INTRODUCTION

History and Purpose of the Act

The Ohio Criminal Justice Recodification Committee ("OCJRC") was created by the 130th General Assembly to study the state's existing criminal statutes, with the goal of enhancing public safety and the administration of criminal justice throughout the state of Ohio. Although there have been revisions of the criminal laws over the years, there has not been a complete revision since 1974. Some of the criminal statutes in force in 2017 have been left untouched since the last recodification effort in 1974 or even earlier when the General Code was changed to the Revised Code in 1953. Many criminal law sections throughout the intervening years have been effectively superseded or contradicted by successive additions to the criminal law designed to solve problems of the moment. As a result, the criminal law has become somewhat bulky and confusing for both professionals and laymen alike. OCJRC's work seeks to remedy these deficiencies.

To achieve the committee's mission, simple goals were set. First, above all else, the committee adopted that overriding precept of "do no harm" by agreeing that the portions of the law that are working well should be left alone and that change should not be made for the sake of change. Next, the committee agreed to simplify the code when possible. Overly complex statutes lead to confusion, unnecessary litigation, and can detract from the quality of justice. Statutory language must ensure adequate particularity to satisfy due process and avoid "void for vagueness" issues while remaining readable so that the average person can be understand what is being prohibited. Following simplification, the committee also agreed to clarify the code by promoting consistency across Chapters and their respective sections, providing culpable mental states for each section, making explicit if strict liability is applicable to a particular prohibition, eliminating duplicity where the same conduct can be charged under two different crimes and different levels, and ensuring that language does what is actually intended. Finally, the committee also strives for proportionality by considering issues of over-criminalization (i.e., too many prohibited activities) and over-penalization (too harsh a penalty) while not demeaning the seriousness of the offender's conduct or the risk that the offender poses. Proportionality asks whether it is appropriate to incarcerate someone convicted of an offense, what should and should not be a felony, and whether repeat offenders should be treated differently. Proportionality seeks to provide judges and correctional institutions the necessary tools to craft punishments and properly rehabilitate offenders by promoting judicial discretion and evidence-based programs that provide swift and certain penalties.

General Changes throughout Title 29

Drafting conventions have been made to promote readability and shorten the overall length of Title 29. For instance, references to "section XXXX.XX of the Revised Code" has been replaced with "R.C. XXXX.XX." The phrase "of this section" is removed from internal cross-

references so that "division (X) of this section" will instead simply read "division (X)." Likewise, cross-references to divisions in other sections are reworked so that "division (X) of section XXXX.XX" simply becomes "XXXX.XX(X)." Additionally, some phrases have been shortened like "under" in place of "pursuant to" or "age xx" instead of "xx years of age." An example illustrating these all of these changes is "pursuant to division (A)(4) of section 2907.05 of the Revised Code" becomes "under R.C. 2907.05(A)(4)." Any time a section received only drafting convention changes, the comments will state that there were no substantive changes made to that particular section.

Under the former code, many sections contained language that prohibited an act and prohibited attempting the act, essentially penalizing an attempt to commit an offense and completing the act as the same. The "attempt" language has been removed from most substantive offenses so that R.C. 2923.02 is the proper pathway for charging a person with "attempting" to violate a section. Furthermore, presumptions for prison and most enhancements based on special victims have been removed.

Scope and Use of the Special Summary

Although it is accepted that there is no legislative history in Ohio, this special summary of this committee's work deliberately seeks to break that precedent just like the 1974 Committee Comments to Am. Sub. H. B. 511. Because of the importance of the criminal law and the magnitude of the committee's work, this special summary is designed to provide not only an outline of the committee's changes but also provide rationale and apparent legislative intent where appropriate. The comments will center on the bulk of the recodification effort found in Chapter 2901 through 2929 coupled with some ancillary sections from other Title 29 chapters. Other extraneous chapters or sections that received only drafting convention changes or cross-reference updates are usually not listed. Except as otherwise provided, this summary contains general comments for each listed chapter in addition to specific comments for each section of that respective chapter. The chapters are listed numerically except for a few chapters or sections that are so functionally or thematically ancillary they should be grouped together (e.g., R.C. Chapter 2925 and R.C. 2951.11). The comments are designed to list substantive changes. If a chapter's introduction explains substantive changes that apply to the whole chapter, the changes will usually not be relisted in the comments for the respective section. Where appropriate, history of former code sections, applicable case law, and basic concepts and rationale used in framing the listed changes will help supplement the summary.

While the comments in this special summary may be used as an indication of legislative intent, they are by no means conclusive on the subject. This special summary's contents are based mostly on the voluminous drafts, memoranda, notes, and other materials collected and organized by the committee's staff. The comments are also partly based on the recollection of both committee members and staff. While no statement of legislative intent can be conclusive unless it comes from the legislature itself, this special summary represents only the restatement

of the Criminal Justice Recodification Committee's intent and its best judgment of the apparent meaning and purpose of any given provision in this recodification effort.

CHAPTER 2901 – GENERAL PROVISIONS

R.C. Chapter 2901 deals with a variety of matters applicable to the criminal law in general, including penal provisions found in the Revised Code outside the criminal code, from Title 1 through Title 61. A number of basic criminal law concepts are covered within R.C. Chapter 2901 and remain mostly unchanged since the comprehensive 1974 revision.

An alphabetical glossary of almost all the defined terms within Title 29 is created for the reader's convenience. Language was added to clarify the consequences of a section that "does not apply" to a person or class of persons. Language was also added to clarify that any newly enacted criminal offense must specify if "strict liability" is the degree of mental culpability required for the commission of the offense. Additionally, language was added to address a statute of limitation situation when an accused person is charged in a single indictment or information with multiple crimes arising out of the same occurrence. Finally, R.C. 2901.32 - Guilty of improper solicitation of contributions for missing children is repealed because its conduct should not be criminalized and any concern of fraud or theft can be handled by R.C. Chapter 2913.

Other notable changes include requiring an offense to specify if "strict liability" is the degree of mental culpability required for the commission of that offense and creating a unified section applicable to all of Title 29 for determining the value of stolen or damaged property. Additionally, in accordance with a recent Supreme Court of Ohio decision, the effect of an adjudication of delinquency for juvenile offenders has been constitutionally conformed to preclude juvenile adjudications of delinquency from being used to enhance subsequent violations in adult court.

Sec. 2901.01. Definitions. This section creates a convenient alphabetical glossary of almost all the defined terms within Title 29. The defined terms contained in this section have been removed from their respective sections except for a few idiosyncratic or verbose terms still contained within their respective sections. Identical terms within the glossary that have different definitions (i.e., victim, law enforcement officer) contain cross-references to their corresponding section followed by the definition ("**Victim**, as used in R.C. 2969.01 to 2969.06, means . . . ."). Terms that appear in Title 29 but are traditionally defined outside of Title 29 are defined within the glossary according to their cross-reference ("**Aircraft** has the same meaning as in R.C. 4561.01.").

