrances. The designation shall be based on such factors as the size and nature of the crowd expected to attend the live entertainment performance, the length of time prior to the live entertainment performance that crowds are expected to congregate at the entrances and the amount of security provided at the restricted entertainment area.

(2) Notwithstanding division (E)(1) of this section, a state university law enforcement officer appointed pursuant to R.C. §§ 3345.04 and 3345.21 shall designate the number of entrances required to be opened, maintained and staffed in the case of a live entertainment performance that is held at a restricted entertainment area located on the campus of an educational institution covered by R.C. § 3345.04.

(F) No person shall enter into any contract for a live entertainment performance that does not permit or require compliance with this section.

(G) (1) This section does not apply to a live entertainment performance held in a restricted entertainment area if one admission ticket entitles the holder to view or participate in three or more different games, rides, activities or live entertainment performances occurring simultaneously at different sites within the restricted entertainment area and if the initial admittance entrance to the restricted entertainment area, for which the ticket is required, is separate from the entrance to any specific live

entertainment performance and an additional ticket is not required for admission to the particular live entertainment performance.

(2) This section does not apply to a symphony orchestra performance, a ballet performance, horse races, dances or fairs.

(H) This section does not prohibit the legislative authority from imposing additional requirements, not in conflict with the section, for the promotion or holding of live entertainment performances.

(I) Whoever violates division (B), (C) or (F) of this section is guilty of a misdemeanor of the first degree. If any individual suffers physical harm to the individual's person as a result of a violation of this section, the sentencing court shall consider this factor in favor of imposing a term of imprisonment upon the offender.

(R.C. § 2917.40)

§ 132.23 MISCONDUCT INVOLVING A PUBLIC TRANSPORTATION SYSTEM.

(A) As used in this section, ***PUBLIC TRANSPORTATION SYSTEM*** means a county transit system operated in accordance with R.C. §§ 306.01 through 306.13, a regional transit authority operated in accordance with R.C. §§ 306.30 through 306.71 or a regional transit commission operated in accordance with R.C. §§ 306.80 through 306.90.

(B) No person shall evade the payment of the known fares of a public transportation system.

(C) No person shall alter any transfer, pass, ticket or token of a public transportation system with the purpose of evading the payment of fares or of defrauding the system.

(D) No person shall do any of the following while in any facility or on any vehicle of a public transportation system:

(1) Play sound equipment without the proper use of a private earphone;

(2) Smoke, eat or drink in any area where the activity is clearly marked as being prohibited;

or

(3) Expectorate upon a person, facility or vehicle.

(E) No person shall write, deface, draw or otherwise mark on any facility or vehicle of a public transportation system.

(F) No person shall fail to comply with a lawful order of a public transportation system police officer, and no person shall resist, obstruct or abuse a public transportation police officer in the performance of the officer's duties.

(G) Whoever violates any of the provisions of this section is guilty of misconduct involving a public transportation system.

(1) A violation of division (B), (C) or (F) of this section is a misdemeanor of the fourth degree.

(2) A violation of division (D) of this section is a minor misdemeanor on a first offense. If a person previously has been convicted of or pleaded guilty to a violation of any division of this section or of a municipal ordinance that is substantially equivalent to any division of this section, a violation of division (D) of this section is a misdemeanor of the fourth degree.

(3) A violation of division (E) of this section is a misdemeanor of the third degree.

(H) Notwithstanding any other provision of law, 75% of each fine paid to satisfy a sentence imposed for a violation of any of the provisions of this section shall be deposited into the treasury of the county and 25% shall be deposited with the county transit board, regional transit authority or regional transit commission that operates the public transportation system involved in the violation, unless the Board of County Commissioners operates the public transportation system, in which case 100% of each fine shall be deposited into the treasury of the county.

(R.C. § 2917.41)

OFFENSES INVOLVING ALCOHOL

§ 132.35 DRUNKENNESS.

Whoever shall disturb the good order and quiet of the municipality by intoxication and drunkenness, shall be guilty of a misdemeanor of the fourth degree.

(1985 Code, § 132.20) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 132.36 ILLEGAL POSSESSION OF INTOXICATING LIQUORS PROHIBITED.

(A) No person, who is not the holder of a permit issued by the Department of Liquor Control, in force at the time and authorizing the same, shall have in his or her possession any intoxicating liquor in one or more containers if the containers do not have thereon the seal prescribed by the Board of Liquor Control, pursuant to R.C. Chapters 4301 and 4303, unless such intoxicating liquor was lawfully acquired by him or her.

(B) The possession of such intoxicating liquor in such containers is prima facie evidence that it was not lawfully acquired by the defendant.

(C) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the fourth degree.

(1985 Code, § 132.21) (Ord. 1169, passed 6-10-1974)

§ 132.37 LIMITATION ON PURCHASE OF LIQUOR OR BEER.

(A) Except as otherwise provided in this chapter or in R.C. Chapter 4301, no person under the age of 21 years shall purchase beer or intoxicating liquor.

(R.C. § 4301.63)

(B) Whoever violates this section shall be fined not less than \$25 nor more than \$100. The court imposing a fine for a violation of this section may order that the fine be paid by the performance of public work at a reasonable hour rate established by the court. The court shall designate the time within which the public work shall be completed.

(R.C. § 4301.99(E))

(1985 Code, § 132.22) (Ord. 1598, passed 7-19-1982; Ord. 88-39, passed 10-3-1988; Ord. 07-10, passed 4-9-2007)

§ 132.38 OPEN CONTAINER PROHIBITED.

(A) As used in this section:

CHAUFFEURED LIMOUSINE. Means a vehicle registered under R.C. § 4503.24.

HIGHWAY. Has the same meaning as in R.C. § 4511.01.

MOTOR VEHICLE. Has the same meaning as in R.C. § 4511.01.

STREET. Has the same meaning as in R.C. § 4511.01.

(B) No person shall have in the person's possession an opened container of beer or intoxicating liquor in any of the following circumstances:

(1) Except as provided in division (C)(1)(e) of this section, in a state liquor store;

(2) Except as provided in division (C) of this section, on the premises of the holder of any permit issued by the Division of Liquor Control;

(3) In any other public place;

(4) Except as provided in division (D) or (E) of this section, while operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking; or

(5) Except as provided in division (D) or (E) of this section, while being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(C) (1) A person may have in the person's possession an opened container of any of the following:

(a) Beer or intoxicating liquor that has been lawfully purchased for consumption on the premises where bought from the holder of an A-1-A, A-2, A-3a, D-1, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j, D-5k, D-5l, D-5m, D-5n, D-5o, D-7, D-8, E, F, F-2, F-5, F-7, or F-8 permit;

(b) Beer, wine or mixed beverages served for consumption on the premises by the holder of an F-3 permit or wine served for consumption on the premises by the holder of an F-4 or F-6 permit;

(c) Beer or intoxicating liquor consumed on the premises of a convention facility as provided in R.C. § 4303.201;

(d) Beer or intoxicating liquor to be consumed during tastings and samplings approved by rule of the Liquor Control Commission; or

(e) Spiritous liquor to be consumed for purposes of a tasting sample, as defined in R.C. § 4301.171.

(2) A person may have in the person's possession on an F liquor permit premises an opened container of beer or intoxicating liquor that was not purchased from the holder of the F permit if the premises for which the F permit is issued is a music festival and the holder of the F permit grants permission for that possession on the premises during the period for which the F permit is issued. As used in this division (C)(2), *MUSIC FESTIVAL* means a series of outdoor live musical performances extending for a period of at least three consecutive days and located on an area of land of at least 40 acres.

(3) (a) A person may have in the person's possession on a D-2 liquor permit premises an opened or unopened container of wine that was not purchased from the holder of the D-2 permit if the premises for which the D-2 permit is issued is an outdoor performing arts center, the person is attending an orchestral performance, and the holder of the D-2 permit grants permission for the possession and consumption of wine in certain predesignated areas of the premises during the period for which the D-2 permit is issued.

(b) As used in division (C)(3)(a) of this section:

ORCHESTRAL PERFORMANCE. Means a concert comprised of a group of not fewer than 40 musicians playing various musical instruments.

OUTDOOR PERFORMING ARTS CENTER. Means an outdoor performing arts center that is located on not less than 150 acres of land and that is open for performances from the first day of April to the last day of October of each year.

(4) A person may have in the person's possession an opened or unopened container of beer or intoxicating liquor at an outdoor location at which the person is attending an orchestral performance as defined in division (C)(3)(b) of this section if the person with supervision and control over the performance grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of that outdoor location.

(5) (a) A person may have in the person's possession on an F-9 liquor permit premises an opened or unopened container of beer or intoxicating liquor that was not purchased from the holder of the F-9 permit if the person is attending an orchestral performance and the holder of the F-9 permit grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of the premises during the period for which the F-9 permit is issued.

(b) As used in division (C)(5) of this section, **ORCHESTRAL PERFORMANCE** has the same meaning as in division (C)(3)(b) of this section.

(6) (a) A person may have in the person's possession on the property of an outdoor motorsports facility an opened or unopened container of beer or intoxicating liquor that was not purchased from the owner of the facility if both of the following apply:

1. The person is attending a racing event at the facility; and
2. The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property of the facility.

(b) As used in division (C)(6)(a) of this section:

OUTDOOR MOTORSPORTS FACILITY. An outdoor racetrack to which all of the following apply:

- a. It is 2.4 miles or more in length;
- b. It is located on 200 acres or more of land;
- c. The primary business of the owner of the facility is the hosting and promoting of racing events; and
- d. The holder of a D-1, D-2 or D-3 permit is located on the property of the facility.

RACING EVENT. A motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations.

(D) This section does not apply to a person who pays all or a portion of the fee imposed for use of a chauffeured limousine pursuant to a prearranged contract or the guest of the person, when all of the following apply:

- (1) The person or guest is a passenger in the limousine;
- (2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located; and
- (3) The limousine is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(E) An opened bottle of wine that was purchased from the holder of a permit that authorizes the sale of wine for consumption on the premises where sold is not an opened container for the purposes of this section if both of the following apply:

- (1) The opened bottle of wine is securely resealed by the permit holder or an employee of the permit holder before the bottle is removed from the premises. The bottle shall be secured in such a manner that it is visibly apparent if the bottle has been subsequently opened or tampered with; and
- (2) The opened bottle of wine that is resealed in accordance with division (E)(1) of this section is stored in the trunk of a motor vehicle or, if the motor vehicle does not have a trunk, behind the last upright seat or in an area not normally occupied by the driver or passengers and not easily accessible by the driver.

(R.C. § 4301.62)

(F) Whoever violates this section is guilty of a minor misdemeanor.

(R.C. § 4301.99(A))
(1985 Code, § 132.23)

§ 132.39 CONSUMPTION IN MOTOR VEHICLES PROHIBITED.

(A) No person shall consume any beer or intoxicating liquor in a motor vehicle.

(B) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the fourth degree.

(1985 Code, § 132.24) (Ord. 1169, passed 6-10-1974)

§ 132.40 SALE TO MINORS PROHIBITED.

(A) No person shall sell intoxicating liquor, beer, malt liquor or malt beverages to a person under the age of 21 years, or buy intoxicating liquor for, or furnish it to, a minor unless given by a physician in the regular line of his or her practice, or by a parent or legal guardian.

(B) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the first degree.

(1985 Code, § 132.25) (Ord. 1598, passed 7-19-1982; Ord. 97-05, passed 2-10-1997)

§ 132.41 LIMITATIONS ON POSSESSION OF LIQUOR OR BEER.

(A) No person under the age of 21 years shall possess intoxicating liquor, beer, malt liquor or malt beverages.

(B) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the first degree.

(1985 Code, § 132.26) (Ord. 1598, passed 7-19-1982; Ord. 97-05, passed 2-10-1997; Ord. 07-10, passed 4-9-2007)

§ 132.42 ALCOHOL VAPORIZING DEVICES PROHIBITED.

(A) As used in this section, *ALCOHOL VAPORIZING DEVICE* means a machine or other device that mixes beer or intoxicating liquor with pure oxygen or any other gas to produce a vaporized product for the purpose of consumption by inhalation.

(B) No person shall sell or offer for sale an alcohol vaporizing device.

(C) No person shall purchase or use an alcohol vaporizing device.

(R.C. § 4301.65)

(D) (1) Whoever violates division (B) of this section is guilty of misdemeanor of the third degree. For a second or subsequent violation occurring within a period of five consecutive years after the first violation, a person is guilty of a misdemeanor of the first degree.

(R.C. § 4301.99(J))

(2) Whoever violates division (C) of this section is guilty of a minor misdemeanor.

(R.C. § 4301.99(A))

(1985 Code, § 132.27)

§ 132.43 MISREPRESENTATION TO OBTAIN ALCOHOLIC BEVERAGE BY OR FOR A MINOR.

(A) Except as otherwise provided in this chapter or in R.C. Chapter 4301, no person shall knowingly furnish any false information as to the name, age or other identification of any person under

21 years of age, for the purpose of obtaining, or with the intent to obtain, beer or intoxicating liquor for a person under 21 years of age, by purchase, or as a gift.

(R.C. § 4301.633)

(B) Except as otherwise provided in this chapter or in R.C. Chapter 4301, no person under the age of 21 years shall knowingly show or give false information concerning his or her name, age or other identification for the purpose of purchasing or otherwise obtaining beer or intoxicating liquor in any place in this municipality where beer or intoxicating liquor is sold under a permit issued by the Division of Liquor Control, or sold by the Division of Liquor Control.

(R.C. § 4301.634)

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.

(R.C. § 4301.99(C))

(D) (1) Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree. If, in committing a first violation of division (B), the offender presented to the permit holder or his or her employee or agent a false, fictitious or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than \$250 and not more than \$1,000, and may be sentenced to a term of imprisonment of not more than six months.

(2) On a second violation in which, for the second time, the offender presented to the permit holder or his or her employee or agent a false, fictitious or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than \$500 nor more than \$1,000, and may be sentenced to a term of imprisonment of not more than six months. The court also may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operation privilege from the range specified in R.C. § 4510.02(A)(7).

(3) On a third or subsequent violation in which, for the third or subsequent time, the offender presented to the permit holder or his or her employee or agent a false, fictitious or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than \$500 nor more than \$1,000, and may be sentenced to a term of imprisonment of not more than six months. Except as provided in this division (B)(3), the court also may impose a class six suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6), and the court may order that the suspension or denial remain in effect until the offender attains the age of 21 years. The court, in lieu of suspending the offender's temporary instruction permit, probationary driver's license or driver's license, instead may order the offender to perform a determinate number of hours of community service, with the court determining the actual number of hours and the nature of the community service the offender shall perform.

(R.C. § 4301.99(F))

(1985 Code, § 132.28) (Ord. 87-30, passed 9-8-1987)

§ 132.44 CONSUMPTION OF ALCOHOL ON PRIVATE PROPERTY.

(A) No person being the owner, occupier or otherwise in possession of any real property located within the city, shall do any of the following:

(1) Allow a minor, under 21 years of age, who is not the child, relative or ward of the owner, occupier or possessor, to possess or consume intoxicating liquor or beer while on the premises; and

(2) Permit circumstances to exist in or upon the real property which would result in a violation of this division (A).

(B) A person will be held to possess intoxicating liquor or beer where such alcoholic beverage is within the immediate control, care or management of that person.

(C) Where a person is investigated or charged under division (A) of this section, the police and/or court shall consider the following factors in favor of such person in determining whether a violation has occurred:

(1) Where the owner, occupier or possessor, prior to leaving the city for a period in excess of 24 hours, notified the Police Department of the dates of the departure and return and the identity of those persons who will remain on the premises during the absence; and/or

(2) Where the owner, occupier or possessor enlisted the aid of the Police Department in controlling the situation involving any of the offenses enumerated in division (A) of this section prior to the police taking action based on their observations or receiving a complaint relating to the situation from another resident of the city.

(D) Whoever violates division (A) of this section is guilty of a minor misdemeanor for the first offense. Any subsequent violation of division (A) of this section within two years of the date of the first conviction shall be a misdemeanor of the fourth degree.

(1985 Code, § 132.29) (Ord. 88-02, passed 2-1-1988; Ord. 87-30, passed 9-8-1987)

§ 132.45 GENERAL PROVISIONS.

(A) All terms used in §§ 132.42 through 132.44 shall be as defined in the Ohio Revised Code.

(B) Should any clause of §§ 132.42 through 132.44 be held unconstitutional, that clause shall be deemed null and void without affecting the enforceability of the remainder of those sections.

(1985 Code, § 132.30) (Ord. 87-30, passed 9-8-1987)

§ 132.46 POSTING OF CARD.

(A) (1) Except as otherwise provided in R.C. § 4301.691, every place in this municipality where beer, intoxicating liquor or any low-alcohol beverage is sold for beverage purposes shall display at all times, in a prominent place on the premises thereof, a printed card, which shall be furnished by the Division of Liquor Control and which shall read substantially as follows:

WARNING TO PERSONS UNDER AGE

If you are under the age of 21

Under the statutes of the State of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or possess or consume beer or intoxicating liquor in any public place, or furnish false information as to name, age or other identification, you are subject to a fine of up to \$1,000, or imprisonment up to six months, or both.

If you are under the age of 18

Under the statutes of the State of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or possess or consume, any type of beer or wine that contains either no alcohol or less than one-half of one percent of alcohol by volume in any public place, or furnish false information as to the name, age, or other identification, you are subject to a fine of up to \$250 or to imprisonment up to 30 days, or both.

(2) No person shall be subject to any criminal prosecution or any proceedings before the Department or the Liquor Control Commission for failing to display this card. No permit issued by the Department shall be suspended, revoked or canceled because of the failure of the permit holder to display this card.

(B) (1) Every place in this municipality for which a D permit has been issued under R.C. Chapter 4303 shall be issued a printed card by the Division of Liquor Control that shall read substantially as follows:

WARNING

If you are carrying a firearm

Under the statutes of Ohio, if you possess a firearm in any room in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303 of the Revised Code, you may be guilty of a felony and may be subjected to a prison term of up to one year.

(2) No person shall be subject to any criminal prosecution or any proceedings before the Division of Liquor Control or the Liquor Control Commission for failing to display this card. No permit issued by the Department shall be suspended, revoked or canceled because of the failure of the permit holder to display this card.

(R.C. § 4301.637) (1985 Code, § 132.31)

Statutory reference:

Carrying concealed weapon, felony, see R.C. § 2923.12

Possessing firearm in liquor permit premises, exceptions, defenses, see R.C. § 2923.121

§ 132.47 GOOD FAITH ACCEPTANCES OF SPURIOUS IDENTIFICATION.

(A) No permit holder, agent or employee of a permit holder, or any other person may be found guilty of a violation of any section of this chapter in which age is any element of the offense, if any court of record finds all of the following:

(1) That the person buying, at the time of so doing, exhibited to the permit holder, the agent or employee of the permit holder, or the other person a driver's or commercial driver's license or an identification card issued under R.C. §§ 4507.50 through 4507.52, or a military identification card issued by the United States Department of Defense, that displays a picture of the individual for whom the license or card was issued and shows that the person buying was then at least 21 years of age if the person was buying beer as defined in R.C. § 4301.01 or intoxicating liquor, or that the person was then at least 18 years of age if the person was buying any low-alcohol beverage;

(2) That the permit holder, the agent or employee of the permit holder, or the other person made a bona fide effort to ascertain the true age of the person buying by checking the identification presented at the time of the purchase to ascertain that the description on the identification compared with the appearance of the buyer and that the identification presented had not been altered in any way; and

(3) That the permit holder, the agent or employee of the permit holder, or the other person had reason to believe that the person buying was of legal age.

(B) The defense provided by division (A) of this section is in addition to the affirmative defense provided by § 132.49.

(R.C. § 4301.639(A), (C)) (1985 Code, § 132.32)

§ 132.48 LIQUOR TRANSACTION SCANS.

(A) As used in this section and § 132.49:

CARD HOLDER. Means any person who presents a driver's or commercial driver's license or an identification card to a permit holder, or an agent or employee of a permit holder, for either of the purposes listed in under divisions (a) or (b) of the definition for "transaction scan" in this section.

IDENTIFICATION CARD. Means an identification card issued under R.C. §§ 4507.50 through 4507.52.

PERMIT HOLDER. Means the holder of a permit issued under R.C. Chapter 4303.

TRANSACTION SCAN. Means the process by which a permit holder or an agent or employee of a permit holder checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for doing either of the following:

(a) Purchasing any beer, intoxicating liquor or low-alcohol beverage; or

(b) Gaining admission to a premises that has been issued a liquor permit authorizing the sale of beer or intoxicating liquor for consumption on the premises where sold, and where admission is restricted to persons 21 years of age or older.

TRANSACTION SCAN DEVICE. Means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(B) (1) A permit holder or an agent or employee of a permit holder may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder for either of the purposes listed in divisions (a) or (b) of the definition for "transaction scan" in this section.

(2) If the information deciphered by the transaction scan performed under division (B)(1) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the permit holder nor any agent or employee of the permit holder shall sell any beer, intoxicating liquor or low-alcohol beverage to the card holder.

(3) Division (B)(1) of this section does not preclude a permit holder or an agent or employee of a permit holder from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition of a sale beer, intoxicating liquor or a low-alcohol beverage or of granting admission to a premises described in the definition for "transaction scan" in this section.

(C) The Registrar of Motor Vehicles, with the approval of the Liquor Control Commission, shall adopt, and may amend or rescind, rules in accordance with R.C. Chapter 119 that do both of the following:

(1) Govern the recording and maintenance of information described in R.C. § 4301.61(D)(1)(a) and (D)(1)(b), R.C. § 2925.57(D)(1)(a) and (D)(1)(b), and R.C. § 2927.021(D)(1)(a) and (D)(1)(b); and

(2) Ensure quality control in the use of transaction scan devices under R.C. §§ 2925.57, 2925.58, 2927.021, 2927.022, 4301.61 and 4301.611.

(D) (1) No permit holder or agent or employee of a permit holder shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

(a) The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by the card holder; and

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

(2) No permit holder or agent or employee of a permit holder shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (D)(1) of this section, except for purposes of R.C. § 4301.611, or a substantially equivalent municipal ordinance.

(3) No permit holder or agent or employee of a permit holder shall use a transaction scan device for a purpose other than a purpose listed in divisions (a) or (b) of the definition for "transaction scan" in this section.

(4) No permit holder or agent or employee of a permit holder shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by R.C. § 4301.611, or a substantially equivalent municipal ordinance, or another section of this code or the Ohio Revised Code.

(E) Nothing in this section or R.C. § 4301.611, or a substantially equivalent municipal ordinance, relieves a permit holder or an agent or employee of a permit holder of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale of beer, intoxicating liquor or low-alcohol beverages.

(F) Whoever violates division (B)(2) or (D) of this section is guilty of an illegal liquor transaction scan, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the court shall pay each collected civil penalty to the County Treasurer for deposit into the county treasury.

(R.C. § 4301.61)

(1985 Code, § 132.33)

§ 132.49 AFFIRMATIVE DEFENSES.

(A) A permit holder or an agent or employee of a permit holder may not be found guilty of a charge of a violation of this chapter or any rule of the Liquor Control Commission in which the age of the purchaser of any beer, intoxicating liquor or low-alcohol beverage is an element of the alleged violation, if the permit holder, agent or employee raises and proves as an affirmative defense that all of the following occurred:

(1) A card holder attempting to purchase any beer, intoxicating liquor or low-alcohol beverage presented a driver's or commercial driver's license or an identification card;

(2) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid; and

(3) The beer, intoxicating liquor or low-alcohol beverage was sold to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(B) In determining whether a permit holder or an agent or employee of a permit holder has proven the affirmative defense provided by division (A) of this section, the Liquor Control Commission or the trier of fact in a court of record shall consider any written policy that the permit holder has adopted and implemented and that is intended to prevent violations of R.C. §§ 4301.22(A)(1) or (A)(2), 4301.63 through 4301.636, 4301.69 and 4301.691, or any substantially equivalent municipal ordinances. For purposes of division (A)(3) of this section, the Commission or trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a permit holder or an agent or employee of a permit holder to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a permit holder or an agent or employee of a permit holder from exercising reasonable diligence to determine, the following:

(1) Whether a person to whom the permit holder or agent or employee of a permit holder sells any beer or intoxicating liquor is 21 years of age or older or sells low-alcohol beverage is 18 years of age or older;

(2) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(C) The affirmative defense provided by division (A) of this section is in addition to the defense provided by R.C. § 4301.639, or any substantially equivalent municipal ordinance.

(D) In any hearing before the Liquor Control Commission and in any criminal action in which the affirmative defense provided by division (A) of this section is raised, the Registrar of Motor Vehicles or a Deputy Registrar who issued an identification card under R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the hearing or action.
(R.C. § 4301.611) (1985 Code, § 132.34)

CHAPTER 133: OFFENSES AGAINST MORALS

Section

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§ 133.01 DEFINITIONS.

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

HARMFUL TO JUVENILES. That quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement or sado-masochistic abuse in any form to which all of the following apply:

- (1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex;

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles; and

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political and scientific value for juveniles.

JUVENILE. Any unmarried person under 18 years of age.

MATERIAL. Any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, video cassette, laser disc, phonograph record, cassette tape, compact disc or other tangible thing capable of arousing interest through sight, sound or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape or similar data storage device.

MENTAL HEALTH CLIENT OR PATIENT. Has the same meaning as in R.C. § 2305.51.

MENTAL HEALTH PROFESSIONAL. Has the same meaning as in R.C. § 2305.115.

MINOR. A person under the age of 18.

NUDITY. The showing, representation or depiction of human male or female genitals, pubic area or buttocks with less than a full, opaque covering or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

OBSCENE. When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is **OBSCENE** if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral or artistic purpose; or

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral or artistic purpose.

PERFORMANCE. Any motion picture, preview, trailer, play, show, skit, dance or other exhibition performed before an audience.

PROSTITUTE. A male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

SADO-MASOCHISTIC ABUSE. Flagellation or torture by or upon a person or the condition of being fettered, bound or otherwise physically restrained.

SEXUAL ACTIVITY. Sexual conduct or sexual contact, or both.

SEXUAL CONDUCT. Vaginal intercourse between a male and female; anal intercourse, fellatio and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

SEXUAL CONTACT. Any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

SEXUAL EXCITEMENT. The condition of human male or female genitals when in a state of sexual stimulation or arousal.

SPOUSE. A person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement pursuant to R.C. § 3103.06;

(2) When an action is pending between the parties for annulment, divorce, dissolution of marriage or legal separation; or

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(R.C. § 2907.01) (1985 Code, § 133.01) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 133.02 UNLAWFUL SEXUAL CONDUCT WITH A MINOR.

(A) No person who is 18 years of age or older shall engage in sexual conduct with another who is not the spouse of the offender, when the offender knows the other person is 13 years of age or older but less than 16 years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in division (B)(2), unlawful sexual conduct with a minor is a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in division (B)(3) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) If the offender previously has been convicted of or pleaded guilty to a violation of R.C. § 2907.02, 2907.03 or 2907.04, or any substantially equivalent municipal ordinance, or a violation of former R.C. § 2907.12, or any substantially equivalent municipal ordinance, unlawful sexual conduct with a minor is a felony to be prosecuted under appropriate state law.
(R.C. § 2907.04) (1985 Code, § 133.02)

§ 133.03 SEXUAL IMPOSITION.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard;

(2) The offender knows that the other person's, or one of the other person's ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired;

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact;

(4) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the person, and the offender is at least 18 years of age and four or more years older than the other person; and

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender has been convicted previously of a violation of this section, R.C. § 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, former R.C. § 2907.12, or a substantially equivalent state law or municipal ordinance, a violation of this section is a misdemeanor of the first degree.

(R.C. § 2907.06) (1985 Code, § 133.03)

Statutory reference:

Gross sexual imposition, felony, see R.C. § 2907.05

Notice to licensing board or agency upon indictment, conviction or guilty plea of mental health professional, see R.C. §§ 2907.17 and 2907.18

§ 133.04 PUBLIC INDECENCY.

(A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:

(1) Expose the persons's private parts;

(2) Engage in sexual conduct or masturbation; or

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:

(1) Engage in masturbation;

(2) Engage in sexual conduct;

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation; or

(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C) (1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (C)(3), (C)(4) and (C)(5) of this section.

(2) Except as otherwise provided in this division (C)(2), a violation of division (A)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony to be prosecuted under appropriate state law.

(3) Except as otherwise provided in this division (C)(3), a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony to be prosecuted under appropriate state law.

(4) Except as otherwise provided in this division (C)(4), a violation of division (B)(1), (B)(2) or (B)(3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(1), (B)(2) or (B)(3) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(1), (B)(2) or (B)(3) of this section is a felony to be prosecuted under appropriate state law.

(5) Except as otherwise provided in this division (C)(5), a violation of division (B)(4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(4) of this section is a felony to be prosecuted under appropriate state law.
(R.C. § 2907.09)

(D) A mother is entitled to breast-feed her baby in any location of a place of public accommodation, as defined in R.C. § 4112.01, wherein the mother otherwise is permitted.

(R.C. § 3781.55)

(1985 Code, § 133.04)

Statutory reference:

Bail considerations for persons charged, see R.C. § 2907.41

§ 133.05 VOYEURISM.

(A) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(B) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph or otherwise record the other person in a state of nudity.

(C) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person in a state of nudity if the other person is a minor.

(D) No person shall secretly or surreptitiously videotape, film, photograph or otherwise record another person under or through the clothing being worn by that person for the purpose of viewing the body of, or the undergarments worn by, that other person.

(E) Whoever violates this section is guilty of voyeurism.

(1) A violation of division (A) of this section is a misdemeanor of the third degree.

(2) A violation of division (B) of this section is a misdemeanor of the second degree.

(3) A violation of division (D) of this section is a misdemeanor of the first degree.

(4) A violation of division (C) of this section is a felony to be prosecuted under appropriate state law.

(R.C. § 2907.08) (1985 Code, § 133.05) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 133.06 POLYGRAPH EXAMINATIONS FOR VICTIMS: RESTRICTIONS ON USE.

(A) (1) A peace officer, prosecutor or other public official shall not ask or require a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation of the alleged sex offense.

(2) The refusal of the victim of an alleged sex offense to submit to a polygraph examination shall not prevent the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense or the prosecution of the alleged perpetrator of the alleged sex offense.

(B) As used in this section:

PEACE OFFICER. Has the same meaning as in R.C. § 2921.51.

POLYGRAPH EXAMINATION. Means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test or question an individual for the purpose of determining the individual's truthfulness.

PROSECUTION. Means the prosecution of criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.

PROSECUTOR. Has the same meaning as in R.C. § 2935.01.

PUBLIC OFFICIAL. Has the same meaning as in R.C. § 117.01.

SEX OFFENSE. Means a violation of any provision of §§ 133.02 to 133.05 or R.C. §§ 2907.02 to 2907.09.
(R.C. § 2907.10) (1985 Code, § 133.06)

§ 133.07 PROCURING.

(A) No person, knowingly and for gain, shall do either of the following:

(1) Entice or solicit another to patronize a prostitute or brothel; or

(2) Procure a prostitute for another to patronize, or take or direct another at the other's request to any place for the purpose of patronizing a prostitute.

(B) No person, having authority or responsibility over the use of premises, shall knowingly permit the premises to be used for the purpose of engaging in sexual activity for hire.

(C) Whoever violates this section is guilty of procuring. Except as otherwise provided in this division (C), procuring is a misdemeanor of the first degree. If the prostitute who is procured, patronized or otherwise involved in a violation of division (A)(2) of this section is under 18 years of age at the time of the violation, regardless of whether the offender who violates division (A)(2) of this section knows the prostitute's age, or if a prostitute who engages in sexual activity for hire in premises used in violation of division (B) of this section is under 18 years of age at the time of the violation, regardless of whether the offender who violates division (B) of this section knows the prostitute's age, procuring is a felony to be prosecuted under appropriate state law.

(R.C. § 2907.23) (1985 Code, § 133.07) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 133.08 SOLICITING; LOITERING TO ENGAGE IN.

(A) No person shall solicit another to engage with the other person in sexual activity for hire.

(B) (1) Whoever violates division (A) of this section is guilty of soliciting, a misdemeanor of the third degree.

(2) If a person is convicted of or pleads guilty to a violation of division (A) of this section or an attempt to commit a violation of division (A) of this section and if the person, in committing or attempting to commit the violation, was in, was on or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6). In lieu of imposing upon the offender the class six suspension, the court instead may require the offender to perform community service for a number of hours determined by the court. (R.C. § 2907.24)

(C) No person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, shall do any of the following:

- (1) Beckon to, stop or attempt to stop another;
- (2) Engage or attempt to engage another in conversation;
- (3) Stop or attempt to stop the operator of a vehicle or approach a stationary vehicle;

(4) If the offender is the operator of or a passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon to or entice another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger; or

- (5) Interfere with the free passage of another.

(D) As used in division (C) of this section:

PUBLIC PLACE. Means any of the following:

(a) A street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot or transportation facility;

(b) A doorway or entrance way to a building that fronts on a place described in division (a) of this definition; or

(c) A place not described in division (a) or (b) of this definition that is open to the public.

VEHICLE. Has the same meaning as in R.C. § 4501.01.

(E) Whoever violates division (C) of this section is guilty of loitering to engage in solicitation, a misdemeanor of the third degree.

(R.C. § 2907.241)

(1985 Code, § 133.08) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

Statutory reference:

Offenders with knowledge that they test HIV positive, felony, see R.C. §§ 2907.24(B) and 2907.241(B)

Testing offenders for venereal disease and AIDS, see R.C. § 2907.27

§ 133.09 PROSTITUTION.

(A) No person shall engage in sexual activity for hire.

(B) Whoever violates this section is guilty of prostitution, a misdemeanor of the third degree.

(R.C. § 2907.25) (1985 Code, § 133.09) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

Statutory reference:

Offenders with knowledge that they test HIV positive, felony, see R.C. § 2907.25(B)

Testing offenders for venereal disease and AIDS, see R.C. § 2907.27

§ 133.10 DISSEMINATING MATTER HARMFUL TO JUVENILES.

(A) No person, with knowledge of its character or content, shall recklessly do any of following:

(1) Directly sell, deliver, furnish, disseminate, provide, exhibit, rent or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles;

(2) Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent or present to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles; or

(3) While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

(B) The following are affirmative defenses to a charge under this section that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian or spouse of the juvenile involved;

(2) The juvenile involved, at the time of the conduct in question, was accompanied by his or her parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile; and

(3) The juvenile exhibited to the defendant or his or her agent or employee a draft card, driver's license, birth record, marriage license or other official or apparently official document purporting to show that the juvenile was 18 years of age or over or married, and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of 18 and unmarried.

(C) (1) It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergy, prosecutor, judge or other proper person.

(2) Except as provided in division (B)(3) of this section, mistake of age is not a defense to a charge under this section.

(D) (1) A person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent or present material or a performance to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile or the group of persons receiving the information are juveniles.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, disseminate, provide, exhibit, rent or present or directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent or present the material or performance in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section if either of the following applies:

(a) The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile; or

(b) The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

(E) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles except as otherwise provided in this division (E), a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, violation of this section is a felony to be prosecuted under appropriate state law. (R.C. § 2907.31)

(F) Presumptions, notice and defense.

(1) An owner or manager, or agent or employee of an owner or manager, of a bookstore, newsstand, theater or other commercial establishment engaged in selling material or exhibiting performances, who, in the course of business does any of the acts prohibited by this section is presumed to have knowledge of the character of the material or performance involved if the owner, manager or agent or employee of the owner or manager has actual notice of the nature of such material or performance, whether or not the owner, manager or agent or employee of the owner or manager has precise knowledge of its contents.

(2) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the municipality. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(3) This § 133.10 does not apply to a motion picture operator or projectionist acting within the scope of employment as an employee of the owner or manager of the theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in the operator's or projectionist's place of employment, other than wages.

(4) (a) The provisions of §§ 133.10, 133.11 and 133.12(A) do not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection.

(b) Division (F)(4)(a) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of § 133.10, 133.11 or 133.12 or who knowingly advertises the availability of material of that nature.

(c) Division (F)(4)(a) of this section does not apply to a person who provides access or connection to an electronic method of remotely transferring information that is engaged in the violation of § 133.10, 133.11 or 133.12 and that contain content that person has selected and introduced into the electronic method of remotely transferring information or content over which that person exercises editorial control.

(5) An employer is not guilty of a violation of § 133.10, 133.11 or 133.12 based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of the employee's or agent's employment or agency, and the employer does either of the following:

(a) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct; or

(b) The employer recklessly disregards the employee's or agent's conduct.

(6) It is an affirmative defense to a charge under § 133.10 or 133.11 as the section applies to an image transmitted through the internet or other electronic method of remotely transmitting information that the person charged with violating the section has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.

(R.C. § 2907.35)

(1985 Code, § 133.10) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977; Ord. 91-12, passed 3-4-1991)

§ 133.11 DISPLAYING MATTER HARMFUL TO JUVENILES.

(A) No person who has custody, control or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

(B) It is not a violation of division (A) of this section if the material in question is displayed by placing it behind "blinder racks" or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.

(C) Whoever violates this section is guilty of displaying matter harmful to juveniles, a misdemeanor of the first degree. Each day during which the offender is in violation of this section constitutes a separate offense.

(R.C. § 2907.311) (1985 Code, § 133.11)

§ 133.12 DECEPTION TO OBTAIN MATTER HARMFUL TO JUVENILES.

(A) No person, for the purpose of enabling a juvenile to obtain any material or gain admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he or she is the parent, guardian or spouse of the juvenile; or

(2) Furnish the juvenile with any identification or document purporting to show that the juvenile is 18 years of age or over or married.

(B) No juvenile, for the purpose of obtaining any material or gaining admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he or she is 18 years of age or over or married; or

(2) Exhibit any identification or document purporting to show that he or she is 18 years of age or over or married.

(C) Whoever violates this section is guilty of deception to obtain matter harmful to juveniles, a misdemeanor of the second degree. A juvenile who violates division (B) of this section shall be adjudged an unruly child, with the disposition of the case as may be appropriate under R.C. Chapter 2151. (R.C. § 2907.33) (1985 Code, § 133.12) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 133.13 NOTICES CONCERNING HABITUAL SEX OFFENDERS.

(A) (1) The Chief of Police, upon receipt of the notice from the County Sheriff or the Ohio Attorney General pursuant to R.C. § 2950.11, or the administrative regulations adopted under authority of R.C. § 2950.13 (hereinafter “2950 Notice”) in addition to any notice required under R.C. Chapter 2950 and any regulations adopted thereunder, shall provide a copy of the 2950 Notice to all residences located within a radius of 600 feet of the address listed within the 2950 Notice of the residence of the sexual predator or habitual sex offender. The Chief of Police shall send such notice within 72 hours of the receipt of the 2950 Notice from the County Sheriff or Ohio Attorney General. The delivery of this notice may be accomplished by personal delivery to a principal adult occupant of the residences in the area described above, or by mailing a copy of the notice by ordinary United States mail, addressed to the owner or principal occupant of the residences in the affected areas as such owner or principal occupant is identified within the records maintained by the city.

(2) As a public record, the Chief of Police is also authorized to release a copy of the 2950 Notice to a newspaper in general circulation within the Madeira community which regularly receives crime reports or statistics from the Police Department.

(B) The procedure set forth herein is not intended to create a cause of action against any official, administrative officer, employee or agent of the city, nor is the procedure adopted herein intended in any way to impact the immunity extended to such persons pursuant to R.C. § 2950.12. Such statutory immunity is reserved to all protected individuals and organizations as outlined in R.C. § 2950.12 or successor statute. As a public record subject to publication and disclosure, this section is intended to provide a procedure for effectively disseminating the public information provided to the Police Department concerning sexual predators or habitual sex offenders residing within the community. The procedure adopted herein is intended to ensure appropriate public safety, and it is not intended to create any obligation upon the Police Department nor any official or employee of the city to disseminate such information or to create liability for the failure to disseminate such information in a timely and complete manner.

(1985 Code, § 133.14) (Ord. 01-22, passed 9-10-2001)

§ 133.14 RULES OF EVIDENCE.

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such place and as to the reputation of the persons who inhabit or frequent it is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of §§ 133.07 through 133.09, proof of a prior conviction of the accused of any such offense or substantially equivalent offense is admissible in support of the charge.

(D) The prohibition contained in R.C. § 2317.02(D) against testimony by a husband or wife concerning communications between them does not apply, and the accused's spouse may testify concerning any such communication in any of the following cases:

(1) When the husband or wife is charged with a violation of § 133.07 and the spouse testifying was the prostitute involved in the offense or the person who used the offender's premises to engage in sexual activity for hire;

(2) When the husband or wife is charged with a violation of § 133.08(A) or § 133.09. (R.C. § 2907.26) (1985 Code, § 133.15)

§ 133.15 DECLARATORY JUDGMENT.

(A) Without limitation on the persons otherwise entitled to bring an action for a declaratory judgment pursuant to R.C. Chapter 2721, involving the same issue, the following persons have standing to bring a declaratory judgment action to determine whether particular materials or performances are obscene or harmful to juveniles:

(1) The chief legal officer of the municipality if and when there is reasonable cause to believe that R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, is being or is about to be violated; and

(2) Any person who, pursuant to R.C. § 2907.35(B) or a substantially equivalent municipal ordinance, has received notice in writing from the chief legal officer stating that particular materials or performances are obscene or harmful to juveniles.