There have been a few notable definition changes. "Conviction" means a person has been found guilty of and sentenced for the commission of an offense. "Finding of guilt" or "found guilty" means that an entry of guilt has been entered against the person, either by the court after a plea of guilty or by the trier of fact after a trial. "Serious offense of violence" includes a list of 28

offenses and also includes offenses under existing or former laws involving physical harm or a risk of serious physical harm that are committed purposefully or knowingly. "Physical damage to property" replaces the previous term "physical harm to property" because harm relates to people and damage refers to property. "Affirmative defense" was clarified as either a defense expressly designated as an affirmative defense or a common law defense recognized by the courts; however, a section or division that "does not apply" to a person or class of persons is not an affirmative defense and precludes criminal liability unless the state proves beyond a reasonable doubt that the section does apply to the designated person or class of persons. "Partial affirmative defense" is a defense that, if successful, results in finding the defendant guilty of a lesser offense instead of the original offense charged.

Sec. 2901.02. Classification of crimes. Former division (B) listed both of the following as capital offenses: "aggravated murder when the indictment . . . contains one or more specifications of aggravated circumstances" and "any other offense for which death may be imposed as a penalty." Except for Aggravated Murder, there are no other crimes in Ohio for which death may be imposed as a penalty. Division (B) is changed to omit the language referencing "any other offense for which death may be imposed as a penalty" because that incorrectly implies that there are more capital offenses in Ohio other than Aggravated Murder.

Sec. 2901.03. Abrogation of common law offenses. There are no substantive changes to this section.

Sec. 2901.04. Rules of construction for statutes and rules of procedure. There are no substantive changes to this section.

Sec. 2901.05. Burden of proof - reasonable doubt - self-defense. Language is added to clarify that when a section in Title 29 explicitly states it "does not apply" to a person or class of persons, the prosecution has the burden of proving, beyond a reasonable doubt, that the section or division does not apply to the defendant. Also, R.C. 2901.09—no duty to retreat in a residence or vehicle—was merged into this section for convenience.

Sec. 2901.06. Battered person syndrome evidence. Previously known as "battered woman syndrome evidence," the section is edited to be gender-neutral and now refers instead to "battered person syndrome."

Sec. 2901.07. DNA specimen collection procedure. There are no substantive changes to this section.

Sec. 2901.08. Effect of adjudication of delinquency or juvenile traffic offender. Division (A) is removed and replaced with language conforming to the *State v. Hand*, 2016-Ohio-5504, decision by prohibiting juvenile adjudications of delinquency to be used to enhance subsequent adult offenses by degree or mandatory sentence. The language added is still intended

to permit a juvenile adjudication of delinquency to be used to enhance penalties only in cases of subsequent juvenile proceedings.

Sec. 2901.09. No duty to retreat in residence or vehicle. This section is merged into 2901.05.

Sec. 2901.11. Jurisdiction for criminal acts. Minor cross-reference edits are made to conform to the new changes made in R.C. 2923.01 – Conspiracy determining when "an overt act is substantial."

Sec. 2901.12. Venue of criminal cases. There are no substantive changes to this section.

Sec. 2901.13. Statute of limitations for criminal offenses. A division is added to address a statute of limitation situation when an accused person is charged in a single indictment or information with multiple crimes arising out of the same occurrence by barring the prosecution of any of those crimes only upon the expiration of the limitation period for the most serious offense charged. A safeguard provision is also added to protect against a prosecution that indicts a more serious crime merely to save a case from being barred by the statute of limitations.

Sec. 2901.20. New criminal offenses; degree of mental culpability required. A division is added to clarify that any newly enacted criminal offense must specify if "strict liability" is the degree of mental culpability required for the commission of that offense; any strict liability offense enacted in violation of this rule is void.

Sec. 2901.21. Criminal liability, culpability. The word "plainly" is replaced with "affirmatively" throughout this section to better explain when a section indicates a purpose to impose strict liability.

Sec. 2901.22. Degrees of culpability attached to mental states. There are no substantive changes to this section.

Sec. 2901.23. Criminal liability of organizations. There are no substantive changes to this section.

Sec. 2901.24. Personal liability for organizational conduct. There are no substantive changes to this section.

Sec. 2901.30. Missing child report. There are no substantive changes to this section.

Sec. 2901.31. Cooperation with federal government. There are no substantive changes to this section.

Sec. 2901.32. Guilty of improper solicitation of contributions for missing children. This section is repealed for a couple of reasons. The former R.C. 2901.32 criminalized an organization soliciting contributions for the purpose of distributing missing children materials on

the basis that the organization either did not comply with specific requirements or claimed, without express written permission, that it was affiliated with an established organization assisting in locating missing children. First, this section criminalizes conduct that should be regulated as a civil matter instead. Second, if any organization like the one mentioned above obtained any benefit from falsely representing itself as affiliated with another established organization that assists in locating missing children, R.C. 2913.02 –Theft already criminalizes any benefit obtained through theft by deception (i.e., fraud).

Sec. 2901.41. Missing person reports policies. There are no substantive changes to this section.

Sec. 2901.42. Missing person report indicting foul play. There are no substantive changes to this section.

Sec. 2901.43. Notice of charges to be sent to retirement plan. There are no substantive changes to this section.

Sec. 2901.431. Notice of felony charges filed against member. There are no substantive changes to this section.

Sec. 2901.51. Valuation of Property.

This newly created section is an amalgamation of two very similar repealed sections: former R.C. 2909.11, which dealt with determining the value of physically damaged property as part of a verdict, and R.C. 2913.61, which dealt with determining the value of stolen property as part of a verdict. This section merges those two repealed sections into one convenient section for determining valuation of property that applies to all of Title 29.

CHAPTER 2903 – HOMICIDE AND ASSAULT

R.C. Chapter 2903 deals with offenses, other than assaultive sex offenses, where the primary prohibitions involve actual or potential harm to persons. The majority of offenses within this chapter remain mostly unchanged; edits were largely relegated to clarification and reorganization for the sake of readability. However, a few notable changes were made.

"Prior calculation and design" is now a defined term to help courts better distinguish between offenders who plan to kill and those who do not. "Partial affirmative defense" language is added to explain that an offender causing serious physical harm or death while under the influence of sudden passion or rage brought on by the victim's provocation would not be found guilty of Felonious Assault or Murder but instead found guilty of Voluntary Manslaughter or Aggravated Assault, respectively. "Recklessly" mental states are added to many offenses that previously omitted a mental state but were not strict

liability crimes. Strict liability is explicitly designated for aggravated vehicular homicide and aggravated vehicular assault where the driver was under the influence of drugs or alcohol.

A few notable sections were either merged or moved for convenience. Felonious assault was merged with Aggravated assault and Aggravated menacing was merged with menacing. Most of the sections relating to protection orders were moved to R.C. Chapter 2932.

Sec. 2903.01. Aggravated murder. "Prior calculation and design" is now a defined term contained in this section. The term is added to properly distinguish between those who plan to kill and those who do not plan to kill and restore the policy decision to treat those who plan to murder more harshly than those who do not. The proposed definition closely tracks the "prior calculation and design" definition the Ohio Judicial Conference recommends in Ohio Jury Instructions § 503.01(3).

Additionally, language is added to explain that a defendant causing the death of another under the influence of sudden passion or fit of rage brought on by the victim's provocation is a "partial affirmative defense" to a charge of aggravated murder. A "partial affirmative defense" mitigates the degree of culpability rather than a completely absolving criminal liability; here, a charge to aggravated murder could be mitigated to a charge of voluntary manslaughter.

Sec. 2903.02. Murder. Similar to the partial affirmative defense in R.C. 2903.01 - Aggravated Murder, *supra*, language is added to explain that an offender causing the death of another under the influence of sudden passion or fit of rage brought on by the victim's provocation is a "partial affirmative defense" to a charge of murder. Also, added "recklessly" mental state to the felony murder prohibition in division (B).

Sec. 2903.03. Voluntary Manslaughter. This section prohibits a person from causing the death of another when that person is under the influence of sudden passion or fit of rage brought on by the victim's provocation. Language indicating that the provocation can come from either the victim or the "intended victim" is added to account for transferred intent provocateur situations. Additionally, a division prohibiting a person from violating this section with a sexual motivation is removed and instead placed in the R.C. 2942.14 - Sexual motivation specification to be consistent with the rest of the crimes for which the sexual motivation specification can also attach (e.g., aggravated murder, murder).

Sec. 2903.04. Involuntary Manslaughter. The mental state "recklessly" is added to both division (A) and (B). Additionally, language is removed that imposed a mandatory prison term and mandatory license suspension if a person caused the death of another while operating a vehicle under the influence; the removed language had significant overlap with the mandatory prison terms and mandatory license suspensions that were also removed from similar prohibitions found in R.C. 2903.06(A)(1)-(2).

Sec. 2903.041. Reckless homicide. There are no substantive changes to this section.

Sec. 2903.05. Negligent homicide. There are no substantive changes to this section.

Sec. 2903.06. Aggravated vehicular homicide – vehicular homicide. The substantive offense and penalty divisions throughout the section are restructured to promote clarity and reduce redundancies. Language is added that would preclude a person from causing the death of another while committing a violation of R.C. 4511.19(B), which deals with a person under age 21 operating a vehicle under the influence. The previously omitted reference to R.C. 4511.19(B) is taken from R.C. 2903.04, *supra*, in a R.C. 2903.04 division now removed that had significant overlap with this section. Language is added to explicitly provide that division (A)(1) and (2) are strict liability offenses. Additionally, the division containing the vehicular manslaughter offense is removed.

Language pertaining to mandatory minimum prison terms and mandatory license suspensions is removed throughout the section. However, this section provides the judge with discretion to choose from a range of discretionary license suspensions, starting with the least severe license suspension class level as a minimum (class seven suspension) and capping the range at the former R.C. 2903.06 mandatory license suspension class level. For instance, vehicular homicide under the former R.C. 2903.06 is a class two suspension, but the changes to this section would allow the judge to choose a class four, five, six, or seven suspension.

Sec. 2903.08. Aggravated vehicular; vehicular assault. The substantive offense and penalty divisions throughout the section is reworked to promote clarity and reduce redundancies similar to R.C. 2903.06, *supra*. Also, mandatory minimums and mandatory license suspensions are removed and replaced with the discretionary range of license suspensions similar to R.C. 2903.06, *supra*. Language is added to explicitly provide that division (A)(1) is a strict liability offense.

Sec. 2903.081. Warning signs in construction zones. There are no substantive changes to this section.

Sec. 2903.09. Legal abortions and acts or omissions of pregnant woman excepted from liability. There are no substantive changes to this section.

Sec. 2903.11. Felonious Assault and aggravated assault. "Aggravated assault" is merged into this section. The "attempt to cause" language is removed from each substantive offense so that an "attempt" at violating this section will use the attempt statute, R.C. 2923.02 – Attempt to commit an offense, as the proper vehicle for an "attempt" violation of this section. Enhancements from a second degree felony to a first degree felony under this section for peace officer victims and investigator of bureau of criminal identification and investigation victims are removed. Also, the division relating to acquired immunodeficiency syndrome is moved to R.C. 2907.10. Removed the mandatory license suspension that occurs if the defendant used a motor

vehicle to violate this section; instead, the judge has the discretion to pick from a range of license suspensions similar to R.C. 2903.06, *supra*. Mandatory prison terms are removed except for the division explaining its relation to the specification found in R.C. 2942.142 dealing with assault of a pregnant woman.

[Former] Sec. 2903.12. Aggravated Assault. As mentioned above in R.C. 2903.11, *supra*, the offense of aggravated assault was merged into R.C. 2903.11.

Sec. 2903.13. Assault. Removed "attempt to cause" language from each substantive offense so that an "attempt" at violating this section will use the attempt statute, R.C. 2923.02 – Attempt to commit an offense, as the proper vehicle for an "attempt" violation of this section. Also, removed all special victims enhancements throughout the section except for the division explaining its relation to the specification found in R.C. 2942.142 dealing with assault of a pregnant woman.

Sec. 2903.14. Negligent Assault. There are no substantive changes to this section.

Sec. 2903.16. Failing to provide for a functionally impaired person. The section's two main prohibitions found in division (A) and (B) are similar in that they both prohibit a caretaker from failing to provide necessary care for a functionally impaired person under the caretaker's care if that failure results in physical harm or serious physical harm to the functionally impaired person. The degree of culpability between them should only be the differentiated by mental state required: division (A) requires knowingly and division (B) requires recklessly. However, division (B) erroneously omitted the term "physical harm" and leaving only "serious physical harm," resulting in a division that, mental state nothwithstanding, would otherwise properly mirror division (A). "Physical harm" is added back to division (B) to account for this discrepancy.

Sec. 2903.21. Aggravated Menacing and menacing. Former R.C. 2903.22 - Menacing is merged into this section for simplicity; the only difference in language between Aggravated Menacing and Menacing were the "physical harm" and "serious physical harm" distinctions. As a result, this section now prohibits a person from knowingly causing another to believe that the person will cause physical harm or serious physical harm to the person or physical damage to the property of another. The term "reasonably" is also added to modify the word "believe" to distinguish between more immediate threats and conditional threats (i.e., no person shall knowingly cause another to reasonably believe . . . .").

Sec. 2903.212. Bail for violations of certain protection orders. There are no substantive changes to this section.

Sec. 2903.22. Menacing by stalking. This section prohibits a person from knowingly engaging in a pattern of conduct to cause another person to believe that the offender will cause physical harm or mental distress to the other person or family member. To be consistent with the

changes made in R.C. 2903.21, *supra*, the term "reasonably" is added to modify the word "believe" to distinguish between more immediate threats and conditional threats (i.e., no person by engaging in a pattern of conduct shall knowingly cause another to reasonably believe . . . ."). Also, an enhancement removed that enhanced a first degree misdemeanor to a fifth degree felony if the victim was a minor.

Sec. 2903.213 . Motion for and hearing on protection order., Sec. 2903.24. Petition for protection order in menacing by stalking cases., Sec. 2903.215. Protection orders on behalf of organization. These sections dealing with protection orders are repealed and replaced with new sections in R.C. Chapter 2932.

[Former] Sec. 2903.22. Menacing. As mentioned above in R.C. 2903.21, *supra*, this section is merged into R.C. 2903.22.

Sec. 2903.31. Hazing. This section prohibits both a person from recklessly participating in a hazing and school-type official from permitting the hazing of another. The former R.C. 2903.31 listed both of these prohibitions as fourth degree misdemeanors. The new changes distinguishes between the two by retaining the fourth degree misdemeanor for a person participating in hazing but enhances the offense to a third degree misdemeanor for any school-type official that permits hazing of another.