(B) Any party to an action for a declaratory judgment pursuant to division (A) of this section is entitled, upon the party's request, to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(C) An action for a declaratory judgement pursuant to division (A) of this section shall not be brought during the pendency of any civil action or criminal prosecution when the character of the

particular materials or performances involved is at issue in the pending case, and either of the following applies:

(1) Either of the parties to the action for a declaratory judgment is a party to the pending case;
or

(2) A judgment in the pending case will necessarily constitute *res judicata* as to the character of the materials or performances involved.

(D) A civil action or criminal prosecution in which the character of particular materials or performances is at issue, brought during the pendency of an action for a declaratory judgment involving the same issue, shall be stayed during the pendency of the action for a declaratory judgment.

(E) The fact that a violation of R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, occurs prior to a judicial determination of the character of the material or performance involved in the violation does not relieve the offender of criminal liability for the violation, even though prosecution may be stayed pending the judicial determination.

(R.C. § 2907.36) (1985 Code, § 133.16)

§ 133.16 INJUNCTION; ABATEMENT OF NUISANCE.

(A) Where it appears that R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, is being or is about to be violated, the chief legal officer of the municipality may bring an action to enjoin the violation. The defendant, upon his or her request, is entitled to trial on the merits within five days after the joinder of the issues, and the court shall render judgment within five days after the trial is concluded.

(B) Premises used or occupied for repeated violations of R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, constitute a nuisance subject to abatement pursuant to R.C. Chapter 3767.

(R.C. § 2907.37) (1985 Code, § 133.17)

Statutory reference:

Disseminating matter harmful to juveniles, felony, see R.C. § 2907.31

Pandering obscenity, felony, see R.C. § 2907.32

§ 133.17 UNLAWFUL OPERATION OF VIEWING BOOTHS DEPICTING SEXUAL CONDUCT.

(A) As used in this section:

COMMERCIAL ESTABLISHMENT. Means an entity that is open to the public and to which either of the following applies:

(a) It has a substantial or significant portion of its stock in trade of the sale, rental or viewing of visual materials or performances depicting sexual conduct; or

(b) It has as a principal business purpose the sale, rental or viewing of visual materials or performances depicting sexual conduct.

VISUAL MATERIALS OR PERFORMANCES. Means films, videos, CD-ROM discs, streaming video or other motion pictures.

(B) No person who has custody, control or supervision of a commercial establishment, with knowledge of the character of the visual material or performance involved, shall knowingly permit the use of, or offer the use of, viewing booths, stalls or partitioned portions of a room located in the commercial establishment for the purpose of viewing visual materials or performances depicting sexual conduct unless both of the following apply:

(1) The inside of each booth, stall or partitioned room is visible from, and at least one side of each booth, stall or partitioned room is open to, a continuous and contiguous main aisle or hallway that is open to the public areas of the commercial establishment and is not obscured by any curtain, door or other covering or enclosure; and

(2) No booth, stall or partitioned room is designed, constructed, pandered or allowed to be used for the purpose of encouraging or facilitating nudity or sexual activity on the part of or between patrons or members of the public, and no booth, stall or partitioned room has any aperture, hole or opening for the purpose of encouraging or facilitating nudity or sexual activity.

(C) It is an affirmative defense to a charge under this section that either of the following applies to the involved visual materials or performances:

(1) The visual materials or performances depicting sexual conduct are disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial or other proper purpose and by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge or other person having a proper interest in the visual materials or performances; or

(2) The visual materials or performances depicting sexual conduct, taken as a whole, would be found by a reasonable person to have serious literary, artistic, political or scientific value or are presented or disseminated in good faith for a serious literary, artistic, political or scientific purpose and are not pandered for their prurient appeal.

(D) Whoever violates this section is guilty of permitting unlawful operation of viewing booths depicting sexual conduct, a misdemeanor of the first degree.

(R.C. § 2907.38) (1985 Code, § 133.18)

§ 133.18 JUVENILES ON THE PREMISES OF ADULT ENTERTAINMENT ESTABLISHMENTS PROHIBITED.

(A) As used in this section:

ADULT ARCADE. Means any place to which the public is permitted or invited in which coin-operated, slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and in which the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE.

(a) Means a commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental of any of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas; or

2. Instruments, devices or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of self or others.

(b) Includes a commercial establishment as defined in R.C. § 2907.38. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas.

ADULT CABARET. Means a nightclub, bar, juice bar, restaurant, bottle club or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

(a) Persons who appear in a state of nudity or seminudity;

(b) Live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities; and

(c) Films, motion pictures, video cassettes, slides or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

ADULT ENTERTAINMENT. Means the sale, rental or exhibition, for any form of consideration, of books, films, video cassettes, magazines, periodicals or live performances that are characterized by an emphasis on the exposure or display of specified anatomical areas or specified sexual activity.

ADULT ENTERTAINMENT ESTABLISHMENT. Means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio or sexual encounter establishment. An establishment in which a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized therapy, including but not limited to massage therapy, as regulated pursuant to R.C. § 4731.15, is not an ***ADULT ENTERTAINMENT ESTABLISHMENT.***

ADULT MOTION PICTURE THEATER. Means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

ADULT THEATER. Means a theater, concert hall, auditorium or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

DISTINGUISHED OR CHARACTERIZED BY THEIR EMPHASIS UPON. Means the dominant or principal character and theme of the object described by this phrase. For instance, when the phrase refers to films “that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas,” the films so described are those whose dominant or principal character and theme are the exhibition or description of specified sexual activities or specified anatomical areas.

NUDE OR SEMINUDE MODEL STUDIO. Means any place where a person, who regularly appears in a state of nudity or seminudity, is provided for money or any other form of consideration to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons. A modeling class or studio is not a nude or seminude model studio and is not subject to this chapter if it is operated in any of the following ways:

- (a) By a college or university supported entirely or partly by taxation;

(b) By a private college or university that maintains and operates educational programs, the credits for which are transferable to a college or university supported entirely or partly by taxation; or

(c) In a structure that has no sign visible from the exterior of the structure and no other advertising indicating that a person appearing in a state of nudity or seminudity is available for viewing, if in order to participate in a class in the structure, a student must enroll at least three days in advance of the class and if not more than one nude or seminude model is on the premises at any one time.

NUDITY, NUDE or STATE OF NUDITY. Means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering; or the showing of the female breasts with less than a fully opaque covering of any part of the nipple.

REGULARLY FEATURES or REGULARLY SHOWN. Means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult entertainment establishment.

SEMINUDE or STATE OF SEMINUDITY. Means a state of dress in which opaque clothing covers not more than the genitals, pubic region and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER ESTABLISHMENT.

(a) Means a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur:

1. Two or more persons may congregate, associate or consort for the purpose of engaging in specified sexual activities; or
2. Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form.

(b) An establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized therapy, including but not limited to massage therapy, as regulated pursuant to R.C. § 4731.15, is not a ***SEXUAL ENCOUNTER ESTABLISHMENT.***

SPECIFIED ANATOMICAL AREAS. Means the cleft of the buttocks, anus, male or female genitals or the female breast.

SPECIFIED SEXUAL ACTIVITY. Means any of the following:

(a) Sex acts, normal or perverted or actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or

(b) Excretory functions as a part of or in connection with any of the activities described in division (a) of this definition.

(B) No person knowingly shall allow an individual, including but not limited to a patron, customer or employee, who is under 18 years of age on the premises of an adult entertainment establishment.

(C) No individual who is under 18 years of age knowingly shall show or give false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment.

(D) A person shall not be found guilty of a violation of division (B) of this section if the person raises as an affirmative defense and if the jury or, in a nonjury trial, the court finds the person has established by a preponderance of the evidence, all of the following.

(1) The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent or independent contractor of the adult entertainment establishment a driver's or commercial driver's license or an identification card issued under R.C. §§ 4507.50 and 4507.52 showing that the individual was then at least 18 years of age.

(2) The operator, employee, agent or independent contractor made a bona fide effort to ascertain the true age of the individual gaining entrance to the adult entertainment establishment by checking the identification presented, at the time of entrance, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way.

(3) The operator, employee, agent or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least 18 years of age.

(E) In any criminal action in which the affirmative defense described in division (D) of this section is raised, the Registrar of Motor Vehicles or the Deputy Registrar who issued a driver's or commercial driver's license or an identification card under R.C. §§ 4507.50 and 4507.52 shall be permitted to submit certified copies of the records, in the Registrar's or Deputy Registrar's possession, of the issuance of the license or identification card in question, in lieu of the testimony of the personnel of the Bureau of Motor Vehicles in the action.

(F) (1) Whoever violates division (B) of this section is guilty of permitting a juvenile on the premises of an adult entertainment establishment, a misdemeanor of the first degree. Each day a person violates this division (F) constitutes a separate offense.

(2) Whoever violates division (C) of this section is guilty of use by a juvenile of false information to enter an adult entertainment establishment, a delinquent act that would be a misdemeanor of the fourth degree if committed by an adult.

(R.C. § 2907.39) (1985 Code, § 133.19)

§ 133.19 SEXUALLY ORIENTED BUSINESSES; ILLEGAL OPERATION AND ACTIVITY.

(A) As used in this section:

ADULT BOOKSTORE or ***ADULT VIDEO STORE***. Means a commercial establishment that has as a significant or substantial portion of its stock in trade or inventory in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

ADULT CABARET. Has the same meaning as in R.C. § 2907.39.

ADULT MOTION PICTURE THEATER. Means a commercial establishment where films, motion pictures, videocassettes, slides or similar photographic reproductions that are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five individuals for any form of consideration.

CHARACTERIZED BY. Describing the essential character or quality of an item.

EMPLOYEE. Means any individual who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

NUDE. Has the same meaning as in R.C. § 2907.39.

NUDITY. Has the same meaning as in R.C. § 2907.39.

OPERATOR. Means any individual on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises.

PATRON. Means any individual on the premises of a sexually oriented business except for any of the following:

(a) An operator or an employee of the sexually oriented business;

(b) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises; or

(c) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee's or volunteer's duties as a public employee or volunteer.

PREMISES. Means the real property on which the sexually oriented business is located and all appurtenances to the real property, including, but not limited, to the sexually oriented business, the grounds, private walkways and parking lots or parking garages adjacent to the real property under the ownership, control or supervision of the owner or operator of the sexually oriented business.

REGULARLY. Means consistently or repeatedly.

SEMINUDE. Has the same meaning as in R.C. § 2907.39.

SEXUAL DEVICE. Means any three-dimensional object designed and marketed for stimulation of the male or female human genitals or anus or female breasts or for sadomasochistic use or abuse of oneself or others, including but not limited to dildos, vibrators, penis pumps and physical representations of the human genital organs, but not including devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP. Means a commercial establishment that regularly features sexual devices, but not including any pharmacy, drug store, medical clinic or establishment primarily dedicated to providing medical or healthcare products or services, and not including any commercial establishment that does not restrict access to its premises by reason of age.

SEXUAL ENCOUNTER CENTER. Means a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between individuals of the opposite sex when one or more of the individuals is nude or seminude.

SEXUALLY ORIENTED BUSINESS. Means an adult bookstore, adult video store, adult cabaret, adult motion picture theater, sexual device shop or sexual encounter center, but does not include a business solely by reason of its showing, selling or renting materials that may depict sex.

SPECIFIED ANATOMICAL AREAS. Includes human genitals, pubic region and buttocks and the human female breast below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITY. Means sexual intercourse, oral copulation, masturbation or sodomy or excretory functions as a part of or in connection with any of these activities.

STATE OF NUDITY. Has the same meaning as in R.C. § 2907.39.

STATE OF SEMINUDITY. Has the same meaning as in R.C. § 2907.39.

(B) No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business that holds a liquor permit pursuant to R.C.

Chapter 4303 may remain open until the hour specified in that permit if it does not conduct, offer or allow sexually oriented entertainment activity in which the performers appear nude.

(C) (1) No patron who is not a member of the employee's immediate family shall knowingly touch any employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or seminude.

(2) No employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.

(D) Whoever violates division (B) of this section is guilty of illegally operating a sexually oriented business, a misdemeanor of the first degree.

(E) Whoever violates division (C) of this section is guilty of illegal sexually oriented activity in a sexually oriented business. If the offender touches a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the first degree. If the offender does not touch a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the fourth degree.

(R.C. § 2907.40) (1985 Code, § 133.20)

Statutory reference:

State indemnification for certain municipal liability stemming from local adult business regulations, see R.C. § 715.55

§ 133.99 SENTENCING FOR SEXUALLY ORIENTED OFFENSES; SEXUAL PREDATORS; REGISTRATION.

(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in R.C. § 2901.07(D)(1) to (D)(3), the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of R.C. § 2950.03, and shall require the offender to submit to a DNA specimen collection procedure pursuant to R.C. § 2901.07.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under R.C. §§ 2950.04, 2950.041, 2950.05 and

2950.06, and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under R.C. § 2950.03(A)(2), the judge shall perform the duties specified in that section or, if required under R.C. § 2950.03(A)(6), the judge shall perform the duties specified in that division.

(R.C. § 2929.23) (1985 Code, § 133.99)

Cross-reference:

Sentencing generally, see Chapter 130

CHAPTER 134: GAMBLING

Section

- 134.01 Definitions
- 134.02 Prohibitions against gambling
- 134.03 Operating a gambling house
- 134.04 Public gaming
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- 134.12 Instant bingo other than at bingo sessions
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- 134.14 Skill-based amusement machines; prohibited conduct

§ 134.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BET. The hazarding of anything of value upon the result of an event, undertaking or contingency, but does not include a bona fide business risk.

BINGO. Either of the following:

(1) A game with all of the following characteristics:

(a) The participants use bingo cards or sheets, including paper formats and electronic representation or image formats, that are divided into 25 spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space;

(b) The participants cover the spaces on the bingo cards or sheets that correspond to combinations of letters and numbers that are announced by a bingo game operator;

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that a bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains 75 objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the 75 possible combinations of a letter and a number that can appear on the bingo cards or sheets; and

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers, as described in division (1)(c) of this definition, that a predetermined and pre-announced pattern of spaces has been covered on a bingo card or sheet being used by the participant.

(2) Instant bingo, punch boards and raffles.

BINGO GAME OPERATOR. Any person, except security personnel, who performs work or labor at the site of bingo including but not limited to collecting money from participants, handing out bingo cards or sheets or objects to cover spaces on bingo cards or sheets, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on bingo cards or sheets, calling out the combinations of letters and numbers, distributing prizes, selling or redeeming instant bingo tickets or cards, supervising the operation of a punch board, selling raffle tickets, selecting raffle tickets from a receptacle and announcing the winning numbers in a raffle, and preparing, selling, and serving food or beverages.

BINGO SESSION. A period that includes both of the following:

(1) Not to exceed five continuous hours for the conduct of one or more games described in division (1) of the definition of “bingo” in this section, instant bingo and seal cards; and

(2) A period for the conduct of instant bingo and seal cards for not more than two hours before and not more than two hours after the period described in division (1) of this definition.

BINGO SUPPLIES. Bingo cards or sheets; instant bingo tickets or cards; electronic bingo aids; raffle tickets; punch boards; seal cards; instant bingo ticket dispensers; and devices for selecting or displaying the combination of bingo letters and numbers or raffle tickets. Items that are “bingo supplies” are not gambling devices if sold or otherwise provided, and used, in accordance with this chapter or R.C. Chapter 2915. For purposes of this chapter, “bingo supplies” are not to be considered equipment used to conduct a bingo game.

BOOKMAKING. The business of receiving or paying off bets.

CHAMBER OF COMMERCE. Any organization of individuals, professionals, and businesses that has the purpose to advance the commercial, financial, industrial and civic interests of the community and that is, and has received from the Internal Revenue Service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(6).

CHARITABLE BINGO GAME. Any bingo game described in divisions (1) or (2) of the definition of “bingo” in this section that is conducted by a charitable organization that has obtained a license pursuant to R.C. § 2915.08 and the proceeds of which are used for a charitable purpose.

CHARITABLE INSTANT BINGO ORGANIZATION. An organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3) and is a charitable organization as defined in this section. The term does not include a charitable organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3) and that is created by a veteran’s organization, a fraternal organization, or a sporting organization in regards to bingo conducted or assisted by a veteran’s organization, a fraternal organization, or a sporting organization pursuant to R.C. § 2915.13, or any substantially equivalent municipal ordinance.

CHARITABLE ORGANIZATION.

(1) Except as otherwise provided in this chapter, “charitable organization” means either of the following:

(a) An organization that is and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3); or

(b) A volunteer rescue service organization, volunteer firefighter’s organization, veteran’s organization, fraternal organization, or sporting organization that is exempt from federal income taxation under IRC §§ 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10) or 501(c)(19).

(2) To qualify as a charitable organization, an organization shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under R.C. § 2915.08 or the conducting of any game of chance as provided in R.C. § 2915.02(D), or a substantially equivalent municipal ordinance.

CHARITABLE PURPOSE. Means that the net profit of bingo, other than instant bingo, is used by, or is given, donated, or otherwise transferred to, any of the following:

(1) Any organization that is described in IRC §§ 509(a)(1), 509(a)(2), or 509(a)(3) and is either a governmental unit or an organization that is tax exempt under IRC § 501(a) and described in IRC § 501(c)(3);

(2) A veteran’s organization that is a post, chapter, or organization of veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter, or organization organized in the United States or any of its possessions, at least 75% of the members of which are veterans and substantially all of the other members of which are individuals who are spouses, widows, or widowers of veterans, or such individuals, provided that no part of the net earnings of such post, chapter, or organization inures to the benefit of any private shareholder or individual, and further provided that the net profit is used by the post, chapter, or organization for the charitable purposes set forth in R.C. § 5739.02(B)(12), is used for awarding scholarships to or for attendance at an institution mentioned in

that division of the Ohio Revised Code, is donated to a governmental agency, or is used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups, or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief;

(3) A fraternal organization that has been in continuous existence in this state for 15 years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if contributions for such use would qualify as a deductible charitable contribution under IRC § 170; or

(4) A volunteer firefighter's organization that uses the net profit for the purposes set forth in the definition of "volunteer firefighter's organization" in this section.

COMMUNITY ACTION AGENCY. Has the same meaning as in R.C. § 122.66.

CONDUCT. To back, promote, organize, manage, carry on, sponsor or prepare for the operation of bingo or a game of chance, a scheme of chance, or a sweepstakes.

DEAL OF INSTANT BINGO TICKETS. A single game of instant bingo tickets all with the same serial number.

DISTRIBUTOR. Any person who purchases or obtains bingo supplies and who does either of the following:

(1) Sells, offers for sale, or otherwise provides or offers to provide the bingo supplies to another person for use in this state; or

(2) Modifies, converts, adds to, or removes parts from the bingo supplies to further their promotion or sale for use in this state.

ELECTRONIC BINGO AID.

(1) An electronic device used by a participant to monitor bingo cards or sheets purchased at the time and place of a bingo session and that does all of the following:

(a) It provides a means for a participant to input numbers and letters announced by a bingo caller;

(b) It compares the numbers and letters entered by the participant to the bingo faces previously stored in the memory of the device; and

(c) It identifies a winning bingo pattern.

(2) The term does not include any device into which a coin, currency, token or an equivalent is inserted to activate play.

EXPENSES. The reasonable amount of gross profit actually expended for all of the following:

- (1) The purchase or lease of bingo supplies;
- (2) The annual license fee required under R.C. § 2915.08;
- (3) Bank fees and service charges for a bingo session or game account described in R.C. § 2915.10;
- (4) Audits and accounting services;
- (5) Safes;
- (6) Cash registers;
- (7) Hiring security personnel;
- (8) Advertising bingo;
- (9) Renting premises in which to conduct a bingo session;
- (10) Tables and chairs;
- (11) Expenses for maintaining and operating a charitable organization's facilities, including but not limited to a post home, club house, lounge, tavern or canteen and any grounds attached to the post home, club house, lounge, tavern or canteen;
- (12) Payment of real property taxes and assessments that are levied on a premises on which bingo is conducted; and
- (13) Any other product or service directly related to the conduct of bingo that is authorized in rules adopted by the Attorney General under R.C. § 2915.08(B)(1).

FRATERNAL ORGANIZATION. Any society, order, state headquarters or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members.

GAMBLING DEVICE. Any of the following:

- (1) A book, totalizer or other equipment used for recording bets;
- (2) A ticket, token or other device representing a chance, share, or interest in a scheme of chance or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus or paraphernalia specially designed for gambling purposes; and

(5) Bingo supplies sold or otherwise provided, or used, in violation of this chapter or R.C. Chapter 2915.

GAMBLING OFFENSE. Any of the following:

(1) A violation of R.C. § 2915.02, 2915.03, 2915.04, 2915.05, 2915.06, 2915.07, 2915.08, 2915.081, 2915.082, 2915.09, 2915.091, 2915.092, 2915.10 or 2915.11;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or of the United States substantially equivalent to any section listed in division (1) of this definition or a violation of R.C. § 2915.06 as it existed prior to July 1, 1996;

(3) An offense under an existing or former municipal ordinance or law of this or any other state or of the United States, of which gambling is an element; or

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under division (1), (2), or (3) of this definition.

GAME FLARE. The board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information for the game:

(1) The name of the game;

(2) The manufacturer's name or distinctive logo;

(3) The form number;

(4) The ticket count;

(5) The prize structure, including the number of winning instant bingo tickets by denomination and the respective winning symbol or number combinations for the winning instant bingo tickets;

(6) The cost per play; and

(7) The serial number of the game.

GAME OF CHANCE. Poker, craps, roulette or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

GAME OF CHANCE CONDUCTED FOR PROFIT. Any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

GROSS ANNUAL REVENUES. The annual gross receipts derived from the conduct of bingo described in division (1) of the definition of “bingo” in this section plus the annual net profit derived from the conduct of bingo described in division (2) of the definition of “bingo” in this section.

GROSS PROFIT. Gross receipts minus the amount actually expended for the payment of prize awards.

GROSS RECEIPTS. All money or assets, including admission fees, that a person receives from bingo without the deduction of any amounts for prizes paid out or for the expenses of conducting bingo. The term does not include any money directly taken in from the sale of food or beverages by a charitable organization conducting bingo, or by a bona fide auxiliary unit or society of a charitable organization conducting bingo, provided all of the following apply:

- (1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to conducting bingo;
- (2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage; and
- (3) The food and beverages are sold at customary and reasonable prices.

HISTORIC RAILROAD. All or a portion of the tracks and right-of-way of a railroad that was owned and operated by a for profit common carrier in this state at any time prior to January 1, 1950.

INSTANT BINGO. A form of bingo that shall use folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners, and may also include games in which some winners are determined by the random selection of one or more bingo numbers by the use of a seal card or bingo blower. In all “instant bingo” the prize amount and structure shall be predetermined. The term does not include any device that is activated by the insertion of a coin, currency, token, or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols, or characters in winning or losing combinations.

INSTANT BINGO TICKET DISPENSER. A mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed and that has the following characteristics:

- (1) It is activated upon the insertion of United States currency;
- (2) It performs no gaming functions;
- (3) It does not contain a video display monitor or generate noise;

(4) It is not capable of displaying any numbers, letters, symbols, or characters in winning or losing combinations;

(5) It does not simulate or display rolling or spinning reels;

(6) It is incapable of determining whether a dispensed bingo ticket or card is a winning or non-winning ticket or card and requires a winning ticket or card to be paid by a bingo game operator;

(7) It may provide accounting and security features to aid in accounting for the instant bingo tickets or cards it dispenses; and

(8) It is not part of an electronic network and is not interactive.

INTERNAL REVENUE CODE (IRC). The Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. §§ 1 et seq., as now or hereafter amended.

MANUFACTURER. Any person who assembles completed bingo supplies from raw materials, other items, or subparts or who modifies, converts, adds to, or removes parts from bingo supplies to further their promotion or sale.

MERCHANDISE PRIZE. Any item of value, but shall not include any of the following:

(1) Cash, gift cards, or any equivalent thereof;

(2) Plays on games of chance, state lottery tickets, bingo or instant bingo;

(3) Firearms, tobacco, or alcoholic beverages; or

(4) A redeemable voucher that is redeemable for any of the items listed in division (1), (2), or (3) of this definition.

NET PROFIT. Gross profit minus expenses.

NET PROFIT FROM THE PROCEEDS OF THE SALE OF INSTANT BINGO. Gross profit minus the ordinary, necessary, and reasonable expense expended for the purchase of instant bingo supplies, and, in the case of instant bingo conducted by a veteran's, fraternal, or sporting organization, minus the payment by that organization of real property taxes and assessments levied on a premises on which instant bingo is conducted.

PARTICIPANT. Any person who plays bingo.

PERSON. Has the same meaning as in R.C. § 1.59 and includes any firm or any other legal entity, however organized.

POOL NOT CONDUCTED FOR PROFIT. A scheme in which a participant gives a valuable consideration for a chance to win a prize and the total amount of consideration wagered is distributed to a participant or participants.

PUNCH BOARD. A board containing a number of holes or receptacles of uniform size in which are placed, mechanically and randomly, serially numbered slips of paper that may be punched or drawn from the hole or receptacle when used in conjunction with instant bingo. A player may punch or draw the numbered slips of paper from the holes or receptacles and obtain the prize established for the game if the number drawn corresponds to a winning number or, if the punch board includes the use of a seal card, a potential winning number.

RAFFLE. A form of bingo in which the one or more prizes are won by one or more persons who have purchased a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle. The term does not include the drawing of a ticket stub or other detachable section of a ticket purchased to attend a professional sporting event if both of the following apply:

- (1) The ticket stub or other detachable section is used to select the winner of a free prize given away at the professional sporting event; and
- (2) The cost of the ticket is the same as the cost of a ticket to the professional sporting event on days when no free prize is given away.

REDEEMABLE VOUCHER. Any ticket, token, coupon, receipt or other noncash representation of value.

RELIGIOUS ORGANIZATION. Any church, body of communicants, or group that is not organized or operated for profit and that gathers in common membership for regular worship and religious observances.

REVOKE. To void permanently all rights and privileges of the holder of a license issued under R.C. § 2915.08, 2915.081, or 2915.082 or a charitable gaming license issued by another jurisdiction.

SCHEME OF CHANCE.

(1) A slot machine unless authorized under R.C. Chapter 3772, lottery unless authorized under R.C. Chapter 3770, numbers game, pool conducted for profit or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. "Scheme of chance" includes the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize. Valuable consideration is deemed to be paid for a chance to win a prize in the following instances:

- (a) Less than 50% of the goods or services sold by a scheme of chance operator in exchange for game entries are used or redeemed by participants at any one location;
- (b) Less than 50% of participants who purchase goods or services at any one location do not accept, use, or redeem the goods or services sold or purportedly sold;
- (c) More than 50% of prizes at any one location are revealed to participants through an electronic device simulating a game of chance or a “casino game” as defined in R.C. § 3772.01;
- (d) The good or service sold by a scheme of chance operator in exchange for a game entry cannot be used or redeemed in the manner advertised;
- (e) A participant pays more than fair market value for goods or services offered by a scheme of chance operator in order to receive one or more game entries;
- (f) A participant may use the electronic device to purchase additional game entries;
- (g) A participant may purchase additional game entries by using points or credits won as prizes while using the electronic device;
- (h) A scheme of chance operator pays out in prize money more than 20% of the gross revenue received at one location; or
- (i) A participant makes a purchase or exchange in order to obtain any good or service that may be used to facilitate play on the electronic device.

(2) As used in this division, “electronic device” means a mechanical, video, digital, or electronic machine or device that is capable of displaying information on a screen or other mechanism and that is owned, leased, or otherwise possessed by any person conducting a scheme of chance, or by that person’s partners, affiliates, subsidiaries, or contractors.

SEAL CARD. A form of instant bingo that uses instant bingo tickets in conjunction with a board or placard that contains one or more seals that, when removed or opened, reveal predesignated winning numbers, letters or symbols.

SECURITY PERSONNEL. Includes any person who either is a Sheriff, deputy sheriff, Marshal, deputy marshal, township constable or member of an organized police department of a municipal corporation or has successfully completed a peace officer’s training course pursuant to R.C. §§ 109.71 through 109.79 and who is hired to provide security for the premises on which bingo is conducted.

SKILL-BASED AMUSEMENT MACHINE.

(1) (a) A mechanical, video, digital or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

1. The wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed \$10;
2. Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than \$10;
3. Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than \$10 times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and
4. Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

(b) A card for the purchase of gasoline is a redeemable voucher for purposes of division (1) of this definition even if the skill-based amusement machine for the play of which the card is awarded is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine.

(2) A device shall not be considered a skill-based amusement machine and shall be considered a slot machine if it pays cash or one or more of the following apply:

(a) The ability of a player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of players playing the game;

(b) Any reward of redeemable vouchers is not based solely on the player achieving the object of the game or the player's score;

(c) The outcome of the game, or the value of the redeemable voucher or merchandise prize awarded for winning the game, can be controlled by a source other than any player playing the game;

(d) The success of any player is or may be determined by a chance event that cannot be altered by player actions;

(e) The ability of any player to succeed at the game is determined by game features not visible or known to the player; and/or

(f) The ability of the player to succeed at the game is impacted by the exercise of a skill that no reasonable player could exercise.

(3) All of the following apply to any machine that is operated as described in division (1) of this definition.

(a) As used in this definition of "skill-based amusement machine", GAME and PLAY mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single game, play,

contest, competition, or tournament may be awarded redeemable vouchers or merchandise prizes based on the results of play.

(b) Advance play for a single game, play, contest, competition, or tournament participation may be purchased. The cost of the contest, competition, or tournament participation may be greater than a single non-contest, competition, or tournament play.

(c) To the extent that the machine is used in a contest, competition, or tournament, that contest, competition, or tournament has a defined starting and ending date and is open to participants in competition for scoring and ranking results toward the awarding of redeemable vouchers or merchandise prizes that are stated prior to the start of the contest, competition, or tournament.

(4) For purposes of division (1) of this definition, the mere presence of a device, such as a pin-setting, ball-releasing, or scoring mechanism, that does not contribute to or affect the outcome of the play of the game does not make the device a skill-based amusement machine.

SLOT MACHINE.

(1) Either of the following:

(a) Any mechanical, electronic, video or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain; or

(b) Any mechanical, electronic, video or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.

(2) The term does not include a skill-based amusement machine or an instant bingo ticket dispenser.

SPORTING ORGANIZATION. A hunting, fishing or trapping organization, other than a college or high school fraternity or sorority, that is not organized for profit, that is affiliated with a state or national sporting organization, including but not limited to the League of Ohio Sportsmen, and that has been in continuous existence in this state for a period of three years.

SUSPEND. To interrupt temporarily all rights and privileges of the holder of a license issued under R.C. § 2915.08, 2915.081 or 2915.082 or a charitable gaming license issued by another jurisdiction.

SWEEPSTAKES. Any game, contest, advertising scheme or plan, or other promotion where consideration is not required for a person to enter to win or become eligible to receive any prize, the determination of which is based upon chance. "Sweepstakes" does not include bingo as authorized under R.C. Chapter 2915, pari-mutuel wagering as authorized by R.C. Chapter 3769, lotteries conducted by the State Lottery Commission as authorized by R.C. Chapter 3770, and casino gaming as authorized by R.C. Chapter 3772.

SWEEPSTAKES TERMINAL DEVICE.

(1) A mechanical, video, digital or electronic machine or device that is owned, leased, or otherwise possessed by any person conducting a sweepstakes, or by that person's partners, affiliates, subsidiaries, or contractors, that is intended to be used by a sweepstakes participant, and that is capable of displaying information on a screen or other mechanism. A device is a sweepstakes terminal device if any of the following apply:

(a) The device uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries;

(b) The device utilizes software such that the simulated game influences or determines the winning of or value of the prize;

(c) The device selects prizes from a predetermined finite pool of entries;

(d) The device utilizes a mechanism that reveals the content of a predetermined sweepstakes entry;

(e) The device predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed;

(f) The device utilizes software to create a game result;

(g) The device reveals the prize incrementally, even though the device does not influence the awarding of the prize or the value of any prize awarded; or

(h) The device determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) As used in this definition and in § 134.02:

ENTER. The act by which a person becomes eligible to receive any prize offered in a sweepstakes.

ENTRY. One event from the initial activation of the sweepstakes terminal device until all the sweepstakes prize results from that activation are revealed.

PRIZE. Any gift, award, gratuity, good, service, credit, reward, or any other thing of value that may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

SWEEPSTAKES TERMINAL DEVICE FACILITY. Any location in this state where a sweepstakes terminal device is provided to a sweepstakes participant, except as provided in § 134.02(G) and R.C. § 2915.02(G).

VETERAN'S ORGANIZATION. Any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit is incorporated as a nonprofit corporation and either has received a letter from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association. As used in this definition, **NATIONAL VETERAN'S ASSOCIATION** means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States Congress or has a national dues-paying membership of at least 5,000 persons.

VOLUNTEER FIREFIGHTER'S ORGANIZATION. Any organization of volunteer firefighters, as defined in R.C. § 146.01, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company and that is recognized or ratified by a county, municipal corporation, or township.

VOLUNTEER RESCUE SERVICE ORGANIZATION. Any organization of volunteers organized to function as an emergency medical service organization, as defined in R.C. § 4765.01.

YOUTH ATHLETIC ORGANIZATION. Any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 21 years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association.

YOUTH ATHLETIC PARK ORGANIZATION. Any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates, and maintains playing fields that satisfy both of the following:

(a) The playing fields are used at least 100 days per year for athletic activities by one or more organizations, not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 18 years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association; and

(b) The playing fields are not used for any profit-making activity at any time during the year.

(2) It uses the proceeds of bingo it conducts exclusively for the operation, maintenance, and improvement of its playing fields of the type described in division (1) of this definition.

(R.C. § 2915.01) (1985 Code, § 134.01)

§ 134.02 PROHIBITIONS AGAINST GAMBLING.

(A) No person shall do any of the following:

(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;

(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 R.C. § 2915.01(VV)(1), (VV)(2), (VV)(3), or (VV)(4) 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 \$10 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 \$10.

(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 R.C. § 2915.02(F); or

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

(B) For purposes of division (A)(1) of this section, a person facilitates bookmaking if the person in any way knowingly aids an illegal bookmaking operation, including, without limitation, placing a bet with a person engaged in or facilitating illegal bookmaking. For purposes of division (A)(2) of this section, a person facilitates a game of chance conducted for profit or a scheme of chance if the person in any way knowingly aids in the conduct or operation of any such game or scheme, including, without limitation, playing any such game or scheme.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(D) This section does not apply to any of the following:

(1) Games of chance, if all of the following apply:

(a) The games of chance are not craps for money or roulette for money;

(b) The games of chance are conducted by a charitable organization that is and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3);

(c) The games of chance are conducted at festivals of the charitable organization that are conducted not more than a total of five days a calendar year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance. A charitable organization shall not lease premises from a veteran's or fraternal organization to conduct a festival described in this division, if the veteran's or fraternal organization already has leased the premises 12 times during the preceding year to charitable organizations for that purpose. If a charitable organization leases premises from a veteran's or fraternal organization to conduct a festival described in this division, the charitable organization shall not pay a rental rate for the premises per day of the festival that exceeds the rental rate per bingo session that a charitable organization may pay under R.C. § 2915.09(B)(1) or a substantially equivalent municipal ordinance when it leases premises from another charitable organization to conduct bingo games;

(d) All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, given, donated or otherwise transferred to any organization that is described in IRC § 509(a)(1), (a)(2), or (a)(3) and is either a governmental unit or an organization that is tax exempt under IRC § 501(a) and described in IRC § 501(c)(3); and

(e) The games of chance are not conducted during or within ten hours of a bingo game conducted for amusement purposes only pursuant to R.C. § 2915.12 or a substantially equivalent municipal ordinance. No person shall receive any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance.

(2) Any tag fishing tournament, as defined in R.C. § 1531.01, operated under a permit issued under R.C. § 1533.92.

(3) Bingo conducted by a charitable organization that holds a license issued under R.C. § 2915.08.

(E) Division (D) of this section shall not be construed to authorize the sale, lease, or other temporary or permanent transfer of the right to conduct games of chance, as granted by that division, by any charitable organization that is granted that right.

(F) Any person desiring to conduct, or participate in the conduct of, a sweepstakes with the use of a sweepstakes terminal device at a sweepstakes terminal device facility shall first register with the Office of the Attorney General and obtain an annual certificate of registration by providing a filing fee of \$200 and all information as required by rule adopted under R.C. § 2915.02(H). Not later than the tenth day of each month, each sweepstakes terminal device operator shall file a sweepstakes terminal device monthly report with the Attorney General and provide a filing fee of \$50 and all information required by rule adopted under R.C. § 2915.02(H). All information provided to the Attorney General under this division shall be available to law enforcement upon request.

(G) (1) A person may apply to the Attorney General, on a form prescribed by the Attorney General, for a certificate of compliance that the person is not operating a sweepstakes terminal device facility. The form shall require the person to include the address of the business location where sweepstakes terminal devices will be used and to make the following certifications:

(a) That the person will not use more than two sweepstakes terminal devices at the business location;

(b) That the retail value of sweepstakes prizes to be awarded at the business location using sweepstakes terminal devices during a reporting period will be less than 3% of the gross revenue received at the business location during the reporting period;

(c) That no other form of gaming except lottery ticket sales as authorized under R.C. Chapter 3770 will be conducted at the business location or in an adjoining area of the business location;

(d) That any sweepstakes terminal device at the business location will not allow any deposit of any money, coin, or token, or the use of any credit card, debit card, prepaid card, or any other method of similar payment to be used, directly or indirectly, to participate in a sweepstakes;

(e) That notification of any prize will not take place on the same day as a participant's sweepstakes entry; and

(f) That the person consents to provide any other information to the Attorney General as required by rule adopted under R.C. § 2915.02(H).

(2) The filing fee for a certificate of compliance is \$250. The Attorney General may charge up to an additional \$250 for reasonable expenses resulting from any investigation related to an application for a certificate of compliance.

(3) A certificate of compliance is effective for one year. The certificate holder may reapply for a certificate of compliance. A person issued a certificate of compliance shall file semiannual reports with the Attorney General stating the number of sweepstakes terminal devices at the business location and that

the retail value of prizes awarded at the business location using sweepstakes terminal devices is less than 3% of the gross revenue received at the business location.

(H) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of any gambling offense, gambling is a felony to be prosecuted under appropriate state law. Notwithstanding this division, failing to file a sweepstakes terminal device monthly report as required by division (F) of this section or the semiannual report required by division (G) of this section is a misdemeanor of the first degree.

(R.C. § 2915.02(A) - (G), (K)) (1985 Code, § 134.02)

§ 134.03 OPERATING A GAMBLING HOUSE.

(A) No person, being the owner or lessee, or having custody, control or supervision of premises, shall:

(1) Use or occupy the premises for gambling in violation of R.C. § 2915.02 or a substantially equivalent municipal ordinance; or

(2) Recklessly permit the premises to be used or occupied for gambling in violation of R.C. § 2915.02 or a substantially equivalent municipal ordinance.

(B) Whoever violates division (A) of this section is guilty of operating a gambling house, a misdemeanor of the first degree. If the offender previously has been convicted of a gambling offense, operating a gambling house is a felony to be prosecuted under appropriate state law.

(C) Premises used or occupied in violation of this section constitute a nuisance subject to abatement under R.C. Chapter 3767.

(R.C. § 2915.03) (1985 Code, § 134.03) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 134.04 PUBLIC GAMING.

(A) No person, while at a hotel, restaurant, tavern, store, arena, hall or other place of public accommodation, business, amusement or resort shall make a bet or play any game of chance or scheme of chance.

(B) No person, being the owner or lessee, or having custody, control or supervision of a hotel, restaurant, tavern, store, arena, hall or other place of public accommodation, business, amusement or resort shall recklessly permit those premises to be used or occupied in violation of division (A) of this section.

(C) Divisions (A) and (B) of this section do not prohibit conduct in connection with gambling expressly permitted by law.

(D) Whoever violates this section is guilty of public gaming. Except as otherwise provided in this division (D), public gaming is a minor misdemeanor. If the offender previously has been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree.

(E) Premises used or occupied in violation of division (B) of this section constitute a nuisance subject to abatement under R.C. Chapter 3767.

(R.C. § 2915.04) (1985 Code, § 134.04) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 134.05 CHEATING.

(A) No person, with purpose to defraud or knowing that the person is facilitating a fraud, shall engage in conduct designed to corrupt the outcome of any of the following:

- (1) The subject of a bet;
- (2) A contest of knowledge, skill or endurance that is not an athletic or sporting event;
- (3) A scheme or game of chance; or
- (4) Bingo.

(B) No person shall knowingly do any of the following:

- (1) Offer, give, solicit or accept anything of value to corrupt the outcome of an athletic or sporting event; or
- (2) Engage in conduct designed to corrupt the outcome of an athletic or sporting event.

(C) (1) Whoever violates division (A) of this section is guilty of cheating. Except as otherwise provided in this division (C), cheating is a misdemeanor of the first degree. If the potential gain from the cheating is \$1,000 or more or if the offender previously has been convicted of any gambling offense or of any theft offense as defined in R.C. § 2913.01, cheating is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of corrupting sports. Corrupting sports is a felony to be prosecuted under appropriate state law.

(R.C. § 2915.05) (1985 Code, § 134.05) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 134.06 REGULATIONS CONCERNING OPERATION.