Sec. 2903.34. Patient abuse or neglect. This section prohibits a person who owns or operates a care facility from committing abuse, gross neglect, or neglect against a resident or patient of the facility. In the former R.C. 2903.34, "abuse," "gross neglect," and "neglect" were defined terms located in a separate section. Instead of cross-referencing a separate section, the definitions of these terms are removed from their own section and placed directly into this section's substantive offenses. For instance, instead of the division reading as "commit abuse against a resident or patient in the facility," the division now reads "Knowingly harm or recklessly cause serious physical harm to a resident or patient of the facility by physical contact with the resident or patient or by the inappropriate use of a physical chemical restraint, medication, or isolation on the resident or patient."

Also, R.C. 2903.36, which prohibits a care facility from discharging or discriminate against any person because that person filed a complaint alleging a violation of this section, and R.C. 2903.37, which mandates that a person who is both found guilty of a felony violation of this section and has a state license, are both merged into this section for convenience.

Sec. 2903.341. Patient endangerment. There are no substantive changes to this section.

[Former] Sec. 2903.35. Filing false patient abuse or neglect complaints. This section is removed and merged into R.C. 2921.13 – Falsification.

Sec. 2903.36. Whistleblower protection. As mentioned above in R.C. 2903.34, *supra*, this section is now merged into R.C. 2903.34.

Sec. 2903.37. License revocation upon conviction. As mentioned above in R.C. 2903.34, *supra*, this section is now merged into R.C. 2903.34.

CHAPTER 2905 — KIDNAPPING AND EXTORTION

This chapter contains a number of crimes centered on unlawfully transporting another or unlawfully restraining another's liberty. The first three offenses—Kidnapping, Abduction, and Unlawful restraint—have been restructured so that Unlawful restraint is a lesser-included offense of Abduction and Abduction is a lesser-included offense of Kidnapping. Criminal child enticement has been reworked to cure its overbreadth issues by requiring the act of soliciting or luring to be for the purpose of violating specific R.C. Chapter 2905 or 2907 sections. Extortion remains mostly the same except for some language that is removed because it overlapped with similar prohibitions in Coercion. Likewise, Coercion also remains mostly the same except for some language changed to be consistent with similar language changed elsewhere in Title 29.

Sec. 2905.01. Kidnapping. This section defines the most serious offense among the abduction offenses in the code. The offense is divided into two parts but otherwise shares the same elements. Division (A) focuses on unlawfully transporting another, by force, threat, or deception, for any one of several specified purposes: to hold for ransom or as a shield or hostage; to facilitate the commission of any felony or flight thereafter; to terrorize or to inflict serious physical harm on the victim or another; to engage in sexual activity with the victim against the victim's will; to hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority; to hold in a condition of involuntary servitude. Likewise, division (B) focuses on unlawfully restraining the liberty of another, by force, threat, or deception, for any of the several specified purposes mentioned in division (A).

Under the former code, merely restraining the liberty of another to facilitate the commission of a felony is kidnapping. By definition, then, every robbery, rape, or assault also constitutes a kidnapping. While these offenses would most likely merge at sentencing under the merger statute, R.C. 2941.25, the defendant can still be charged with these overlapping offenses. The terms "transport" and "restrain" have both been qualified with the word "substantial" to avoid undermining the severity of the kidnapping offense by reserving this section only for the worst type of offenders. "Substantially transport" means removing a victim from a structure or property, transporting the victim with such a quality and nature that the resulting movement was significant, or when transporting the victim significantly lessened the likelihood of detection or facilitated the person's escape. Likewise, "substantially restrain" means the victim was restrained for a prolonged period of time or restraint of the victim significantly lessened the likelihood of detection or facilitated the person's escape.

Kidnapping is a first degree felony or a second degree felony if the offender releases the victim in a safe place unharmed. Additionally, if the offense was committed in furtherance of human trafficking, it is a mandatory prison term of at least 3 years and not more than the maximum stated prison term for that degree of felony.

Sec. 2905.02. Abduction. Abduction is now a lesser-included offense of R.C. 2905.01 – Kidnapping. As a result, Abduction prohibits a person, by force, threat, or deception, from either retraining the liberty of another or transporting another from the place where they are found. Unlike Kidnapping, no specified purpose needs to be additionally proven. Similarly, the offense does not depend on the distance the victim is removed or the manner in which he is restrained; mere transportation or restraint, even though temporary, will be sufficient. Abduction is a third degree felony or a second degree felony if during the course of the abduction the offender caused serious physical harm to the victim. Furthermore, if the offense was committed in furtherance of human trafficking, it is a mandatory prison term of at least 3 years and not more than the maximum stated prison term for that degree of felony.

Sec. 2905.03. Unlawful restraint. Unlawful restraint is now a lesser-included offense of R.C. 2905.03 – Abduction. As a result, Unlawful restraint prohibits a person from restraining another's liberty. Unlike Abduction, force, threat, and deception are not elements. Unlawful restraint is a third degree misdemeanor.

Sec. 2905.05. Criminal child enticement. This former section prohibited a person from soliciting or luring any child under fourteen to accompany the person if the person does not have the permission of the parent and the person is not law enforcement, medic, firefighter, or other person regularly providing emergency services.

The fourteen year old threshold is changed to "thirteen" because thirteen years old is a commonly used age threshold throughout this chapter and R.C. Chapter 2907; likewise, the fourteen year old threshold is not found anywhere else in Title 29 except a few miscellaneous sections (e.g., R.C. 2907.01, 2931.02, 2931.18). Likewise, the penalty section contained a fifth degree felony enhancement based on a prior finding of guilt for various R.C. Chapter 2905 and 2907 offenses when the victim of that prior offense was under seventeen years old. The seventeen year old threshold is changed to a sixteen year old threshold because the seventeen year old threshold is not a threshold in any other section throughout R.C. Chapter 2905 and 2907 but the sixteen year old threshold, the age of consent, is used many times throughout R.C. Chapter 2905 and 2907. Additionally, the enhancement is changed from a fourth degree felony to a fifth degree felony.

This section was created to prevent a person from abducting a child or committing lewd acts against children but this section's language was held unconstitutional under *State v. Romage*, 2014-Ohio-783, ¶19, 138 Ohio St. 3d 390, 396, 7 N.E.3d 1156, 1163, due to its overbreadth. To rectify this, the language regarding "permission" of the parent and not being an

emergency services personnel is removed and replaced with language qualifying that the act of soliciting or luring a child under thirteen is "for the purpose of" violating Kidnapping, Abduction, Unlawful restraint, Trafficking in persons, or various sex offenses in R.C. Chapter 2907. Likewise, division (C) is removed because the language in division (C) is confusing and was added after the *Romage* case in an attempt to rectify the unconstitutional status of division (A). Criminal child enticement is a first degree misdemeanor or a fifth degree felony if the offender has previously been found guilty of violating R.C. 2905.01, 2907.01, 2907.02, 2907.03 or 2907.05 when the victim of that prior offense was under age sixteen at the time.

Sec. 2905.11. Extortion. This section prohibited a person, with purpose to obtain a valuable benefit or to induce another to do an unlawful act, from doing any of the following: threatening to commit any felony or serious offense of violence; violating R.C. 2903.21; uttering or threatening any calumny against a person; or exposing or threatening to expose any matter tending to subject a person to hatred, contempt, ridicule, or damage any person's personal or business repute, or to impair any person's credit. The last two, uttering or threatening calumny and exposing a matter that could subject a person to various harms, are removed because both prohibitions are already covered under R.C. 2905.12 – Coercion. If left intact, a person could feasibly threaten another person with purpose to obtain a benefit and be charged under both this section and R.C. 2905.12 – Coercion because a person giving up a benefit is "coercing" that him or her to take action where that person would otherwise have freedom of choice.

Extortion is a fourth degree felony. Language is added to allow the court to impose fines, up to $10,000, if the offender obtained a benefit from the extortion.

Sec. 2905.12. Coercion. This section prohibits a person, with purpose to coerce another into taking or refraining from action, from doing any of the following: threatening to commit any offense; uttering or threatening any calumny against any person; exposing or threaten to expose any matter subjecting any person to hatred, contempt, ridicule, to damage any person's personal or business repute, or to impair any person's credit; instituting or threatening criminal proceedings against any person; or taking, withholding, or threatening to take or withhold official action.

The language referring to "utter[ing] or threaten[ing] any calumny against any person" is replaced with the functionally equivalent "unlawfully threaten harm against any person" to mirror the changes made to the same language in R.C. 2921.03. As a result of this change, the committee believes the section should also be extended to unlawfully threatening damage against certain types of property such as a motor vehicle, an occupied structure or its contents, any personal property necessary for the owner or possessor's professional business, an item that has irreplaceable, intrinsic worth to its owner like an heirloom or antique, a companion animal, or any property valued at $2,500 or more.

The language referring to "threaten[ing] to commit any offense" is removed because coercing a person by threatening to commit any offense should not be a crime unless the offense involves unlawfully threatening harm against persons or threatening damage to property like in division (A)(1) and (2), respectively. Coercion is a second degree misdemeanor.

[Former] Sec. 2905.21. Extortionate extension of credit – criminal usury definitions. This section is repealed because it contained only definitions and all definitions have been moved to R.C. 2901.01.

Sec. 2905.22. Extortionate extension of credit – criminal usury. There are no substantive changes to this section.

Sec. 2905.23. Probably cause to believe that extension of credit was extortionate. There are no substantive changes to this section.

Sec. 2905.24. Evidence showing an implicit threat as means of collection. There are no substantive changes to this section.

[Former] Sec. 2905.31. Definitions for sections 2905.31 to 2905.33. This section is repealed because it contained only definitions and all definitions have been moved to R.C. 2901.01.

Sec. 2905.32. Trafficking in persons. There are no substantive changes to this section.

Sec. 2905.33. Unlawful conduct with respect to documents. There are no substantive changes to this section.

CHAPTER 2907 SEX OFFENSES

With regard to sex offenses, the most important change was ensuring proper culpability through mental states. Therefore, for all offenses other than aggravated rape of a young child, a mens rea was added to the element of age – a person must know that the person was within the prohibited age range, or be reckless in that regard. This mens rea for age was not intended to make the prosecution prove that the person knew the specific age of the person; it is merely intended to require proof that the defendant was reckless in his belief that the person was not in the prohibited age range specified.

In addition, the spousal exception was removed from each section in the chapter. A sexual offense can occur to anyone, even within a marriage.

Finally, with regard to juveniles and ages – changes were made to ensure that criminal violations were appropriately applied to consensual acts between and among juveniles. When children of close age engage in consensual acts, the criminal code must be narrowly tailored to only apply to truly criminal behavior – for example, when there is coercion, either express or inherently due to age differences. When children of similar age engage in

consensual activity, criminally charging youths for such behavior is generally not appropriate. Therefore, these changes ensure that the vulnerable are protected, predators are punished, and youthful indiscretions do not carry a lifetime of unwarranted consequences.

Sec. 2907.01 Aggravated Rape. Aggravated Rape, or rape of a young child, is one of the most serious criminal offenses contained in this code. Therefore, aggravated rape was split off from the remainder of the rape section and addressed separately.

This section expands on the former prohibition contained in R.C. 2907.02(A)(1)(b). Because this section is punished so severely, the prohibition on strict liability rape of a child was narrowly tailored to hone in on the worst offenders.

It is a violation of this section for any person age eighteen or over to engage in sexual conduct with any person under age thirteen. In addition, it is also a violation of this section for any person age fourteen or over to engage in sexual conduct with any person under age ten. There is no mistake of age defense for this offense; the age element is strict liability.

The eighteen age limit was added to ensure that juveniles who were closer in age to the other person were not punished as harshly as adults, since their lesser age difference and maturity necessitated a slightly lesser penalty. However, a juvenile aged fourteen or older who engages in sexual activity with someone under age ten also commits this most serious form of rape, because of the extreme youth of the victim. Age fourteen was chosen because that is the minimum age to bind a juvenile over to adult court, and is a clear line of culpability already used throughout the code. In addition, the forcible rape prohibition always can separately apply to any forcible sexual conduct.

Aggravated Rape is an unclassified felony, similar to aggravated murder and murder. Unless aggravating factors are present, it is punishable by a stated minimum term in prison of not less than fifteen years, and not more than thirty years (plus a maximum sentence as calculated under chapter 2929). The sentence can be enhanced to a life sentence is the person has ever previously been found guilty of rape of a child under thirteen, or if the person purposefully caused the victim to submit by force or threat of force, and as a result caused serious physical harm.

Finally, attempted aggravated rape is also punished more severely under this section. An attempt to commit aggravated rape is a first degree felony and is punishable by a stated minimum prison term of ten to fifteen years. The prison term is fifteen to twenty years if the person caused serious physical harm during the commission of the attempt.

Sec. 2907.02 Rape. Other than separating the rape of a child into the separate section, aggravated rape, and other than removing the spousal exception, the substantive elements of rape are completely unchanged.

Sec. 2907.03 Sexual Battery. The changes to this section were minimal. First, as with all other sections in this chapter, the spousal exception was removed. In addition, division (A)(13) was reworked after that division was declared unconstitutional. *See State v. Mole*, 2016-Ohio-5124. Rather than strictly prohibiting a sexual relationship between an otherwise lawfully consenting person and a peace officer, this prohibition was more narrowly tailored to apply to an officer abusing his or her authority to engage in sexual conduct with a minor. Finally, the mistake of age defense of recklessness applies to the enhancement from a third to a second degree felony if the other person is under age thirteen.

Sec. 2907.04 Unlawful Sexual Conduct with a Minor. This section was reworked for clarity and was also expanded to be read as a lesser included offense of aggravated rape. Initially, the prohibition on an adult having sexual conduct with a person over age thirteen, or under age sixteen, was rewritten for clarity. One change was to add a reckless mistake of age defense, consistent with the changes made across the entire code. In addition, the misdemeanor prohibition on this conduct was removed. If the person is under five years age difference (thirteen and nearly eighteen, or fifteen and nearly twenty), that conduct is not sufficiently egregious to warrant criminal charges for a purely consensual act due to the similarity in age.

A new prohibition was added to this section, to be a lesser included offense of aggravated rape. In creating the age ranges for the most serious charge, a gap was left regarding older juveniles who engage in sexual conduct with younger juveniles. While this conduct is not sufficiently egregious to punish as harshly as aggravated rape, it is nevertheless criminal. Therefore, it is a crime under this section for any person, age sixteen or seventeen, to engage in sexual conduct with a person under age thirteen. A violation is a fifth degree felony if the age difference is under five years, but a third degree felony if the age gap is five years or greater.