(A) No charitable organization that conducts bingo shall fail to do any of the following:

(1) Own all of the equipment used to conduct bingo or lease that equipment from a charitable organization that is licensed to conduct bingo, or from the landlord of a premises where bingo is conducted, for a rental rate that is not more than is customary and reasonable for that equipment;

(2) Except as otherwise provided in division (A)(3) of this section, use all of the gross receipts from bingo for paying prizes, for reimbursement of expenses for or for renting premises in which to conduct bingo, for reimbursement of expenses for or for purchasing or leasing bingo supplies used in conducting bingo, for reimbursement of expenses for or for hiring security personnel, for reimbursement of expenses for or for advertising bingo, or for reimbursement of other expenses or for other expenses listed in the definition for “expenses” in R.C. § 2915.01, provided that the amount of the receipts so spent is not more than is customary and reasonable for a similar purchase, lease, hiring, advertising or expense. If the building in which bingo is conducted is owned by the charitable organization conducting bingo and the bingo conducted includes a form of bingo described in division (1) of the definition of “bingo” in R.C. § 2915.01, the charitable organization may deduct from the total amount of the gross receipts from each session a sum equal to the lesser of \$600 or 45% of the gross receipts from the bingo described in that division as consideration for the use of the premises; or

(3) Use, or give, donate or otherwise transfer, all of the net profit derived from bingo, other than instant bingo, for a charitable purpose listed in its license application and described in the definition for “charitable purpose” in R.C. § 2915.01, or distribute all of the net profit from the proceeds of the sale of instant bingo as stated in its license application and in accordance with R.C. § 2915.101.

(B) No charitable organization that conducts a bingo game described in division (1) of the definition of “bingo” in R.C. § 2915.01 shall fail to do any of the following:

(1) Conduct the bingo game on premises that are owned by the charitable organization, on premises that are owned by another charitable organization and leased from that charitable organization for a rental rate not in excess of the lesser of \$650 per bingo session or 45% of the gross receipts of the bingo session, on premises that are leased from a person other than a charitable organization for a rental rate that is not more than is customary and reasonable for premises that are similar in location, size and quality but not in excess of \$450 per bingo session, or on premises that are owned by a person other than a charitable organization, that are leased from that person by another charitable organization, and that are subleased from that other charitable organization by the charitable organization for a rental rate not in excess of \$450 per bingo session. No charitable organization is required to pay property taxes or assessments on premises that the charitable organization leases from another person to conduct bingo sessions. If the charitable organization leases from a person other than a charitable organization the premises on which it conducts bingo sessions, the lessor of the premises shall provide only the premises to the organization and shall not provide the organization with bingo game operators, security personnel, concessions or concession operators, bingo supplies or any other type of service. A charitable organization shall not lease or sublease premises that it owns or leases to more than three other charitable organizations per calendar week for conducting bingo sessions on the premises. A person that is not a charitable organization shall not lease premises that it owns, leases or otherwise is empowered to lease to more than three charitable organizations per calendar week for conducting bingo sessions on the premises. In no case shall more than nine bingo sessions be conducted on any premises in any calendar week;

(2) Display its license conspicuously at the premises where the bingo session is conducted; or

(3) Conduct the bingo session in accordance with division (1) of the definition of “bingo” in R.C. § 2915.01.

(C) No charitable organization that conducts a bingo game described in division (1) of the definition of “bingo” in R.C. § 2915.01 shall do any of the following:

(1) Pay any compensation to a bingo game operator for operating a bingo session that is conducted by the charitable organization or for preparing, selling or serving food or beverages at the site of the bingo session, permit any auxiliary unit or society of the charitable organization to pay compensation to any bingo game operator who prepares, sells or serves food or beverages at a bingo session conducted by the charitable organization, or permit any auxiliary unit or society of the charitable organization to prepare, sell or serve food or beverages at a bingo session conducted by the charitable organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell or serve the food or beverages;

(2) Pay consulting fees to any person for any services performed in relation to the bingo session;

(3) Pay concession fees to any person who provides refreshments to the participants in the bingo session;

(4) Except as otherwise provided in division (C)(4) of this section, conduct more than three bingo sessions in any seven-day period. A volunteer firefighter’s organization or a volunteer rescue service organization that conducts not more than five bingo sessions in a calendar year may conduct more than three bingo sessions in a seven-day period after notifying the Attorney General when it will conduct the sessions;

(5) Pay out more than \$6,000 in prizes for bingo games described in R.C. § 2915.01(S)(1) during any bingo session that is conducted by the charitable organization. Prizes do not include awards from the conduct of instant bingo;

(6) Conduct a bingo session at any time during the eight-hour period between 2:00 a.m. and 10:00 a.m., at any time during, or within ten hours of, a bingo game conducted for amusement only pursuant to R.C. § 2915.12 or any substantially equivalent municipal ordinance, at any premises not specified on its license, or on any day of the week or during any time period not specified on its license. This division (C) does not prohibit the sale of instant bingo tickets beginning at 9:00 a.m. for a bingo session that begins at 10:00 a.m. If circumstances make it impractical for the charitable organization to conduct a bingo session at the premises, or on the day of the week or at the time specified on its license or if a charitable organization wants to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license, the charitable organization may apply in writing to the Attorney General for an amended license pursuant to R.C. § 2915.08(F). A charitable organization may apply twice in each calendar year for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its license. If the amended license is granted, the

organization may conduct bingo sessions at the premises, on the day of the week, and at the time specified on its amended license;

(7) Permit any person whom the charitable organization knows, or should have known, is under the age of 18 to work as a bingo game operator;

(8) Permit any person whom the charitable organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator;

(9) Permit the lessor of the premises on which the bingo session is conducted, if the lessor is not a charitable organization, to provide the charitable organization with bingo game operators, security personnel, concessions, bingo supplies or any other type of service;

(10) Purchase or lease bingo supplies from any person except a distributor issued a license under R.C. § 2915.081;

(11) (a) Use or permit the use of electronic bingo aids except under the following circumstances:

1. For any single participant, not more than 90 bingo faces can be played using an electronic bingo aid or aids;

2. The charitable organization shall provide a participant using an electronic bingo aid with corresponding paper bingo cards or sheets;

3. The total price of bingo faces played with an electronic bingo aid shall be equal to the total price of the same number of bingo faces played with a paper bingo card or sheet sold at the same bingo session but without an electronic bingo aid;

4. An electronic bingo aid cannot be part of an electronic network other than a network that includes only bingo aids and devices that are located on the premises at which the bingo is being conducted or be interactive with any device not located on the premises at which the bingo is being conducted;

5. An electronic bingo aid cannot be used to participate in bingo that is conducted at a location other than the location at which the bingo session is conducted and at which the electronic bingo aid is used; and

6. An electronic bingo aid cannot be used to provide for the input of numbers and letters announced by a bingo caller other than the bingo caller who physically calls the numbers and letters at the location at which the bingo session is conducted and at which the electronic bingo aid is used.

(b) The Attorney General may adopt rules in accordance with R.C. Chapter 119 that govern the use of electronic bingo aids. The rules may include a requirement that an electronic bingo aid

be capable of being audited by the Attorney General to verify the number of bingo cards or sheets played during each bingo session.

(12) Permit any person the charitable organization knows, or should have known, to be under 18 years of age to play bingo described in division (1) of the definition of “bingo” in R.C. § 2915.01.

(D) (1) Except as otherwise provided in division (D)(3) of this section, no charitable organization shall provide to a bingo game operator, and no bingo game operator shall receive or accept, any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo during a bingo session.

(2) Except as otherwise provided in division (D)(3) of this section, no charitable organization shall provide to a bingo game operator any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation, directly or indirectly regardless of the source, for conducting instant bingo other than at a bingo session at the site of instant bingo other than at a bingo session.

(3) Nothing in this division (D) of this section prohibits an employee of a fraternal organization, veteran’s organization or sporting organization from selling instant bingo tickets or cards to the organization’s members or invited guests, as long as no portion of the employee’s compensation is paid from any receipts of bingo.

(E) Notwithstanding division (B)(1) of this section, a charitable organization that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to another charitable organization or other charitable organizations for the conducting of bingo sessions so that more than two bingo sessions are conducted per calendar week on the premises, and a person that is not a charitable organization and that, prior to December 6, 1977, has entered into written agreements for the lease of premises it owns to charitable organizations for the conducting of more than two bingo sessions per calendar week on the premises, may continue to lease the premises to those charitable organizations, provided that no more than four sessions are conducted per calendar week, that the lessor organization or person has notified the Attorney General in writing of the organizations that will conduct the sessions and the days of the week and the times of the day on which the sessions will be conducted, that the initial lease entered into with each organization that will conduct the sessions was filed with the Attorney General prior to December 6, 1977, and that each organization that will conduct the sessions was issued a license to conduct bingo games by the Attorney General prior to December 6, 1977.

(F) This section does not prohibit a bingo licensed charitable organization or a game operator from giving any person an instant bingo ticket as a prize.

(G) Whoever violates division (A)(2) of this section is guilty of illegally conducting a bingo game, a felony to be prosecuted under appropriate state law. Except as otherwise provided in this division (G), whoever violates division (A)(1), (A)(3), (B)(1), (B)(2), (B)(3), (C)(1) through (C)(11) or (D) of this section is guilty of a minor misdemeanor. If the offender previously has been convicted of a violation of division (A)(1), (A)(3), (B)(1), (B)(2), (B)(3), (C)(1) through (C)(11) or (D) of this section, a violation of division (A)(1), (A)(3), (B)(1), (B)(2), (B)(3), (C)(1) through (C)(11) or (D) of this section is a

misdemeanor of the first degree. Whoever violates division (C)(12) of this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (C)(12) of this section, a violation of division (C)(12) of this section is a felony to be prosecuted under appropriate state law.

(R.C. § 2915.09) (1985 Code, § 134.06)

§ 134.07 RECORDS TO BE KEPT.

(A) No charitable organization that conducts bingo or a game of chance pursuant to R.C. § 2915.02(D), or any substantially equivalent municipal ordinance, shall fail to maintain the following records for at least three years from the date on which the bingo or game of chance is conducted:

(1) An itemized list of the gross receipts of each bingo session, each game of instant bingo by serial number, each raffle, each punch board game and each game of chance, and an itemized list of the gross profits of each game of instant bingo by serial number;

(2) An itemized list of all expenses, other than prizes, that are incurred in conducting bingo or instant bingo, the name of each person to whom the expenses are paid, and a receipt for all of the expenses;

(3) A list of all prizes awarded during each bingo session, each raffle, each punch board game and each game of chance conducted by the charitable organization, the total prizes awarded from each game of instant bingo by serial number, and the name, address and Social Security number of all persons who are winners of prizes of \$600 or more in value;

(4) An itemized list of the recipients of the net profit of bingo or game of chance, including the name and address of each recipient to whom the money is distributed, and if the organization uses the net profit of bingo, or the money or assets received from a game of chance, for any charitable or other purpose set forth in R.C. § 2915.01(V), R.C. § 2915.02(D) or R.C. § 2915.101, a list of each purpose and an itemized list of each expenditure for each purpose;

(5) The number of persons who participate in any bingo session or game of chance that is conducted by the charitable organization;

(6) A list of receipts from the sale of food and beverages by the charitable organization or one of its auxiliary units or societies, if the receipts were excluded from “gross receipts” under R.C. § 2915.01(T); and

(7) An itemized list of all expenses incurred at each bingo session, each raffle, each punch board game or each game of instant bingo conducted by the charitable organization in the sale of food and beverages by the charitable organization or by an auxiliary unit or society of the charitable organization, the name of each person to whom the expenses are paid, and a receipt for all of the expenses.

(B) A charitable organization shall keep the records that it is required to maintain pursuant to division (A) of this section at its principal place of business in this state or at its headquarters in this state and shall notify the Attorney General of the location at which those records are kept.

(C) The gross profit from each bingo session or game described in division (1) or (2) of the definition of “bingo” in R.C. § 2915.01 shall be deposited into a checking account devoted exclusively to the bingo session or game. Payments for allowable expenses incurred in conducting the bingo session or game and payments to recipients of some or all of the net profit of the bingo session or game shall be made only by checks or electronic fund transfers drawn on the bingo session or game account.

(D) Each charitable organization shall conduct and record an inventory of all of its bingo supplies as of the first day of November of each year.

(E) The Attorney General may adopt rules in accordance with R.C. Chapter 119 that establish standards of accounting, record keeping and reporting to ensure that gross receipts from bingo or games of chance are properly accounted for.

(F) A distributor shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing to another person bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name of the manufacturer from which the distributor purchased the bingo supplies and the date of the purchase;

(2) The name and address of the charitable organization or other distributor to which the bingo supplies were sold or otherwise provided;

(3) A description that clearly identifies the bingo supplies; and

(4) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each charitable organization.

(G) A manufacturer shall maintain, for a period of three years after the date of its sale or other provision, a record of each instance of its selling or otherwise providing bingo supplies for use in this state. The record shall include all of the following for each instance:

(1) The name and address of the distributor to whom the bingo supplies were sold or otherwise provided;

(2) A description that clearly identifies the bingo supplies, including serial numbers; and

(3) Invoices that include the nonrepeating serial numbers of all paper bingo cards and sheets and all instant bingo deals sold or otherwise provided to each distributor.

(H) (1) The Attorney General or any law enforcement agency may do all of the following:

(a) Investigate any charitable organization or any officer, agent, trustee, member or employee of the organization;

(b) Examine the accounts and records of the organization;

(c) Conduct inspections, audits and observations of bingo or games of chance;

(d) Conduct inspections of the premises where bingo or games of chance are conducted;
and

(e) Take any other necessary and reasonable action to determine if a violation of any provision of this chapter or R.C. Chapter 2915 has occurred and to determine whether R.C. § 2915.11, or any substantially equivalent municipal ordinance, has been complied with.

(2) If any law enforcement agency has reasonable grounds to believe that a charitable organization or an officer, agent, trustee, member or employee of the organization has violated any provision of this chapter or R.C. Chapter 2915, the law enforcement agency may proceed by action in the proper court to enforce this chapter or R.C. Chapter 2915, provided that the law enforcement agency shall give written notice to the Attorney General when commencing an action as described in this division (H).

(I) No person shall destroy, alter, conceal, withhold or deny access to any accounts or records of a charitable organization that have been requested for examination, or obstruct, impede or interfere with any inspection, audit or observation of bingo or a game of chance or premises where bingo or a game of chance is conducted or refuse to comply with any reasonable request of, or obstruct, impede or interfere with any other reasonable action undertaken by, the Attorney General or a law enforcement agency pursuant to division (H) of this section.

(J) Whoever violates division (A) or (I) of this section is guilty of a misdemeanor of the first degree.

(R.C. § 2915.10) (1985 Code, § 134.07)

§ 134.08 REQUIREMENTS FOR BINGO GAME OPERATORS.

(A) No person shall be a bingo game operator unless the person is 18 years of age or older.

(B) No person who has been convicted of a felony or a gambling offense in any jurisdiction shall be a bingo game operator.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the third degree. Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree.

(R.C. § 2915.11) (1985 Code, § 134.08)

§ 134.09 BINGO GAMES FOR AMUSEMENT ONLY.

(A) Sections 134.06 through 134.13 do not apply to bingo games that are conducted for the purpose of amusement only. A bingo game is conducted for the purpose of amusement only if it complies with all of the requirements specified in either division (A)(1) or (A)(2) of this section.

(1) (a) The participants do not pay any money or any other thing of value, including an admission fee or any fee, for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo, for the privilege of participating in the bingo game, or to defray any costs of the game, or pay tips or make donations during or immediately before or after the bingo game.

(b) All prizes awarded during the course of the game are non-monetary, and in the form of merchandise, goods or entitlement to goods or services only, and the total value of all prizes awarded during the game is less than \$100.

(c) No commission, wages, salary, reward, tip, donation, gratuity or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

(d) The bingo game is not conducted either during or within ten hours of any of the following:

1. A bingo session during which a charitable bingo game is conducted pursuant to R.C. §§ 2915.07 through 2915.11 or any substantially equivalent municipal ordinance; or

2. A scheme or game of chance, or bingo described in R.C. § 2915.01(O)(2).

(e) The number of players participating in the bingo game does not exceed 50.

(2) (a) The participants do not pay money or any other thing of value as an admission fee, and no participant is charged more than \$0.25 to purchase a bingo card or sheet, objects to cover the spaces or other devices used in playing bingo.

(b) The total amount of money paid by all of the participants for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo does not exceed \$100.

(c) All of the money paid for bingo cards or sheets, objects to cover spaces, or other devices used in playing bingo is used only to pay winners monetary and nonmonetary prizes and to provide refreshments.

(d) The total value of all prizes awarded during the game does not exceed \$100.

(e) No commission, wages, salary, reward, tip, donation, gratuity or other form of compensation, either directly or indirectly and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game.

(f) The bingo game is not conducted during or within ten hours of either of the following:

1. A bingo session during which a charitable bingo game is conducted pursuant to R.C. §§ 2915.07 through 2915.11 or any substantially equivalent municipal ordinance; or

2. A scheme of chance or a game of chance, or bingo described in R.C. § 2915.01(O)(2).

(g) All of the participants reside at the premises where the bingo game is conducted.

(h) The bingo games are conducted on different days of the week and not more than twice in a calendar week.

(B) The Attorney General or any local law enforcement agency may investigate the conduct of a bingo game that purportedly is conducted for purposes of amusement only if there is reason to believe that the purported amusement bingo game does not comply with the requirements of either division (A)(1) or (A)(2) of this section. A local law enforcement agency may proceed by action in the proper court to enforce this section if the local law enforcement agency gives written notice to the Attorney General when commencing the action.

(R.C. § 2915.12) (1985 Code, § 134.09)

§ 134.10 PROHIBITIONS WHERE INSTANT BINGO GAME IS CONDUCTED.

(A) No charitable organization that conducts instant bingo shall do any of the following:

(1) Fail to comply with the requirements of R.C. § 2915.09(A)(1), (A)(2) and (A)(3), or any substantially equivalent municipal ordinance;

(2) Conduct instant bingo unless either of the following applies:

(a) That organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under IRC § 501(a), is described in IRC § 501(c)(3), is a charitable organization as defined in R.C. § 2915.01, is in good standing in the state pursuant to R.C. § 2915.08, and is in compliance with R.C. Chapter 1716; or

(b) That organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under IRC § 501(a), is described in IRC § 501(c)(7), (c)(8), (c)(10) or (c)(19) or is a veteran's organization described in IRC § 501(c)(4), and conducts instant bingo under R.C. § 2915.13.

(3) Conduct instant bingo on any day, at any time, or at any premises not specified on the organization's license issued pursuant to R.C. § 2915.08;

(4) Permit any person whom the organization knows or should have known has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator in the conduct of instant bingo;

(5) Purchase or lease supplies used to conduct instant bingo or punch board games from any person except a distributor licensed under R.C. § 2915.081;

(6) Sell or provide any instant bingo ticket or card for a price different from the price printed on it by the manufacturer on either the instant bingo ticket or card or on the game flare;

(7) Sell an instant bingo ticket or card to a person under 18 years of age;

(8) Fail to keep unsold instant bingo tickets or cards for less than three years;

(9) Pay any compensation to a bingo game operator for conducting instant bingo that is conducted by the organization or for preparing, selling or serving food or beverages at the site of the instant bingo game, permit any auxiliary unit or society of the organization to pay compensation to any bingo game operator who prepares, sells or serves food or beverages at an instant bingo game conducted by the organization, or permit any auxiliary unit or society of the organization to prepare, sell or serve food or beverages at an instant bingo game conducted by the organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell or serve the food or beverages;

(10) Pay fees to any person for any services performed in relation to an instant bingo game, except as provided in R.C. § 2915.093(D);

(11) Pay fees to any person who provides refreshments to the participants in an instant bingo game;

(12) (a) Allow instant bingo tickets or cards to be sold to bingo game operators at a premises at which the organization sells instant bingo tickets or cards or to be sold to employees of a D permit holder who are working at a premises at which instant bingo tickets or cards are sold; and

(b) Division (A)(12)(a) of this section does not prohibit a licensed charitable organization or a bingo game operator from giving any person an instant bingo ticket as a prize in place of a cash prize won by a participant in an instant bingo game. In no case shall an instant bingo ticket or card be sold or provided for a price different from the price printed on it by the manufacturer on either the instant bingo ticket or card or on the game flare.

(13) Fail to display its bingo license, and the serial numbers of the deal of instant bingo tickets or cards to be sold, conspicuously at each premises at which it sells instant bingo tickets or cards;

(14) Possess a deal of instant bingo tickets or cards that was not purchased from a distributor licensed under R.C. § 2915.081 as reflected on an invoice issued by the distributor that contains all of the information required by R.C. § 2915.10(E);

(15) Fail, once it opens a deal of instant bingo tickets or cards, to continue to sell the tickets or cards in that deal until the tickets or cards with the top two highest tiers of prizes in that deal are sold; or

(16) Possess bingo supplies that were not obtained in accordance with R.C. Chapter 2915.

(B) A charitable organization may purchase, lease or use instant bingo ticket dispensers to sell instant bingo tickets or cards.

(C) Pursuant to R.C. § 2915.091(C), the Attorney General may adopt rules in accordance with R.C. Chapter 119 that govern the conduct of instant bingo by charitable organizations.

(D) Whoever violates division (A) of this section or a rule adopted under division (C) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division (D), illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (A) of this section or of such a rule adopted under division (C) of this section, illegal instant bingo conduct is a felony to be prosecuted under appropriate state law.

(R.C. § 2915.091) (1985 Code, § 134.10)

§ 134.11 RAFFLE DRAWINGS.

(A) (1) Subject to division (A)(2) of this section, a charitable organization, a public school, a chartered nonpublic school, a community school or a veteran's organization, fraternal organization or sporting organization that is exempt from federal income taxation under IRC § 501(a) and is described in IRC §§ 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10) or 501(c)(19) may conduct a raffle to raise money for the organization or school and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit.

(2) If a charitable organization that is described in division (A)(1) of this section, but that is not also described in IRC § 501(c)(3), conducts a raffle, the charitable organization shall distribute at least 50% of the net profit from the raffle to a charitable purpose described in R.C. § 2915.01(V) or to a department or agency of the federal government, the state or any political subdivision.

(B) A chamber of commerce may conduct not more than one raffle per year to raise money for the chamber of commerce.

(C) Except as provided in division (A) or (B) of this section, no person shall conduct a raffle drawing that is for profit or a raffle drawing that is not for profit.

(D) Whoever violates division (C) of this section is guilty of illegal conduct of a raffle. Except as otherwise provided in this division (D), illegal conduct of a raffle is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (C) of this section, illegal conduct of a raffle is a felony to be prosecuted under appropriate state law.

(R.C. § 2915.092) (1985 Code, § 134.11)

§ 134.12 INSTANT BINGO OTHER THAN AT BINGO SESSIONS.

(A) As used in this section, ***RETAIL INCOME FROM ALL COMMERCIAL ACTIVITY*** means the income that a person receives from the provision of goods, services or activities that are provided at the location where instant bingo other than at a bingo session is conducted, including the sale of instant bingo tickets. A religious organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), at not more than one location at which it conducts its charitable programs, may include donations from its members and guests as retail income.

(B) (1) If a charitable instant bingo organization conducts instant bingo other than at a bingo session, the charitable instant bingo organization shall enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted to allow the owner or lessor to assist in the conduct of instant bingo other than at a bingo session, identify each location where the instant bingo other than at a bingo session is being conducted, and identify the owner or lessor of each location.

(2) A charitable instant bingo organization that conducts instant bingo other than at a bingo session is not required to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted provided that the owner or lessor is not assisting in the conduct of the instant bingo other than at a bingo session and provided that the conduct of the instant bingo other than at a bingo session at that location is not more than five days per calendar year and not more than ten hours per day.

(C) Except as provided in division (F) of this section, no charitable instant bingo organization shall conduct instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets.

(D) (1) The owner or lessor of a location that enters into a contract pursuant to division (B) of this section shall pay the full gross profit to the charitable instant bingo organization, in return for the deal of instant bingo tickets. The owner or lessor may retain the money that the owner or lessor receives for selling the instant bingo tickets; provided, however, that after the deal has been sold, the owner or lessor shall pay to the charitable instant bingo organization the value of any unredeemed instant bingo prizes remaining in the deal of instant bingo tickets.

(2) The charitable instant bingo organization shall pay 6% of the total gross receipts of any deal of instant bingo tickets for the purpose of reimbursing the owner or lessor for expenses described in this division (D).

(3) As used in this division (D)(3), **EXPENSES** means those items provided for in R.C. §§ 2915.01(GG)(4), (GG)(5), (GG)(6), (GG)(7), (GG)(8), (GG)(12) and (GG)(13) and that percentage of the owner's or lessor's rent for the location where instant bingo is conducted. Expenses, in the aggregate, shall not exceed 6% of the total gross receipts of any deal of instant bingo tickets.

(4) As used in this division (D)(4), **FULL GROSS PROFIT** means the amount by which the total receipts of all instant bingo tickets, if the deal has been sold in full, exceeds the amount that would be paid out if all prizes were redeemed.

(E) A charitable instant bingo organization shall provide the Attorney General with all of the following information:

(1) That the charitable instant bingo organization has terminated a contract entered into pursuant to division (B) of this section with an owner or lessor of a location;

(2) That the charitable instant bingo organization has entered into a written contract pursuant to division (B) of this section with a new owner or lessor of a location; and

(3) That the charitable instant bingo organization is aware of conduct by the owner or lessor of a location at which instant bingo is conducted that is in violation of R.C. Chapter 2915.

(F) Division (C) of this section does not apply to a volunteer firefighter's organization that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), that conducts instant bingo other than at a bingo session on the premises where the organization conducts firefighter training, that has conducted instant bingo continuously for at least five years prior to July 1, 2003, and that, during each of those five years, had gross receipts of at least \$1,500,000.

(R.C. § 2915.093)

(G) (1) A veteran's organization, a fraternal organization or a sporting organization authorized to conduct a bingo session pursuant to R.C. Chapter 2915 may conduct instant bingo other than at a bingo session if all of the following apply:

(a) The veteran's organization, fraternal organization or sporting organization limits the sale of instant bingo to 12 hours during any day, provided that the sale does not begin earlier than 10:00 a.m. and ends not later than 2:00 a.m.;

(b) The veteran's organization, fraternal organization or sporting organization limits the sale of instant bingo to its own premises and to its own members and invited guests; and

(c) The veteran's organization, fraternal organization or sporting organization is raising money for an organization that is described in IRC § 509(a)(1), (a)(2) or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), and that is in good standing in this state and executes a written contract with that organization as required in division (G)(2) of this section.

(2) If a veteran's organization, fraternal organization or sporting organization authorized to conduct instant bingo pursuant to division (G)(1) of this section is raising money for another organization that is described in IRC § 509(a)(1), (a)(2) or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c), and that is in good standing in this state, the veteran's organization, fraternal organization or sporting organization shall execute a written contract with the organization that is described in IRC § 509(a)(1), (a)(2) or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c), and that is in good standing in this state in order to conduct instant bingo. That contract shall include a statement of the percentage of the net proceeds that the veteran's, fraternal or sporting organization will be distributing to the organization that is described in IRC § 509(a)(1), (a)(2) or (a)(3) and is either a governmental unit or an organization that maintains its principal place of business in this state, that is exempt from federal income taxation under IRC § 501(a) and described in IRC § 501(c)(3), and that is in good standing in this state.

(3) (a) If a veteran's organization, fraternal organization or sporting organization authorized to conduct instant bingo pursuant to division (G)(1) of this section has been issued a liquor permit under R.C. Chapter 4303, that permit may be subject to suspension, revocation or cancellation if the veteran's organization, fraternal organization or sporting organization violates a provision of this chapter or R.C. Chapter 2915.

(b) No veteran's organization, fraternal organization or sporting organization that enters into a written contract pursuant to division (G)(2) of this section shall violate any provision of this chapter or R.C. Chapter 2915, or permit, aid or abet any other person in violating any provision of this chapter or R.C. Chapter 2915.

(4) A veteran's organization, fraternal organization or sporting organization shall give all required proceeds earned from the conduct of instant bingo to the organization with which the veteran's organization, fraternal organization or sporting organization has entered into a written contract.

(5) Whoever violates division (G) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division (G), illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (G) of this section, illegal instant bingo conduct is a felony to be prosecuted under appropriate state law.

(R.C. § 2915.13)

(1985 Code, § 134.12)

§ 134.13 RESTRICTIONS ON OWNER OR LESSOR OF LOCATION AT INSTANT BINGO.

(A) No owner or lessor of a location shall assist a charitable instant bingo organization in the conduct of instant bingo other than at a bingo session at that location unless the owner or lessor has entered into a written contract, as described in R.C. § 2915.093, with the charitable instant bingo organization to assist in the conduct of instant bingo other than at a bingo session.

(B) The location of the lessor or owner shall be designated as a location where the charitable instant bingo organization conducts instant bingo other than at a bingo session.

(C) No owner or lessor of a location that enters into a written contract as prescribed in division (A) of this section shall violate any provision of this chapter or R.C. Chapter 2915, or permit, aid or abet any other person in violating any provision of this chapter or R.C. Chapter 2915.

(D) No owner or lessor of a location that enters into a written contract as prescribed in division (A) of this section shall violate the terms of the contract.

(E) (1) Whoever violates division (C) or (D) of this section is guilty of illegal instant bingo conduct. Except as otherwise provided in this division (E), illegal instant bingo conduct is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (C) or (D) of this section, illegal instant bingo conduct is a felony to be prosecuted under appropriate state law.

(2) If an owner or lessor of a location knowingly, intentionally or recklessly violates division (C) or (D) of this section, any license that the owner or lessor holds for the retail sale of any goods on the owner's or lessor's premises that is issued by the state or a political subdivision is subject to suspension, revocation or payment of a monetary penalty at the request of the Attorney General. (R.C. § 2915.094) (1985 Code, § 134.13)

§ 134.14 SKILL-BASED AMUSEMENT MACHINES; PROHIBITED CONDUCT.

(A) No person shall give to another person any item described in division (1), (2), (3) or (4) of the definition for "merchandise prize" in § 134.01 in exchange for a noncash prize, toy or novelty received as a reward for playing or operating a skill-based amusement machine or for a free or reduced-price game won on a skill-based amusement machine.

(B) Whoever violates division (A) of this section is guilty of skill-based amusement machine prohibited conduct. A violation of division (A) of this section is a misdemeanor of the first degree for each redemption of a prize that is involved in the violation. If the offender previously has been convicted of a violation of division (A) of this section, a violation of that division is a felony to be prosecuted under appropriate state law.

(R.C. § 2915.06) (1985 Code, § 134.14)

CHAPTER 135: OFFENSES AGAINST PERSONS

Section

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§ 135.01 DEFINITIONS.

(A) For the purpose of §§ 135.01 through 135.06, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANOTHER'S UNBORN or ***OTHER PERSON'S UNBORN***. A member of the species *Homo sapiens* who is or was carried in the womb of another during a period that begins with fertilization and that continues unless and until live birth occurs.

UNLAWFUL TERMINATION OF ANOTHER'S PREGNANCY. Causing the death of an unborn member of the species *Homo sapiens* who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs.

(B) Notwithstanding division (A) of this section, in no case shall the definitions of the terms "another's unborn," "other person's unborn" and "unlawful termination of another's pregnancy" that are set forth in division (A) of this section be applied or construed in any of the following manners:

(1) Except as otherwise provided in this division (B)(1) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as any violation of R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21 or 2903.22, or a substantially equivalent municipal ordinance, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence but that does violate R.C. § 2919.12, 2919.13(B), 2919.151, 2919.17 or 2919.18, or a substantially equivalent municipal ordinance, may be punished as a violation of such section, as applicable; or

(2) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

(a) Her delivery of a stillborn baby;

(b) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;

(c) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;

(d) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human; or

(e) Her causing, threatening to cause or attempting to cause, in any other manner, an injury, illness or other psychological illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(R.C. § 2903.09)

§ 135.02 NEGLIGENT HOMICIDE.

(A) No person shall negligently cause the death of another or the unlawful termination of another's pregnancy by means of a deadly weapon or dangerous ordnance, as defined in R.C. § 2923.11.

(B) Whoever violates this section is guilty of negligent homicide, a misdemeanor of the first degree. (R.C. § 2903.05) (1985 Code, § 135.01)

§ 135.03 VEHICULAR HOMICIDE; VEHICULAR MANSLAUGHTER.

(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways:

(1) (a) As the proximate result of committing a violation of R.C. § 4511.19(A) or of a substantially equivalent municipal ordinance;

(b) As the proximate result of committing a violation of R.C. § 1547.11(A), or of a substantially equivalent municipal ordinance; or

(c) As the proximate result of committing a violation of R.C. § 4561.15(A)(3), or of a substantially equivalent municipal ordinance.

(2) In one of the following ways:

(a) Recklessly; or

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division (A) applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in division (D) of this section.

(3) In one of the following ways:

(a) Negligently; or

(b) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division (A) applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in division (D) of this section.

(4) As the proximate result of committing a violation of any provision of any section contained in R.C. Title 45 that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in R.C. Title 45 that is a minor misdemeanor.

(B) (1) Whoever violates division (A)(1) or (A)(2) of this section is guilty of aggravated vehicular homicide, a felony to be prosecuted under appropriate state law.

(2) (a) Whoever violates division (A)(3) of this section is guilty of vehicular homicide. Except as otherwise provided in this division (B), vehicular homicide is a misdemeanor of the first degree. Vehicular homicide committed in violation of division (A)(3) of this section is a felony to be prosecuted under appropriate state law if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under R.C. Chapter 4510 or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under R.C. § 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter or assault offense. The court shall impose a mandatory jail term on the offender when required by division (C) of this section.

(b) In addition to any other sanctions imposed pursuant to this division (B), the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(4) or, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter or assault offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(3), or, if the offender previously had been convicted of or pleaded guilty to a traffic-related murder, felonious assault or attempted murder offense, a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege as specified in R.C. § 4510.02(A)(2).

(3) (a) Whoever violates division (A)(4) of this section is guilty of vehicular manslaughter. Except as otherwise provided in this division (B), vehicular manslaughter is a misdemeanor of the second

degree. Vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under R.C. Chapter 4510 or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under R.C. § 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter or assault offense.

(b) In addition to any other sanctions imposed pursuant to this division (B), the court shall impose upon the offender a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6) or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter or assault offense, or a traffic-related murder, felonious assault or attempted murder offense, a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(4).

(C) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a felony violation of this section, as provided in R.C. § 2903.06(E). The court shall impose a mandatory jail term of at least 15 days on an offender who is convicted of or pleads guilty to a misdemeanor violation of division (A)(3)(b) of this section and may impose upon the offender a longer jail term as authorized pursuant to R.C. § 2929.24.

(D) Divisions (A)(2)(b) and (A)(3)(b) of this section do not apply in a particular construction zone unless signs of the type described in R.C. § 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the Director of Transportation under R.C. § 5501.27. The failure to erect signs of the type described in R.C. § 2903.081 in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of division (A)(1), (A)(2)(a), (A)(3)(a) or (A)(4) of this section in that construction zone or the prosecution of any person who violates any of those divisions in that construction zone.

(E) (1) As used in this section:

CONSTRUCTION ZONE. Has the same meaning as in R.C. § 5501.27.

MANDATORY JAIL TERM. Has the same meaning as in R.C. § 2929.01.

MANDATORY PRISON TERM. Has the same meaning as in R.C. § 2929.01.

MOTOR VEHICLE. Has the same meaning as in R.C. § 4501.01.

RECKLESS OPERATION OFFENSE. Means a violation of R.C. § 4511.20 or a municipal ordinance substantially equivalent to R.C. § 4511.20.

SPEEDING OFFENSE. Means a violation of R.C. § 4511.21 or a municipal ordinance pertaining to speed.

TRAFFIC-RELATED HOMICIDE, MANSLAUGHTER OR ASSAULT OFFENSE. Means a violation of R.C. § 2903.04 in circumstances in which division (D) of that section applies, a violation of R.C. § 2903.06 or 2903.08, or a violation of R.C. § 2903.06, 2903.07 or 2903.08 as they existed prior to March 23, 2000.

TRAFFIC-RELATED MURDER, FELONIOUS ASSAULT OR ATTEMPTED MURDER OFFENSE. Means a violation of R.C. § 2903.01 or R.C. § 2903.02 in circumstances in which the offender used a motor vehicle as the means to commit the violation, a violation of R.C. § 2903.11(A)(2) in circumstances in which the deadly weapon used in the commission of the violation is a motor vehicle, or an attempt to commit aggravated murder or murder in violation of R.C. § 2923.02 in circumstances in which the offender used a motor vehicle as the means to attempt to commit the aggravated murder or murder.

(2) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of this or another state or the United States.

(R.C. § 2903.06) (1985 Code, § 135.02)

Statutory reference:

Aggravated vehicular assault, felony, see R.C. § 2903.08

Trial court to suspend driver's license, see R.C. § 4510.05

§ 135.04 ASSAULT.

(A) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

(B) No person shall recklessly cause serious physical harm to another or to another's unborn.

(C) Whoever violates division (A) or (B) of this section is guilty of assault. Except as provided in R.C. § 2903.13(C), assault is a misdemeanor of the first degree.

(D) If an offender who is convicted of or pleads guilty to assault when it is a misdemeanor also is convicted of or pleads guilty to a specification as described in R.C. § 2941.1423 (victim of the offense was a woman whom the defendant knew was pregnant at the time of the offense) that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory jail term as provided in R.C. § 2929.24(G).

(R.C. § 2903.13) (1985 Code, § 135.03)

Statutory reference:

Aggravated and felonious assault, see R.C. §§ 2903.11 and 2903.12

Aggravated vehicular assault, felony, see R.C. § 2903.08

Felony offenses: assaulting functionally impaired person, peace officer, investigator of the Bureau of Criminal Identification and Investigation, firefighter, person performing emergency medical service, officer or employee of a public children services agency or private child placing agency; assault at a correctional institution; assault on school officials and school bus drivers, see R.C. § 2903.13(C)

§ 135.05 NEGLIGENT ASSAULT.

(A) No person shall negligently, by means of a deadly weapon or dangerous ordnance as defined in R.C. § 2923.11, cause physical harm to another or to another's unborn.

(B) Whoever violates division (A) of this section is guilty of negligent assault, a misdemeanor of the third degree.

(R.C. § 2903.14) (1985 Code, § 135.04) (Ord. 1306, passed 6-13-1977)

§ 135.06 INJURY OF PERSONS BY HUNTERS.

(A) No person in the act of hunting, pursuing, taking or killing a wild animal shall act in a negligent, careless or reckless manner so as to injure persons.

(R.C. § 1533.171(A))

(B) Whoever violates this section shall be guilty of a misdemeanor of the first degree.

(R.C. § 1533.99(C)) (1985 Code, § 135.041)

Statutory reference:

Violation, license revocation, see R.C. § 1533.171(B) through (E)

§ 135.07 AGGRAVATED MENACING.

(A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, such other person's unborn or a member of such other person's immediate family.

(B) Whoever violates division (A) of this section is guilty of aggravated menacing. Except as otherwise provided in this division (B), aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony to be prosecuted under appropriate state law or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony to be prosecuted under appropriate state law.

(R.C. § 2903.21) (1985 Code, § 135.05)

§ 135.08 MENACING.

(A) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn or a member of the other person's immediate family.

(B) Whoever violates division (A) of this section is guilty of menacing. Except as otherwise provided in this division (B), menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony to be prosecuted under appropriate state law.

(R.C. § 2903.22) (1985 Code, § 135.06)

§ 135.09 MENACING BY STALKING.

(A) (1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

(2) No person, through the use of any electronic method of remotely transferring information, including but not limited to any computer, computer network, computer program or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (C)(1)(a) of this section.

(3) No person, with a sexual motivation, shall violate division (A)(1) or (A)(2) of this section.

(B) Whoever violates division (A)(1) of this section is guilty of menacing by stalking.

(1) Except as otherwise provided in division (B)(2) of this section, menacing by stalking is a misdemeanor of the first degree.

(2) Menacing by stalking is a felony, to be prosecuted under appropriate state law, if any of the following applies:

(a) The offender previously has been convicted of or pleaded guilty to a violation of R.C. § 2903.211 or a violation of R.C. § 2911.211, or a substantially equivalent municipal ordinance to either of these offenses;

(b) In committing the offense under division (A)(1), (A)(2) or (A)(3) of this section, the offender made a threat of physical harm to or against the victim, or as a result of an offense committed under division (A)(2) or (A)(3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim;

(c) In committing the offense under division (A)(1), (A)(2) or (A)(3) of this section, the offender trespassed on the land or premises where the victim lives, is employed or attends school, or as a result of an offense committed under division (A)(2) or (A)(3) of this section, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed or attends school;

(d) The victim of the offense is a minor;

(e) The offender has a history of violence towards the victim or any other person or a history of other violent acts towards the victim or any other person;

(f) While committing the offense under division (A)(1) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(2) of this section;

(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under R.C. § 2903.213 or R.C. § 2903.214, regardless of whether or not the person to be protected under the order is the victim of the offense or another person;

(h) In committing the offense under division (A)(1), (A)(2) or (A)(3) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or as a result of an offense committed under division (A)(2) of this section or an offense committed under division

(A)(3) of this section based on a violation of division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises;

(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious harm, or other evidence of then-present dangerousness;

(j) The victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties; or

(k) The offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties.

(C) R.C. § 2919.271 applies in relation to a defendant charged with a violation of this section.

(D) As used in this section:

COMPUTER. Has the same meaning as in R.C. § 2913.01.

COMPUTER NETWORK. Has the same meaning as in R.C. § 2913.01.