Sec. 2907.05 Gross Sexual Imposition. The only changes to this section were consistent with changes made chapter wide. First, the spousal exception was removed. Next, the reckless mens rea regarding age was included. Finally, the old division (B) was removed as unnecessary and redundant. All conduct prohibited under former division (B) was already covered under division (A)(4), which is easier to prove and contains the same penalty. Consistent with the philosophy of the committee, mandatory sentences were removed from this section.

Sec. 2907.06 Sexual Imposition. Similar to above, the only changes here were to remove the spousal exception and add a reckless mens rea to knowledge of age.

Sec. 2907.07 Solicitation. Again, the primary changes to this section were to add a mens rea element regarding knowledge of age. Consistent with sentencing in chapter 2929, the presumptions of prison were removed. Everything else, including the degree of offense, was unchanged.

Sec. 2907.08 Voyeurism. The elements of this section were unchanged. For clarity and readability, surreptitiously was changed to secretly.

Sec. 2907.09 Public Indecency. There were only two changes to this section. First, due to concern of overbreadth and vagueness, the prohibition regarding engaging in conduct that, to an ordinary observer would appear to be masturbation was removed. That incredibly broad element would allow the criminalization of an innocent act that doesn't rise to the level of criminal act. This section criminalizes exposure and committing indecent acts in public, not merely appearing to. In addition, for proportionality, the enhancements to a felony were removed.

Sec. 2907.10 Dangerous Sexual Activity. This new section is intended to be the comprehensive prohibition on acts that can transmit HIV. The former prohibition contained in felonious assault was incorporated into this section.

As an initial matter, it is important to keep proportionality in mind when considering this section. HIV is no longer the death sentence it once was; in fact, the average life expectancy for HIV positive persons is over seventy years old. Therefore, the former law's second degree felony when the virus was never even transmitted was grossly disproportionate to the potential for harm. While it is undisputed that harm (worry, anxiety, fear) is caused to a person who gets tested for HIV after potential exposure, that harm must be balanced against the medical science.

This section creates a tiered system of seriousness, which is proportionally tied to the degree of harm caused. The most serious form is purposefully transmitting the virus to another, by any means. Purposefully transmitting the virus is a second degree felony, and an attempt to do so is a third degree felony under the attempt statute.

Next, a person who knows that that person is HIV positive and fails to disclose that knowledge to their partner and, as a result, infects that person is also guilty of a second degree felony. However, this section and an attempt to commit this section does not apply unless actual transmission takes place.

Finally, to also protect against the harm of potential exposure to HIV, the final division prohibits engaging in sexual conduct without taking reasonable precautions. Science has proven that the risk of transmission is near zero when a person is actively taking antiretroviral medication or uses protection, such as a condom. Therefore, this division criminalizes the failure to take those reasonable precautions as a first degree misdemeanor.

Sec. 2907.11 Truth Verification. This section alters the former prohibition on asking a victim of an alleged sex offense to take a truth verification examination. Sometimes, during an investigation into an alleged sex offense, the investigation stalls due to conflicting witness statements and credibility determinations. In order to give law enforcement all the tools necessary to investigate and prosecute sex offenses, this section allows a law enforcement officer to request a truth verification examination in limited circumstances. They may request one from the victim only after they have notified the person that the examination is not required on mandatory, that the refusal to submit will not, in any way, prevent the investigation or

prosecution of the alleged crime, and that the refusal to submit or the results are completely inadmissible in any court proceeding relating to the offense.

Sec. 2907.12 Withholding Name of Sex Offender Victim. No change

Sec. 2907.15 through 2907.18 Sex Offender Restitution Special Proceedings. No changes

Sec. 2907.19 Commercial Exploitation of a Minor. No changes except reordering existing language for clarity.

Sec. 2907.21 Compelling Prostitution. The changes made in this section were designed to provide greater clarity and reduce duplicity; nothing substantive was changed except adding the reckless mens rea for knowledge of age.

Sec. 2907.22 Promoting Prostitution. No substantive changes; as above, added reckless mens rea regarding knowledge of age.

Sec. 2907.23 Procuring Prostitution. No substantive changes; as above, added reckless mens rea regarding knowledge of age.

Sec. 2907.24 Soliciting Prostitution. Removed the HIV provision because R.C. 2907.10 is the exclusive section regarding HIV. In addition, the driver's license suspension was removed as unnecessary and disproportionality punitive. Otherwise, no substantive changes except adding reckless mens rea regarding knowledge of age.

Sec. 2907.25 Prostitution. Added an affirmative defense for persons who were compelled to engage in prostitution. In creating the affirmative defense, the compulsion language came from human trafficking. As above, the HIV provisions were removed in favor of R.C. 2907.10.

Sec. 2907.26 Rule of Evidence – Brothels. No changes

Sec. 2907.27 – 2907.30. No changes

Sec. 2907.31 Disseminating Matter Harmful to Juveniles. The only change in this section regards the distinction between harmful to juveniles and obscene. Harmful to juveniles is broader than obscenity, by definition, so obscene was removed as an element of this section. Harmful to juveniles is a relatively clear definition, easier to prove, and encompasses any material of a graphic sexual nature. In contrast, obscenity is a relatively amorphous concept tied to ever-changing community standards, and is disfavored due to its difficulty to define. Therefore, this section remains substantively identical as before with the clearly defined harmful to juvenile standard.

Sec. 2907.311 Displaying Matter Harmful to Juveniles. The elements of this section are unchanged. The only change to this section regards the punishment, which was changed to an unclassified misdemeanor. Since a violation of this section is commercial in nature, the punishment should also be a criminal fine of up to $1000 per day that this material is unlawfully displayed.

Sec. 2907.32 Pandering Obscenity. As discussed above, the obscenity standard is particularly amorphous, constantly evolving to meet community standards while navigating constitutional protections. Due to the difficulty defining obscenity, it is difficult know the precise line of obscenity. For example, researching Ohio case law on the subject shows that otherwise lawful pornography becomes obscene due to a small scene in one movie, which the vendor may have no knowledge of. Criminal law requires a culpable mental state, and the lack of clearly defined obscenity standard does not provide clear culpability. To remedy that, this section was changed to require actual knowledge that material is obscene in order to incur criminal penalties.

Using existing declaratory judgment actions, a person has actual knowledge that material is obscene when the person receives a declaration from a chief legal officer declaring the material obscene. The person may either accept that determination and cease selling the material (or face criminal charges), or the person may challenge that determination in a declaratory judgement action. If the material is declared to be obscene under the appropriate legal standard, the person must cease selling that material or face criminal sanctions.

Sec. 2907.321 Endangering a Minor – Sexually Oriented Material. This section comes from the former endangering children section, R.C. 2919.22(B)(5). It was substantively unchanged from that section and edited to be its own standalone section.

Sec. 2907.322 Pandering Sexually Oriented Matter Involving a Minor. The elements of this section were reworked for greater clarity and readability; it was intended that division (A)(1) cover the act of creating the sexually oriented material, and mere possession without any dissemination be covered under the slightly less-serious (A)(5). An affirmative defense relating to the age of the person was also created. Otherwise, the elements and degrees of offense for this section are unchanged.