COMPUTER PROGRAM. Has the same meaning as in R.C. § 2913.01.

COMPUTER SYSTEM. Has the same meaning as in R.C. § 2913.01.

EMERGENCY FACILITY PERSON. Is the singular of "emergency facility personnel" as defined in R.C. § 2909.04.

EMERGENCY MEDICAL SERVICES PERSON. Is the singular of "emergency medical services personnel" as defined in R.C. § 2133.21.

MENTAL DISTRESS. Means any of the following:

(a) Any mental illness or condition that involves some temporary substantial incapacity;

or

(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment or other mental health services.

PATTERN OF CONDUCT. Means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct or delay the performance by a public official, firefighter, rescuer, emergency medical services person or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's or emergency facility person's official capacity or the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including but not limited to a computer, computer network, computer program, computer system or telecommunications device, may constitute a ***PATTERN OF CONDUCT.***

POST A MESSAGE. Means transferring, sending, posting, publishing, disseminating or otherwise communicating, or attempting to transfer, send, post, publish, disseminate or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

PUBLIC OFFICIAL. Has the same meaning as in R.C. § 2921.01.

SEXUAL MOTIVATION. Has the same meaning as in R.C. § 2971.01.

TELECOMMUNICATIONS DEVICE. Has the same meaning as in R.C. § 2913.01.

THIRD PERSON. Means, in relation to conduct as described in division (C)(1)(b) of this section, an individual who is neither the offender nor the victim of the conduct.

(E) The prosecution does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment or other mental health services in order to show that the person was caused mental distress as described in division (b) of the definition for "mental distress" in this section.

(F) (1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. In addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is or will be sent in violation of this section.

(2) Division (F)(1) of this section does not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is or will be sent in violation of this section except as otherwise provided by law.

(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature.

(R.C. § 2903.211) (1985 Code, § 135.061)

Statutory reference:

Conditions of bail for violators, see R.C. § 2903.212

Persons who may seek relief under anti-stalking protection order; ex parte orders, see R.C. § 2903.214

Protection order as pretrial condition of release, see R.C. § 2903.213

§ 135.10 UNLAWFUL RESTRAINT.

(A) No person, without privilege to do so, shall knowingly restrain another of the other person's liberty.

(B) No person, without privilege to do so and with a sexual motivation, shall knowingly restrain another of the other person's liberty.

(C) Whoever violates this section is guilty of unlawful restraint, a misdemeanor of the third degree.

(D) As used in this section, **SEXUAL MOTIVATION** has the same meaning as in R.C. § 2971.01. (R.C. § 2905.03) (1985 Code, § 135.07)

§ 135.11 CRIMINAL CHILD ENTICEMENT.

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice or lure any child under 14 years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity; and

(2) The actor is not a law enforcement officer, medic, firefighter or other person who regularly provides emergency services, and is not an employee or agent of or a volunteer acting under the direction of, any board of education, or the actor is any such person, but at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) No person, for any unlawful purpose other than, or in addition to, that proscribed by division (A) of this section, shall engage in any activity described in division (A) of this section.

(D) It is an affirmative defense to a charge under division (A) of this section that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(E) Whoever violates division (A), (B) or (C) of this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, a substantially equivalent state law or municipal ordinance, R.C. § 2907.02 or 2907.03 or former R.C. § 2907.12, or R.C. § 2905.01 or 2907.05 when the victim of that prior offense was under 17 years of age at the time of the offense, criminal child enticement is a felony to be prosecuted under appropriate state law.

(F) As used in this section:

SEXUAL MOTIVATION. Has the same meaning as in R.C. § 2971.01.

VEHICLE. Has the same meaning as in R.C. § 4501.01.

VESSEL. Has the same meaning as in R.C. § 1547.01.
(R.C. § 2905.05)

§ 135.12 COERCION.

(A) No person, with purpose to coerce another into taking or refraining from action concerning which he or she has a legal freedom of choice, shall do any of the following:

- (1) Threaten to commit any offense;
- (2) Utter or threaten any slander against any person;
- (3) Expose or threaten to expose any matter tending to subject any person to hatred, contempt or ridicule, or to damage his or her personal or business repute, or to impair his or her credit;
- (4) Institute or threaten criminal proceedings against any person; or
- (5) Take or withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld.

(B) Divisions (A)(4) and (A)(5) of this section shall not be construed to prohibit a prosecutor or court from doing any of the following in good faith and in the interests of justice:

- (1) Offering or agreeing to grant, or granting immunity from prosecution pursuant to R.C. § 2945.44;

(2) In return for a plea of guilty to one or more offenses charged or to one or more other or lesser offenses, or in return for the testimony of the accused in a case to which he or she is not a party, offering or agreeing to dismiss, or dismissing one or more charges pending against an accused, or offering or agreeing to impose, or imposing a certain sentence or modification of sentence; or

(3) Imposing probation on certain conditions, including without limitation requiring the offender to make restitution or redress to the victim of his or her offense.

(C) It is an affirmative defense to a charge under division (A)(3), (A)(4) or (A)(5) of this section that the actor's conduct was a reasonable response to the circumstances which occasioned it, and that his or her purpose was limited to:

(1) Compelling another to refrain from misconduct or to desist from further misconduct;

(2) Preventing or redressing a wrong or injustice;

(3) Preventing another from taking action for which the actor reasonably believed the other person to be disqualified; or

(4) Compelling another to take action which the actor reasonably believed the other person to be under a duty to take.

(D) Whoever violates this section is guilty of coercion, a misdemeanor of the second degree.

(E) As used in this section, *THREAT* includes a direct threat and a threat by innuendo.
(R.C. § 2905.12) (1985 Code, § 135.09)

§ 135.13 BIGAMY.

(A) No married person shall marry another or continue to cohabit with such other person in this municipality.

(B) It is an affirmative defense to a charge under this section that the actor's spouse was continuously absent for five years immediately preceding the purported subsequent marriage, and was not known by the actor to be alive within that time.

(C) Whoever violates this section is guilty of bigamy, a misdemeanor of the first degree.
(R.C. § 2919.01) (1985 Code, § 135.10)

§ 135.14 UNLAWFUL ABORTION.

(A) As used in this section:

ABORTION. Means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo.
(R.C. § 2919.11)

EMANCIPATED. A minor shall be considered emancipated if the minor has married, entered the armed services of the United States, become employed and self-subsisting, or has otherwise become independent from the care and control of her parent, guardian or custodian.

UNEMANCIPATED. Means a woman who is unmarried and under 18 years of age who has not entered the armed services of the United States, has not become employed and self-subsisting, or has not otherwise become independent from the care and control of her parent, guardian or custodian.

(B) No person shall perform or induce an abortion without the informed consent of the pregnant woman.

(C) No person shall knowingly perform or induce an abortion upon a pregnant minor unless one of the following is the case:

(1) The attending physician has secured the informed written consent of the minor and one parent, guardian or custodian;

(2) The minor is emancipated and the attending physician has received her informed written consent;

(3) The minor has been authorized to consent to the abortion by a court order issued pursuant to R.C. § 2919.121(C) and the attending physician has received her informed written consent; or

(4) The court has given its consent in accordance with R.C. § 2919.121(C) and the minor is having the abortion willingly.

(D) No person shall knowingly perform or induce an abortion upon a woman who is pregnant, unmarried, under 18 years of age and unemancipated unless at least one of the circumstances enumerated in R.C. § 2919.12(B) applies.

(E) (1) It is an affirmative defense to a charge under division (D) of this section that the pregnant woman provided the person who performed or induced the abortion with false, misleading or incorrect information about her age, marital status or emancipation, about the age of the brother or sister to whom she requested notice to be given as a specified relative instead of one of her parents, her guardian or her custodian, or about the last known address of either of her parents, her guardian, her custodian or a specified brother, sister, stepparent or grandparent to whom she requested notice be given and the person who performed or induced the abortion did not otherwise have reasonable cause to believe the pregnant woman was under 18 years of age, unmarried or unemancipated, to believe that the age of the brother or sister to whom she requested notice be given as a specified relative instead of one of her parents, her guardian or her custodian was not 21 years of age, or to believe that the last known address of either of

her parents, her guardian, her custodian, or a specified brother, sister, stepparent or grandparent to whom she requested notice be given was incorrect.

(2) It is an affirmative defense to a charge under this section that compliance with the requirements of this section was not possible because an immediate threat of serious risk to the life or physical health of the pregnant woman or pregnant minor from the continuation of her pregnancy created an emergency necessitating the immediate performance or inducement of an abortion.

(F) Whoever violates this section is guilty of unlawful abortion. A violation of division (B), (C) or (D) of this section is a misdemeanor of the first degree on the first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.

(G) Whoever violates this section is liable to the pregnant woman or pregnant minor, and her parents, guardian or custodian for civil, compensatory and exemplary damages.
(R.C. §§ 2919.12, 2919.121)

(H) (1) Division (C) of this section applies in lieu of division (D) of this section whenever its operation is not enjoined. If division (C) of this section is enjoined, division (D) of this section applies.

(2) If a person complies with the requirements of division (D) of this section under the good faith belief that the application or enforcement of division (C) of this section is subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any civil, criminal or professional disciplinary action brought under division (C) of this section or R.C. § 2919.121.

(3) If a person complies with the requirements of division (C) of this section under the good faith belief that it is not subject to a restraining order or injunction, good faith compliance shall constitute a complete defense to any civil, criminal or professional disciplinary action for failure to comply with the requirements of division (D) of this section.
(R.C. § 2919.122)

(I) Failure to perform viability testing.

(1) Except in a medical emergency that prevents compliance with this division (I), no physician shall perform or induce or attempt to perform or induce an abortion on a pregnant woman after the beginning of the twentieth week of gestation unless, prior to the performance or inducement of the abortion or the attempt to perform or induce the abortion, the physician determines, in the physician's good faith medical judgment, that the unborn child is not viable, and the physician makes that determination after performing a medical examination of the pregnant woman and after performing or causing to be performed those tests for assessing gestational age, weight, lung maturity or other tests that the physician, in that physician's good faith medical judgment, believes are necessary to determine whether an unborn child is viable.

(2) Except in a medical emergency that prevents compliance with this division (I), no physician shall perform or induce or attempt to perform or induce an abortion on a pregnant woman after the beginning of the twentieth week of gestation without first entering the determination made in division

(I)(1) of this section and the associated findings of the medical examination and tests in the medical record of the pregnant woman.

(3) Whoever violates this division (I) is guilty of failure to perform viability testing, a misdemeanor of the fourth degree.

(4) The State Medical Board shall suspend a physician's license to practice medicine in this state for a period of not less than six months if the physician violates this section.

(R.C. § 2919.18)

(1985 Code, § 135.11)

§ 135.15 ABORTION TRAFFICKING.

(A) No person shall experiment upon or sell the product of human conception which is aborted. Experiment does not include autopsies pursuant to R.C. §§ 313.13 and 2108.50.

(B) Whoever violates this section is guilty of abortion trafficking, a misdemeanor of the first degree. (R.C. § 2919.14) (1985 Code, § 135.12)

§ 135.16 NONSUPPORT OF DEPENDENTS.

(A) No person shall abandon, or fail to provide adequate support to:

(1) His or her spouse, as required by law;

(2) His or her legitimate or illegitimate child who is under age 18, or mentally or physically disabled child who is under age 21; and

(3) His or her aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for his or her own support.

(B) No person shall abandon or fail to provide support as established by court order to another person whom, by court order or decree, the person is legally obligated to support.

(C) No person shall aid, abet, induce, cause, encourage or contribute to a child or a ward of the juvenile court becoming a dependent child, as defined in R.C. § 2151.04, or a neglected child, as defined in R.C. § 2151.03.

(D) It is an affirmative defense to a charge of failure to provide adequate support under division (A) of this section or a charge of failure to provide support established by a court order under division (B) of this section that the accused was unable to provide adequate support or the established support, but did provide the support that was within his or her ability and means.

(E) It is an affirmative defense to a charge under division (A)(3) of this section that the parent abandoned the accused, or failed to support the accused as required by law, while the accused was under age 18, or was mentally or physically disabled and under age 21.

(F) It is not a defense to a charge under division (B) of this section that the person whom a court has ordered the accused to support is being adequately supported by someone other than the accused.

(G) (1) Except as otherwise provided in this division (G), whoever violates division (A) or (B) of this section is guilty of nonsupport of dependents, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) or (B) of this section or a substantially equivalent state law or municipal ordinance, or if the offender has failed to provide support under division (A)(2) or (B) of this section for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of division (A)(2) or (B) of this section is a felony to be prosecuted under appropriate state law. If the offender previously has been convicted of or pleaded guilty to a felony violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (B) of this section is a felony to be prosecuted under appropriate state law.

(2) If the offender is guilty of nonsupport of dependents by reason of failing to provide support to his or her child as required by a child support order issued on or after April 15, 1985, pursuant to R.C. § 2151.23, 2151.231, 2151.232, 2151.33, 3105.21, 3109.05, 3111.13, 3113.04, 3113.31 or 3115.31, the court, in addition to any other sentence imposed, shall assess all court costs arising out of the charge against the person and require the person to pay any reasonable attorney's fees of any adverse party other than the state, as determined by the court, that arose in relation to the charge.

(3) Whoever violates division (C) of this section is guilty of contributing to the nonsupport of dependents, a misdemeanor of the first degree. Each day of a violation of division (C) of this section is a separate offense.

(R.C. § 2919.21) (1985 Code, § 135.13)

§ 135.17 ENDANGERING CHILDREN.

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under 18 years of age or a mentally or physically disabled child under 21 years of age, shall create a substantial risk to the health or safety of the child by violating a duty of care, protection or support. It is not a violation of a duty of care, protection or support under this division (A) when the parent, guardian, custodian or person having custody or control of a child treats the physical or mental illness or disability of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under 18 years of age or a mentally or physically disabled child under 21 years of age:

- (1) Abuse the child;

(2) Torture or cruelly abuse the child;

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) Repeatedly administer unwarranted disciplinary measures to a child when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter or is nudity-oriented matter; or

(6) Allow the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, any act in violation of R.C. § 2925.04 or 2925.041 when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of R.C. § 2925.04 or 2925.041 that is the basis of the violation of this division (B).

(C) (1) No person shall operate a vehicle, as defined by R.C. § 4511.01, within the municipality and in violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, when one or more children under 18 years of age are in the vehicle. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division (C) and a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that constitutes the basis of the charge of the violation of this division (C). For purposes of R.C. §§ 4511.191 through 4511.197 and all related provisions of law, a person arrested for a violation of this division (C) shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath or urine.

(2) As used in division (C)(1) of this section:

CONTROLLED SUBSTANCE. Has the same meaning as in R.C. § 3719.01.

VEHICLE. Has the same meaning as in R.C. § 4511.01.

(D) (1) Division (B)(5) of this section does not apply to any material or performance that is produced, presented or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies for research, librarian, member of the clergy, prosecutor, judge or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

(3) In a prosecution under division (B)(5) of this section, the trier of fact may infer that an actor, model or participant in the material or performance involved is a juvenile if the material or performance, through its title, text, visual representation or otherwise, represents or depicts the actor, model or participant as a juvenile.

(4) As used in this division (D) and division (B)(5) of this section:

MATERIAL. Has the same meaning as in R.C. § 2907.01.

NUDITY-ORIENTED MATTER. Means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to the prurient interest.

OBSCENE. Has the same meaning as in R.C. § 2907.01.

PERFORMANCE. Has the same meaning as in R.C. § 2907.01.

SEXUAL ACTIVITY. Has the same meaning as in R.C. § 2907.01.

SEXUALLY ORIENTED MATTER. Means any material or performance that shows a minor participating or engaging in sexual activity, masturbation or bestiality.

(E) Whoever violates this section is guilty of endangering children.

(1) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following:

(a) Except as otherwise provided in division (E)(1)(b), (E)(1)(c) or (E)(1)(d), a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or a substantially equivalent state law or municipal ordinance, or of any offense involving neglect, abandonment or contributing to the delinquency of or physical abuse of a child, except as otherwise provided in division (E)(1)(c) or (E)(1)(d) of this section, endangering children is a felony to be prosecuted under appropriate state law;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, endangering children is a felony to be prosecuted under appropriate state law; or

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, endangering children is a felony to be prosecuted under appropriate state law.

(2) If the offender violates division (B)(2), (B)(3), (B)(4), (B)(5) or (B)(6) of this section, endangering children is a felony to be prosecuted under appropriate state law.

(3) If the offender violates division (C) of this section, the offender shall be punished as follows:

(a) Except as provided in (E)(3)(b) or (E)(3)(c), endangering children in violation of division (C) of this section is a misdemeanor of the first degree;

(b) If the violation results in serious physical harm to the child or if the offender previously has been convicted of a violation of this section or a substantially equivalent state law or municipal ordinance, or of any offense involving neglect, abandonment or contributing to the delinquency of or physical abuse of a child, except as otherwise provided in division (E)(3)(c) of this section, endangering children in violation of division (C) of this section is a felony to be prosecuted under appropriate state law;

(c) If the violation results in serious physical harm to the child and if the offender previously has been convicted of a violation of this section, R.C. § 2903.06, 2903.08, 2919.22(C) or former R.C. § 2903.07 as it existed prior to March 23, 2000, or R.C. § 2903.04, in a case in which the offender was subject to the sanctions described in division (D) of that section, endangering children in violation of division (C) of this section is a felony to be prosecuted under appropriate state law;

(d) In addition to any term of imprisonment, fine or other sentence, penalty or sanction it imposes upon the offender pursuant to divisions (E)(3)(a), (E)(3)(b) or (E)(3)(c) of this section or pursuant to any other provision of law, and in addition to any suspension of the offender's driver's license or commercial driver's license or permit or nonresident operating privilege under R.C. Chapter 4506, 4509, 4510 or 4511, or any other provision of law, the court also may impose upon the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(7); and

(e) In addition to any term of imprisonment, fine or other sentence, penalty or sanction imposed upon the offender pursuant to division (E)(3)(a), (E)(3)(b), (E)(3)(c) or (E)(3)(d) of this section or pursuant to any other provision of law for the violation of division (C) of this section, if as a part of the same trial or proceeding the offender also is convicted of or pleads guilty to a separate charge charging the violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that was the basis of the charge of the violation of division (C) of this section, the offender also shall be sentenced in accordance with R.C. § 4511.19, or a substantially equivalent municipal ordinance, for that violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance.

(F) (1) If a person violates division (C) of this section and if, at the time of the violation, there were two or more children under 18 years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of division (C) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2) (a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the person is not also convicted of and does not also plead guilty to a separate charge of violating R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that was the basis of the charge of the violation of division (C) of this section, both the following apply:

1. For purposes of the provisions of R.C. § 4511.19, or a substantially equivalent municipal ordinance, that set forth the penalties and sanctions for a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance; and

2. For purposes of the provisions of law that refers to a conviction of or plea of guilty to a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, and that is not described in division (F)(2)(a)1. of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction or plea of guilty to a violation of R.C. § 4511.19(A), or a substantially equivalent municipal ordinance.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this section and the person also is convicted of or pleads guilty to a separate charge of violating R.C. § 4511.19(A), or a substantially equivalent municipal ordinance, that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for the purposes of any provision of law that refers to a conviction of or a plea of guilty to a violation of R.C. § 4511.19(A) or a substantially equivalent municipal ordinance, a conviction of or a plea of guilty to a violation of R.C. § 4511.19(A) or a substantially equivalent municipal ordinance.

(R.C. § 2919.22(A) - (E), (H)) (1985 Code, § 135.14)

Statutory reference:

Community service, requirements, see R.C. § 2919.22(F)

License suspension, requirements, see R.C. § 2919.22(G)

Permitting child abuse, felony offense, see R.C. § 2903.15

§ 135.18 INTERFERENCE WITH CUSTODY.

(A) No person, knowing that he or she is without privilege to do so or being reckless in that regard, shall entice, take, keep or harbor a person identified in division (A)(1), (A)(2) or (A)(3) of this section from the parent, guardian or custodian of the person identified in division (A)(1), (A)(2) or (A)(3) of this section:

(1) A child under the age of 18, or a mentally or physically disabled child under the age of 21;

(2) A person committed by law to an institution for delinquent, unruly, neglected, abused or dependent children; and

(3) A person committed by law to an institution for the mentally ill or mentally disabled.

(B) No person shall aid, abet, induce, cause or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department or public or private institution to leave the custody of that person, department or institution without legal consent.

(C) It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section that the actor reasonably believed that his or her conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under his or her shelter, protection or influence.

(D) Whoever violates this section is guilty of interference with custody.

(1) Except as otherwise provided in this division (D)(1), a violation of division (A)(1) above is a misdemeanor of the first degree. If the child who is the subject of a violation of division (A)(1) is removed from the state or if the offender previously has been convicted of an offense under this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a felony to be prosecuted under appropriate state law. If the child who is the subject of a violation of division (A)(1) suffers physical harm as a result of the violation, a violation of division (A)(1) of this section is a felony to be prosecuted under appropriate state law.

(2) A violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the third degree.

(3) A violation of division (B) of this section is a misdemeanor of the first degree. Each day of a violation of division (B) is a separate offense.

(R.C. § 2919.23) (1985 Code, § 135.15)

§ 135.19 INTERFERENCE WITH SUPPORT ORDERS.

(A) No person, by using physical harassment or threats of violence against another person, shall interfere with the other person's initiation or continuance of, or attempt to prevent the other person from initiating or continuing, an action to issue or modify a support order under R.C. Chapter 3115, or under R.C. § 2151.23, 2151.231, 2151.232, 2151.33, 2151.36, 2151.361, 2151.49, 3105.18, 3105.21, 3109.05, 3109.19, 3111.13, 3113.04, 3113.07 or 3113.31.

(B) Whoever violates division (A) of this section is guilty of interfering with an action to issue or modify a support order, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of this division (A) or a substantially equivalent state law or municipal ordinance, or R.C. § 3111.19, interfering with an action to issue or modify a support order is a felony to be prosecuted under appropriate state law.

(R.C. § 2919.231) (1985 Code, § 135.151)

§ 135.20 ABUSING FAMILY.

Whoever abuses his or her family shall be guilty of a minor misdemeanor on the first offense, and guilty of a misdemeanor of the fourth degree for each subsequent offense. For the purpose of enforcing the provisions of this section, it shall be lawful for the police to enter any house to arrest any person violating the same.

(1985 Code, § 135.16) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 135.21 POCKET PICKING ATTEMPT.

Any person who otherwise then by force or violence, or by putting in fear, attempts to steal and take from the person of another anything of value, shall be guilty of a misdemeanor of the third degree.

(1985 Code, § 135.17) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 135.22 DOMESTIC VIOLENCE.

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D) (1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (D)(5) of this section.

(2) Except as otherwise provided in division (D)(3), (D)(4) or (D)(5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to domestic violence, a violation of R.C. § 2903.14, 2909.06, 2909.07, 2911.12, 2911.211 or 2919.22 if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) is a felony to be prosecuted under appropriate state law, and a violation of division (C) is a misdemeanor of the second degree.

(4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of division (A) or (B) of this section is a felony to be prosecuted under appropriate state law, and a violation of division (C) of this section is a misdemeanor of the first degree.

(5) Except as otherwise provided in division (D)(3) or (D)(4) of this section, if the offender knew that the victim of the violation was pregnant at the time of the violation, a violation of division (A) or (B) of this section is a felony to be prosecuted under appropriate state law, and a violation of division (C) of this section is a misdemeanor of the third degree.

(E) Notwithstanding any provision of law to the contrary, no court or unit of state or local government shall charge any fee, cost, deposit or money in connection with the filing of charges against a person alleging that the person violated this section or a municipal ordinance substantially equivalent to this section or in connection with the prosecution of any charges so filed.

(F) As used in this section:

FAMILY OR HOUSEHOLD MEMBER. Means any of the following:

(a) Any of the following who is residing or has resided with the offender:

1. A spouse, a person living as a spouse as defined below, or a former spouse of the offender;
2. A parent, a foster parent or a child of the offender, or another person related by consanguinity or affinity to the offender; or
3. A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse or former spouse of the offender.

(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

PERSON LIVING AS A SPOUSE. Means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

(R.C. § 2919.25)

Statutory reference:

Temporary protection orders, see R.C. § 2919.26

Violation of protection order or consent agreement, factors to consider, bail, see R.C. § 2919.251

§ 135.23 HAZING PROHIBITED.

(A) As used in this section, **HAZING** means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.

(B) (1) No person shall recklessly participate in the hazing of another.

(2) No administrator, employee or faculty member of any primary, secondary or post-secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person.

(C) Whoever violates this section is guilty of hazing, a misdemeanor of the fourth degree.

(R.C. § 2903.31)

Statutory reference:

Civil liability for hazing, see R.C. § 2307.44

§ 135.24 CONTRIBUTING TO UNRULINESS OR DELINQUENCY OF A CHILD.

(A) No person, including a parent, guardian or other custodian of a child, shall do any of the following:

(1) Aid, abet, induce, cause, encourage or contribute to a child or a ward of the juvenile court becoming an unruly child, as defined in R.C. § 2151.022, or a delinquent child, as defined in R.C. § 2152.02;

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child, as defined in R.C. § 2151.022, or a delinquent child, as defined in R.C. § 2152.02; or

(3) If the person is the parent, guardian or custodian of a child who has the duties under R.C. Chapters 2152 and 2950 to register, register a new residence address and periodically verify a residence address, and, if applicable, to send a notice of intent to reside, and if the child is not emancipated, as defined in R.C. § 2919.121, fail to ensure that the child complies with those duties under R.C. Chapters 2152 and 2950.

(B) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of a violation of this section is a separate offense.

(R.C. § 2919.24)

Statutory reference:

Failure to send child to school, see R.C. § 3321.38

§ 135.25 FAILURE TO PROVIDE FOR FUNCTIONALLY IMPAIRED PERSON.

(A) No caretaker shall knowingly fail to provide a functionally impaired person under his or her care with any treatment, care, goods or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in physical harm or serious physical harm to the functionally impaired person.

(B) No caretaker shall recklessly fail to provide a functionally impaired person under his or her care with any treatment, care, goods or service that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person.

(C) (1) Whoever violates division (A) of this section is guilty of knowingly failing to provide for a functionally impaired person, a misdemeanor of the first degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of recklessly failing to provide for a functionally impaired person, a misdemeanor of the second degree. If the functionally impaired person under the offender's care suffers serious physical harm as a result of the violation of this section, a violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(R.C. § 2903.16)

(D) As used in this section:

CARETAKER. Means a person who assumes the duty to provide for the care and protection of a functionally impaired person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. The term does not include a person who owns, operates or administers, or who is an agent or employee of, a care facility, as defined in R.C. § 2903.33.

FUNCTIONALLY IMPAIRED PERSON. Means any person who has a physical or mental impairment that prevents the person from providing for his or her own care or protection or whose infirmities caused by aging prevent the person from providing for his or her own care or protection.

(R.C. § 2903.10)

§ 135.26 PATIENT ABUSE OR NEGLECT; PATIENT ENDANGERMENT; EXCEPTIONS; FALSE STATEMENTS; RETALIATION.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABUSE. Means knowingly causing physical harm or recklessly causing serious physical harm to a person by physical contact with the person or by the inappropriate use of a physical or chemical restraint, medication or isolation on the person.

CARE FACILITY. Means any of the following:

- (a) Any “home” as defined in R.C. § 3721.10;
- (b) Any “residential facility” as defined in R.C. § 5119.34 or 5123.19;
- (c) Any institution or facility operated or provided by the Department of Mental Health and Addiction Services or by the Department of Developmental Disabilities pursuant to R.C. §§ 5119.14 and 5123.03;
- (d) Any unit of any hospital, as defined in R.C. § 3701.01, that provided the same services as a nursing home, as defined in R.C. § 3721.01; or
- (e) Any institution, residence or facility that provides, for a period of more than 24 hours, whether for consideration or not, accommodations to one individual or two unrelated individuals who are dependent upon the services of others.

GROSS NEGLIGENCE. Means knowingly failing to provide a person with any treatment, care, goods or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.

INAPPROPRIATE USE OF A PHYSICAL OR CHEMICAL RESTRAINT, MEDICATION OR ISOLATION. Means the use of physical or chemical restraint, medication or isolation as punishment, for staff convenience, excessively, as a substitute for treatment, or in quantities that preclude habilitation and treatment.

NEGLECT. Means recklessly failing to provide a person with any treatment, care, goods or service that is necessary to maintain the health or safety of the person when the failure results in serious physical harm to the person.
(R.C. § 2903.33)

(B) *Patient abuse or neglect; spiritual treatment; defense.*

(1) No person who owns, operates or administers, or who is an agent or employee of a care facility shall do any of the following:

- (a) Commit abuse against a resident or patient of the facility;
- (b) Commit gross neglect against a resident or patient of the facility; or
- (c) Commit neglect against a resident or patient of the facility.

(2) (a) A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered neglectful under division (B)(1)(c) of this section for that reason alone.

(b) It is an affirmative defense to a charge of gross neglect or neglect under this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person with supervisory authority over the actor.

(3) (a) Whoever violates division (B)(1)(a) is guilty of patient abuse, a felony to be prosecuted under appropriate state law.

(b) Whoever violates division (B)(1)(b) is guilty of gross patient neglect, a misdemeanor of the first degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section or a substantially equivalent state law or municipal ordinance, gross patient neglect is a felony to be prosecuted under appropriate state law.

(c) Whoever violates division (B)(1)(c) is guilty of patient neglect, a misdemeanor of the second degree. If the offender previously has been convicted of, or pleaded guilty to, any violation of this section or a substantially equivalent state law or municipal ordinance, gross patient neglect is a felony to be prosecuted under appropriate state law.

(R.C. § 2903.34)

(C) *Patient endangerment; spiritual treatment; defense.*

(1) As used in division (C) of this section:

DEVELOPMENTALLY DISABLED PERSON. Has the same meaning as in R.C. § 5123.01.

MENTALLY RETARDED PERSON. Has the same meaning as in R.C. § 5123.01.

MR/DD CARETAKER. Means any MR/DD employee or any person who assumes the duty to provide for the care and protection of a mentally retarded person or a developmentally disabled person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. The term includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. The term does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to persons with mental retardation or a developmental disability.

MR/DD EMPLOYEE. Has the same meaning as in R.C. § 5123.50.

(2) No MR/DD caretaker shall create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person. An MR/DD caretaker does not create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person under this

division when the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded person or developmentally disabled person by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(3) No person who owns, operates or administers a care facility or who is an agent of a care facility shall condone, or knowingly permit, any conduct by an MR/DD caretaker who is employed by or under the control of the owner, operator, administrator or agent that is in violation of division (C)(2) of this section and that involves a mentally retarded person or a developmentally disabled person who is under the care of the owner, operator, administrator or agent. A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered endangered under this division for that reason alone.

(4) (a) It is an affirmative defense to a charge of a violation of division (C)(2) or (C)(3) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:

1. The person has supervisory authority over the actor; or
2. The person has authority over the actor's conduct pursuant to a contract for the provision of services.

(b) It is an affirmative defense to a charge of a violation of division (C)(3) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved mentally retarded person or a developmentally disabled person or that the admission, discharge, and transfer rule set forth in the Ohio Administrative Code is being followed.

(c) It is an affirmative defense to a charge of a violation of division (C)(3) of this section that the actor did not have readily available a means to prevent either the harm to the person with mental retardation or a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.

(5) (a) Except as provided in division (C)(5)(b) or (C)(5)(c) of this section, whoever violates division (C)(2) or (C)(3) of this section is guilty of patient endangerment, a misdemeanor of the first degree.

(b) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section or a substantially equivalent state law or municipal ordinance, patient endangerment is a felony to be prosecuted under appropriate state law.

(c) If the violation results in serious physical harm to the person with mental retardation or a developmental disability, patient endangerment is a felony to be prosecuted under appropriate state law.

(R.C. § 2903.341)

(D) *False statements.*

(1) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, alleging a violation of division (B) of this section when the statement is made with purpose to incriminate another.

(2) Whoever violates this division (D) is guilty of filing a false patient abuse or neglect complaint, a misdemeanor of the first degree.

(R.C. § 2903.35)

(E) Retaliation against person reporting patient abuse or neglect. No care facility shall discharge or in any manner discriminate or retaliate against any person solely because such person, in good faith, filed a complaint, affidavit, or other document alleging a violation of division (B) of this section or a violation of R.C. § 2903.34.

(R.C. § 2903.36)

Statutory reference:

License revocation for felony violations, see R.C. § 2903.37

§ 135.27 VIOLATING A PROTECTION ORDER, CONSENT AGREEMENT, ANTI-STALKING PROTECTION ORDER OR ORDER ISSUED BY A COURT OF ANOTHER STATE.

(A) No person shall recklessly violate the terms of any of the following:

(1) A protection order issued or consent agreement approved pursuant to R.C. § 2919.26 or R.C. § 3113.31;

(2) A protection order issued pursuant to R.C. § 2151.34, 2903.213 or 2903.214; or

(3) A protection order issued by a court of another state.

(B) (1) Whoever violates this section is guilty of violating a protection order.

(2) Except as otherwise provided in division (B)(3) or (B)(4) of this section, violating a protection order is a misdemeanor of the first degree.

(3) If the offender previously has been convicted of, pleaded guilty to or been adjudicated a delinquent child for a violation of a protection order issued pursuant to R.C. § 2151.34, 2903.213 or 2903.214, two or more violations of R.C. § 2903.21, 2903.211, 2903.22 or 2911.211, or a substantially equivalent state law or municipal ordinance, that involved the same person who is the subject of the protection order or consent agreement, or one or more violations of this section or a substantially equivalent state law or municipal ordinance, violating a protection order is a felony to be prosecuted under appropriate state law.

(4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony to be prosecuted under appropriate state law.

(5) If the protection order violated by the offender was an order issued pursuant to R.C. § 2151.34 or 2903.214 that required electronic monitoring of the offender pursuant to that section, the court may require in addition to any other sentence imposed upon the offender that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court. If the court requires under this division (B) that the offender be electronically monitored, unless the court determines that the offender is indigent, the court shall order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device. If the court determines that the offender is indigent and subject to the maximum amount allowable and the rules promulgated by the Attorney General under R.C. § 2903.214, the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device may be paid out of funds from the Reparations Fund created pursuant to R.C. § 2743.191. The total amount paid from the Reparations Fund created pursuant to R.C. § 2743.191 for electronic monitoring under R.C. §§ 2151.34, 2903.214 and 2919.27 shall not exceed \$300,000 per year.

(C) It is an affirmative defense to a charge under division (A)(3) of this section that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. § 2265(b) for a protection order that must be accorded full faith and credit by a court of this state or that it is not entitled to full faith and credit under 18 U.S.C. § 2265(c).

(D) As used in this section, ***PROTECTION ORDER ISSUED BY A COURT OF ANOTHER STATE*** means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a *pendente lite* order in a proceeding for other relief, if the court issued it in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. The term does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.
(R.C. § 2919.27)

§ 135.28 ADULTERATION OF FOOD.

(A) No person shall do either of the following, knowing or having reasonable cause to believe that any person may suffer physical harm or be seriously inconvenienced or annoyed thereby:

(1) Place a pin, razor blade, glass, laxative, drug of abuse or other harmful or hazardous object or substance in any food or confection; or

(2) Furnish to any person any food or confection which has been adulterated in violation of division (A)(1) of this section.

(R.C. § 3716.11)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.

(R.C. § 3716.99(C))

Statutory reference:

Adulteration of food generally, see R.C. § 3715.59

§ 135.29 ILLEGAL DISTRIBUTION OF CIGARETTES OR OTHER TOBACCO PRODUCTS; TRANSACTION SCANS.

(A) *Illegal distribution of cigarettes or other tobacco products.*

(1) As used in this section:

CHILD. Has the same meaning as in R.C. § 2151.011.

CIGARETTE. Includes clove cigarettes and hand-rolled cigarettes.

DISTRIBUTE. Means to furnish, give or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products or papers used to roll cigarettes.

PROOF OF AGE. Means a driver's license, a commercial driver's license, a military identification card, a passport or an identification card issued under R.C. §§ 4507.50 through 4507.52 that shows that a person is 18 years of age or older.

VENDING MACHINE. Has the same meaning as "Coin Machine" in R.C. § 2913.01.

(2) No manufacturer, producer, distributor, wholesaler or retailer of cigarettes, other tobacco products or any papers used to roll cigarettes, no agent, employee or representative of a manufacturer, producer, distributor, wholesaler or retailer of cigarettes, other tobacco products or papers used to roll cigarettes, and no other person shall do any of the following:

(a) Give, sell or otherwise distribute cigarettes, other tobacco products or papers used to roll cigarettes to any child;

(b) Give away, sell or distribute cigarettes, other tobacco products or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing cigarettes, other tobacco products or papers used to roll cigarettes to a person under 18 years of age is prohibited by law;

(c) Knowingly furnish any false information regarding the name, age or other identification of any child with purpose to obtain cigarettes, other tobacco products or papers used to roll cigarettes for that child;

(d) Manufacture, sell or distribute in this state any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco; or

(e) Sell cigarettes in a smaller quantity than that placed in the pack or other container by the manufacturer.

(3) No person shall sell or offer to sell cigarettes or other tobacco products by or from a vending machine except in the following locations:

(a) An area within a factory, business, office or other place not open to the general public;

(b) An area to which children are not generally permitted access; and

(c) Any other place not identified in division (A)(3)(a) or (A)(3)(b) of this section, upon all of the following conditions:

1. The vending machine is located within the immediate vicinity, plain view and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes and other tobacco product purchases from the vending machine will be readily observed by the person who owns or operates the place, or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway or outer waiting area shall not be considered located within the immediate vicinity, plain view and control of the person who owns or operates the place, or an employee of that person; and

2. The vending machine is inaccessible to the public when the place is closed.

(4) The following are affirmative defenses to a charge under division (A)(2)(a) of this section:

(a) The child was accompanied by a parent, spouse who is 18 years of age or older or legal guardian of the child; and

(b) The person who gave, sold or distributed cigarettes, other tobacco products or papers used to roll cigarettes to a child under division (A)(2)(a) of this section is a parent, spouse who is 18 years of age or older or legal guardian of the child.

(5) It is not a violation of division (A)(2)(a) or (A)(2)(b) of this section for a person to give or otherwise distribute to a child cigarettes, other tobacco products or papers used to roll cigarettes while the child is participating in a research protocol if all of the following apply:

(a) The parent, guardian or legal custodian of the child has consented in writing to the child participating in the research protocol;

(b) An institutional human subjects protection review board, or an equivalent entity, has approved of the research protocol; and

(c) The child is participating in the research protocol at the facility or location specified in the research protocol.

(6) (a) Whoever violates division (A)(2)(a), (A)(2)(b), (A)(2)(d) or (A)(2)(e) or (A)(3) of this section is guilty of illegal distribution of cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(a), (A)(2)(b), (A)(2)(d), (A)(2)(e) or (A)(3) of this section or a substantially equivalent state law or municipal ordinance, illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree.

(b) Whoever violates division (A)(2)(c) of this section is guilty of permitting children to use cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division (A)(2)(c) or a substantially equivalent state law or municipal ordinance, permitting children to use cigarettes or other tobacco products is a misdemeanor of the third degree.

(7) Any cigarettes, other tobacco products or papers used to roll cigarettes that are given, sold or otherwise distributed to a child in violation of this division (A) and that are used, possessed, purchased or received by a child in violation of R.C. § 2151.87 are subject to seizure and forfeiture as contraband under R.C. Chapter 2981.

(R.C. § 2927.02)

(B) *Tobacco product transaction scan.*

(1) As used in this division (B) and division (C) of this section:

CARD HOLDER. Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive cigarettes or other tobacco products from a seller, agent or employee.

IDENTIFICATION CARD. Means an identification card issued under R.C. §§ 4507.50 through 4507.52.

SELLER. Means a seller of cigarettes or other tobacco products and includes any person whose gift of or other distribution of cigarettes or other tobacco products is subject to the prohibitions of division (A) of this section.

TRANSACTION SCAN. Means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's

license or an identification card that is presented as a condition for purchasing or receiving cigarettes or other tobacco products.

TRANSACTION SCAN DEVICE. Means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away or otherwise distributing to the card holder cigarettes or other tobacco products.

(b) If the information deciphered by the transaction scan performed under division (B)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away or otherwise distribute any cigarettes or other tobacco products to the card holder.

(c) Division (B)(2)(a) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away or otherwise distributing cigarettes or other tobacco products to the person presenting the document.

(3) Rules adopted by the Registrar of Motor Vehicles under R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (B) and division (C) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except for the following:

1. The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by the card holder; or
2. The expiration date and identification number of the driver's or commercial driver's license or identification card presented by the card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (B)(4)(a) of this section, except for purposes of division (C) of this section.

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by division (C) of this section or another section of this code or the Ohio Revised Code.

(5) Nothing in this division (B) or division (C) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable local, state or federal laws or rules governing the sale, giving away or other distribution of cigarettes or other tobacco products.

(6) Whoever violates division (B)(2)(b) or (B)(4) of this section is guilty of engaging in an illegal tobacco product transaction scan, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the court shall pay each collected civil penalty to the County Treasurer for deposit into the county treasury.

(R.C. § 2927.021)

(C) Affirmative defenses.

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (A) of this section in which the age of the purchaser or other recipient of cigarettes or other tobacco products is an element of the alleged violation, if the seller, agent or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive cigarettes or other tobacco products presented a driver's or commercial driver's license or an identification card;

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid; and

(c) The cigarettes or other tobacco products were sold, given away or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (C)(1) of this section, the trier of fact in the action for the alleged violation of division (A) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (A) of this section. For purposes of division (C)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away or otherwise distributes cigarettes or other tobacco products is 18 years of age or older; and

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (C)(1) of this section is raised, the Registrar of Motor Vehicles or a Deputy Registrar who issued an identification card under R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.

(R.C. § 2927.022)

(D) *Shipment of tobacco products.*

(1) As used in this division (D):

AUTHORIZED RECIPIENT OF TOBACCO PRODUCTS. Means a person who is:

1. Licensed as a cigarette wholesale dealer under R.C. § 5743.15;
2. Licensed as a retail dealer as long as the person purchases cigarettes with the appropriate tax stamp affixed;
3. An export warehouse proprietor as defined in § 5702 of the Internal Revenue Code;
4. An operator of a customs bonded warehouse under 19 U.S.C. § 1311 or 19 U.S.C. § 1555;
5. An officer, employee or agent of the federal government or of this state acting in the person's official capacity;
6. A department, agency, instrumentality or political subdivision of the federal government or of this state; and
7. A person having a consent for consumer shipment issued by the Tax Commissioner under R.C. § 5743.71.

MOTOR CARRIER. Has the same meaning as in R.C. § 4923.01.

(2) The purpose of this division (D) is to prevent the sale of cigarettes to minors and to ensure compliance with the Master Settlement Agreement, as defined in R.C. § 1346.01.

(3) (a) No person shall cause to be shipped any cigarettes to any person in this municipality other than an authorized recipient of tobacco products.

(b) No motor carrier or other person shall knowingly transport cigarettes to any person in this municipality that the carrier or other person reasonably believes is not an authorized recipient of tobacco products. If cigarettes are transported to a home or residence, it shall be presumed that the motor carrier or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient of tobacco products.

(4) No person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in this municipality in any container or wrapping other than the original container or wrapping of the cigarettes shall fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the words "cigarettes."

(5) A court shall impose a fine of up to \$1,000 for each violation of division (D)(3)(a), (D)(3)(b) or (D)(4) of this section.
(R.C. § 2927.023)

§ 135.30 NONSMOKING AREAS IN PLACES OF PUBLIC ASSEMBLY.

(A) As used in this section, *PLACE OF PUBLIC ASSEMBLY* means:

(1) Enclosed theaters, except the lobby; opera houses; auditoriums; classrooms; elevators; rooms in which persons are confined as a matter of health care, including but not limited to a hospital room and a room in a residential care facility serving as the residence of a person living in such residential care facility;

(2) All buildings and other enclosed structures owned by the state, its agencies or political subdivisions, including but not limited to hospitals and state institutions for the mentally disabled and the mentally ill; university and college buildings, except rooms within those buildings used primarily as the residences of students or other persons affiliated with the university or college; office buildings; libraries; museums; and vehicles used in public transportation. That portion of a building or other enclosed structure that is owned by the state, a state agency or a political subdivision, and that is used primarily as a food service establishment, is not a *PLACE OF PUBLIC ASSEMBLY*; and

(3) Each portion of a building or enclosed structure that is not included in division (A)(1) or (A)(2) of this section is a *PLACE OF PUBLIC ASSEMBLY* if it has a seating capacity of 50 or more persons and is available to the public. Restaurants, food service establishments, dining rooms, cafés, cafeterias or other rooms used primarily for the service of food, as well as bowling alleys and places licensed by the Ohio Division of Liquor Control to sell intoxicating beverages for consumption on the premises, are not places of public assembly.

(B) For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of persons not smoking, in every place of public assembly there shall be an area where smoking is not permitted, which shall be designated a no smoking area, provided that not more than one-half of the rooms in any health care facility in which persons are confined as a matter of health care may be designated as smoking areas in their entirety. The designation shall be made before the place of public assembly is made available to the public. In places included in division (A)(1) of this section, the local fire authority having jurisdiction shall designate the no smoking area. In places included in division (A)(2) of this section that are owned by the state or its agencies, the Ohio Director of Administrative Services shall designate the area, and if the place is owned by a political subdivision, its legislative authority shall designate an officer who shall designate the area. In places included in division (A)(3) of this section, the person having control of the operations of the place of public assembly shall designate the no smoking area. In places included in division (A)(2) of this section which are also included in division (A)(1) of this section, the officer who has authority to designate the area in places in division (A)(2) of this section shall designate the no smoking area. A no smoking area may include the entire place of public assembly. Designations shall be made by the placement of signs that are clearly visible and that state "no smoking." No person shall remove signs from areas designated as no smoking areas.

(C) This section does not affect or modify the prohibition contained in R.C. § 3313.751(B).

(D) No person shall smoke in any area designated as a no smoking area in accordance with division (B) of this section.

(E) Whoever violates this section is guilty of a minor misdemeanor.
(R.C. § 3791.031)

§ 135.31 SPREADING CONTAGION.

(A) No person, knowing or having reasonable cause to believe that he or she is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself or herself to other persons, except when seeking medical aid.

(B) No person, having charge or care of a person whom he or she knows or has reasonable cause to believe is suffering from a dangerous, contagious disease, shall recklessly fail to take reasonable measures to protect others from exposure to the contagion, and to inform health authorities of the existence of the contagion.

(C) No person, having charge of a public conveyance or place of public accommodation, amusement, resort or trade, and knowing or having reasonable cause to believe that persons using such conveyance or place have been or are being exposed to a dangerous, contagious disease, shall negligently fail to take reasonable measures to protect the public from exposure to the contagion, and to inform health authorities of the existence of the contagion.
(R.C. § 3701.81)

(D) Whoever violates this section is guilty of a misdemeanor of the second degree.
(R.C. § 3701.99(C))

Statutory reference:

Contagion and quarantine, see R.C. §§ 3707.04 et seq.

Power to prevent contagious diseases, see R.C. § 715.37

§ 135.32 UNLAWFUL COLLECTION OF BODILY SUBSTANCES.

(A) No person shall knowingly collect any blood, urine, tissue or other bodily substance of another person without privilege or consent to do so.

(B) (1) Division (A) of this section does not apply to any of the following:

(a) The collection of any bodily substance of a person by a law enforcement officer, or by another person pursuant to the direction or advice of a law enforcement officer, for purposes of a chemical test or tests of the substance under R.C. § 1547.111(A)(1) or R.C. § 4511.191(A)(2) to determine the alcohol, drug, controlled substance, metabolite of a controlled substance or combination content of the bodily substance; or

(b) The collection of any bodily substance of a person by a peace officer, or by another person pursuant to the direction or advice of a peace officer, for purposes of a test or tests of the substance as provided in R.C. § 4506.17(A) to determine the person's alcohol concentration or the presence of any controlled substance or metabolite of a controlled substance.

(2) Division (B)(1) of this section shall not be construed as implying that the persons identified in divisions (B)(1)(a) and (B)(1)(b) of this section do not have privilege to collect the bodily substance of another person as described in those divisions or as limiting the definition of "privilege" set forth in R.C. § 2901.01.

(C) Whoever violates division (A) of this section is guilty of unlawful collection of a bodily substance. Except as otherwise provided in this division (C), unlawful collection of a bodily substance is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section or a substantially equivalent state law or municipal ordinance, unlawful collection of a bodily substance is a felony to be prosecuted under appropriate state law.

(R.C. § 2927.15)

CHAPTER 136: OFFENSES AGAINST JUSTICE AND ADMINISTRATION

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§ 136.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CAMPAIGN COMMITTEE. Has the same meaning as in R.C. § 3517.01.

CONTRIBUTION. Has the same meaning as in R.C. § 3517.01.

DETENTION. Arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States; hospitalization, institutionalization or confinement in any public or private facility that is ordered pursuant to or under the authority of R.C. § 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401 or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this division, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization or confinement in the facility but that occurs outside the facility; supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under R.C. § 311.29(E) or R.C. § 5149.03(B). For a person confined in a county jail who participates in a county jail industry program pursuant to R.C. § 5147.30, the term includes time spent at an assigned work site and going to and from the work site.

DETENTION FACILITY. Any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or an unruly child in this state or another state or under the laws of the United States.

LEGISLATIVE CAMPAIGN FUND. Has the same meaning as in R.C. § 3517.01.

OFFICIAL PROCEEDING. Any proceeding before a legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with an official proceeding.

PARTY OFFICIAL. Any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which he or she directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

POLITICAL ACTION COMMITTEE. Has the same meaning as in R.C. § 3517.01.

POLITICAL CONTRIBUTING ENTITY. Has the same meaning as in R.C. § 3517.01.

POLITICAL PARTY. Has the same meaning as in R.C. § 3517.01.

PROVIDER AGREEMENT. Has the same meaning as in R.C. § 5164.01.

PUBLIC OFFICIAL. Any elected or appointed officer, employee, or agent of the state or any political subdivision thereof, whether in a temporary or permanent capacity, and includes but is not

limited to legislators, judges and law enforcement officers. The term does not include an employee, officer or governor-appointed member of the board of directors of the nonprofit corporation formed under R.C. § 187.01.

PUBLIC SERVANT.

(1) Any of the following:

(a) Any public official;

(b) Any person performing ad hoc a governmental function, including but not limited to a juror, member of a temporary commission, master, arbitrator, advisor or consultant; or

(c) A person who is a candidate for public office, whether or not he or she is elected or appointed to the office for which he or she is a candidate. A person is a candidate for purposes of this division if he or she has been nominated according to law for election or appointment to public office, or if he or she has filed a petition or petitions as required by law to have his or her name placed on the ballot in a primary, general, or special election, or if he or she campaigns as a write-in candidate in any primary, general or special election.

(2) The term does not include an employee, officer or governor-appointed member of the board of directors of the nonprofit corporation formed under R.C. § 187.01.

VALUABLE THING or ***VALUABLE BENEFIT.*** Includes but is not limited to a contribution. This inclusion does not indicate or imply that a contribution was not included in those terms before September 17, 1986.

(R.C. § 2921.01) (1985 Code, § 136.01)

§ 136.02 FALSIFICATION.

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

(1) The statement is made in any official proceeding;

(2) The statement is made with purpose to incriminate another;

(3) The statement is made with purpose to mislead a public official in performing his or her official function;

(4) The statement is made with purpose to secure the payment of unemployment compensation; Ohio Works First; prevention, retention and contingency benefits and services; disability financial

assistance; retirement benefits or health care coverage from a state retirement system; economic development assistance as defined in R.C. § 9.66; or other benefits administered by a governmental agency or paid out of a public treasury;

(5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release or provider agreement;

(6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths;

(7) The statement is in writing on or in connection with a report or return that is required or authorized by law;

(8) The statement is in writing, and is made with purpose to induce another to extend credit to or employ the offender, or to confer any degree, diploma, certificate of attainment, award of excellence or honor on the offender, or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom the statement is directed relies upon it to his or her detriment;

(9) The statement is made with purpose to commit or facilitate the commission of a theft offense;

(10) The statement is knowingly made to a probate court in connection with any action, proceeding or other matter within its jurisdiction, either orally or in a written document, including but not limited to an application, petition, complaint or other pleading, or an inventory, account or report;

(11) The statement is made on an account, form, record, stamp, label or other writing that is required by law;

(12) The statement is made in connection with the purchase of a firearm, as defined in R.C. § 2923.11, and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity;

(13) The statement is made in a document or instrument of writing that purports to be a judgment, lien or claim of indebtedness and is filed or recorded with the Secretary of State, a county recorder or the clerk of a court of record;

(14) The statement is made in an application filed with a county sheriff pursuant to R.C. § 2923.125 in order to obtain or renew a concealed handgun license or is made in an affidavit submitted to a county sheriff to obtain a concealed handgun license on a temporary emergency basis under R.C. § 2923.1213; and

(15) The statement is required under R.C. § 5743.71 in connection with the person's purchase of cigarettes or tobacco products in a delivery sale.

(B) No person, in connection with the purchase of a firearm as defined in R.C. § 2923.11, shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) No person, in an attempt to obtain a concealed handgun license under R.C. § 2923.125, shall knowingly present to a sheriff a fictitious or altered document that purports to be certification of the person's competence in handling a handgun as described in division (B)(3) of that section.

(D) It is no defense to a charge under division (A)(6) of this section that the oath or affirmation was administered or taken in an irregular manner.

(E) If contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

(F) (1) Whoever violates division (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), (A)(6), (A)(7), (A)(8), (A)(10), (A)(11), (A)(13) or (A)(15) of this section is guilty of falsification, a misdemeanor of the first degree.

(2) Whoever violates division (A)(9) of this section is guilty of falsification in a theft offense. Except as otherwise provided in this division, falsification in a theft offense is a misdemeanor of the first degree. If the value of the property or services stolen is \$1,000 or more, falsification in a theft offense is a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (A)(12) or (B) of this section is guilty of falsification to purchase a firearm, a felony to be prosecuted under appropriate state law.

(4) Whoever violates division (A)(14) or (C) of this section is guilty of falsification to obtain a concealed handgun license, a felony to be prosecuted under appropriate state law.
(R.C. § 2921.13)

(G) (1) No person who has knowingly failed to maintain proof of financial responsibility in accordance with R.C. § 4509.101 shall produce any document with the purpose to mislead a peace officer upon the request of a peace officer for proof of financial responsibility made in accordance with R.C. § 4509.101(D)(2).

(2) Whoever violates this division (G) is guilty of falsification, a misdemeanor of the first degree.

(R.C. § 4509.102) (1985 Code, § 136.02)

§ 136.03 COMPOUNDING A CRIME.

(A) No person shall knowingly demand, accept or agree to accept anything of value in consideration of abandoning or agreeing to abandon a pending criminal prosecution.

(B) It is an affirmative defense to a charge under this section when both of the following apply:

(1) The pending prosecution involved is for a violation of R.C. § 2913.02, 2913.11, 2913.21(B)(2) or 2913.47, or a substantially equivalent municipal ordinance, of which the actor under this section was the victim; and

(2) The thing of value demanded, accepted or agreed to be accepted, in consideration of abandoning or agreeing to abandon the prosecution, did not exceed an amount that the actor reasonably believed due him or her as restitution for the loss caused him or her by the offense.

(C) When a prosecuting witness abandons or agrees to abandon a prosecution under division (B) of this section, the abandonment or agreement in no way binds the state to abandoning the prosecution.

(D) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree.

(R.C. § 2921.21) (1985 Code, § 136.03)

§ 136.04 FAILURE TO REPORT A CRIME.

(A) (1) Except as provided in division (A)(2) of this section, no person, knowing that a felony has been or is being committed, shall knowingly fail to report the information to law enforcement authorities.

(2) No person, knowing that a violation of R.C. § 2913.04(B) has been or is being committed or that the person has received information derived from such a violation, shall knowingly fail to report the violation to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no person who is a physician, limited practitioner, nurse or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound that the person treated or observed, or any serious physical harm to other persons that the person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers a body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at that time would not be unexpected, or to a law enforcement officer, ambulance service, emergency squad or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

(D) No person shall fail to provide upon request of the person to whom a report required by division (C) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within his or her knowledge that may have a bearing on the investigation of the death.

(E) (1) As used in this section, **BURN INJURY** means any of the following:

(a) Second or third degree burns;

(b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air; or

(c) Any burn injury or wound that may result in death.

(2) No physician, nurse or limited practitioner who, outside a hospital, sanitarium or other medical facility, attends or treats a person who has sustained a burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent or other person in charge of a hospital, sanitarium or other medical facility in which a person is attended or treated for any burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or (E)(3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the State Fire Marshal. The report shall be made on a form provided by the State Fire Marshal.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding R.C. § 4731.22, the physician-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted pursuant to division (E) of this section.

(F) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, professional clinical counselor or professional counselor who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence as defined in R.C. § 3113.31 shall note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding R.C. § 4731.22, the physician-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted pursuant to division (F)(1), and the information may be admitted as evidence in accordance with the Rules of Evidence.

(G) Division (A) or (D) of this section does not require disclosure of information, when any of the following applies.

(1) The information is privileged by reason of the relationship between attorney and client, doctor and patient, licensed psychologist or licensed school psychologist and client, member of the clergy or rabbi or minister or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister or priest for a religious counseling purpose in the professional character of the member of the clergy, rabbi, minister or priest, husband and wife, or a communications assistant and those who are a party to a telecommunications relay service call.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under R.C. § 2739.04 or 2739.12.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to him or her in his or her capacity as such by a person seeking his or her aid or counsel.

(5) Disclosure would amount to revealing information acquired by the actor in the course of his or her duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency or services provider certified pursuant to R.C. § 5119.36.

(6) Disclosure would amount to revealing information acquired by the actor in the course of his or her duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of R.C. § 2907.02 or 2907.05, or to victims of felonious sexual penetration in violation of former R.C. § 2907.12. As used in this division, **COUNSELING SERVICES** include services provided in an informal setting by a person who, by education or experience, is competent to provide such services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A)(1) of this section is a misdemeanor of the fourth degree. Violation of division (A)(2) or (B) of this section is a misdemeanor of the second degree.

(J) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(K) (1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree.

(R.C. § 2921.22) (1985 Code, § 136.04)

§ 136.05 FAILURE TO AID A LAW ENFORCEMENT OFFICER.

(A) No person shall negligently fail or refuse to aid a law enforcement officer, when called upon for assistance in preventing or halting the commission of an offense, or in apprehending or detaining an offender, when the aid can be given without a substantial risk of physical harm to the person giving it.

(B) Whoever violates this section is guilty of failure to aid a law enforcement officer, a minor misdemeanor.

(R.C. § 2921.23) (1985 Code, § 136.05)

§ 136.06 OBSTRUCTING OFFICIAL BUSINESS.

(A) No person, without privilege to do so and with purpose to prevent, obstruct or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

(B) Whoever violates this section is guilty of obstructing official business. Except as otherwise provided in this division (B), obstructing official business is a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, obstructing official business is a felony to be prosecuted under appropriate state law.

(R.C. § 2921.31) (1985 Code, § 136.06)

§ 136.07 OBSTRUCTING JUSTICE.

(A) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction or punishment of another for crime, or to assist another to benefit from the commission of a crime, and no person, with purpose to hinder the discovery, apprehension, prosecution, adjudication as a delinquent child, or disposition of a child for an act that if committed by an adult would be a crime or to assist a child to benefit from the commission of an act that if committed by an adult would be a crime, shall do any of the following:

(1) Harbor or conceal the other person or child;

(2) Provide the other person or child with money, transportation, a weapon, a disguise or other means of avoiding discovery or apprehension;

(3) Warn the other person or child of impending discovery or apprehension;

(4) Destroy or conceal physical evidence of the crime or act, or induce any person to withhold testimony or information or to elude legal process summoning him or her to testify or supply evidence;

(5) Communicate false information to any person; or

(6) Prevent or obstruct any person, by means of force, intimidation or deception, from performing any act to aid in the discovery, apprehension or prosecution of the other person or child.

(B) A person may be prosecuted for, and may be convicted of or adjudicated a delinquent child for committing, a violation of division (A) of this section regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to or is adjudicated a delinquent child for committing the crime or act the person or child aided committed. The crime or act the person or child aided committed shall be used under division (C) of this section in determining the penalty for violation of division (A) of this section, regardless of whether the person or child aided ultimately is apprehended for, is charge with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed.

(C) Whoever violates this section is guilty of obstructing justice.

(1) If the crime committed by the person aided is a misdemeanor or if the act committed by the child aided would be a misdemeanor if committed by an adult, obstructing justice is a misdemeanor of the same degree as the crime committed by the person aided or a misdemeanor of the same degree that the act committed by the child aided would be if committed by an adult.

(2) If the crime committed by the person aided is a felony or if the act committed by the child aided would be a felony if committed by an adult, or if the crime or act committed by the person or child aided is an act of terrorism, obstructing justice is a felony to be prosecuted under appropriate state law.

(D) As used in this section:

ACT OF TERRORISM. Has the same meaning as in R.C. § 2909.21.

ADULT. Has the same meaning as in R.C. § 2151.011.

CHILD. Has the same meaning as in R.C. § 2151.011.

DELINQUENT CHILD. Has the same meaning as in R.C. § 2152.02.
(R.C. § 2921.32) (1985 Code, § 136.07)

§ 136.08 RESISTING ARREST.

(A) No person, recklessly or by force, shall resist or interfere with a lawful arrest of himself, herself or another.

(B) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, cause physical harm to a law enforcement officer.

(C) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person if either of the following applies:

(1) The offender, during the course of or as a result of the resistance or interference, recklessly causes physical harm to a law enforcement officer by means of a deadly weapon; or

(2) The offender, during the course of the resistance or interference, brandishes a deadly weapon.

(D) Whoever violates this section is guilty of resisting arrest. A violation of division (A) of this section is a misdemeanor of the second degree. A violation of division (B) of this section is a misdemeanor of the first degree. A violation of division (C) of this section is a felony to be prosecuted under appropriate state law.

(E) As used in this section, **DEADLY WEAPON** has the same meaning as in R.C. § 2923.11. (R.C. § 2921.33) (1985 Code, § 136.08)

§ 136.09 HAVING AN UNLAWFUL INTEREST IN A PUBLIC CONTRACT.

(A) No public official shall knowingly do any of the following:

(1) Authorize or employ the authority of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest;

(2) Authorize or employ the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage or other security with respect to which the public official, a member of the public official's family, or any of the public official's business associates either has an interest, is an underwriter or receives any brokerage, origination or servicing fees;

(3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected; or

(5) Have an interest in the profits or benefits of a public contract that is not let by competitive bidding when required by law, and that involves more than \$150.

(B) In the absence of bribery or a purpose to defraud, a public official, member of a public official's family, or any of a public official's business associates shall not be considered as having an interest in a public contract or the investment of public funds, if all of the following apply:

(1) The interest of that person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization, that is the contractor on the public contract involved, or that is the issuer of the security in which public funds are invested;

(2) The shares owned or controlled by that person do not exceed 5% of the outstanding shares of the corporation, and the amount due that person as creditor does not exceed 5% of the total indebtedness of the corporation or other organization; and

(3) That person, prior to the time the public contract is entered into, files with the political subdivision or governmental agency or instrumentality involved, an affidavit giving that person's exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions; and

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

(D) Division (A)(4) of this section does not prohibit participation by a public employee in any housing program funded by public monies if the public employee otherwise qualifies for the program and does not use the authority or influence of the public employee's office or employment to secure benefits from the program and if the monies are to be used on the primary residence of the public employee. Such participation does not constitute an unlawful interest in a public contract in violation of this section.

(E) Whoever violates this section is guilty of having an unlawful interest in a public contract. Violation of division (A)(1) or (A)(2) of this section is a felony to be prosecuted under appropriate state law. Violation of division (A)(3), (A)(4) or (A)(5) of this section is a misdemeanor of the first degree.

(F) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with R.C. §§ 309.06 and 2921.421, or for a chief legal officer of a municipality or an official designated as prosecutor in a municipality to appoint assistants and employees in accordance with R.C. §§ 733.621 and 2921.421, or for a township law director appointed under R.C. § 504.15 to appoint assistants and employees in accordance with R.C. §§ 504.151 and 2921.421.

(G) Any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of this section is void and unenforceable. Any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination or servicing fees and that was entered into in violation of this section is void and unenforceable.

(H) As used in this section:

CHIEF LEGAL OFFICER. Has the same meaning as in R.C. § 733.621.

PUBLIC CONTRACT. Means any of the following:

(a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state or any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions or any agency or instrumentality of either; or

(b) A contract for the design, construction, alteration, repair or maintenance of any public property.

(R.C. § 2921.42) (1985 Code, § 136.09)

§ 136.10 SOLICITING OR RECEIVING IMPROPER COMPENSATION.

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by R.C. § 102.03(G), (H), (I) or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation; or

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

(B) No public servant for the public servant's own personal or business use and no person for the person's own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing, maintaining or renewing the appointment of any person to any public office, employment or agency; or

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion or other material aspects of employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining or renewing the appointment of any person to any public office, employment or agency; or

(2) Preferring, or maintaining the status of, any public employee with respect to compensation, duties, placement, location, promotion or other material aspects of employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) A public servant who is convicted of a violation of this section is disqualified from holding any public office, employment or position of trust in this state for a period of seven years from the date of conviction.

(F) Divisions (A), (B) and (C) of this section do not prohibit any person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity or prohibit a political party, campaign committee, legislative campaign fund, political action committee or political contributing entity from accepting voluntary contributions.

(R.C. § 2921.43) (1985 Code, § 136.10) (Ord. 87-44, passed 9-8-1987)

§ 136.11 DERELICTION OF DUTY.

(A) No law enforcement officer shall negligently do any of the following:

(1) Fail to serve a lawful warrant without delay; or

(2) Fail to prevent or halt the commission of an offense or to apprehend an offender, when it is in the law enforcement officer's power to do so alone or with available assistance.

(B) No law enforcement, ministerial or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.

(C) No officer, having charge of a detention facility, shall negligently do any of the following:

(1) Allow the detention facility to become littered or unsanitary;

(2) Fail to provide persons confined in the detention facility with adequate food, clothing, bedding, shelter and medical attention;

(3) Fail to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another;

(4) Allow a prisoner to escape; or

(5) Fail to observe any lawful and reasonable regulation for the management of the detention facility.

(D) No public official shall recklessly create a deficiency, incur a liability or expend a greater sum than is appropriated by the legislative authority for the use in any one year of the department, agency or institution with which the public official is connected.

(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office.

(F) Whoever violates this section is guilty of dereliction of duty, a misdemeanor of the second degree.

(G) As used in this section, **PUBLIC SERVANT** includes an officer or employee of a contractor as defined in R.C. § 9.08.

(R.C. § 2921.44) (1985 Code, § 136.11)

§ 136.12 INTERFERING WITH CIVIL RIGHTS.

(A) No public servant, under color of his or her office, employment or authority, shall knowingly deprive, conspire or attempt to deprive any person of a constitutional or statutory right.

(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.

(R.C. § 2921.45) (1985 Code, § 136.12)

§ 136.13 ILLEGAL CONVEYANCE OF PROHIBITED ITEMS ONTO GROUNDS OF A DETENTION FACILITY OR MENTAL HEALTH OR MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES FACILITY.

(A) No person shall knowingly convey, or attempt to convey, onto the grounds of a detention facility or of an institution, office building or other place that is under the control of the Department of Mental Health and Addiction Services, the Department of Developmental Disabilities, the Department of Youth Services or the Department of Rehabilitation and Correction, any of the following items:

(1) Any deadly weapon or dangerous ordnance, as defined in R.C. § 2923.11, or any part of or ammunition for use in such deadly weapon or dangerous ordnance;

(2) Any drug of abuse, as defined in R.C. § 3719.011; or

(3) Any intoxicating liquor, as defined in R.C. § 4301.01.

(B) Division (A) of this section does not apply to any person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution, office building or other place under the control of the Department of Mental Health and Addiction Services, the Department of Developmental Disabilities, the Department of Youth Services or the Department of Rehabilitation and Correction, with written authorization of the person in charge of the detention facility or the institution, office building or other place and in accordance with the written rules of the detention facility or the institution, office building or other place.

(C) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, to a prisoner who is temporarily released from confinement for a work assignment, or to any patient in an institution under the control of the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities, any item listed in division (A).

(D) No person shall knowingly deliver or attempt to deliver cash to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment.

(E) No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment a cellular telephone, two-way radio or other electronic communications device.

(F) (1) It is an affirmative defense to a charge under division (A)(1) of this section that the weapon or dangerous ordnance in question was being transported in a motor vehicle for any lawful purpose, that it was not on the actor's person, and if the weapon or dangerous ordnance was a firearm, that it was unloaded and was being carried in a closed package, box or case or in a compartment that can be reached only by leaving the vehicle.

(2) It is an affirmative defense to a charge under division (C) of this section that the actor was not otherwise prohibited by law from delivering the item to the confined person, the child, the prisoner, or the patient and that either of the following applies:

(a) The actor was permitted by the written rules of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(b) The actor was given written authorization by the person in charge of the detention facility or the institution, office building, or other place to deliver the item to the confined person or the patient.

(G) (1) Whoever violates division (A)(1) of this section or commits a violation of division (C) of this section involving any item listed in division (A)(1) of this section is guilty of illegal conveyance of weapons onto the grounds of a specified governmental facility, a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (A)(2) of this section or commits a violation of division (C) of this section involving any drug of abuse is guilty of illegal conveyance of drugs of abuse onto the grounds of a specified governmental facility, a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (A)(3) of this section or commits a violation of division (C) of this section involving any intoxicating liquor is guilty of illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility, a misdemeanor of the second degree.

(4) Whoever violates division (D) of this section is guilty of illegal conveyance of cash onto the grounds of a detention facility, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (D) of this section or a substantially equivalent state law or municipal ordinance, illegal conveyance of cash onto the grounds of a detention facility is a felony to be prosecuted under appropriate state law.

(5) Whoever violates division (E) of this section is guilty of illegal conveyance of a communications device onto the grounds of a specified governmental facility, a misdemeanor of the first degree. If the offender previously has been convicted or pleaded guilty to a violation of division (E) of

this section or a substantially equivalent state law or municipal ordinance, illegal conveyance of a communications device onto the grounds of a detention facility is a felony to be prosecuted under appropriate state law.

(R.C. § 2921.36)

(H) The person in charge of a detention facility shall, on the grounds of the detention facility, have the same power as a peace officer, as defined in R.C. § 2935.01, to arrest a person who violates this section.

(R.C. § 2921.37)

(1985 Code, § 136.13)

§ 136.14 ARREST NOTICE; FAILURE TO OBEY.

(A) Arrest of a person charged with a misdemeanor under an ordinance of this municipality or section of this code may be made by taking the person charged into custody or by serving him or her with an arrest notice. Such arrest notice may be served by the arresting officer when he or she is satisfied that the defendant will obey the order of arrest and all orders of the court, and that peace and order will be subserved by not taking such person into custody. The defendant shall in such cases acknowledge in writing the service of notice and shall agree to obey its order and all orders of the court.

(B) Failure to obey the order of an arrest notice shall be a minor misdemeanor.

(1985 Code, § 136.14) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 136.15 FAILURE TO ANSWER SUMMONS.

If a person summoned to appear as provided in R.C. § 2935.10(B) fails to appear without just cause and personal service of the summons was had upon the person, he or she may be found guilty of contempt of court, and may be fined not to exceed \$20 for such contempt. Upon failure to appear, the court or magistrate may forthwith issue a warrant for his or her arrest.

(R.C. § 2935.11) (1985 Code, § 136.15) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 136.16 RESERVED.

§ 136.17 INTERFERING WITH AUTHORIZED PERSONS AT EMERGENCIES.

(A) No person shall willfully obstruct, impede or hamper in any way the lawful operation of Sheriffs, police officers, deputies or other law enforcement officers, or of firefighters, rescue personnel, medical personnel or other authorized persons, at the scene of fires, accidents, disasters or emergencies of any kind, and no person shall willfully fail to obey the lawful order of any Sheriff, police officer,

deputy or other law enforcement officer engaged in the performance of his or her duties at the scene of or in connection with fires, accidents, disasters or emergencies of any kind.

(B) Nothing in this section shall be construed to limit access of or deny information to news media representatives in the lawful performance of their work.

(C) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the first degree.

(1985 Code, § 136.17) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 136.18 ASSAULTING POLICE DOG OR HORSE OR ASSISTANCE DOG.

(A) No person shall knowingly cause, or attempt to cause, physical harm to a police dog or horse in either of the following circumstances:

(1) The police dog or horse is assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted; or

(2) The police dog or horse is not assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog or horse is a police dog or horse.

(B) No person shall recklessly do any of the following:

(1) Taunt, torment or strike a police dog or horse;

(2) Throw an object or substance at a police dog or horse;

(3) Interfere with or obstruct a police dog or horse, or interfere with or obstruct a law enforcement officer who is being assisted by a police dog or horse, in a manner that does any of the following:

(a) Inhibits or restricts the law enforcement officer's control of the police dog or horse;

(b) Deprives the law enforcement officer of control of the police dog or horse;

(c) Releases the police dog or horse from its area of control;

(d) Enters the area of control of the police dog or horse without the consent of the law enforcement officer, including placing food or any other object or substance into that area; or

(e) Inhibits or restricts the ability of the police dog or horse to assist a law enforcement officer.

(4) Engage in any conduct that is likely to cause serious physical injury or death to a police dog or horse; or

(5) If the person is the owner, keeper or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger a police dog or horse that at the time of the conduct is assisting a law enforcement officer in the performance of the officer's duties or that the person knows is a police dog or horse.

(C) No person shall knowingly cause, or attempt to cause, physical harm to an assistance dog in either of the following circumstances:

(1) The dog is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted; or

(2) The dog is not assisting or serving a blind, deaf or hearing impaired, or mobility impaired person at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog is an assistance dog.

(D) No person shall recklessly do any of the following:

(1) Taunt, torment or strike an assistance dog;

(2) Throw an object or substance at an assistance dog;

(3) Interfere with or obstruct an assistance dog, or interfere with or obstruct a blind, deaf or hearing impaired, or mobility impaired person who is being assisted or served by an assistance dog, in a manner that does any of the following:

(a) Inhibits or restricts the assisted or served person's control of the dog;

(b) Deprives the assisted or served person of control of the dog;

(c) Releases the dog from its area of control;

(d) Enters the area of control of the dog without the consent of the assisted or served person, including placing food or any other object or substance into that area; or

(e) Inhibits or restricts the ability of the dog to assist the assisted or served person.

(4) Engage in any conduct that is likely to cause serious physical injury or death to an assistance dog; or

(5) If the person is the owner, keeper or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger an assistance dog that at the time of the conduct is assisting or serving a blind, deaf or hearing impaired, or mobility impaired person or that the person knows is an assistance dog.

(E) (1) Whoever violates division (A) of this section is guilty of assaulting a police dog or horse. Except as otherwise provided in this division (E), assaulting a police dog or horse is a misdemeanor of the second degree. If the violation results in physical harm to the police dog or horse other than death or serious physical harm, assaulting a police dog or horse is a misdemeanor of the first degree. If the violation results in serious physical harm to the police dog or horse or results in its death, assaulting a police dog or horse is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of harassing a police dog or horse. Except as otherwise provided this division (E), harassing a police dog or horse is a misdemeanor of the second degree. If the violation results in physical harm to the police dog or horse but does not result in its death or in serious physical harm to it, harassing a police dog or horse is a misdemeanor of the first degree. If the violation results in serious physical harm to the police dog or horse or results in its death, harassing a police dog or horse is a felony to be prosecuted under appropriate state law.

(3) Whoever violates division (C) of this section is guilty of assaulting an assistance dog. Except as otherwise provided in this division (E), assaulting an assistance dog is a misdemeanor of the second degree. If the violation results in physical harm to the assistance dog other than death or serious physical harm, assaulting an assistance dog is a misdemeanor of the first degree. If the violation results in serious physical harm to the assistance dog or results in its death, assaulting an assistance dog is a felony to be prosecuted under appropriate state law.

(4) Whoever violates division (D) of this section is guilty of harassing an assistance dog. Except as otherwise provided in this division (E), harassing an assistance dog is a misdemeanor of the second degree. If the violation results in physical harm to the assistance dog but does not result in the death or in serious physical harm to it, harassing an assistance dog is a misdemeanor of the first degree. If the violation results in serious physical harm to the assistance dog or results in its death, harassing an assistance dog is a felony to be prosecuted under appropriate state law.

(5) In addition to any other sanctions or penalty imposed for the offense under this section, R.C. Chapter 2929 or any other provision of the Ohio Revised Code or this code, whoever violates division (A), (B), (C) or (D) of this section is responsible for the payment of all of the following:

(a) Any veterinary bill or bill for medication incurred as a result of the violation by the Police Department regarding a violation of division (A) or (B) of this section or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog regarding a violation of division (C) or (D) of this section;

(b) The cost of any damaged equipment that results from the violation;

(c) If the violation did not result in the death of the police dog or horse or the assistance dog that was the subject of the violation and if, as a result of that dog or horse being the subject of the violation, the dog or horse needs further training or retraining to be able to continue in the capacity of a police dog or horse or an assistance dog, the cost of any further training or retraining of that dog or horse by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog; and

(d) If the violation resulted in the death of the police dog or horse or the assistance dog that was the subject of the violation or resulted in serious physical harm to that dog or horse to the extent that the dog or horse needs to be replaced on either a temporary or a permanent basis, the cost of replacing that dog or horse and of any further training of a new police dog or horse or a new assistance dog by a law enforcement officer or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog, which replacement or training is required because of the death of or the serious physical harm to the dog or horse that was the subject of the violation.

(F) This section does not apply to a licensed veterinarian whose conduct is in accordance with R.C. Chapter 4741.

(G) This section only applies to an offender who knows or should know at the time of the violation that the police dog or horse or assistance dog that is the subject of a violation under this section is a police dog or horse or an assistance dog.

(H) As used in this section:

ASSISTANCE DOG. Has the same meaning as in R.C. § 955.011.

BLIND. Has the same meaning as in R.C. § 955.011.

MOBILITY IMPAIRED PERSON. Has the same meaning as in R.C. § 955.011.

PHYSICAL HARM. Means any injury, illness or other psychological impairment, regardless of its gravity or duration.

POLICE DOG OR HORSE. Means a dog or horse that has been trained and may be used to assist law enforcement officers in the performance of their official duties.

SERIOUS PHYSICAL HARM. Means any of the following:

(a) Any physical harm that carries a substantial risk of death;

(b) Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming; or

(c) Any physical harm that causes acute pain of a duration that results in substantial suffering.

(R.C. § 2921.321) (1985 Code, § 136.18)

§ 136.19 MISUSE OF 9-1-1 SYSTEM.

(A) As used in this section, **9-1-1 SYSTEM** means a system through which individuals can request emergency service using the telephone number 9-1-1.

(R.C. § 128.01(A))

(B) No person shall knowingly use the telephone number of a 9-1-1 system established under R.C. Chapter 128 to report an emergency if the person knows that no emergency exists.

(C) No person shall knowingly use a 9-1-1 system for a purpose other than obtaining emergency service.

(D) No person shall disclose or use any information concerning telephone numbers, addresses, or names obtained from the database that serves the public safety answering point of a 9-1-1 system established under R.C. Chapter 128, except for any of the following purposes or under any of the following circumstances:

(1) For the purpose of the 9-1-1 system;

(2) For the purpose of responding to an emergency call to an emergency service provider;

(3) In the circumstance of the inadvertent disclosure of such information due solely to technology of the wireless telephone network portion of the 9-1-1 system not allowing access to the database to be restricted to 9-1-1 specific answering lines at a public safety answering point;

(4) In the circumstance of access to a database being given by a telephone company that is a wireless service provider to a public utility or municipal utility in handling customer calls in times of public emergency or service outages. The charge, terms and conditions for the disclosure or use of such information for the purpose of such access to a database shall be subject to the jurisdiction of the Steering Committee; or

(5) In the circumstance of access to a database given by a telephone company that is a wireline service provider to a state and local government in warning of a public emergency, as determined by the Steering Committee. The charge, terms and conditions for the disclosure or use of that information for the purpose of access to a database is subject to the jurisdiction of the Steering Committee.

(R.C. § 128.32(E) - (G))

(E) (1) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree.

(2) Whoever violates division (C) or (D) of this section is guilty of a misdemeanor of the fourth degree on a first offense and a felony to be prosecuted under appropriate state law on each subsequent offense.

(R.C. § 128.99(A), (B))

(1985 Code, § 136.19)

§ 136.20 FAILURE TO DISCLOSE PERSONAL INFORMATION.

(A) No person who is in a public place shall refuse to disclose the person's name, address or date of birth, when requested by a law enforcement officer who reasonably suspects either of the following:

(1) The person is committing, has committed or is about to commit a criminal offense; or

(2) The person witnessed any of the following:

(a) An offense of violence that would constitute a felony under the laws of this state;

(b) A felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or property;

(c) Any attempt or conspiracy to commit, or complicity in committing, any offenses identified in division (A)(2)(a) or (A)(2)(b) of this section; or

(d) Any conduct reasonably indicating that any offense identified in division (A)(2)(a) or (A)(2)(b) of this section or any attempt, conspiracy or complicity described in division (A)(2)(c) of this section has been, is being or is about to be committed.

(B) Whoever violates division (A) of this section is guilty of failure to disclose one's personal information, a misdemeanor of the fourth degree.

(C) Nothing in division (A) of this section requires a person to answer any questions beyond that person's name, address or date of birth. Nothing in division (A) of this section authorizes a law enforcement officer to arrest a person for not providing any information beyond the person's name, address or date of birth or for refusing to describe the offense observed.

(D) It is not a violation of division (A) of this section to refuse to answer a question that would reveal a person's age or date of birth if age is an element of the crime that the person is suspected of committing.

(R.C. § 2921.29)

(E) No person entering an airport, train station, port or other similar critical transportation infrastructure site shall refuse to show identification when requested by a law enforcement officer when there is a threat to security and the law enforcement officer is requiring identification of all persons entering the site.

(F) A law enforcement officer may prevent any person who refuses to show identification when asked under the circumstances described in division (E) of this section from entering the critical transportation infrastructure site.

(R.C. § 2909.31)

(1985 Code, § 136.20)

§ 136.21 FALSE REPORT OF CHILD ABUSE OR NEGLECT.

(A) No person shall knowingly make or cause another person to make a false report under R.C. § 2151.421(B) alleging that any person has committed an act or omission that resulted in a child being an abused child as defined in R.C. § 2151.031 or a neglected child as defined in R.C. § 2151.03.