Sec. 2907.323 Illegal Use of nudity Oriented Material Involving a Minor. The primary changes to this section involve providing some protection for minors who engage is "sexting," or sharing nude photographs between significant others. The first change involves protecting the person who takes a nude photo of him-or-herself from criminal prosecution. In addition, an affirmative defense to the possession of a nude image was created for person who received the picture voluntarily and directly from the person who took the picture. However, to address predators who would otherwise use such a defense, a new prohibition was added which criminalizes soliciting or obtaining such a nude image if the person is five or more years older than the person depicted in the photo. A violation of that division is a first degree misdemeanor,

enhanced to a fifth degree felony if the person is ten or more years older, and enhanced to a fourth degree if the person is under thirteen. This section is also meant to be read in conjunction with the next section, R.C. 2907.324, which adds additional prohibitions on persons otherwise legally receiving these pictures.

Sec. 2907.324 Illegal Dissemination of a Nude Photo. This section enhances and complements the previous section. A person who receives a nude image directly and voluntarily from the person who took the photo has an affirmative defense from a serious charge of R.C. 2907.323. However, that person is prohibited under this section from further disseminating that photo. For example, a high school student who received the photo from that person's significant other would be protected from prosecution under .323. If that person sent it to his friends, however, he would be guilty under this section. A violation if this section I general a first degree misdemeanor, enhanced to a fifth degree felony if the photo was uploaded to a publically viewable website.

Sec. 2907.33 Unlawful Access to Sexually Oriented Establishment. This section combines the former R.C. 2907.39 to create a uniform section prohibiting a juvenile from accessing sexually oriented material. The elements and prohibitions are otherwise substantially unchanged

Sec. 2907.34 Declaratory Judgement Regarding Obscenity. This section deals with the declaratory judgement action needed to put a person on notice they are selling or disseminating obscene material. It allows a chief legal officer to send a written notice to a person or business declaring a material obscene. The person may accept that determination and cease selling the material, or they may challenge the determination within fourteen days by declaratory judgement action. The burden is on the person or business to institute the declaratory judgement action within fourteen days in order to challenge the obscenity determination.

Sec. 2907.35 Presumptions in Obscenity Cases. The only changes to this section were to conform with the declaratory judgement action, above.

Sec. 2907.36 Declaratory Judgment Action. This section merely implements the declaratory judgement action described above. The only changes are to conform to the fourteen day timeline and provide that criminal liability for pandering obscenity does not begin until the court has issued its final appealable order.

Sec. 2907.37 Nuisance. No changes

Sec. 2907.38 Unlawful Viewing Booths. No changes

Sec. 2907.39 Unlawful Advertising of Massage. This section was formerly contained in R.C. 2927.17. It was moved here, unchanged, as it fit better within the prohibitions regarding sexually oriented businesses.

Sec. 2907.40 Illegal Operation of Sexually Oriented Business. This section was largely unchanged and retains the prohibition on touching any nude or seminude employee of a sexually oriented business. However, the prohibition on touching any part of the clothing was removed due to its overbreadth and potential to criminalize otherwise innocent, non-culpable behavior. A prohibition on touching the person is the appropriate line to draw.

Sec. 2907.41 Bail for Certain Sex Offenses. Substantively unchanged

CHAPTER 2909 ARSON AND TERRORISM

The changes to this chapter are mainly to the degree of the offense, rather than substantive changes to the elements of the offense. The guiding principle regarding property crimes is the equivalence between damaging property and stealing property. In both cases, the loss to the owner of the property is the same or similar, and as such, the penalties should be aligned. Therefore, this chapter borrows the theft valuations from Chapter 2913 for most violations of this chapter. In addition, consistent with the definition changes in Chapter 2901, physical harm to property was changed to physical damage to property throughout.

Sec. 2909.02 Aggravated Arson This section was substantially unchanged, and merely reordered for clarity.

Sec. 2909.03 Arson. The elements of this section are substantially unchanged. The penalties for this section, however, are altered to conform to the theft chapter. The valuation is tied to a violation of (A)(1), the most generic and common form of arson. The base level of offense remains as in current law, which can be enhanced up to a second degree felony, depending on the value of the damage to the property. The changes also add a one-degree enhancement to the level of offense if the person has ever been previously found guilty of arson.

Sec. 2909.04 Disrupting Public Services. The only change to this section was to remove the split mens rea and establish that any violation of this section must be done knowingly.

Sec. 2909.05 Criminal Damage to Property. This section combined the former offenses of vandalism, criminal damaging, criminal mischief, and desecration into one section. The intent of this section is to criminalize all interference with the property of another, and tie the degree of offense not to the act committed, but to the damage caused. The elements of each former offense are preserved, but all violations of this section begin at a third degree misdemeanor, and are enhanced up to a second degree felony.

There is also a separate enhancement, to a fifth degree felony, if any misdemeanor violation of the section creates a substantial risk of physical harm to another person.

Sec. 2909.08 Endangering Aircraft/Airport Operations. This section is designed to deal with any act that endangers any aircraft or the operation of any airport. All sections of the former criminal damaging and criminal mischief that dealt with airplanes/airports were merged

into this section. Other than those additions, the changes are minimal. First, it broadens the prohibition on shooting certain types of guns over airport lands by forbidding the any projecting of a projectile over the airport. It also replaces risk of physical harm with actual causing physical harm with regards to the fourth degree felony enhancement.

Sec. 2909.081 Interference with Aircraft by Laser This section deals with the dangerous activity of shining a laser into an aircraft to disrupt its operations. Unlike the former statute, which criminalized knowingly violating this prohibition, this section can be violated two ways – recklessly or purposefully. Recklessly is appropriate when a person creates a visible light in an airplane without any specific intent to do so; for example, a powerful Christmas decoration, or a laser light show. The more serious charge, purposefully, prohibits the specific targeting of an aircraft with a laser or other light.

This section also expands the section by prohibiting this light at any time the aircraft is operating, rather than just during takeoff and landing.

Sec. 2909.09 Vehicular Interference This section combines the former vehicular vandalism and railroad vandalism sections into one offense. Otherwise, the substantive elements and penalties remained the same.

Sec. 2909.22 Providing Support for Terrorism. This section consolidated the former section criminalize providing support for an act or terror with the former money laundering in support of terror to create a uniform statute dealing with providing support for terrorism. Any violation of this section is a second degree felony.

Sec. 2909.23 Making Terroristic Threats. This section remains substantially unchanged, with one minor exception. The target of the threat was broadened beyond government to also include government official. That change was made throughout the chapter.

Sec. 2909.24 Terrorism. The elements of this section were substantively unchanged, except as described above. As to the punishment, mandatory life without parole was changed to mirror aggravated murder, adding the possibility of parole to the life without parole options, to increase judicial discretion.

Sec. 2909.26 Possessing WMD This section was altered to criminalize the possession of weapons of mass destruction while removing explosive devise from this or other sections. Although mindful of the destruction an explosive device can do, they are already prohibited as a dangerous ordinance under Ch. 2923. Duplicating that provision here could turn a more routine illegal possession of a dangerous ordinance charge into a terrorism-related offense, a first-degree felony.

Sec. 2909.27 Use of WMD. This section penalizes the reckless use, rather than just knowing possession, of a WMD as described above. Otherwise, the changes mirror those above.

Sec. 2909.28 Illegal Manufacture of WMD. This section was substantially unchanged except as described above; explosive device was removed as duplicative of the weapons control chapter, 2923.