(B) Whoever violates this section is guilty of making or causing a false report of child abuse or child neglect, a misdemeanor of the first degree.

(R.C. § 2921.14)

§ 136.22 DISCLOSURE OF CONFIDENTIAL PEACE OFFICER INFORMATION.

(A) No officer or employee of a law enforcement agency or court, or of the Clerk's office of any court, shall disclose during the pendency of any criminal case the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee or youth services employee who is a witness or arresting officer in the case.

(B) Division (A) of this section does not prohibit a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee or youth services employee from disclosing the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's or youth services employee's own home address, and does not apply to any person who discloses the home address of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee or youth services employee pursuant to a court-ordered disclosure under division (C) of this section.

(C) The court in which any criminal case is pending may order the disclosure of the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee or youth services employee who is a witness or arresting officer in the case, if the court determines after a written request for the disclosure that good cause exists for disclosing the home address of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee or youth services employee.

(D) Whoever violates division (A) of this section is guilty of disclosure of confidential information, a misdemeanor of the fourth degree.

(R.C. § 2921.24)

(E) No judge of a court of record, or Mayor presiding over a Mayor's court, shall order a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee or youth services employee who is a witness in a criminal case, to disclose the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's or youth services employee's home address during the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's or youth services employee's examination in the case unless the judge or Mayor determines that the defendant has a right to the disclosure.

(F) As used in this section:

PEACE OFFICER. Has the same meaning as in R.C. § 2935.01.

CORRECTIONAL EMPLOYEE. Has the same meaning as in R.C. § 149.43.

YOUTH SERVICES EMPLOYEE. Has the same meaning as in R.C. § 149.43.

(R.C. § 2921.25)

§ 136.23 INTIMIDATION OF CRIME VICTIM OR WITNESS.

(A) No person shall knowingly attempt to intimidate or hinder the victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding, and no person shall knowingly attempt to intimidate a witness to a criminal or delinquent act by reason of the person being a witness to that act.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property or by unlawful threat to commit any offense or calumny against any person, shall attempt to influence, intimidate or hinder any of the following persons:

(1) The victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding;

(2) A witness to a criminal or delinquent act by reason of the person being a witness to that act;
or

(3) An attorney by reason of the attorney's involvement in any criminal or delinquent child action or proceeding.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment or information by participating in the arbitration, mediation, compromise, settlement or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement or conciliation of a dispute of that nature that is conferred by any of the following:

(1) A section of the Ohio Revised Code;

(2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the Ohio Supreme Court in accordance with Ohio Constitution, Art. IV, § 5;

(3) A local rule of court, including but not limited to a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement or other conciliation programs; or

(4) The order of a judge of a municipal court, county court or court of common pleas.

(D) Whoever violates this section is guilty of intimidation of an attorney, victim or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(E) As used in this section, **WITNESS** means any person who has or claims to have knowledge concerning a fact or facts concerning a criminal or delinquent act, whether or not criminal or delinquent child charges are actually filed.

(R.C. § 2921.04)

§ 136.24 USING SHAM LEGAL PROCESS.

(A) As used in this section:

LAWFULLY ISSUED. Means adopted, issued or rendered in accordance with the United States Constitution, the Constitution of a state, and the applicable statutes, rules, regulations and ordinances of the United States, a state and the political subdivisions of a state.

POLITICAL SUBDIVISIONS. Means municipal corporations, townships, counties, school districts and all other bodies corporate and politic that are organized under state law and are responsible for governmental activities only in geographical areas smaller than that of a state.

SHAM LEGAL PROCESS. Means an instrument that meets all of the following conditions:

(a) It is not lawfully issued;

(b) It purports to do any of the following:

1. To be a summons, subpoena, judgment or order of a court, a law enforcement officer, or a legislative, executive or administrative body;

2. To assert jurisdiction over or determine the legal or equitable status, rights, duties, powers or privileges of any person or property; and

3. To require or authorize the search, seizure, indictment, arrest, trial or sentencing of any person or property.

(c) It is designed to make another person believe that it is lawfully issued.

STATE. Means a state of the United States, including without limitation the state legislature, the highest court of the state that has statewide jurisdiction, the offices of all elected state officers and all departments, boards, offices, commissions, agencies, institutions and other instrumentalities of the state. The term does not include the political subdivisions of the state.

(B) No person shall, knowing the sham legal process to be a sham legal process, do any of the following:

(1) Knowingly issue, display, deliver, distribute or otherwise use sham legal process;

(2) Knowingly use sham legal process to arrest, detain, search or seize any person or the property of another person;

(3) Knowingly commit or facilitate the commission of an offense using sham legal process; or

(4) Knowingly commit a felony by using sham legal process.

(C) It is an affirmative defense to a charge under division (B)(1) or (B)(2) of this section that the use of sham legal process was for a lawful purpose.

(D) Whoever violates this section is guilty of using sham legal process. A violation of division (B)(1) of this section is a misdemeanor of the fourth degree. A violation of division (B)(2) or (B)(3) of this section is a misdemeanor of the first degree, except that if the purpose of a violation of division (B)(3) of this section is to commit or facilitate the commission of a felony, a violation of division (B)(3) of this section is a felony to be prosecuted under appropriate state law. A violation of division (B)(4) of this section is a felony to be prosecuted under appropriate state law.

(R.C. § 2921.52(A) - (D))

§ 136.25 MAKING FALSE ALLEGATION OF PEACE OFFICER MISCONDUCT.

(A) As used in this section, **PEACE OFFICER** has the same meaning as in R.C. § 2935.01.

(B) No person shall knowingly file a complaint against a peace officer that alleges that the peace officer engaged in misconduct in the performance of the officer's duties if the person knows that the allegation is false.

(C) Whoever violates division (B) of this section is guilty of making a false allegation of peace officer misconduct, a misdemeanor of the first degree.

(R.C. § 2921.15)

CHAPTER 137: WEAPONS CONTROL

Section

- 137.01 Definitions
- 137.02 Carrying concealed weapons
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- 137.14 Pointing and discharging firearms and other weapons
- 137.15 License or permit to possess dangerous ordnance

§ 137.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUTOMATIC FIREARM. Any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. The term also means any semi-automatic firearm designed or specially adapted to fire more than 31 cartridges without reloading, other than a firearm chambering only .22 caliber short, long or long-rifle cartridges.

BALLISTIC KNIFE. A knife with a detachable blade that is propelled by a spring-operated mechanism.

CONCEALED HANDGUN LICENSE or ***LICENSE TO CARRY A CONCEALED HANDGUN.***

(1) Means, subject to division (2) of this definition, a license or temporary emergency license to carry a concealed handgun issued under R.C. § 2923.125 or R.C. § 2923.1213 or a license to carry

a concealed handgun issued by another state with which the Attorney General has entered into a reciprocity agreement under R.C. § 109.69.

(2) A reference in any provision of this Code to a concealed handgun license issued under R.C. § 2923.125 or a license to carry a concealed handgun issued under R.C. § 2923.125 means only a license of the type that is specified in that section. A reference in any provision of this Code to a concealed handgun license issued under R.C. § 2923.1213, a license to carry a concealed handgun issued under R.C. § 2923.1213, or a license to carry a concealed handgun on a temporary emergency basis means only a license of the type that is specified in R.C. § 2923.1213. A reference in any provision of this Code to a concealed handgun license issued by another state or a license to carry a concealed handgun issued by another state means only a license issued by another state with which the Attorney General has entered into a reciprocity agreement under R.C. § 109.69.

DANGEROUS ORDNANCE.

(1) Any of the following, except as provided in division (2) of this definition:

(a) Any automatic or sawed-off firearm, zip-gun or ballistic knife.

(b) Any explosive device or incendiary device;

(c) Nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid and other high explosives; amatol, tritonal, tetrytol, pentolite, pectretol, cyclotol and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating or demolitions;

(d) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon;

(e) Any firearm muffler or silencer; and

(f) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

(2) The term does not include any of the following:

(a) Any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder;

(b) Any pistol, rifle or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm;

(c) Any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;

(d) Black powder, priming quills and percussion caps possessed and lawfully used to fire a cannon of a type defined in division (2)(c) of this definition during displays, celebrations, organized matches or shoots and target practice, and smokeless and black powder, primers and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;

(e) Dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio or museum piece; or

(f) Any device that is expressly excepted from the definition of a destructive device pursuant to the Gun Control Act of 1968, 18 U.S.C. § 921(a)(4), as amended, and regulations issued under that act.

DEADLY WEAPON. Any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

EXPLOSIVE. Any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. The term includes all materials that have been classified as division 1.1, division 1.2, division 1.3 or division 1.4 explosives by the United States Department of Transportation in its regulations and includes but is not limited to dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses and igniter cords and igniters. The term does not include "fireworks," as defined in R.C. § 3743.01, or any substance or material otherwise meeting the definition of explosive set forth in this section that is manufactured, sold, possessed, transported, stored, or used in any activity described in R.C. § 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations, including but not limited to the provisions of R.C. § 3743.80 and the rules of the Fire Marshal adopted pursuant to R.C. § 3737.82.

EXPLOSIVE DEVICE. Any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. The term includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge and any pressure vessel that has been knowingly tampered with or arranged so as to explode.

FIREARM.

(1) Any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. The term includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable.

(2) When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including but not limited to the representations and actions of the individual exercising control over the firearm.

HANDGUN. Any of the following:

(1) Any firearm that has a short stock and is designed to be held and fired by the use of a single hand; or

(2) Any combination of parts from which a firearm of a type described in division (1) of this definition can be assembled.

INCENDIARY DEVICE. Any firebomb, and any device designed or specially adapted to cause physical harm to persons or property by means of fire, and consisting of an incendiary substance or agent and a means to ignite it.

SAWED-OFF FIREARM. A shotgun with a barrel less than 18 inches long, or a rifle with a barrel less than 16 inches long, or a shotgun or rifle less than 26 inches long overall.

SEMI-AUTOMATIC FIREARM. Any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

VALID CONCEALED HANDGUN LICENSE or VALID LICENSE TO CARRY A CONCEALED HANDGUN. A concealed handgun license that is currently valid, that is not under a suspension under R.C. § 2923.128(A)(1), under R.C. § 2923.1213, or under a suspension provision of the state other than this state in which the license was issued, and that has not been revoked under R.C. § 2923.128(B)(1), under R.C. § 2923.1213, or under a revocation provision of the state other than this state in which the license was issued.

ZIP-GUN. Any of the following:

(1) Any firearm of crude and extemporized manufacture;

(2) Any device, including without limitation a starter's pistol, not designed as a firearm, but that is specially adapted for use as a firearm; or

(3) Any industrial tool, signaling device or safety device, not designed as a firearm, but that as designed is capable of use as such, when possessed, carried or used as a firearm.
(R.C. § 2923.11) (1985 Code, § 137.01)

§ 137.02 CARRYING CONCEALED WEAPONS.

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

- (1) A deadly weapon other than a handgun;
- (2) A handgun other than a dangerous ordnance; or
- (3) A dangerous ordnance.

(B) No person who has been issued a concealed handgun license shall do any of the following:

(1) If the person is stopped for a law enforcement purpose, and is carrying a concealed handgun, fail to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a concealed handgun license and that the person then is carrying a concealed handgun;

(2) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(3) If the person is stopped for a law enforcement purpose, if the person is carrying a concealed handgun, and if the person is approached by any law enforcement officer while stopped, knowingly remove or attempt to remove the loaded handgun from the holster, pocket or other place in which the person is carrying it, knowingly grasp or hold the loaded handgun, or knowingly have contact with the loaded handgun by touching it with the person's hands or fingers at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person removes, attempts to remove, grasps, holds or has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer; or

(4) If the person is stopped for a law enforcement purpose and is carrying a concealed handgun, knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the person is stopped, including but not limited to a specific order to the person to keep the person's hands in plain sight.

(C) (1) This section does not apply to any of the following:

(a) An officer, agent or employee of this or any other state or the United States, or to a law enforcement officer, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns and is acting within the scope of the officer's, agent's or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry concealed weapons or dangerous ordnance or is authorized to carry handguns, and who is subject to and in compliance with the requirements of R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (C)(1)(b) does not apply to the person;

(c) A person's transportation or storage of a firearm, other than a firearm described in R.C. § 2923.11(G) to (M), in a motor vehicle for any lawful purpose if the firearm is not on the actor's person; or

(d) A person's storage or possession of a firearm, other than a firearm described in R.C. § 2923.11(G) to (M), in the actor's own home for any lawful purpose.

(2) Division (A)(2) of this section does not apply to any person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid concealed handgun license, unless the person knowingly is in a place described in R.C. § 2923.126(B).

(D) It is an affirmative defense to a charge under division (A)(1) of this section of carrying or having control of a weapon other than a handgun and other than a dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following applies.

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of a character or was necessarily carried on in a manner or at a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor, a member of the actor's family, or the actor's home, such as would justify a prudent person in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.

(E) No person who is charged with a violation of this section shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(F) (1) Whoever violates this section is guilty of carrying concealed weapons. Except as otherwise provided in this division or division (F)(2) of this section, carrying concealed weapons in violation of division (A) of this section is a misdemeanor of the first degree. Except as otherwise provided in this division or division (F)(2) of this section, if the offender previously has been convicted of a violation of

this section or any substantially equivalent state law or municipal ordinance or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons in violation of division (A) of this section is a felony to be prosecuted under appropriate state law. Except as otherwise provided in division (F)(2) of this section, if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons in violation of division (A) of this section is a felony to be prosecuted under appropriate state law.

(2) If a person being arrested for a violation of division (A)(2) of this section promptly produces a valid concealed handgun license, and if at the time of the violation the person was not knowingly in a place described in R.C. § 2923.126(B), the officer shall not arrest the person for a violation of that division. If the person is not able to promptly produce any concealed handgun license and if the person is not in a place described in that section, the officer may arrest the person for a violation of that division, and the offender shall be punished as follows.

(a) The offender shall be guilty of a minor misdemeanor if both of the following apply:

1. Within ten days after the arrest, the offender presents a concealed handgun license, which license was valid at the time of the arrest to the law enforcement agency that employs the arresting officer; and

2. At the time of the arrest, the offender was not knowingly in a place described in R.C. § 2923.126(B).

(b) The offender shall be guilty of a misdemeanor and shall be fined \$500 if all of the following apply:

1. The offender previously had been issued a concealed handgun license, and that license expired within the two years immediately preceding the arrest;

2. Within 45 days after the arrest, the offender presents a concealed handgun license to the law enforcement agency that employed the arresting officer, and the offender waives in writing the offender's right to a speedy trial on the charge of the violation that is provided in R.C. § 2945.71; and

3. At the time of the commission of the offense, the offender was not knowingly in a place described in R.C. § 2923.126(B).

(c) If neither division (F)(2)(a) nor (F)(2)(b) of this section applies, the offender shall be punished under division (F)(1) of this section.

(3) Except as otherwise provided in this division, carrying concealed weapons in violation of division (B)(1) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for a violation of division (B)(1) of this section, the offender's concealed handgun

license shall be suspended pursuant to R.C. § 2923.128(A)(2). If, at the time of the stop of the offender for a law enforcement purpose that was the basis of the violation, any law enforcement officer involved with the stop had actual knowledge that the offender has been issued a concealed handgun license, carrying concealed weapons in violation of division (B)(1) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to R.C. § 2923.128(A)(2).

(4) Carrying concealed weapons in violation of division (B)(2) or (B)(4) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(2) or (B)(4) of this section or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (B)(2) or (B)(4) of this section, the offender's concealed handgun license shall be suspended pursuant to R.C. § 2923.128(A)(2).

(5) Carrying concealed weapons in violation of division (B)(3) of this section is a felony to be prosecuted under appropriate state law.

(G) If a law enforcement officer stops a person to question the person regarding a possible violation of this section, for a traffic stop, or for any other law enforcement purpose, if the person surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, R.C. § 2923.163(B) applies.

(R.C. § 2923.12) (1985 Code, § 137.02)

§ 137.03 USING WEAPONS WHILE INTOXICATED.

(A) No person, while under the influence of alcohol or any drug of abuse, shall carry or use any firearm or dangerous ordnance.

(B) Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree.

(R.C. § 2923.15) (1985 Code, § 137.03)

§ 137.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.

(A) No person shall knowingly discharge a firearm while in or on a motor vehicle.

(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.

(C) No person shall knowingly transport or have a firearm in a motor vehicle, unless the person may lawfully possess that firearm under applicable law of this state or the United States, the firearm is unloaded, and the firearm is carried in one of the following ways:

- (1) In a closed package, box or case;
- (2) In a compartment that can be reached only by leaving the vehicle;
- (3) In plain sight and secured in a rack or holder made for the purpose; or

(4) If the firearm is at least 24 inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least 18 inches in length, either in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

(D) No person shall knowingly transport or have a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies:

- (1) The person is under the influence of alcohol, a drug of abuse or a combination of them; or

(2) The person's whole blood, blood serum or plasma, breath or urine contains a concentration of alcohol, a listed controlled substance or a listed metabolite of a controlled substance prohibited for persons operating a vehicle, as specified in R.C. § 4511.19(A), regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.

(E) No person who has been issued a concealed handgun license, who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in R.C. § 5503.34, and who is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, shall do any of the following:

(1) Fail to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a concealed handgun license and that the person then possesses or has a loaded handgun in the motor vehicle;

(2) Fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a concealed handgun license and that the person then possesses or has a loaded handgun in the commercial motor vehicle;

(3) Knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(4) Knowingly have contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person has contact with the loaded handgun pursuant to and in accordance with directions given by the law enforcement officer; or

(5) Knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, including but not limited to a specific order to the person to keep the person's hands in plain sight.

(F) (1) Divisions (A), (B), (C) and (E) of this section do not apply to any of the following:

(a) An officer, agent or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's or employee's duties; or

(b) Any person who is employed in this state, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the requirements of R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (F)(1)(b) does not apply to the person.

(2) Division (A) of this section does not apply to a person if all of the following circumstances apply.

(a) The person discharges a firearm from a motor vehicle at a coyote or groundhog, the discharge is not during the deer gun hunting season as set by the Chief of the Division of Wildlife of the Department of Natural Resources, and the discharge at the coyote or groundhog, but for the operation of this section, is lawful.

(b) The motor vehicle from which the person discharges the firearm is on real property that is located in an unincorporated area of a township and that is either zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(2)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person does not discharge the firearm in any of the following manners:

1. While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

2. In the direction of a street, highway or other public or private property used by the public for vehicular traffic or parking;

3. At or into an occupied structure that is a permanent or temporary habitation; or

4. In the commission of any violation of law, including but not limited to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(3) Division (A) of this section does not apply to a person if all of the following apply.

(a) The person possesses a valid electric-powered all-purpose vehicle permit issued under R.C. § 1533.103 by the Chief of the Division of Wildlife.

(b) The person discharges a firearm at a wild quadruped or game bird as defined in R.C. § 1531.01 during the open hunting season for the applicable wild quadruped or game bird.

(c) The person discharges a firearm from a stationary electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife, provided that the road is identified by an electric-powered all-purpose vehicle sign.

(d) The person does not discharge the firearm in any of the following manners:

1. While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

2. In the direction of a street, a highway, or other public or private property that is used by the public for vehicular traffic or parking;

3. At or into an occupied structure that is a permanent or temporary habitation; or

4. In the commission of any violation of law, including but not limited to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(4) Divisions (B) and (C) of this section do not apply to a person if all of the following circumstances apply.

(a) At the time of the alleged violation of either of those divisions, the person is the operator of or a passenger in a motor vehicle.

(b) The motor vehicle is on real property that is located in an unincorporated area of a township and that is either zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(4)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person, prior to arriving at the real property described in division (F)(4)(b) of this section, did not transport or possess a firearm in the motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway or other public or private property used by the public for vehicular traffic or parking.

(5) Divisions (B) and (C) of this section do not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, both of the following apply.

(a) The person transporting or possessing the handgun is carrying a valid concealed handgun license.

(b) The person transporting or possessing the handgun is not knowingly in a place described in R.C. § 2923.126(B).

(6) Divisions (B) and (C) of this section do not apply to a person if all of the following apply.

(a) The person possesses a valid electric-powered all-purpose vehicle permit issued under R.C. § 1533.103 by the Chief of the Division of Wildlife.

(b) The person is on or in an electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle during the open hunting season for a wild quadruped or game bird.

(c) The person is on or in an electric-powered all-purpose vehicle as defined in R.C. § 1531.01 or a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife, provided that the road is identified by an electric-powered all-purpose vehicle sign.

(G) (1) The affirmative defenses authorized in R.C. § 2923.12(D)(1) and (D)(2) are affirmative defenses to a charge under division (B) or (C) of this section that involves a firearm other than a handgun.

(2) It is an affirmative defense to a charge under division (B) or (C) of this section of improperly handling firearms in a motor vehicle that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on the actor's own property, provided that this affirmative defense is not available unless the person, immediately prior to arriving at the actor's own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(H) (1) No person who is charged with a violation of division (B), (C), or (D) of this section shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(2) (a) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (E) of this section as it existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of division (E) of this section on or

after September 30, 2011, the person may file an application under R.C. § 2953.37 requesting the expungement of the record of conviction.

(b) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B) or (C) of this section as the division existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of division (B) or (C) of this section on or after September 30, 2011, due to the application of division (F)(5) of this section as it exists on and after September 30, 2011, the person may file an application under R.C. § 2953.37 requesting the expungement of the record of conviction.

(I) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. Violation of division (A) of this section is a felony to be prosecuted under appropriate state law. Violation of division (C) of this section is a misdemeanor of the fourth degree. A violation of division (D) of this section is a felony to be prosecuted under appropriate state law and, if the loaded handgun is concealed on the person's person, it is also a felony to be prosecuted under appropriate state law. Except as otherwise provided in this division, a violation of division (E)(1) or (E)(2) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for the violation, the offender's concealed handgun license shall be suspended pursuant to R.C. § 2923.128(A)(2). If at the time of the stop of the offender for a traffic stop, for another law enforcement purpose, or for a purpose defined in R.C. § 5503.34 that was the basis of the violation any law enforcement officer involved with the stop or the employee of the motor carrier enforcement unit who made the stop had actual knowledge of the offender's status as a licensee, a violation of division (E)(1) or (E)(2) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to R.C. § 2923.128(A)(2). A violation of division (E)(4) of this section is a felony to be prosecuted under appropriate state law. A violation of division (E)(3) or (E)(5) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (E)(3) or (E)(5) of this section or any substantially equivalent state law or municipal ordinance, a felony to be prosecuted under appropriate state law. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (E)(3) or (E)(5) of this section, the offender's concealed handgun license shall be suspended pursuant to R.C. § 2923.128(A)(2). A violation of division (B) of this section is a felony to be prosecuted under appropriate state law.

(J) If a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the motor vehicle surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, R.C. § 2923.163(B) applies.

(K) As used in this section:

AGRICULTURE. Has the same meaning as in R.C. § 519.01.

COMMERCIAL MOTOR VEHICLE. Has the same meaning as in R.C. § 4506.25(A).

HIGHWAY. Has the same meaning as in R.C. § 4511.01.

MOTOR CARRIER ENFORCEMENT UNIT. Means the Motor Carrier Enforcement Unit in the Department of Public Safety, Division of State Highway Patrol, that is created by R.C. § 5503.34.

MOTOR VEHICLE. Has the same meaning as in R.C. § 4511.01.

OCCUPIED STRUCTURE. Has the same meaning as in R.C. § 2909.01.

STREET. Has the same meaning as in R.C. § 4511.01.

TENANT. Has the same meaning as in R.C. § 1531.01.

UNLOADED.

(a) With respect to a firearm other than a firearm described in division (d) of this definition, means that no ammunition is in the firearm in question, no magazine or speed loader containing ammunition is inserted into the firearm, and one of the following applies.

1. There is no ammunition in a magazine or speed loader that is in the vehicle in question and that may be used with the firearm in question.

2. Any magazine or speed loader that contains ammunition and that may be used with the firearm in question is stored in a compartment within the vehicle in question that cannot be accessed without leaving the vehicle or is stored in a container that provides complete and separate enclosure.

(b) For the purposes of division (a)2. of this definition, a “container that provides complete and separate enclosure” includes but is not limited to any of the following:

1. A package, box or case with multiple compartments, as long as the loaded magazine or speed loader and the firearm in question either are in separate compartments within the package, box or case, or, if they are in the same compartment, the magazine or speed loader is contained within a separate enclosure in that compartment that does not contain the firearm and that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents or the firearm is contained within a separate enclosure of that nature in that compartment that does not contain the magazine or speed loader; or

2. A pocket or other enclosure on the person of the person in question that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents.

(c) For the purposes of divisions (a) and (b) of this definition, ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

(d) “Unloaded” means, with respect to a firearm employing a percussion cap, flintlock or other obsolete ignition system, when the weapon is uncapped or when the priming charge is removed from the pan.

(L) Divisions (a) and (b) of the definition of “unloaded” in division (K) of this section do not affect the authority of a person who is carrying a valid concealed handgun license to have one or more magazines or speed loaders containing ammunition anywhere in a vehicle, without being transported as described in those divisions, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any other provision of this chapter. A person who is carrying a valid concealed handgun license may have one or more magazines or speed loaders containing ammunition anywhere in a vehicle without further restriction, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any provision of this chapter.

(R.C. § 2923.16) (1985 Code, § 137.04)

§ 137.05 DISCHARGING FIREARMS; HUNTING.

(A) No person shall engage in hunting or discharge any cannon, pistol or other firearm of any kind whatsoever within the city. This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation’s armed forces acting under military authority, and shall not apply to law enforcement officials in the proper enforcement of the law, or to any person in the proper exercise of the right of self-defense. This section shall not prohibit the discharging of a pistol or other firearm of any kind within the city on ranges constructed in conformance with plans approved by the City Manager.

(B) Whoever violates the provisions of this section shall be guilty of a minor misdemeanor.
(1985 Code, § 137.05) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 137.06 FAILURE TO SECURE DANGEROUS ORDNANCE.

(A) No person, in acquiring, possessing, carrying or using any dangerous ordnance, shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person; or

(2) To ensure the safety of persons and property.

(B) Whoever violates this section is guilty of failure to a secure dangerous ordnance, a misdemeanor of the second degree.

(R.C. § 2923.19) (1985 Code, § 137.06)

§ 137.07 UNLAWFUL TRANSACTIONS IN WEAPONS.

(A) No person shall:

(1) Recklessly sell, lend, give or furnish any firearm to any person prohibited by R.C. § 2923.13 or 2923.15, or a substantially equivalent municipal ordinance, from acquiring or using any firearm, or recklessly sell, lend, give or furnish any dangerous ordnance to any person prohibited by R.C. § 2923.13, 2923.15 or 2923.17, or a substantially equivalent municipal ordinance, from acquiring or using any dangerous ordnance;

(2) Possess any firearm or dangerous ordnance with purpose to dispose of it in violation of division (A)(1) of this section;

(3) Manufacture, possess for sale, sell or furnish to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife or similar weapon;

(4) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license or permit showing him or her to be authorized to acquire dangerous ordnance pursuant to R.C. § 2923.17, or negligently fail to take a complete record of the transaction and forthwith forward a copy of the record to the Sheriff of the county or Safety Director or Police Chief of the municipality where the transaction takes place; or

(5) Knowingly fail to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession and under his or her control.

(B) Whoever violates this section is guilty of unlawful transactions in weapons. A violation of division (A)(1) or (A)(2) of this section is a felony to be prosecuted under appropriate state law. A violation of division (A)(3) or (A)(4) of this section is a misdemeanor of the second degree. A violation of division (A)(5) of this section is a misdemeanor of the fourth degree.

(R.C. § 2923.20) (1985 Code, § 137.07)

§ 137.08 UNDERAGE PURCHASE OF FIREARMS OR HANDGUN.

(A) No person under 18 years of age shall purchase or attempt to purchase a firearm.

(B) No person under 21 years of age shall purchase or attempt to purchase a handgun; provided, that this division (B) does not apply to the purchase or attempted purchase of a handgun by a person 18 years of age or older and under 21 years of age if either of the following applies:

(1) The person is a law enforcement officer and has received firearms training approved by the Ohio Peace Officer Training Council or equivalent firearms training; or

(2) The person is an active or reserve member of the armed services of the United States or the Ohio National Guard, or was honorably discharged from military service in the active or reserve armed services of the United States or the Ohio National Guard, and the person has received firearms training from the armed services or the national guard or equivalent firearms training.

(C) Whoever violates division (A) of this section is guilty of underage purchase of a firearm, a delinquent act that would be a felony to be prosecuted under appropriate state law if it could be committed by an adult. Whoever violates division (B) of this section is guilty of underage purchase of a handgun, a misdemeanor of the second degree.

(R.C. § 2923.211) (1985 Code, § 137.08)

§ 137.09 CONCEALED HANDGUN LICENSES: POSSESSION OF A REVOKED OR SUSPENDED LICENSE; ADDITIONAL RESTRICTIONS; POSTING OF SIGNS PROHIBITING POSSESSION.

(A) *Possession of a revoked or suspended concealed handgun license.*

(1) No person, except in the performance of official duties, shall possess a concealed handgun license that was issued and that has been revoked or suspended.

(2) Whoever violates this division (A) is guilty of possessing a revoked or suspended concealed handgun license, a misdemeanor of the third degree.

(R.C. § 2923.1211(B), (C))

(B) *Additional restrictions.* Pursuant to R.C. § 2923.126:

(1) (a) A concealed handgun license that is issued under R.C. § 2923.125 shall expire five years after the date of issuance. A licensee who has been issued a license under that section shall be granted a grace period of 30 days after the licensee's license expires during which the licensee's license remains valid. Except as provided in divisions (B)(2) and (B)(3) of this section, a licensee who has been issued a concealed handgun license under R.C. § 2923.125 or 2923.1213 may carry a concealed handgun anywhere in this state if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun. The licensee shall give notice of any change in the licensee's residence address to the sheriff who issued the license within 45 days after that change.

(b) If a licensee is the driver or an occupant of a motor vehicle that is stopped as the result of a traffic stop or a stop for another law enforcement purpose and if the licensee is transporting or has a loaded handgun in the motor vehicle at that time, the licensee shall promptly inform any law enforcement officer who approaches the vehicle while stopped that the licensee has been issued a concealed handgun license and that the licensee currently possesses or has a loaded handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the motor vehicle is stopped, knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law

enforcement officer; and the licensee shall not knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of R.C. § 2923.16(E), after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves. Additionally, if a licensee is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in R.C. § 5503.04 and if the licensee is transporting or has a loaded handgun in the commercial motor vehicle at that time, the licensee shall promptly inform the employee of the unit who approaches the vehicle while stopped that the licensee has been issued a concealed handgun license and that the licensee currently possesses or has a loaded handgun.

(c) If a licensee is stopped for a law enforcement purpose and if the licensee is carrying a concealed handgun at the time the officer approaches, the licensee shall promptly inform any law enforcement officer who approaches the licensee while stopped that the licensee has been issued a concealed handgun license and that the licensee currently is carrying a concealed handgun; the licensee shall not knowingly disregard or fail to comply with lawful orders of a law enforcement officer given while the licensee is stopped or knowingly fail to keep the licensee's hands in plain sight after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves, unless directed otherwise by a law enforcement officer; and the licensee shall not knowingly remove, attempt to remove, grasp, or hold the loaded handgun or knowingly have contact with the loaded handgun by touching it with the licensee's hands or fingers, in any manner in violation of R.C. § 2923.12(B), after any law enforcement officer begins approaching the licensee while stopped and before the officer leaves.

(2) A valid concealed handgun license does not authorize the licensee to carry a concealed handgun in any manner prohibited under R.C. § 2923.12(B) or in any manner prohibited under R.C. § 2923.16. A valid license does not authorize the licensee to carry a concealed handgun into any of the following places:

(a) A police station, sheriff's office, or state highway patrol station, premises controlled by the Bureau of Criminal Identification and Investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to R.C. § 5119.14(A) or R.C. § 5123.03(A)(1);

(b) A school safety zone if the licensee's carrying the concealed handgun is in violation of R.C. § 2923.122;

(c) A courthouse or another building or structure in which a courtroom is located, in violation of R.C. § 2923.123;

(d) Any premises or open air arena for which a D permit has been issued under R.C. Chapter 4303 if the licensee's carrying the concealed handgun is in violation of R.C. § 2923.121;

(e) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(f) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(g) A child day-care center, a type A family day-care home, or a type B family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home or a type B family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(h) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(i) Any building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to division (B)(2)(c) of this section; and

(j) A place in which federal law prohibits the carrying of handguns.

(3) (a) Nothing in this division (B) shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer. Nothing in this division (B) shall require a private employer of that nature to adopt a rule, policy, or practice concerning or prohibiting the presence of firearms on the private employer's premises or property, including motor vehicles owned by the private employer.

(b) 1. A private employer shall be immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto the premises or property of the private employer, including motor vehicles owned by the private employer, unless the private employer acted with malicious purpose. A private employer is immune from liability in a civil action for any injury, death, or loss to person or property that allegedly was caused by or related to the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the premises or property of the private employer. As used in this division, **PRIVATE EMPLOYER** includes a private college, university, or other institution of higher education.

2. A political subdivision shall be immune from liability in a civil action, to the extent and in the manner provided in R.C. Chapter 2744, for any injury, death, or loss to person or property that allegedly was caused by or related to a licensee bringing a handgun onto any premises or property owned, leased, or otherwise under the control of the political subdivision. As used in this division, **POLITICAL SUBDIVISION** has the same meaning as in R.C. § 2744.01.

(c) 1. Except as provided in division (B)(3)(c)2. of this section, the owner or person in

control of private land or premises, and a private person or entity leasing land or premises owned by the state, the United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. Except as otherwise provided in this division, a person who knowingly violates a posted prohibition of that nature is guilty of criminal trespass in violation of R.C. § 2911.21(A)(4) and is guilty of a misdemeanor of the fourth degree. If a person knowingly violates a posted prohibition of that nature and the posted land or premises primarily was a parking lot or other parking facility, the person is not guilty of criminal trespass in violation of R.C. § 2911.21(A)(4) and instead is subject only to a civil cause of action for trespass based on the violation.

2. A landlord may not prohibit or restrict a tenant who is a licensee and who on or after September 9, 2008 enters into a rental agreement with the landlord for the use of residential premises, and the tenant's guest while the tenant is present, from lawfully carrying or possessing a handgun on those residential premises.

3. As used in division (B)(3)(c) of this section:

LANDLORD. Has the same meaning as in R.C. § 5321.01.

RENTAL AGREEMENT. Has the same meaning as in R.C. § 5321.01.

RESIDENTIAL PREMISES. Has the same meaning as in R.C. § 5321.01, except the term does not include a dwelling unit that is owned or operated by a college or university.

TENANT. Has the same meaning as in R.C. § 5321.01.

(4) A person who holds a concealed handgun license issued by another state that is recognized by the Attorney General pursuant to a reciprocity agreement entered into pursuant to R.C. § 109.69 has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under R.C. § 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that section.

(5) A peace officer has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under R.C. § 2923.125. For purposes of reciprocity with other states, a peace officer shall be considered to be a licensee in this state.

(6) (a) A qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (B)(6)(b) of this section and a valid firearms requalification certification issued pursuant to division (B)(6)(c) of this section has the same right to carry a concealed handgun in this state as a person who was issued a concealed handgun license under R.C. § 2923.125 and is subject to the same restrictions that apply to a person who carries a license issued under that section. For purposes of reciprocity with other states, a qualified retired peace officer who possesses a retired peace officer identification card issued pursuant to division (B)(6)(b) of this section and a valid firearms requalification certification issued pursuant to division (B)(6)(c) of this section shall be considered to be a licensee in this state.

(b) 1. Each public agency of this state or of a political subdivision of this state that is served by one or more peace officers shall issue a retired peace officer identification card to any person who retired from service as a peace officer with that agency, if the issuance is in accordance with the agency's policies and procedures and if the person, with respect to the person's service with that agency, satisfies all of the following:

a. The person retired in good standing from service as a peace officer with the public agency, and the retirement was not for reasons of mental instability;

b. Before retiring from service as a peace officer with that agency, the person was authorized to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and the person had statutory powers of arrest;

c. At the time of the person's retirement as a peace officer with that agency, the person was trained and qualified to carry firearms in the performance of the peace officer's duties; and

d. Before retiring from service as a peace officer with that agency, the person was regularly employed as a peace officer for an aggregate of 15 years or more, or, in the alternative, the person retired from service as a peace officer with that agency, after completing any applicable probationary period of that service, due to a service-connected disability, as determined by the agency.

2. A retired peace officer identification card issued to a person under division (B)(6)(b)1. of this section shall identify the person by name, contain a photograph of the person, identify the public agency of this state or of the political subdivision of this state from which the person retired as a peace officer and that is issuing the identification card, and specify that the person retired in good standing from service as a peace officer with the issuing public agency and satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section. In addition to the required content specified in this division, a retired peace officer identification card issued to a person under division (B)(6)(b)1. of this section may include the firearms requalification certification described in division (B)(6)(c) of this section, and if the identification card includes that certification, the identification card shall serve as the firearms requalification certification for the retired peace officer. If the issuing public agency issues credentials to active law enforcement officers who serve the agency, the agency may comply with division (B)(6)(b)1. of this section by issuing the same credentials to persons who retired from service as a peace officer with the agency and who satisfy the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section, provided that the credentials so issued to retired peace officers are stamped with the word "RETIRED".

3. A public agency of this state or of a political subdivision of this state may charge persons who retired from service as a peace officer with the agency a reasonable fee for issuing to the person a retired peace officer identification card pursuant to division (B)(6)(b)1. of this section.

(c) 1. If a person retired from service as a peace officer with a public agency of this state or of a political subdivision of this state and the person satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section, the public agency may provide the retired peace officer with the opportunity to attend a firearms requalification program that is approved for purposes of firearms

requalification required under R.C. § 109.801. The retired peace officer may be required to pay the cost of the course.

2. If a retired peace officer who satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section attends a firearms requalification program that is approved for purposes of firearms requalification required under R.C. § 109.801, the retired peace officer's successful completion of the firearms requalification program requalifies the retired peace officer for purposes of division (B)(6) of this section for five years from the date on which the program was successfully completed, and the requalification is valid during that five-year period. If a retired peace officer who satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section satisfactorily completes such a firearms requalification program, the retired peace officer shall be issued a firearms requalification certification that identifies the retired peace officer by name, identifies the entity that taught the program, specifies that the retired peace officer successfully completed the program, specifies the date on which the course was successfully completed, and specifies that the requalification is valid for five years from that date of successful completion. The firearms requalification certification for a retired peace officer may be included in the retired peace officer identification card issued to the retired peace officer under division (B)(6)(b) of this section.

3. A retired peace officer who attends a firearms requalification program that is approved for purposes of firearms requalification required under R.C. § 109.801 may be required to pay the cost of the program.

(7) As used in division (B) of this section:

GOVERNMENT FACILITY OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE. Means any of the following:

1. A building or part of a building that is owned or leased by the government of this state or a political subdivision of this state and where employees of the government of this state or the political subdivision regularly are present for the purpose of performing their official duties as employees of the state or political subdivision;

2. The office of a deputy registrar serving pursuant to R.C. Chapter 4503 that is used to perform deputy registrar functions.

QUALIFIED RETIRED PEACE OFFICER. Means a person who satisfies all of the following:

1. The person satisfies the criteria set forth in divisions (B)(6)(b)1.a. to (B)(6)(b)1.d. of this section.

2. The person is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance.

3. The person is not prohibited by federal law from receiving firearms.

RETIRED PEACE OFFICER IDENTIFICATION CARD. Means an identification card that is issued pursuant to division (B)(6)(b) of this section to a person who is a retired peace officer. (R.C. § 2923.126)

(C) *Posting of signs prohibiting possession.* Pursuant to R.C. § 2923.1212:

(1) The following persons, boards and entities, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: “Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person’s control, convey or attempt to convey a deadly weapon or dangerous ordnance onto these premises.”

(a) The Director of Public Safety or the person or board charged with the erection, maintenance or repair of police stations, municipal jails, and the municipal courthouse and courtrooms in a conspicuous location at all police stations, municipal jails, and municipal courthouses and courtrooms;

(b) The Sheriff or Sheriff’s designee who has charge of the Sheriff’s office in a conspicuous location in that office;

(c) The Superintendent of the State Highway Patrol or the Superintendent’s designee in a conspicuous location at all state highway patrol stations;

(d) Each sheriff, chief of police or person in charge of every county, multi-county, municipal, municipal-county, or multi-county/municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility or other local or state correctional institution or detention facility within the state, or that person’s designee, in a conspicuous location at that facility under that person’s charge;

(e) The board of trustees of a regional airport authority, chief administrative officer of an airport facility or other person in charge of an airport facility in a conspicuous location at each airport facility under that person’s control;

(f) The officer or officer’s designee who has charge of a courthouse or the building or structure in which a courtroom is located in a conspicuous location in that building or structure;

(g) The Superintendent of the Bureau of Criminal Identification and Investigation or the Superintendent’s designee in a conspicuous location in all premises controlled by that Bureau;

(h) The owner, administrator or operator of a child day-care center, a type A family day-care home, or a type B family day-care home; or

(i) The officer of this state or of a political subdivision of this state, or the officer’s designee, who has charge of a building that is a government facility of this state or the political subdivision of this state, as defined in R.C. § 2923.126, and that is not a building that is used primarily

as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located that is subject to R.C. § 2923.126(B)(3).

(2) The following boards, bodies and persons, or designees, shall post in the following locations a sign that contains a statement in substantially the following form: “Unless otherwise authorized by law, pursuant to R.C. § 2923.122, no person shall knowingly possess, have under the person’s control, convey, or attempt to convey a deadly weapon or dangerous ordnance into a school safety zone.”

(a) A board of education of a city, local, exempted village, or joint vocational school district or that board’s designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the board;

(b) A governing body of a school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07 or that body’s designee in a conspicuous location in each building and on each parcel of real property owned or controlled by the school; and

(c) The principal or chief administrative officer of a nonpublic school in a conspicuous location on property owned or controlled by that nonpublic school.
(R.C. § 2923.1212) (1985 Code, § 137.09)

§ 137.10 POSSESSION OF AN OBJECT INDISTINGUISHABLE FROM A FIREARM IN A SCHOOL SAFETY ZONE.

(A) No person shall knowingly possess an object in a school safety zone if both of the following apply:

(1) The object is indistinguishable from a firearm, whether or not the object is capable of being fired; and

(2) The person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm.

(B) (1) This section does not apply to any of the following:

(a) An officer, agent or employee of this or any other state or the United States, or a law enforcement officer, who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer’s, agent’s or employee’s duties, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;
or

(b) Any person who is employed in this state, who is authorized to carry deadly weapons or dangerous ordnance, and who is subject to and in compliance with the requirements of R.C. § 109.801, unless the appointing authority of the person has expressly specified that the exemption provided in this division (B)(1)(b) does not apply to the person.

(2) This section does not apply to premises upon which home schooling is conducted. This section also does not apply to a school administrator, teacher or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an object that is indistinguishable from a firearm under the direction of a school administrator, teacher or employee, or any other person who, with the express prior approval of a school administrator, possesses an object that is indistinguishable from a firearm for a legitimate purpose, including the use of the object in a ceremonial activity, a play, re-enactment or other dramatic presentation, or a ROTC activity or another similar use of the object.

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity;

(b) The person is carrying a valid concealed handgun license;

(c) The person is in the school safety zone in accordance with 18 U.S.C. § 922(q)(2)(B);
and

(d) The person is not knowingly in a place described in R.C. § 2923.126(B)(1) or (B)(3) through (B)(10).

(4) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if at the time of that conveyance, attempted conveyance, or possession of the handgun all of the following apply:

(a) The person is carrying a valid concealed handgun license;

(b) The person is the driver or passenger in a motor vehicle and is in the school safety zone while immediately in the process of picking up or dropping off a child; and

(c) The person is not in violation of section R.C. § 2923.16.

(C) Whoever violates this section is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this division, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony to be prosecuted under appropriate

state law.

(D) (1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section, and subject to division (D)(2) of this section, if the offender has not attained 19 years of age, regardless of whether the offender is attending or is enrolled in a school operated by a board of education or for which the State Board of Education prescribes minimum standards under R.C. § 3301.07, the court shall impose upon the offender a class four suspension of the offender's probationary driver's license, restricted license, driver's license, commercial driver's license, temporary instruction permit or probationary commercial driver's license that then is in effect from the range specified in R.C. § 4510.02(A)(4) and shall deny the offender the issuance of any permit or license of that type during the period of the suspension. If the offender is not a resident of this state, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in R.C. § 4510.02(A)(4).

(2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits or privileges specified in division (D)(1) of this section or deny the issuance of one of the temporary instruction permits specified in division (D)(1) of this section, the court in its discretion may choose not to impose the suspension, revocation or denial required in division (D)(1) of this section, but the court, in its discretion, instead may require the offender to perform community service for a number of hours determined by the court.

(E) As used in this section, ***OBJECT THAT IS INDISTINGUISHABLE FROM A FIREARM*** means an object made, constructed or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.

(R.C. § 2923.122(C) - (G)) (1985 Code, § 137.10)

§ 137.11 POSSESSION OF DEADLY WEAPON WHILE UNDER DETENTION.

(A) As used in this section, ***DETENTION*** and ***DETENTION FACILITY*** have the same meanings as in R.C. § 2921.01.

(B) No person under detention at a detention facility shall possess a deadly weapon.

(C) Whoever violates this section is guilty of possession of a deadly weapon while under detention.

(1) Except as otherwise provided in division (C)(2) of this section, possession of a deadly weapon while under detention is a felony to be prosecuted under state law.

(2) If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if at the time the offender commits the act for which the offender was under detention it would not be a felony if committed by an adult, possession of a deadly weapon while under detention is a misdemeanor of the first degree.

(R.C. § 2923.131) (1985 Code, § 137.11)

§ 137.12 DEFACED FIREARMS.

(A) No person shall do either of the following:

(1) Change, alter, remove or obliterate the name of the manufacturer, model, manufacturer's serial number or other mark of identification on a firearm; or

(2) Possess a firearm knowing or having reasonable cause to believe that the name of the manufacturer, model, manufacturer's serial number or other mark of identification on the firearm has been changed, altered, removed or obliterated.

(B) (1) Whoever violates division (A)(1) of this section is guilty of defacing identification marks of a firearm. Except as otherwise provided in this division (B)(1), defacing identification marks of a firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(1) of this section, defacing identification marks of a firearm is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (A)(2) of this section is guilty of possessing a defaced firearm. Except as otherwise provided in this division (B)(2), possessing a defaced firearm is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) of this section, possessing a defaced firearm is a felony to be prosecuted under appropriate state law.

(C) Division (A) of this section does not apply to any firearm on which no manufacturer's serial number was inscribed at the time of its manufacture.

(R.C. § 2923.201) (1985 Code, § 137.12)

§ 137.13 POSSESSING CRIMINAL TOOLS.

(A) No person shall possess or have under his or her control any substance, device, instrument or article, with purpose to use it criminally.

(B) Each of the following constitutes prima facie evidence of criminal purpose:

(1) Possession or control of any dangerous ordnance, or the materials or parts for making a dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials or parts are intended for a legitimate use;

(2) Possession or control of any substance, device, instrument or article designed or specially adapted for criminal use; and

(3) Possession or control of any substance, device, instrument or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use.

(C) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division (C), possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony to be prosecuted under appropriate state law.

(R.C. § 2923.24)

§ 137.14 POINTING AND DISCHARGING FIREARMS AND OTHER WEAPONS.

(A) *Discharge of firearms on or near prohibited premises.* No person shall do any of the following:

(1) Without permission from the proper officials and subject to division (B)(1) of this section, discharge a firearm upon or over a cemetery or within 100 yards of a cemetery;

(2) Subject to division (B)(2) of this section, discharge of a firearm on a lawn, park, pleasure ground, orchard or other ground appurtenant to a schoolhouse, church or inhabited dwelling, the property of another or a charitable institution; or

(3) Discharge a firearm upon or over a public road or highway.

(B) *Application of division (A).*

(1) Division (A)(1) of this section does not apply to a person who while on the person's own land, discharges a firearm.

(2) Division (A)(2) of this section does not apply to a person who owns any type of property described in that division and who, while on the person's own enclosure, discharges a firearm.

(C) *Penalty for violation of division (A).* Whoever violates division (A) of this section is guilty of discharge of a firearm on or near prohibited premises. A violation of division (A)(1) or (A)(2) of this section is a misdemeanor of the fourth degree. A violation of division (A)(3) shall be punished as follows:

(1) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(3) of this section is a misdemeanor of the first degree.

(2) If the violation created a substantial risk of physical harm to any person, caused serious physical harm to property, caused physical harm to any person, or caused serious physical harm to any person, a violation of division (A)(3) is a felony to be prosecuted under appropriate state law.

(R.C. § 2923.162)

(D) *Hunting near township park.*

(1) No person shall hunt, shoot, or kill game within one-half mile of a township park unless

the Board of Township Park Commissioners has granted permission to kill game not desired within the limits prohibited by this division.

(R.C. § 3773.06)

(2) Whoever violates division (D)(1) of this section is guilty of a misdemeanor of the fourth degree.

(R.C. § 3773.99(A))

(E) *Unlawful discharge.* No person shall discharge any BB gun, air gun or firearm, or make use of any sling, bow and arrow or crossbow, within the corporate limits of the municipality.

(F) *Unlawful pointing or aiming.* No person shall, intentionally and without malice, point or aim any BB gun, air gun or firearm, or any sling, bow and arrow or crossbow at or toward another.

(G) *Penalty for violations of division (E) or (F).* Whoever violates division (E) or (F) of this section is guilty of a misdemeanor of the fourth degree.

(H) *Exceptions.* This section shall not prohibit the firing of a military salute or the firing of weapons by persons of the nation's armed forces acting under military authority, and shall not apply to law enforcement officials or other government officials in the proper enforcement of the law, or to any person in the proper exercise of the right of self defense, or to any person otherwise lawfully permitted by proper federal, state or local authorities to discharge a BB gun, air gun or firearm, or to use a sling, bow and arrow, or crossbow in a manner contrary to the provisions of this section. Division (E) of this section does not extend to cases in which BB guns, air guns or firearms, or slings, bows and arrows or crossbows are used in the confines of structures or used within the confines of a person's own property, provided such use is under adult supervision and is approved by the municipality.

§ 137.15 LICENSE OR PERMIT TO POSSESS DANGEROUS ORDNANCE.

(A) Upon application to the Sheriff of the county or Safety Director or Police Chief of the municipality where the applicant resides or has his or her principal place of business, and upon payment of the fee specified in division (B) of this section, a license or temporary permit shall be issued to qualified applicants to acquire, possess, carry or use a dangerous ordnance for the following purposes:

(1) Contractors, wreckers, quarry workers, mine operators and other persons regularly employing explosives in the course of a legitimate business, with respect to explosives and explosive devices acquired, possessed, carried or used in the course of such business;

(2) Farmers, with respect to explosives and explosive devices acquired, possessed, carried or used for agricultural purposes on lands farmed by them;

(3) Scientists, engineers and instructors, with respect to a dangerous ordnance acquired, possessed, carried or used in the course of bona fide research or instruction;

(4) Financial institutions and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried or used by any such person while acting within the scope of his or her duties; and

(5) In the discretion of the issuing authority, any responsible person, with respect to a dangerous ordnance lawfully acquired, possessed, carried or used for a legitimate research, scientific, educational, industrial or other proper purpose.

(B) Application for a license or temporary permit under this section shall be in writing under oath to the Sheriff of the county or Safety Director or Police Chief of the municipality where the applicant resides or has his or her principal place of business. The application shall be accompanied by an application fee of \$50 when the application is for a license, and an application fee of \$5 when the application is for a temporary permit. The fees shall be paid into the General Revenue Fund of the county or municipality. The application shall contain the following information:

(1) The name, age, address, occupation and business address of the applicant, if he or she is a natural person, or the name, address and principal place of business of the applicant if the applicant is a corporation;

(2) A description of the dangerous ordnance for which a permit is requested;

(3) A description of the places where and the manner in which the dangerous ordnance is to be kept, carried and used;

(4) A statement of the purposes for which the dangerous ordnance is to be acquired, possessed, carried or used; and

(5) Such other information as the issuing authority may require in giving effect to this section.

(C) Upon investigation, the issuing authority shall issue a license or temporary permit only if all of the following apply:

(1) The applicant is not otherwise prohibited by law from acquiring, having, carrying or using a dangerous ordnance;

(2) The applicant is 21 years of age or over, if the applicant is a natural person;

(3) It appears that the applicant has sufficient competence to safely acquire, possess, carry or use the dangerous ordnance, and that proper precautions will be taken to protect the security of the dangerous ordnance and ensure the safety of persons and property; and

(4) It appears that the dangerous ordnance will be lawfully acquired, possessed, carried and used by the applicant for a legitimate purpose.

(D) The license or temporary permit shall identify the person to whom it is issued, identify the

dangerous ordnance involved and state the purposes for which the license or temporary permit is issued, state the expiration date, if any, and list such restrictions on the acquisition, possession, carriage or use of the dangerous ordnance as the issuing authority considers advisable to protect the security of the dangerous ordnance and ensure the safety of persons and property.

(E) A temporary permit shall be issued for the casual use of explosives and explosive devices, and other consumable dangerous ordnance, and shall expire within 30 days of its issuance. A license shall be issued for the regular use of a consumable dangerous ordnance, which license need not specify an expiration date, but the issuing authority may specify such expiration date, not earlier than one year from the date of issuance, as it considers advisable in view of the nature of the dangerous ordnance and the purposes for which the license is issued.

(F) The dangerous ordnance specified in a license or temporary permit may be obtained by the holder anywhere in the state. Pursuant to R.C. § 2923.18(F), the holder of a license may use such dangerous ordnance anywhere in the state. The holder of a temporary permit may use such dangerous ordnance only within the territorial jurisdiction of the issuing authority.

(G) The issuing authority shall forward to the State Fire Marshal a copy of each license or temporary permit issued pursuant to this section, and a copy of each record of a transaction in a dangerous ordnance and of each report of a lost or stolen dangerous ordnance, given to the local law enforcement authority as required by R.C. § 2923.20(A)(4) and (A)(5) or a substantially equivalent municipal ordinance. The State Fire Marshal will keep a permanent file of all licenses and temporary permits issued pursuant to this section, and of all records of transactions in, and losses or thefts of a dangerous ordnance forwarded by local law enforcement authorities pursuant to this section.

(R.C. § 2923.18)

CHAPTER 138: DRUG OFFENSES

Section

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- 138.12 Barbiturates and amphetamines (downers and uppers)
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§ 138.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words, terms and phrases and their derivatives used in this chapter which are not defined in this section shall have the meanings given to them in the Ohio Revised Code.

ADMINISTER. The direct application of a drug, whether by injection, inhalation, ingestion or any other means to a person or an animal.

ADULTERATE. To cause a drug to be adulterated as described in R.C. § 3715.63.

BULK AMOUNT. Of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II or Schedule III, with the exception of controlled substance analogs, marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (2) or (5) of this definition, whichever of the following is applicable:

(a) An amount equal to or exceeding ten grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative;

(b) An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding 30 grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a Schedule I stimulant or depressant;

(d) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative;

(e) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq., as amended) and the federal drug abuse control laws, as defined in this section, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq., as amended) and the federal drug abuse control laws;

(2) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

(3) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule III opiate or opium derivative;

(4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance; and

(5) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

CERTIFIED GRIEVANCE COMMITTEE. A duly constituted and organized committee of the Ohio State Bar Association or of one or more local bar associations of the state that complies with the criteria set forth in Rule V, Section 6 of the Rules for the Government of the Bar of Ohio.

COCAINE. Any of the following:

(1) A cocaine salt, isomer or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(2) Coca leaves or a salt, compound, derivative or preparation of coca leaves, including ecgonine, a salt, isomer or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine; or

(3) A salt, compound, derivative, or preparation of a substance identified in division (1) or (2) of this definition that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

COMMITTED IN THE VICINITY OF A JUVENILE. An offense is “committed in the vicinity of a juvenile” if the offender commits the offense within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

COMMITTED IN THE VICINITY OF A SCHOOL. An offense is “committed in the vicinity of a school” if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

CONTROLLED SUBSTANCE. A drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV or V of R.C. § 3719.41.

CONTROLLED SUBSTANCE ANALOG.

(1) The phrase means, except as provided in division (2) of this definition, a substance to which both of the following apply:

(a) The chemical structure of the substance is substantially similar to the structure of a controlled substance in Schedule I or II; and

(b) One of the following applies regarding the substance:

1. The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

2. With respect to a particular person, that person represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(2) The phrase does not include any of the following:

(a) A controlled substance;

(b) Any substance for which there is an approved new drug application;

(c) With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent that conduct with respect to that substance is pursuant to that exemption; or

(d) Any substance to the extent it is not intended for human consumption before the exemption described in division (2)(c) of this definition takes effect with respect to that substance.

(3) Except as otherwise provided in R.C. § 2925.03 or R.C. § 2925.11, a controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of this Code or the Ohio Revised Code as a controlled substance in Schedule I.

COUNTERFEIT CONTROLLED SUBSTANCE. Any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name or other identifying mark used without authorization of the owner of rights to the trademark, trade name or identifying mark;

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed or distributed by a person other than the person that manufactured, processed, packed or distributed it;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance; and

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution or the price for which it is sold or offered for sale.

CULTIVATE. Includes planting, watering, fertilizing or tilling.

DANGEROUS DRUG. Any of the following:

(1) Any drug to which either of the following applies:

(a) Under the Federal Food, Drug and Cosmetic Act, is required to bear a label containing the legend “Caution: Federal law prohibits dispensing without a prescription” or “Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian” or any similar restrictive statement, or may be dispensed only upon a prescription; or

(b) Under R.C. Chapter 3715 or 3719, may be dispensed only upon a prescription.

(2) Any drug that contains a Schedule V controlled substance and that is exempt from R.C. Chapter 3719 or to which that chapter does not apply.

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

DECEPTION. Has the same meaning as in R.C. § 2913.01.

DISCIPLINARY COUNSEL. The disciplinary counsel appointed by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court under the Rules for the Government of the Bar of Ohio.

DISPENSE. Means to sell, leave with, give away, dispose of or deliver.

DISTRIBUTE. Means to deal in, ship, transport or deliver, but does not include administering or dispensing a drug.

DRUG. Any of the following:

(1) Any article recognized in the official United States pharmacopeia, national formulary or any supplement intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or other animals; or

(4) Any article intended for use as a component of any article specified in division (1), (2) or (3) above; but does not include devices or their components, parts, or accessories.

DRUG ABUSE OFFENSE. Any of the following:

(1) A violation of R.C. § 2913.02(A) that constitutes theft of drugs, or any violation of R.C. § 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36 or 2925.37;

(2) A violation of an existing or former law of a municipality, state or any other state or of the United States, that is substantially equivalent to any section listed in division (1) of this definition;

(3) An offense under an existing or former law of a municipality, state or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using or otherwise dealing with a controlled substance is an element; or

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit, any offense under division (1), (2) or (3) of this definition.

DRUG DEPENDENT PERSON. Any person who, by reason of the use of any drug of abuse, is physically and/or psychologically dependent upon the use of such drug to the detriment of the person's health or welfare.

DRUG OF ABUSE. Any controlled substance, any harmful intoxicant, and any dangerous drug, as defined in this section.

FEDERAL DRUG ABUSE CONTROL LAWS. The "Comprehensive Drug Abuse Prevention and Control Act of 1970," 21 U.S.C. §§ 801 et seq., as amended.

FELONY DRUG ABUSE OFFENSE. Any drug abuse offense that would constitute a felony under the laws of this state, any other state or the United States.

HARMFUL INTOXICANT. Does not include beer or intoxicating liquor, but means any of the following:

(1) Any compound, mixture, preparation or substance the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, and includes but is not limited to any of the following:

(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline or other preparation containing a volatile organic solvent;

- (b) Any aerosol propellant;
 - (c) Any fluorocarbon refrigerant; or
 - (d) Any anesthetic gas.
- (2) Gamma Butyrolactone; or
 - (3) 1,4 Butanediol.

HASHISH. The resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract or liquid distillate form.

HYPODERMIC. A hypodermic syringe or needle, or other instrument or device for the injection of medication.

JUVENILE. A person under 18 years of age.

LABORATORY. A laboratory approved by the State Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.

LAWFUL PRESCRIPTION. A prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS or PRESCRIBER. An individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following:

- (1) A dentist licensed under R.C. Chapter 4715;
 - (2) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under R.C. § 4723.48;
 - (3) An optometrist licensed under R.C. Chapter 4725 to practice optometry under a therapeutic pharmaceutical agent's certificate;
 - (4) A physician authorized under R.C. Chapter 4731 to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;
 - (5) A physician assistant who holds a certificate to prescribe issued under R.C. Chapter 4730;
- and

(6) A veterinarian licensed under R.C. Chapter 4741.

L.S.D. Lysergic acid diethylamide.

MAJOR DRUG OFFENDER. Has the same meaning as in R.C. § 2929.01.

MANDATORY PRISON TERM. Has the same meaning as in R.C. § 2929.01.

MANUFACTURE. To plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis or compounding, or any combination of the same, and includes packaging, repackaging, labeling and other activities incident to production.

MANUFACTURER. A person who manufactures a controlled substance, as “manufacture” is defined by this section.

MARIHUANA. All parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture or preparation of a plant of that type or of its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. The term does not include hashish.

METHAMPHETAMINE. Methamphetamine, any salt, isomer or salt of an isomer of methamphetamine, or any compound, mixture, preparation or substance containing methamphetamine or any salt, isomer or salt of an isomer of methamphetamine.

MINOR DRUG POSSESSION OFFENSE. Either of the following:

(1) A violation of R.C. § 2925.11 as it existed prior to July 1, 1996, or a substantially equivalent municipal ordinance; or

(2) A violation of R.C. § 2925.11 as it exists on and after July 1, 1996, or a substantially equivalent municipal ordinance, that is a misdemeanor or a felony of the fifth degree.

OFFICIAL WRITTEN ORDER. An order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by federal law.

PERSON. Means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association or other legal entity.

PHARMACIST. A person licensed under R.C. Chapter 4729 to engage in the practice of pharmacy.

PHARMACY. Except when used in a context that refers to the practice of pharmacy, means any area, room, rooms, place of business, department, or portion of any of the foregoing, where the practice of pharmacy is conducted.

POSSESS or POSSESSION. Having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

PRESCRIPTION. A written, electronic or oral order for drugs or combination or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs.

PRESUMPTION FOR A PRISON TERM or PRESUMPTION THAT A PRISON TERM SHALL BE IMPOSED. A presumption as described in R.C. § 2929.13(D) that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under R.C. § 2929.11.

PROFESSIONAL LICENSE. Any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in R.C. § 2925.01(W)(1) through (W)(36) and that qualifies a person as a professionally licensed person.

PROFESSIONALLY LICENSED PERSON. Any of the following:

(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under R.C. Chapter 3719;

(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under R.C. Chapter 4701 and who holds an Ohio permit issued under that chapter;

(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under R.C. Chapter 4703;

(4) A person who is registered as a landscape architect under R.C. Chapter 4703 or who holds a permit as a landscape architect issued under that chapter;

(5) A person licensed under R.C. Chapter 4707;

(6) A person who has been issued a certificate of registration as a registered barber under R.C. Chapter 4709;

(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of R.C. Chapter 4710;

(8) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, managing cosmetologist's license, managing hair designer's license, managing manicurist's license, managing esthetician's license, managing natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license or tanning facility permit under R.C. Chapter 4713;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under R.C. Chapter 4715;

(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under R.C. Chapter 4717;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under R.C. Chapter 4723;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under R.C. Chapter 4725;

(13) A person licensed to act as a pawnbroker under R.C. Chapter 4727;

(14) A person licensed to act as a precious metals dealer under R.C. Chapter 4728;

(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under R.C. Chapter 4729;

(16) A person who is authorized to practice as a physician assistant under R.C. Chapter 4730;

(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under R.C. Chapter 4731;

(18) A person licensed as a psychologist or school psychologist under R.C. Chapter 4732;

(19) A person registered to practice the profession of engineering or surveying under R.C. Chapter 4733;

(20) A person who has been issued a license to practice chiropractic under R.C. Chapter 4734;

(21) A person licensed to act as a real estate broker or real estate salesperson under R.C. Chapter 4735;

(22) A person registered as a registered sanitarian under R.C. Chapter 4736;

- (23) A person licensed to operate or maintain a junkyard under R.C. Chapter 4737;
- (24) A person who has been issued a motor vehicle salvage dealer's license under R.C. Chapter 4738;
- (25) A person who has been licensed to act as a steam engineer under R.C. Chapter 4739;
- (26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under R.C. Chapter 4741;
- (27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under R.C. Chapter 4747;
- (28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under R.C. Chapter 4749;
- (29) A person licensed and registered to practice as a nursing home administrator under R.C. Chapter 4751;
- (30) A person licensed to practice as a speech-language pathologist or audiologist under R.C. Chapter 4753;
- (31) A person issued a license as an occupational therapist or physical therapist under R.C. Chapter 4755;
- (32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under R.C. Chapter 4757;
- (33) A person issued a license to practice dietetics under R.C. Chapter 4759;
- (34) A person who has been issued a license or limited permit to practice respiratory therapy under R.C. Chapter 4761;
- (35) A person who has been issued a real estate appraiser certificate under R.C. Chapter 4763;
or
- (36) A person who has been admitted to the bar by order of the Ohio Supreme Court in compliance with its prescribed and published rules.

PUBLIC PREMISES. Any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

SALE. Includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant or employee.

SAMPLE DRUG. A drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

SCHEDULE I, II, III, IV OR V. Controlled substance Schedules I, II, III, IV, and V established pursuant to R.C. § 3719.41, as amended pursuant to R.C. § 3719.43 or 3719.44.

SCHOOL. Any school operated by a board of education, any community school established under R.C. Chapter 3314, or any nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

SCHOOL BUILDING. Any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

SCHOOL PREMISES. Either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed; or

(2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under R.C. Chapter 3314, or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. § 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

STANDARD PHARMACEUTICAL REFERENCE MANUAL. The current edition, with cumulative changes if any, of references that are approved by the State Board of Pharmacy.

THEFT OFFENSE. Has the same meaning as in R.C. § 2913.01.

UNIT DOSE. An amount or unit or a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

WHOLESALE. A person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced or prepared personally and includes **WHOLESALE DISTRIBUTOR OF DANGEROUS DRUGS**, which means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of that person authorized by that person to engage in the sale of dangerous drugs at wholesale.

(R.C. §§ 2925.01, 3719.01, 3719.011, 3719.013, 4729.01) (1985 Code, § 138.01)

§ 138.02 TRAFFICKING IN CONTROLLED SUBSTANCES; GIFT OF MARIHUANA.

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance or a controlled substance analog; or

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731 and 4741;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration; and

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 et seq., as amended), and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

(C) Whoever violates division (A) of this section is guilty of the following:

(1) Except as otherwise provided in division (C)(2) of this section, trafficking in controlled substances is a felony to be prosecuted under appropriate state law; and

(2) Except as otherwise provided in this division, if the offense involves a gift of 20 grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of 20 grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with R.C. § 2925.03(G); and

(2) If the offender is a professionally licensed person, the court immediately shall comply with R.C. § 2925.38.

(E) (1) Notwithstanding any contrary provision of R.C. § 3719.21 and except as provided in R.C. § 2925.03(H), the Clerk of the Court shall pay any mandatory fine imposed pursuant to this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to R.C. § 2929.18(A) or (B)(5) to the county, township, municipality, park district, as created pursuant to R.C. § 511.18 or 1545.04, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the Clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (E)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (E)(2) of this section.

(2) Prior to receiving any fine moneys under division (E)(1) of this section or R.C. § 2925.42(B), a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general type of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under R.C. § 149.43. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(3) As used in division (E) of this section:

LAW ENFORCEMENT AGENCIES. Includes but is not limited to the State Board of Pharmacy and the office of a prosecutor.

PROSECUTOR. Has the same meaning as in R.C. § 2935.01.

(F) As used in this section, **DRUG** includes any substance that is represented to be a drug. (R.C. § 2925.03) (1985 Code, § 138.02)

§ 138.03 DRUG POSSESSION OFFENSES.

(A) No person shall knowingly obtain, possess or use a controlled substance or a controlled substance analog.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731 and 4741;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration;

(3) Any person who sells, offers for sale, prescribes, dispenses or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug and Cosmetic Act, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act; or

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) Except as otherwise provided in divisions (C)(2), (C)(3), (C)(4) and (C)(5), if the drug involved in the violation is a compound, mixture, preparation, or substance included in Schedule I or II of R.C. § 3719.41, or is cocaine, L.S.D., heroin, a controlled substance analog or a compound, mixture or preparation containing such drugs, possession of drugs is a felony to be prosecuted under appropriate state law;

(2) If the drug involved is a compound, mixture, preparation, or substance included in Schedule III, IV or V of R.C. § 3719.41, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, it is a felony to be prosecuted under appropriate state law; or

(b) If the amount of the drug involved equals or exceeds the bulk amount, possession of drugs is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of marihuana is a minor misdemeanor;

(b) If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams, possession of marihuana is a misdemeanor of the fourth degree; or

(c) If the amount of the drug involved equals or exceeds 200 grams, possession of marihuana is a felony to be prosecuted under appropriate state law.

(4) If the drug involved in the violation is hashish or a compound, mixture, preparation or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of hashish is a minor misdemeanor;

(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree; or

(c) If the amount of the drug involved equals or exceeds ten grams of hashish in a solid form or equals or exceeds two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony to be prosecuted under appropriate state law.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) of this section and R.C. §§ 2929.13, 2929.14, 2929.22, 2929.24 and 2929.25, or any substantially equivalent municipal ordinance, and in addition to any other sanction that is imposed for the offense under this section, R.C. §§ 2929.11 through 2929.18, or R.C. §§ 2929.21 through 2929.28, or any substantially equivalent municipal ordinance, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do the following if applicable regarding the offender:

(1) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and

subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F);

(2) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit; and

(3) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.11) (1985 Code, § 138.03)

§ 138.04 POSSESSION OF DRUG ABUSE INSTRUMENTS.

(A) No person shall knowingly make, obtain, possess or use any instrument, article or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(B) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731 and 4741.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, violation of this section is a misdemeanor of the first degree.

(D) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.12) (1985 Code, § 138.04)

§ 138.05 PERMITTING DRUG ABUSE.

(A) No person who is the owner, operator or person in charge of a locomotive, watercraft, aircraft or other vehicle, as defined in R.C. § 4501.01, shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(B) No person, who is the owner, lessee or occupant, or who has custody, control or supervision of premises, or real estate, including vacant land, shall knowingly permit his or her premises, or real

estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(C) Whoever violates this section is guilty of permitting drug abuse.

(1) Except as provided in division (C)(2) of this section, permitting drug abuse is a misdemeanor of the first degree.

(2) Permitting drug abuse is a felony to be prosecuted under appropriate state law if the felony drug abuse offense in question is a violation of R.C. § 2925.02 or 2925.03.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit; and

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(E) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(F) Any premises or real estate that is permitted to be used in violation of division (B) of this section constitutes a nuisance subject to abatement pursuant to R.C. Chapter 3767.
(R.C. § 2925.13) (1985 Code, § 138.05)

§ 138.06 ILLEGAL CULTIVATION OF MARIJUANA.

(A) No person shall knowingly cultivate marihuana.

(B) This section does not apply to any person listed in R.C. § 2925.03(B)(1), (B)(2) or (B)(3), or a substantially equivalent municipal ordinance, to the extent and under the circumstances described in that division.

(C) Whoever commits a violation of division (A) of this section is guilty of illegal cultivation of marihuana.

(1) Except as otherwise provided in the following divisions, illegal cultivation of marihuana is a minor misdemeanor or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.

(2) If the amount of marihuana involved equals or exceeds 100 grams but is less than 200 grams, illegal cultivation of marihuana is a misdemeanor of the fourth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree.

(3) If the amount of marihuana involved equals or exceeds 200 grams, illegal cultivation of marihuana is a felony to be prosecuted under appropriate state law.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with R.C. § 2925.03(G). If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division; and

(2) If the offender is a professionally licensed person, the court immediately shall comply with R.C. § 2925.38.

(E) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license or other right or privilege, or made in connection with the person's appearance as a witness.

(R.C. § 2925.04)

§ 138.07 ABUSING HARMFUL INTOXICANTS.

(A) Except for lawful research, clinical, medical, dental or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess or use a harmful intoxicant.

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the first degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a felony to be prosecuted under appropriate state law.

(C) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.31) (1985 Code, § 138.07)

§ 138.08 ILLEGAL DISPENSING OF DRUG SAMPLES.

(A) No person shall knowingly furnish a sample drug to another person.

(B) Division (A) of this section does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4725, 4729, 4730, 4731 and 4741.

(C) (1) Whoever violates this section is guilty of illegal dispensing of drug samples.

(2) If the drug involved in the offense is a compound, mixture, preparation or substance included in Schedule I or II of R.C. § 3719.41 with the exception of marihuana, illegal dispensing of drug samples is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation or substance included in Schedule III, IV or V of R.C. § 3719.41, or is marihuana, the penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, illegal dispensing of drug samples is a misdemeanor of the second degree; and

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree.

(D) In addition to any prison term authorized or required by division (C) of this section and R.C. §§ 2929.13 and 2929.14, and in addition to any other sanction imposed for the offense under this section or R.C. §§ 2929.11 through 2929.18, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:

(1) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license; and

(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(E) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(R.C. § 2925.36) (1985 Code, § 138.08)

§ 138.09 DISPENSING NITROUS OXIDE.

(A) *Improper dispensing or distribution.*

(1) No person who dispenses or distributes nitrous oxide in cartridges shall fail to comply with either of the following:

(a) The recordkeeping requirements established under division (A)(3) of this section; or

(b) The labeling and transaction identification requirements established under division (A)(4) of this section.

(2) Whoever violates division (A)(1)(a) or (A)(1)(b) of this section is guilty of improperly dispensing or distributing nitrous oxide, a misdemeanor of the fourth degree.

(3) Beginning July 1, 2001, a person who dispenses or distributes nitrous oxide shall record each transaction involving the dispensing or distribution of the nitrous oxide on a separate card. The person shall require the purchaser to sign the card and provide a complete residence address. The person dispensing or distributing the nitrous oxide shall sign and date the card. The person shall retain the card recording a transaction for one year from the date of the transaction. The person shall maintain the cards at the person's business address and make them available during normal business hours for inspection and copying by officers or employees of the State Board of Pharmacy or of other law enforcement agencies that are authorized to investigate violations of this code, R.C. Chapters 2925, 3719 or 4729, or federal drug abuse control laws. The cards used to record each transaction shall inform the purchaser of the following:

(a) That nitrous oxide cartridges are to be used only for purposes of preparing food;

(b) That inhalation of nitrous oxide can have dangerous health effects; and

(c) That it is a violation of state law to distribute or dispense cartridges of nitrous oxide to any person under age 21, punishable as a felony of the fifth degree.

(4) (a) Each cartridge of nitrous oxide dispensed or distributed in this municipality shall bear the following printed warning: "Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under age 21. Do not inhale contents. Misuse can be dangerous to your health."

(b) Each time a person dispenses or distributes one or more cartridges of nitrous oxide, the person shall mark the packaging containing the cartridges with a label or other device that identifies the person who dispensed or distributed the nitrous oxide and the person's business address.

(R.C. § 2925.32(B)(4), (D)(2), (F), (G))

(B) *Possession in a motor vehicle.*

(1) As used in this section, **MOTOR VEHICLE**, **STREET** and **HIGHWAY** have the same meaning as in R.C. § 4511.01.

(2) Unless authorized by this code or by state law, no person shall possess an open cartridge of nitrous oxide in either of the following circumstances:

(a) While operating or being a passenger in or on a motor vehicle on a street, highway or other public or private property open to the public for purposes of vehicular traffic or parking; or

(b) While being in or on a stationary motor vehicle on a street, highway or other public or private property open to the public for purposes of vehicular traffic or parking.

(3) Whoever violates this division (B) is guilty of possessing nitrous oxide in a motor vehicle, a misdemeanor of the fourth degree.

(R.C. § 2925.33)

(1985 Code, § 138.09)

§ 138.10 LABORATORY REPORT REQUIRED.

(A) (1) In any criminal prosecution for a violation of this chapter or R.C. Chapters 2925 or 3719, a laboratory report from the Bureau of Criminal Identification and Investigation or a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the Association of American Universities or the North Central Association of Colleges and Secondary Schools, primarily for the purpose of providing scientific service to law enforcement agencies, and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima facie evidence of the content, identity and weight or the existence and number of unit dosages of the substance. In any criminal prosecution for a violation of R.C. § 2925.041 or a violation of this chapter, R.C. Chapter 2925 or R.C. Chapter 3719 that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation or substance included in Schedule I, II, III, IV or V, a laboratory report from the Bureau or from any laboratory that is operated or established as described in this division (A) that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight and identity of each of the substances, is prima facie evidence of the content, identity and weight of the substances.

(2) Attached to that report shall be a copy of a notarized statement by the signer of the report giving the name of the signer and stating that the signer is an employee of the laboratory issuing the report and that performing the analysis is a part of the signer's regular duties, and giving an outline of the signer's education, training and experience for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or grand jury proceeding where the report may be used without having been previously served upon the accused.

(C) The report shall not be prima facie evidence of the contents, identity and weight or the existence and number of unit dosages of the substance if the accused or the accused's attorney demands the testimony of the person signing the report, by serving the demand upon the prosecuting attorney, within seven days from the accused or the accused's attorney's receipt of the report. The time may be extended by a trial judge in the interests of justice.

(D) Any report issued for use under this section shall contain notice of the right of the accused to demand, and the manner in which the accused shall demand, the testimony of the person signing the report.

(E) Any person who is accused of a violation of this chapter or R.C. Chapters 2925 or 3719 is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is, or of each of the substances that are, the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or, if the accused is indigent, by a qualified laboratory analyst appointed by the court. Such portion shall be a representative sample of the entire substance that is, or of each of the substances that are, the basis of the alleged violation and shall be of sufficient size, in the opinion of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance or substances. The prosecuting attorney shall provide the accused's analyst with the sample portion at least 14 days prior to trial, unless the trial is to be held in a court not of record or unless the accused person is charged with a minor misdemeanor, in which case the prosecuting attorney shall provide the accused's analyst with the sample portion at least three days prior to trial. If the prosecuting attorney determines that such a sample portion cannot be preserved and given to the accused's analyst, the prosecuting attorney shall so inform the accused person, or the accused's attorney. In such a circumstance, the accused person is entitled, upon written request made to the prosecuting attorney, to have the accused's privately employed or court appointed analyst present at an analysis of the substance that is, or the substances that are, the basis of the alleged violation, and, upon further written request, to receive copies of all recorded scientific data that result from the analysis and that can be used by an analyst in arriving at conclusions, findings or opinions concerning the identity of the substance or substances subject to the analysis.

(F) In addition to the rights provided under division (E) of this section, any person who is accused of a violation of this chapter or R.C. Chapters 2925 or 3719 that involves a bulk amount of a controlled

substance, or any multiple thereof, or who is accused of a violation of R.C. § 2925.11 or a substantially equivalent municipal ordinance, other than a minor misdemeanor violation, that involves marihuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court, present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions, findings or opinions concerning the weight, volume or number of unit doses of the substance subject to the measurement or weighing.

(R.C. § 2925.51)

(G) In addition to the financial sanctions authorized or required under R.C. §§ 2929.18 and 2929.28 and to any costs otherwise authorized or required under any provision of law, the court imposing sentence upon an offender who is convicted of or pleads guilty to a drug abuse offense may order the offender to pay to the state, municipal or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation or county reasonably incurred in having tests performed under this section or R.C. § 2925.51 or in any other manner on any substance that was the basis of, or involved in, the offense to determine whether the substance contained any amount of a controlled substance if the results of the tests indicate that the substance tested contained any controlled substance. No court shall order an offender under this section to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance. The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the sentencing hearing for the offender.

(R.C. § 2925.511)

(1985 Code, § 138.10)

§ 138.11 FEDERAL PROSECUTION BAR TO MUNICIPAL PROSECUTION.

No person shall be prosecuted for a violation of this chapter if the person has been acquitted or convicted under the federal drug abuse control laws of the same act or omission which, it is alleged, constitutes a violation of this chapter.

(R.C. §§ 2925.50, 3719.19) (1985 Code, § 138.11)

§ 138.12 BARBITURATES AND AMPHETAMINES (DOWNERS AND UPPERS).

(A) No person shall, with intent to produce intoxication, elation, paralysis, irrational conduct or the changing, distortion or disturbance of the thinking process, judgment, balance or coordination, use any barbiturate or amphetamine, as defined in R. C. § 3719.23. However, this section shall not apply to the use of any barbiturate or amphetamine by licensed manufacturers, wholesalers, pharmacists, owners of pharmacies, physicians and other persons for research, clinical or medicinal purposes authorized by federal law or state law, or any rules or regulations adopted pursuant thereto.

(B) No person shall induce or attempt to induce another person to unlawfully use any barbiturate or amphetamine; or employ, induce or use a minor to unlawfully transport, carry, dispense, produce or manufacture any barbiturate or amphetamine; or induce or attempt to induce a minor to violate any of the provisions of this section.

(C) Whoever violates any of the provisions of this section shall be guilty of a misdemeanor of the first degree.

(1985 Code, § 138.12) (Ord. 1169, passed 6-10-1974)

§ 138.13 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.

(A) Whenever a manufacturer sells a controlled substance, and whenever a wholesaler sells a controlled substance in a package the wholesaler has prepared, the manufacturer or wholesaler shall securely affix to each package in which the controlled substance is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of controlled substance contained therein. No person, except a pharmacist for the purpose of dispensing a controlled substance upon a prescription, shall alter, deface or remove any label so affixed.

(B) No person shall alter, deface or remove any label affixed pursuant to R.C. § 3719.08 as long as any of the original contents remain.

(R.C. § 3719.08(A), (E))

(C) Whoever violates this section is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, or R.C. § 3719.07 or 3719.08, or a drug abuse offense, a violation of this section is a felony to be prosecuted under appropriate state law. If the violation involves the sale, offer to sell or possession of a Schedule I or II controlled substance, with the exception of marijuana, and if the offender, as a result of the violation, is a major drug offender, then R.C. § 3719.99(D) applies.

(R.C. § 3719.99(C))

(1985 Code, § 138.13)

§ 138.14 USE, POSSESSION OR SALE OF DRUG PARAPHERNALIA.

(A) As used in this section, *DRUG PARAPHERNALIA* means any equipment, product or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance in violation of this chapter. The term includes but is not limited to any of the following equipment, products or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

- (1) A kit for propagating, cultivating, growing or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;
- (2) A kit for manufacturing, compounding, converting, producing, processing or preparing a controlled substance;
- (3) Any object, instrument or device for manufacturing, compounding, converting, producing, processing or preparing methamphetamine.
- (4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;
- (5) Testing equipment for identifying, or analyzing the strength, effectiveness or purity of, a controlled substance;
- (6) A scale or balance for weighing or measuring a controlled substance;
- (7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose or lactose, for cutting a controlled substance;
- (8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;
- (9) A blender, bowl, container, spoon or mixing device for compounding a controlled substance;
- (10) A capsule, balloon, envelope or container for packaging small quantities of a controlled substance;
- (11) A container or device for storing or concealing a controlled substance;
- (12) A hypodermic syringe, needle or instrument for parenterally injecting a controlled substance into the human body; or
- (13) An object, instrument or device for ingesting, inhaling or otherwise introducing into the human body, marihuana, cocaine, hashish or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic or ceramic pipe, with or without a screen, permanent screen, hashish head or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if any equipment, product or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner or by anyone in control of the equipment, product or material, concerning its use;

(2) The proximity in time or space of the equipment, product or material, or of the act relating to the equipment, product or material, to a violation of any provision of this chapter or R.C. Chapter 2925;

(3) The proximity of the equipment, product or material to any controlled substance;

(4) The existence of any residue of a controlled substance on the equipment, product or material;

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product or material, to deliver it to any person whom he or she knows intends to use the equipment, product or material to facilitate a violation of any provision of this chapter or R.C. Chapter 2925. A finding that the owner or anyone in control of the equipment, product or material is not guilty of a violation of any other provision of this chapter or R.C. Chapter 2925 does not prevent a finding that the equipment, product or material was intended or designed by the offender for use as drug paraphernalia;

(6) Any oral or written instruction provided with the equipment, product or material concerning its use;

(7) Any descriptive material accompanying the equipment, product or material and explaining or depicting its use;

(8) National or local advertising concerning the use of the equipment, product or material;

(9) The manner and circumstances in which the equipment, product or material is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product or material to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the equipment, product or material in the community; and

(12) Expert testimony concerning the use of the equipment, product or material.

(C) (1) Subject to division (D)(2) of this section, no person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if he or she knows or reasonably should know that the equipment, product or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill or other publication that is published and printed and circulates primarily within this state, if he or she knows that the purpose of the advertisement is to promote the illegal sale in this municipality or in this state of the equipment, product or material that the offender intended or designed for use as drug paraphernalia.

(D) (1) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731 and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by R.C. § 3719.172.

(2) Division (C)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug paraphernalia that is equipment, a product or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body marihuana.

(E) Notwithstanding R.C. Chapter 2981, any drug paraphernalia that was used, possessed, sold or manufactured in violation of this section shall be seized, after a conviction for that violation, shall be forfeited, and upon forfeiture shall be disposed of pursuant to R.C. § 2981.12(B).

(F) (1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a minor misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.14)

(H) Illegal use or possession of marihuana drug paraphernalia.

(1) As used in this division (H), **DRUG PARAPHERNALIA** has the same meaning as in division (A) of this section.

(2) In determining if any equipment, product or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, all factors identified in division (B) of this section.

(3) No person shall knowingly use, or possess with purpose to use, any drug paraphernalia that is equipment, a product or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body marihuana.

(4) This division (H) does not apply to any person identified in division (D)(1) of this section, and it shall not be construed to prohibit the possession or use of a hypodermic as authorized by R.C. § 3719.172.

(5) Division (E) of this section applies with respect to any drug paraphernalia that was used or possessed in violation of this section.

(6) Whoever violates division (H)(3) of this section is guilty of illegal use or possession of marihuana drug paraphernalia, a minor misdemeanor.

(7) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. § 2925.38.

(R.C. § 2925.141)

(1985 Code, § 138.14)

§ 138.15 COUNTERFEIT CONTROLLED SUBSTANCES.

(A) No person shall knowingly possess any counterfeit controlled substance.

(B) Whoever violates division (A) of this section shall be guilty of possession of counterfeit controlled substances, a misdemeanor of the first degree.

(C) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(R.C. § 2925.37(A), (G), (M)) (1985 Code, § 138.15)

Statutory reference:

Trafficking and other felony counterfeit controlled substance offenses, see R.C. § 2925.37(H) through (K)

§ 138.16 UNLAWFUL FURNISHING OF PRESCRIPTION TO ENABLE PERSONS TO BE ISSUED HANDICAPPED PARKING PLACARDS OR LICENSE PLATES.

(A) No physician or chiropractor shall do either of the following:

(1) Furnish a person with a prescription in order to enable the person to be issued a removable windshield placard, temporary removable windshield placard or license plates under R.C. § 4503.44, knowing that the person does not meet any of the criteria contained in R.C. § 4503.44(A)(1); or

(2) Furnish a person with a prescription described in division (A)(1) of this section and knowingly misstate on the prescription the length of time the physician or chiropractor expects the person to have the disability that limits or impairs the person's ability to walk in order to enable the person to retain a placard issued under R.C. § 4503.44 for a period of time longer than that which would be estimated by a similar practitioner under the same or similar circumstances.

(R.C. §§ 4731.481, 4734.161)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree.

(R.C. §§ 4731.99(F), 4734.99(B))

(1985 Code, § 138.16)

§ 138.17 PSEUDOEPHEDRINE SALES.

(A) *Unlawful purchases.*

(1) As used in divisions (A), (B), (C) and (D) of this section:

CONSUMER PRODUCT. Any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

EPHEDRINE. Any material, compound, mixture or preparation that contains any quantity of ephedrine, any of its salts, optical isomers or salts of optical isomers.

EPHEDRINE PRODUCT. A consumer product that contains ephedrine.

PSEUDOEPHEDRINE. Any material, compound, mixture or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers or salts of optical isomers.

PSEUDOEPHEDRINE PRODUCT. A consumer product consisting that contains pseudoephedrine.

RETAILER. A place of business that offers consumer products for sale to the general public.

SINGLE-INGREDIENT PREPARATION. A compound, mixture, preparation or substance that contains a single active ingredient.

TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS. Has the same meaning as in R.C. § 4729.01.

(2) (a) 1. No individual shall knowingly purchase, receive, or otherwise acquire an amount of pseudoephedrine product or ephedrine product that is greater than either of the following unless the pseudoephedrine product or ephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731 or 4741:

- a. Three and six tenths grams within a period of a single day;
- b. Nine grams within a period of 30 consecutive days.

2. The limits specified in divisions (A)(2)(a)1.a. and (A)(2)(a)1.b. of this section apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The limits do not apply to the product's overall weight.

(b) It is not a violation of division (B)(1) of this section for an individual to receive or accept more than an amount of pseudoephedrine product or ephedrine product specified in division (A)(2)(a)1.a. or (A)(2)(a)1.b. of this section if the individual is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading or unloading of the product.

(3) (a) No individual under 18 years of age shall knowingly purchase, receive, or otherwise acquire a pseudoephedrine product, or ephedrine product unless the pseudoephedrine product or ephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731 or 4741.

(b) Division (A)(3)(a) of this section does not apply to an individual under 18 years of age who purchases, receives, or otherwise acquires a pseudoephedrine product or ephedrine product from any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides the pseudoephedrine product or ephedrine product to that individual and whose conduct is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731 or 4741;

2. A parent or guardian of that individual who provides the pseudoephedrine product or ephedrine product to the individual;

3. A person, as authorized by that individual's parent or guardian, who dispenses, sells, or otherwise provides the pseudoephedrine product or ephedrine product to the individual;

4. A retailer or terminal distributor of dangerous drugs who provides the pseudoephedrine product or ephedrine product to that individual if the individual is an employee of the retailer or terminal distributor of dangerous drugs and the individual receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading or unloading of the product.

(4) No individual under 18 years of age shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise acquiring a pseudoephedrine product or ephedrine product.

(5) No individual shall knowingly fail to comply with the requirements of R.C. § 3715.051(B).

(6) Whoever violates division (A)(2)(a) of this section is guilty of unlawful purchase of a pseudoephedrine product or ephedrine product, a misdemeanor of the first degree.

(7) Whoever violates division (A)(3)(a) of this section is guilty of underage purchase of a pseudoephedrine product or ephedrine product, a delinquent act that would be a misdemeanor of the fourth degree if it could be committed by an adult.

(8) Whoever violates division (A)(4) of this section is guilty of using false information to purchase a pseudoephedrine product or ephedrine product, a delinquent act that would be a misdemeanor of the first degree if it could be committed by an adult.

(9) Whoever violates division (A)(5) of this section is guilty of improper purchase of a pseudoephedrine product or ephedrine product, a misdemeanor of the fourth degree.
(R.C. § 2925.55)

(B) *Unlawful retail sales.*

(1) (a) 1. Except as provided in division (B)(1)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, offer to sell, hold for sale, deliver, or otherwise provide to any individual an amount of pseudoephedrine product or ephedrine product that is greater than either of the following:

- a. Three and six tenths grams within a period of a single day;
- b. Nine grams within a period of 30 consecutive days.

2. The maximum amounts specified in divisions (B)(1)(a)1.a. and (B)(1)(a)1.b. of this section apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The maximum amounts do not apply to the product's overall weight.

(b) 1. Division (B)(1)(a) of this section does not apply to any quantity of pseudoephedrine product or ephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs if the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731, or 4741.

2. It is not a violation of division (B)(1)(a) of this section for a retailer, terminal distributor of dangerous drugs, or employee of either to provide to an individual more than an amount of pseudoephedrine product or ephedrine product specified in division (B)(1)(a)1.a. or (B)(1)(a)1.b. of this section under either of the following circumstances:

a. The individual is an employee of the retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer, terminal distributor of dangerous drugs, or employee the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product;

b. A stop-sale alert is generated after the submission of information to the national precursor log exchange under the conditions described in R.C. § 3715.052(A)(2).

(2) (a) Except as provided in division (B)(2)(b) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall sell, offer to sell, hold for sale, deliver, or otherwise provide a pseudoephedrine product or ephedrine product to an individual who is under 18 years of age.

(b) Division (B)(2)(a) of this section does not apply to any of the following:

1. A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides a pseudoephedrine product or ephedrine product to an individual under 18 years of age and whose conduct is in accordance with R.C. Chapter 3719, 4715, 4723, 4729, 4730, 4731 or 4741;

2. A parent or guardian of an individual under 18 years of age who provides a pseudoephedrine product or ephedrine product to the individual;

3. A person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a pseudoephedrine product or ephedrine product to an individual under 18 years of age;

4. The provision by a retailer, terminal distributor of dangerous drugs, or employee of either of a pseudoephedrine product or ephedrine product in a sealed container to an employee of the retailer or terminal distributor of dangerous drugs who is under 18 years of age in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(3) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of R.C. § 3715.051(A) or R.C. § 3715.052(A)(2).

(4) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of R.C. § 3715.052(A)(1).

(5) Whoever violates division (B)(1)(a) of this section is guilty of unlawfully selling a pseudoephedrine product or ephedrine product, a misdemeanor of the first degree.

(6) Whoever violates division (B)(2)(a) of this section is guilty of unlawfully selling a pseudoephedrine product or ephedrine product to a minor, a misdemeanor of the fourth degree.

(7) Whoever violates division (B)(3) of this section is guilty of improper sale of a pseudoephedrine product or ephedrine product, a misdemeanor of the second degree.

(8) Whoever violates division (B)(4) of this section is guilty of failing to submit information to the national precursor log exchange, a misdemeanor for which the offender shall be fined not more than \$1,000 per violation.

(R.C. § 2925.56)

(C) *Transaction scans.*

(1) As used in this division and division (D) of this section:

CARD HOLDER. Means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive any pseudoephedrine product or ephedrine product from the seller, agent, or employee.

IDENTIFICATION CARD. Has the same meaning as in R.C. § 2927.021.

SELLER. Means a retailer or terminal distributor of dangerous drugs.

TRANSACTION SCAN. Means the process by which a seller or an agent or employee of a seller checks by means of a transaction scan device the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving any pseudoephedrine product or ephedrine product.

TRANSACTION SCAN DEVICE. Has the same meaning as in R.C. § 2927.021.

(2) (a) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder a pseudoephedrine product or ephedrine product.

(b) If the information deciphered by the transaction scan performed under division (C)(2)(a) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any pseudoephedrine product or ephedrine product to the card holder.

(c) Division (C)(2)(a) of this section does not preclude a seller or an agent or employee of a seller as a condition for selling, giving away, or otherwise distributing a pseudoephedrine product or ephedrine product to the person presenting the document from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card if the document includes a bar code or magnetic strip that may be scanned by the device.

(3) Rules adopted by the Registrar of Motor Vehicles under R.C. § 4301.61(C) apply to the use of transaction scan devices for purposes of this division (C) and division (D) of this section.

(4) (a) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

1. The name, address, and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;
2. The expiration date, identification number, and issuing agency of the driver's or commercial driver's license or identification card presented by a card holder.

(b) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (C)(4)(a) of this section except for purposes of division (D) of this section, R.C. § 2925.58 or R.C. § 3715.052(A)(1).

(c) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (C)(2)(a) of this section.

(d) No seller or agent or employee of a seller shall sell or otherwise disseminate the information derived from a transaction scan to any third party, including but not limited to selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by division (D) of this section or any other section of the Ohio Revised Code.

(5) Nothing in this division (C) or division (D) of this section relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of pseudoephedrine products or ephedrine products.

(6) Whoever violates division (C)(2)(b) or (C)(4) of this section is guilty of engaging in an illegal pseudoephedrine product or ephedrine product transaction scan, and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The Clerk of the Court shall pay each collected civil penalty to the County Treasurer for deposit into the County Treasury.
(R.C. § 2925.57)

(D) Affirmative defenses.

(1) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of division (B) of this section in which the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

(a) A card holder attempting to purchase or receive a pseudoephedrine product presented a driver's or commercial driver's license or an identification card.

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(c) The pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (D)(1) of this section, the trier of fact in the action for the alleged violation of division (B) of this section shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of division (B) of this section. For purposes of division (D)(1)(c) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is 18 years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (D)(1) of this section is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under R.C. §§ 4507.50 through 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action.

(R.C. § 2925.58)

(E) *Retailer's duties.*

(1) As used in divisions (E) and (F) of this section:

CONSUMER PRODUCT. Any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

DRUG. Has the same meanings as in R.C. § 4729.01.

EPHEDRINE. Any material, compound, mixture, or preparation that contains any quantity of ephedrine, any of its salts, optical isomers or salts of optical isomers.

EPHEDRINE PRODUCT. A consumer product that contains ephedrine.

LAW ENFORCEMENT OFFICIAL. An officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by the law to investigate or conduct an official inquiry into a potential violation of law or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

LICENSED HEALTH PROFESSIONAL AUTHORIZED TO PRESCRIBE DRUGS. Has the same meanings as in R.C. § 4729.01.

NATIONAL PRECURSOR LOG EXCHANGE or EXCHANGE. The electronic system for tracking sales of pseudoephedrine products and ephedrine products on a national basis that is administered by the National Association of Drug Diversion Investigators or a successor organization.

PHARMACIST. A person licensed under Chapter 4729. of the Revised Code to engage in the practice of pharmacy.

PHARMACY. Has the same meanings as in R.C. § 4729.01.

PRESCRIBER. Has the same meanings as in R.C. § 4729.01.

PRESCRIPTION. Has the same meanings as in R.C. § 4729.01.

PROOF OF AGE. A driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under R.C. §§ 4507.50 to 4507.52 that shows a person is 18 years of age or older.

PSEUDOEPHEDRINE. Any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.

PSEUDOEPHEDRINE PRODUCT. A consumer product that contains pseudoephedrine.

RETAILER. A place of business that offers consumer products for sale to the general public.

SINGLE-INGREDIENT PREPARATION. A compound, mixture, preparation, or substance that contains a single active ingredient.

STOP-SALE ALERT. A notification sent from the national precursor log exchange to a retailer or terminal distributor of dangerous drugs indicating that the completion of a sale of a pseudoephedrine product or ephedrine product would result in a violation of R.C. § 2925.56(A)(1) or federal law.

TERMINAL DISTRIBUTOR OF DANGEROUS DRUGS. Has the same meanings as in R.C. § 4729.01.

WHOLESALE. Has the same meaning as in R.C. § 3719.01.

(2) A retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides a pseudoephedrine product or ephedrine product to the public shall do all of the following:

(a) Segregate pseudoephedrine products or ephedrine products from other merchandise so that no member of the public may procure or purchase such products without the direct assistance of a pharmacist or other authorized employee of the retailer or terminal distributor of dangerous drugs;

(b) With regard to each time a pseudoephedrine product or ephedrine product is sold or otherwise provided without a valid prescription:

1. Determine, by examination of a valid proof of age, that the purchaser or recipient is at least 18 years of age;

2. a. Using any information available, including information from the national precursor log exchange if the information is accessible, make a reasonable attempt to ensure that no individual purchases or receives an amount of pseudoephedrine product or ephedrine product that is greater than either of the following:

- i. Three and six tenths grams within a period of a single day; or
- ii. Nine grams within a period of 30 consecutive days.

b. The maximum amounts specified in divisions (E)(2)(b)2.a.i. and (E)(2)(b)2.a.ii. of this section apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The maximum amounts do not apply to the product's overall weight.

(c) Maintain a log book of pseudoephedrine product or ephedrine product purchases, in accordance with R.C. § 3715.051;

(d) If required to comply with section R.C. § 3715.052, submit the information specified in divisions (A)(1)(a) to (A)(1)(d) of that section to the national precursor log exchange.

(3) Prescriptions, orders and records maintained pursuant to this section and stocks of pseudoephedrine products and ephedrine products shall be open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Such prescriptions, orders, records and stocks shall be open for inspection by the State Medical Board and its employees for purposes of enforcing R.C. Chapter 4731.

(R.C. § 3715.05)

(F) *Theft or loss; reporting requirements.*

(1) Each retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler that sells, offers to sell, holds for sale, delivers or otherwise provides any pseudoephedrine product and that discovers the theft or loss of any pseudoephedrine product in an amount of more than nine grams per incident of theft or loss shall notify all of the following upon discovery of the theft or loss:

(a) The State Board of Pharmacy, by telephone immediately upon discovery of the theft or loss;

(b) Law enforcement authorities. If the incident is a theft and the theft constitutes a felony, the retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler shall report the theft to the law enforcement authorities in accordance with R.C. § 2921.22.

(2) Within 30 days after making a report by telephone to the State Board of Pharmacy pursuant to division (F)(1)(a) of this section, a retailer, terminal distributor of dangerous drugs, pharmacy, prescriber or wholesaler shall send a written report to the State Board of Pharmacy.

(3) The reports required under this section shall identify the product that was stolen or lost, the amount of the product stolen or lost, and the date and time of discovery of the theft or loss.

(R.C. § 3715.06)

(1985 Code, § 138.17)

§ 138.18 CONTROLLED SUBSTANCE SCHEDULES.

Controlled Substance Schedules I, II, III, IV and V, as established in R.C. § 3719.41 and amended by R.C. §§ 3719.43 and 3719.44, are hereby adopted by reference, and shall be treated as if set forth in full herein.

(1985 Code, § 138.18)

Statutory reference:

For comprehensive lists of drugs identified under each of the following Schedules, see R.C. § 3719.41, as amended by R.C. §§ 3719.43 and 3719.44:

Schedule I

- (A) Narcotics - opiates*
- (B) Narcotics - opium derivatives*
- (C) Hallucinogens*
- (D) Depressants*
- (E) Stimulants*

Schedule II

- (A) Narcotics - opium and opium derivatives*
- (B) Narcotics - opiates*
- (C) Stimulants*
- (D) Depressants*
- (E) Hallucinogenic substances*
- (F) Immediate precursors*

Schedule III

- (A) Stimulants*
- (B) Depressants*
- (C) Narcotic antidotes*
- (D) Narcotics - narcotic preparations*
- (E) Anabolic steroids*
- (F) Hallucinogenic substances*

Schedule IV

- (A) Narcotic drugs*
- (B) Depressants*
- (C) Fenfluramine*
- (D) Stimulants*
- (E) Other substances*

Schedule V

- (A) Narcotic drugs*
- (B) Narcotics - narcotic preparations*
- (C) Stimulants*

§ 138.19 POSSESSION, SALE AND DISPOSAL OF HYPODERMICS.

(A) Possession of a hypodermic is authorized for the following:

(1) A manufacturer or distributor of, or dealer in hypodermics, or medication packaged in hypodermics, and any authorized agent or employee of that manufacturer, distributor or dealer, in the regular course of business;

(2) A terminal distributor of dangerous drugs, in the regular course of business;

(3) A person authorized to administer injections, in the regular course of the person's profession or employment;

(4) A person, when the hypodermic in his or her possession was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed for the treatment of disease by a licensed health professional authorized to prescribe drugs;

(5) A person whose use of a hypodermic is for legal research, clinical, educational or medicinal purposes;

(6) A farmer, for the lawful administration of a drug to an animal; and

(7) A person whose use of a hypodermic is for lawful professional, mechanical, trade or craft purposes.

(B) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no terminal distributor of dangerous drugs, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to division (A) of this section shall negligently fail to take reasonable precautions to prevent any hypodermic in the person's possession from theft or acquisition by any unauthorized person.

(R.C. § 3719.172(A), (B))

(C) Whoever violates division (B) of this section is guilty of a misdemeanor of the third degree. If the offender previously has been convicted of a violation of division (B) of this section, R.C. § 3719.05, 3719.06, 3719.13, 3719.172(B) or 3719.31, or a drug abuse offense, a violation of division (B) of this section is a misdemeanor of the first degree.

(R.C. § 3719.99(E))

Statutory reference:

Felony offenses, see R.C. § 3719.172(C) and (D)

CHAPTER 139: MISCELLANEOUS

Section

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§ 139.01 ABUSE OF CORPSE.

(A) No person, except as authorized by law, shall treat a human corpse in a way that he or she knows would outrage reasonable family sensibilities.

(B) No person, except as authorized by law, shall treat a human corpse in a way that would outrage reasonable community sensibilities.

(C) Whoever violates division (A) of this section is guilty of abuse of a corpse, a misdemeanor of the second degree. Whoever violates division (B) of this section is guilty of gross abuse of a corpse, a felony to be prosecuted under appropriate state law.

(R.C. § 2927.01) (1985 Code, § 139.01)

§ 139.02 RESERVED.**§ 139.03 UNVENTED HEATERS.**

(A) The use of a brazier, salamander, space heater, room heater, furnace, water heater or other burner or heater using wood, coal, coke, fuel oil, kerosene, gasoline, natural gas, liquid petroleum gas or similar fuel, and tending to give off carbon monoxide or other harmful gases must comply with the following provisions:

(1) When used in living quarters, or in any enclosed building or space in which persons are usually present, shall be used with a flue or vent so designed, installed and maintained as to vent the products of combustion outdoors; except in storage, factory or industrial buildings which are provided with sufficient ventilation to avoid the danger of carbon monoxide poisoning; and

(2) When used as a portable or temporary burner or heater at a construction site, or in a warehouse, shed, or structure in which persons are temporarily present, shall be vented as provided in division (A)(1) of this section or used with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(B) This section does not apply to domestic ranges, laundry stoves, gas logs installed in a fireplace with an adequate flue, or hot plates, unless the same are used as space or room heaters.

(C) No person shall negligently use, or, being the owner, person in charge or occupant of premises, negligently permit the use of a burner or heater in violation of the standards for venting and ventilation provided in this section.

(D) Division (A) above does not apply to any kerosene-fired space or room heater that is equipped with an automatic extinguishing tip-over device, or to any natural gas-fired or liquid petroleum gas-fired space or room heater that is equipped with an oxygen depletion safety shut-off system, and that has its fuel piped from a source outside the building in which it is located, that are approved by an authoritative source recognized by the State Fire Marshal in the State Fire Code adopted by him or her under R.C. § 3737.82.

(E) The State Fire Marshal may make rules to ensure the safe use of unvented kerosene, natural gas or liquid petroleum gas heaters exempted from division (A) above when used in assembly buildings, business buildings, high hazard buildings, institutional buildings, mercantile buildings and type R-1 and R-2 residential buildings, as these groups of buildings are defined in rules adopted by the Board of Building Standards under R.C. § 3781.10. No person shall negligently use, or, being the owner, person in charge or occupant of premises, negligently permit the use of a heater in violation of any rules adopted under this division.

(F) The State Fire Marshal may make rules prescribing standards for written instructions containing ventilation requirements and warning of any potential fire hazards that may occur in using a kerosene, natural gas or liquid petroleum gas heater. No person shall sell or offer for sale any kerosene, natural gas or liquid petroleum gas heater unless the manufacturer provides with the heater written instructions that comply with any rules adopted under this division.

(G) No product labeled as a fuel additive for kerosene heaters and having a flash point below 100°F or 37.8°C shall be sold, offered for sale or used in any kerosene space heater.

(H) No device that prohibits any safety feature on a kerosene, natural gas or liquid petroleum gas space heater from operating shall be sold, offered for sale or used in connection with any kerosene, natural gas or liquid petroleum gas space heater.

(I) No person shall sell or offer for sale any kerosene-fired, natural gas or liquid petroleum gas-fired heater that is not exempt from division (A) above, unless it is marked conspicuously by the manufacturer on the container with the phrase "Not Approved For Home Use."

(J) No person shall use a cabinet-type, liquid petroleum gas-fired heater having a fuel source within the heater, inside any building, except as permitted by the State Fire Marshal in the State Fire Code adopted by him or her under R.C. § 3737.82.
(R.C. § 3701.82)

(K) Whoever violates this section is guilty of a misdemeanor of the first degree.
(R.C. § 3701.99(B))
(1985 Code, § 139.03)

§ 139.04 ABANDONED REFRIGERATORS.

(A) No person shall abandon, discard or knowingly permit to remain on premises under the person's control, in a place accessible to children, any abandoned or discarded icebox, refrigerator or other airtight or semi-airtight container which has a capacity of one and one-half cubic feet or more and an opening of 50 square inches or more and which has a door or lid equipped with a hinge, latch or other fastening device capable of securing such door or lid, without rendering the equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. This section shall not apply to an icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouse or repairer.
(R.C. § 3767.29)

(B) Whoever violates this section shall be guilty of a misdemeanor of the fourth degree.
(R.C. § 3767.99(B))
(1985 Code, § 139.04)

§ 139.05 LITTERING PUBLIC WAYS.

(A) No owner, occupant or tenant of any house, building or lot within the city shall discharge, cast, throw, place or deposit any boxes, baskets, crates, barrels, coops or containers or any merchandise or rubbish in and upon any street, alley, sidewalk, gutter or other public ground.

(B) Whoever violates this section shall be guilty of a minor misdemeanor.
(1985 Code, § 139.05) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 139.06 MAINTAINING A NUISANCE.

(A) No person shall erect, continue to use or maintain a building, structure or place for the exercise of a trade, employment or business or for keeping or feeding an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort or property of individuals or of the public.

(B) No person shall cause or allow offal, filth or noisome substances to be collected or remain in any place to the damage or prejudice of others or of the public.

(C) No person shall unlawfully obstruct or impede the passage of a navigable river, harbor or collection of water, or corrupt or render unwholesome or impure a watercourse, stream of water or unlawfully divert such watercourse from its natural course or state to the injury or prejudice of others.

(D) Persons who are engaged in agriculture-related activities, as agriculture is defined in R.C. § 519.01, and who are conducting those activities outside the municipality, in accordance with generally accepted agricultural practices, and in such a manner so as not to have a substantial, adverse effect on the public health, safety or welfare, are exempt from divisions (A) and (B) above and from any ordinances, resolutions, rules, or other enactments of the municipality that prohibit excessive noise.
(R.C. § 3767.13)

(E) Whoever violates this section is guilty of a misdemeanor of the third degree.
(R.C. § 3767.99(C))
(1985 Code, § 139.07)

§ 139.07 DEPOSITING POISON.

(A) No person shall leave or deposit dangerous drugs, poisons or substances containing dangerous drugs or poisons in a common, street, alley, lane, or thoroughfare or a yard or enclosure occupied by another. Whoever violates this section shall be liable to the person injured for all damages sustained as a result of leaving or depositing the dangerous drugs, poisons or other substances.
(R.C. § 3719.30)

(B) Whoever violates the provisions of this section shall be guilty of a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of this section or a drug abuse offense, a violation of this section is a misdemeanor of the third degree.

(R.C. § 3719.99(F))

(1985 Code, § 139.08) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 139.08 LITTERING BY PROJECTILES.

(A) No person shall shoot, force or throw by means of an air gun or other arm or implement, a lead, iron or other hard substance upon a street, alley, lane, public place or onto the property of another.

(B) Whoever violates the provisions of this section shall be guilty of a minor misdemeanor.

(1985 Code, § 139.09) (Ord. 1306, passed 6-13-1977)

§ 139.09 SIDEWALKS TO BE KEPT FREE OF RUBBISH.

Whoever, being the owner, agent, lessee, occupant or person otherwise in charge or control of any premises abutting a public street, shall, after notification by a police officer, fail to remove from the sidewalk area along such premises with reasonable promptness all debris, rubbish, litter and other matter which may at any time accumulate or be deposited thereon from any cause whatever, shall be guilty of a minor misdemeanor. Each day's failure to remove shall constitute a separate offense. For the purpose of this section, the *SIDEWALK AREA* shall mean the entire area from the property line to the established curb line or paving.

(1985 Code, § 139.10) (Ord. 1306, passed 6-13-1977)

Cross-reference:

Littering, see § 139.05

§ 139.10 ERECTING SIGN ACROSS STREET.

No person, firm or corporation shall erect a sign or banner across a public street within the city. The failure of the person, firm or corporation erecting such sign to remove it upon notice of the City Manager shall be a minor misdemeanor.

(1985 Code, § 139.11) (Ord. 1306, passed 6-13-1977)

§ 139.11 ADULTERATING CANDY OR FOOD.

(A) No person shall place pins, needles, razor blades, drugs of abuse, harmful or hazardous substances or other dangerous objects in any food or confection with intent to harm the consumer or user thereof, nor shall any person knowingly furnish any food or confection containing such substance or object to another.

(B) The presence of any such substance or object in any food or confection is prima facie evidence that such substance or object was intentionally placed therein.

(C) Whoever violates this section is guilty of a misdemeanor of the first degree. (1985 Code, § 139.12) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 139.12 RADIO RECEPTION INTERFERENCE.

(A) No person, firm or corporation shall knowingly use or cause to be used to maintain and operate, or cause to be maintained and operated, any device, appliance, equipment or apparatus in such manner as to cause electrostatic or electromagnetic waves or high frequency oscillations or radiations which interfere with radio broadcast receiving apparatus or wireless receiving apparatus. However a person duly licensed to practice medicine, osteopathy, dentistry or any limited branch or branches of medicine or surgery, duly licensed by the state, in the course of the practice of his or her profession, may operate or cause to be operated under his or her direct supervision, any machine necessary to give such treatment, provided that all reasonable methods of preventing interference with radio broadcasting reception, either through insulation, screening of the roofs or premises in which such operation shall be conducted, or other reasonable and approved methods of interference prevention shall be installed and used.

(B) Whoever shall violate the provisions of this section shall be guilty of a minor misdemeanor. (1985 Code, § 139.13) (Ord. 1306, passed 6-13-1977)

§ 139.13 SELLING OR DISCHARGING FIREWORKS PROHIBITED.

(A) The term ***FIREWORKS***, as used in this section, shall mean all rockets, roman candles, bombs, balloons, wheels and other substances and devices for pyrotechnic display; all firecrackers, blank cartridges, torpedoes and concussion canes, pistols and other devices for the explosion of caps or cartridges, or any substance designed or intended to produce a visible or audible pyrotechnic effect, by combustion, explosion, deflagration or detonation.

(B) No person, firm or corporation shall offer for sale at retail, or sell at retail, or loan, barter, deliver, give away or possess within the city, any fireworks as defined in division (A) of this section, except to holders of permits as provided in division (D) hereof.

(C) No person, firm or corporation shall purchase at retail, or receive, use, fire, set off, discharge, set in motion or ignite, within the limitation of the city, any fireworks as defined in division (A) above except as provided in division (D) hereof.

(D) Special permission may be granted to persons, firms or corporations for the purpose of fireworks as defined in division (A), and for their use at a public gathering or in a public parade, provided an application is filed with the City Manager, setting forth the name of the applicant, the time and the place of the exhibition or parade. The City Manager, on being satisfied that the fireworks will

be used as stipulated in the application, and being satisfied that all reasonable precautions will be exercised with regard to the protection of all property and the safety of all persons, may issue a permit which shall allow the use of the fireworks at the time and place set out in the application.

(E) Any person, firm or corporation violating any of the provisions of divisions (B) or (C) of this section shall be guilty of a minor misdemeanor.

(1985 Code, § 139.14) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

Cross-reference:

Fire prevention code, see Chapter 91

Statutory reference:

Definitions, R.C. § 3743.01

Permit to use fireworks, R.C. § 3743.54

Sale and use of fireworks, R.C. § 3743.65

§ 139.14 CURFEW; PROHIBITED ACTIVITIES.

(A) The Manager, or in the absence of the Manager, the Mayor, or in the absence of the Manager and Mayor, the Vice-Mayor of the city, when engaged in suppressing a riot, mob action or other substantial civil disorders, or when he or she has concluded that a state of emergency exists because there is a clear and present danger of riot, mob action or other substantial civil disorders within the city, may impose a curfew throughout the area threatened by such actions by prohibiting or regulating the sale, offering for sale, dispensing or transportation of alcoholic beverages, explosives, guns, other weapons and gasoline in, to or from the area subject such curfew.

(B) In any complaint, action or proceeding brought for the enforcement of any part of this section, it shall not be necessary to negative any exception contained in such sections, and the burden of proof of any such exception shall be upon the defendant.

(C) Whoever violates any provision of this section shall be guilty of a misdemeanor of the first degree.

(1985 Code, § 139.15) (Ord. 1169, passed 6-10-1974; Ord. 1306, passed 6-13-1977)

§ 139.15 DEPOSIT OF DEAD ANIMALS OR OFFAL.

(A) No person shall put the carcass of a dead animal, or the offal from a slaughterhouse, butcher's establishment, packing house or fish house, or spoiled meat, spoiled fish or other putrid substance or the contents of a privy vault, upon or into a lake, river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market place or common.

(B) No owner or occupant of such place shall knowingly permit such thing to retain therein to the annoyance of any citizen or neglect to remove or abate the nuisance occasioned thereby within 24 hours after knowledge of the existence thereof, or after notice thereof in writing from the City Manager.

(C) Whoever violates the provisions of this section shall be guilty of a minor misdemeanor. (1985 Code, § 139.16) (Ord. 1169, passed 6-10-1974)

§ 139.16 HAULING UNCOVERED GARBAGE.

(A) No person shall haul, convey or transport any garbage, paper or refuse of any kind whatsoever over or upon the streets, thoroughfares, alleys and ways of the city, without having the garbage, paper or refuse securely covered and confined by tarpaulin, or otherwise.

(B) Whoever shall violate the provisions of this section shall be guilty of a minor misdemeanor. (1985 Code, § 139.17) (Ord. 1169, passed 6-10-1974)

§ 139.17 INTERFERENCE WITH RIGHT OF PERSON TO ENGAGE IN HOUSING TRANSACTIONS BECAUSE OF RACE, RELIGION OR THE LIKE.

(A) No person, whether or not acting under color of law, shall by force or threat of force willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with any of the following:

(1) Any person because of race, color, religion, sex, familial status, as defined in R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry and because that person is or has been selling, purchasing, renting, financing, occupying, contracting or negotiating for the sale, purchase, rental, financing or occupation of any housing accommodations, or applying for or participating in any service, organization or facility relating to the business of selling or renting housing accommodations;

(2) Any person because that person is or has been doing, or in order to intimidate that person or any other person or any class of persons from doing either of the following:

(a) Participating, without discrimination on account of race, color, religion, sex, familial status, as defined in R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry, in any of the activities, services, organizations or facilities described in division (A)(1) of this section; or

(b) Affording another person or class of persons opportunity or protection so to participate.

(3) Any person because that person is or has been, or in order to discourage that person or any other person from, lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, familial status as defined in R.C. § 4112.01, national origin, military status as defined in that section, disability as defined in that section, or ancestry, in any of the activities, services, organizations or facilities described in division (A)(1) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(B) Whoever violates division (A) of this section is guilty of a misdemeanor of the first degree.
(R.C. § 2927.03) (1985 Code, § 139.18)

§ 139.18 ETHNIC INTIMIDATION.

(A) No person shall violate R.C. § 2903.21, 2903.22, 2909.06 or 2909.07, or R.C. § 2917.21(A)(3), (A)(4) or (A)(5), by reason of the race, color, religion or national origin of another person or group of persons.

(B) Whoever violates this section is guilty of ethnic intimidation. Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation. In the case of an offense that is a misdemeanor of the first degree, ethnic intimidation is a felony to be prosecuted under appropriate state law.

(R.C. § 2927.12) (1985 Code, § 139.19)

§ 139.19 CURFEW FOR MINORS.

(A) *Purpose.* There is a legitimate governmental interest in addressing the number of crimes committed by juvenile offenders, as well as protecting the citizens and property of the city. Further, there is a legitimate governmental interest in protecting the peace and quiet of the community from the disturbances that juvenile offenders may cause. Therefore, the Council of the city has determined that it is necessary for the public peace, health, safety and welfare to institute a curfew for minors.

(B) *Definitions.*

ADULT PERSON. A person, 18 years or older, who is authorized by a parent or guardian of the minor to have the care and custody of such minor.

BODILY INJURY. Injury that creates a substantial health risk that necessitates immediate medical attention from a medical professional.

EMERGENCY. An unforeseen combination of circumstances, or the resulting state, that call for immediate action. The term includes but is not limited to a fire, natural disaster, an automobile accident or any situation requiring immediate action to prevent or mitigate bodily injury or loss of life.

EMPLOYMENT ACTIVITY. Any bona fide or legal service performed for wages or salary under contract, written, expressed or implied.

ESTABLISHMENT. Any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

GUARDIAN. A person who, under court order, is the guardian of a minor, or a public or private agency with whom a minor has been placed by a court.

LAWFUL ACTIVITY. Includes or is substantially equivalent to the following:

(a) Involvement in employment activity;

(b) Attending an activity organized and supervised by adults sponsored by a county, state municipality or township, school district, civic organization or other similar organization which takes responsibility for the minor, or attending an official school or religious activity; or

(c) Proceeding to or coming from lawful activities described in (a) or (b) above without any detour or stop.

MINOR. Any person under 18 years of age who is not married or otherwise emancipated.

PARENT. A person who is the natural parent, adoptive parent or stepparent of a minor.

PUBLIC PLACE. Any place to which the public or a substantial group of the public has access, and includes but is not limited to streets, highways, parks and the common areas of schools, hospitals, apartment houses, office buildings, transportation facilities, shops, shopping centers, malls and restaurants, including the parking lots thereto.

SUNDAY THROUGH THURSDAY, FRIDAY, SATURDAY. The time commencing on the evening of the stated day, through and including the morning of the following day, with the exception that curfew times beginning after 12:00 midnight actually begin on the early morning of the following day through and including the morning of that same following day. Thus, Friday between 1:00 a.m. and 6:00 a.m. means Saturday morning between 1:00 a.m. and 6:00 a.m. and Saturday between 1:00 a.m. and 6:00 a.m. means Sunday morning between 1:00 a.m. and 6:00 a.m.

(C) *Prohibition.* No minor shall be upon or in the public streets, parks, buildings or establishments, or upon or in public places, open lands or vacant lots within the city, Sunday through Thursday, between the hours of 12:00 a.m. (midnight) and 6:00 a.m. of the following morning, and Friday and Saturday between the hours of 1:00 a.m. and 6:00 a.m. of the following morning, except as provided in division (E) of this section.

(D) *Exceptions.* This section does not apply to a minor who is:

(1) Accompanied by a parent, guardian, or custodian;

(2) Accompanied by an adult specified by a parent, guardian, or custodian;

(3) Carrying out an errand or other lawful activity as directed by a parent, guardian or custodian; or

(4) Occupying the sidewalk of the place where the minor resides, or the sidewalk of a place where the minor has permission from his or her parent or guardian to be, or the sidewalk of a next-door neighbor not communicating an objection to a police officer; or

(5) Participating in, going to or returning from:

- (a) Lawful employment;
- (b) A lawful athletic, educational, entertainment, religious or social event; or
- (c) Interstate travel.

(E) *Duty of parent, guardian or other adult.* No parent, guardian or other adult having the care and custody of a minor shall knowingly permit such minor to be upon or in the public streets, parks, buildings or establishments or upon or in public places, open lands or vacant lots within the city between the hours prohibited in division (C) of this section; provided, however, this division shall not apply to exceptions set forth in division (D) of this section.

(F) *Penalty.* Any minor who violates this section shall be guilty of a minor misdemeanor and dealt with in accordance with juvenile court law and procedure. Any parent, guardian or other adult person having the care and custody of a minor who violates division (E) of this section shall be guilty of a minor misdemeanor.

(1985 Code, § 139.20) (Ord. 05-35, passed 4-10-2006)