Sec. 2909.29 Illegal Contamination of Substance meant for Human Consumption. This crime was moved from the miscellaneous offenses to showcase its severity. The mens rea was lowered to include recklessly committing the offense.

Sec. 2909.30 Notification of homeland security department of conviction of suspected alien. No substantive changes

Sec. 2909.31 Identification at Critical Transportation Site. The changes to this section were designed to provide greater clarity when a person may be arrested for refusing to show identification, since generally refusing to show identification is constitutionally protected.

A person present at, or entering, a critical transportation site must show ID upon request if there is a threat to security or identification is requested of every person entering or remaining at the site. If a person refuses to show identification, they will be given the opportunity to immediately leave. If the person refuses to leave, they are subject to arrest for a violation of this section, a fourth degree misdemeanor.

CHAPTER 2911 — ROBBERY, BURGLARY, TRESPASS, AND SAFECRACKING

The offenses contained in this chapter involve the intersection of theft, violence, and trespass. The crimes of Robbery and Burglary were intended to be a series of greater- and lesser-included offenses, which more severely punish the more dangerous acts. Thus, the revisions to this chapter were predominately guided by proportionality and clarity. With regard to the offenses of Robbery and Burglary, the intention is to ensure that the degree of the offenses corresponded to the degree of harm caused. To that end, all elements regarding physical harm were limited to actually causing physical harm – attempts to cause harm were eliminated from the elements of the offense, to be charged through R.C. 2923.02, the separate attempt statute, rather than as a degree of the substantive offense. These offenses establish clear, bright-line rules regarding the degree of offenses, while essentially retaining the core aspects of the previous version of the offenses. In addition, the offenses were renumbered to remove large numbering gaps and provide greater clarity.

Sec. 2911.01. Aggravated Robbery. This section retains all the elements and rationale of the former Aggravated Robbery section, with two substantive alterations. First, the mens rea was clarified by adding knowingly. Next, the attempt language was removed from two divisions – committing serious harm, and removing a firearm from a law enforcement officer. Having attempt as an element of the substantive offense creates a legal fiction and blurs the line between causing actual harm and the slightly less culpable attempt to cause harm. Thus, a completed first

degree felony is only proper when a deadly weapon or dangerous ordinance is used or brandished, or serious physical harm is caused. Otherwise, the attempt statute under R.C. 2923.02 is the proper vehicle to charge an offender under this section.

The attempt language was retained in the element of committing or attempting to commit a theft offense, because the focus of the Robbery statutes is the force or threat of force, regardless of the actual amount of theft. For example, a person who, at gunpoint, steals a moneybag or strongbox that later is discovered to be empty still commits a completed aggravated robbery, because the culpability lies in the act of violence by attempting to take the property at gunpoint.

Sec. 2911.02 Robbery. Like Aggravated Robbery, Robbery was intended to create a clear distinction between committing harm and threatening or attempting to commit harm. Robbery is a second degree felony when physical harm is committed, and a third degree felony when physical harm is attempted or threatened. Robbery is a lesser included offense of Aggravated Robbery.

Sec. 2911.03. Aggravated Burglary. Aggravated Burglary was re-written to focus on the most serious crimes resulting from trespassing with intent to commit a crime. First, burglary is only appropriate when the structure broken into is a habitation – which is defined as "any structure or separately secured portion of a structure, however permanent or temporary, the primary purpose of which is a dwelling for any person." This definition was meant to be read broadly, to encompass any place where a person dwells, regardless of how permanent or temporary the structure is. This would include tents, mobile homes, vacation homes, or any place where a person resides or dwells for any length of time. Breaking and entering, not burglary, is appropriate when the structure is anything other than a habitation.

Second, the statute clarifies a mens rea: the elements of trespass into a habitation must be done knowingly, but the elements of force, stealth, or deception and the presence of another person are strict liability. Next, aggravated burglary is appropriate only when there is another person present in the habitation, and the offender either inflicts physical harm, or possesses a weapon. Threatening or attempting to inflict serious harm is a second degree felony under the attempt statute or R.C. 2911.04 burglary.

Sec. 2911.04. Burglary. Like Aggravated Burglary, this statute creates a bright-line rule of culpability regarding another person's presence in the habitation. If another person is present, at any time during the commission of the offense, burglary is a second degree felony. If another person is not present at any time during the commission of the offense, burglary is a third degree felony. Just like aggravated burglary, the element of trespass and habitation must be committed knowingly, but the element of the presence of another person is strict liability.

This statute retains, unchanged, that trespass in a habitation, with no intent to commit an offense, is a fourth degree felony. Burglary and trespass in a habitation are all lesser included offenses of Aggravated Burglary.

Sec. 2911.05. Breaking and Entering. Breaking and entering is a lesser included offense of burglary, as well, because it encompasses trespassing in any structure with intent to commit a theft offense or felony. Thus, it is broader than burglary and is intended to cover all structures that are not a habitation.

Again, like burglary, breaking and entering has a bright line rule regarding the presence of another: if another is present at any time during the commission of the offense, it is a fourth degree felony. If no person is present, breaking and entering is a fifth degree felony.

However, similar to the aggravated version of both robbery and burglary, breaking and entering contains an enhancement for committing physical harm against another person during the commission of the offense, making it a third degree felony.

Finally, like burglary, the element of trespass must be done knowingly, but the elements of force, stealth, or deception and the presence of another are strict liability.

Sec. 2911.06. Criminal Trespass. This section was consolidated to contain all forms of criminal trespass. Division (A) is the most serious form of trespass, which is trespassing on the land of another with purpose to commit a felony. This section is a lesser included offense of breaking and entering and is a fifth degree felony.

Division (B), previously called aggravated trespass, is trespassing on the lands of another with purpose to commit a misdemeanor, the elements of which include inflicting physical harm on another.

Division (C) consolidated trespass in a place of public amusement, making it a first degree misdemeanor to interrupt or delay a live event.

Division (D) is the previous version of trespass, and is unchanged from prior law. Violations of division (D) are a fourth degree misdemeanor, but may be enhanced to a third degree misdemeanor if the person has been previously found guilty of trespass in the preceding two years.

Sec. 2911.07. Safecracking. This section was largely unchanged; however, the scope of the section was narrowed slightly. The word strongbox was eliminated due to concern about the definition and scope of the term. A fourth degree felony is appropriate for tampering with or forcing entrance into a safe or a vault, as those are immovable, secured containers. A strongbox, however, is considerably broader and could include readily mobile small boxes and other storage containers that do not rise to the level of safe or vault. The theft chapter is appropriate to deal with those containers, and this section is intended to protect only those immobile, secured vaults and safes.

CHAPTER 2913 — THEFT AND FRAUD

Chapter 2913 consolidates and simplifies all the varying value-based enhancement penalties throughout R.C. Chapter 2913 by creating a general enhancement section, R.C. 2913.90, that applies to most R.C. Chapter 2913 offenses. First and second degree felony enhancement value thresholds are lowered from many former R.C. Chapter 2913 offenses to allow harsher penalties for offenders that steal or defraud larger amounts of money. Fifth and fourth degree felony enhancement value thresholds are raised from many former R.C. Chapter 2913 offenses to help prevent first-time offenders from being convicted of a felony. However, unlike the majority of former R.C. Chapter 2913 offenses, repeat violators under this chapter will be subject to harsher penalties. Many theft offenses that were automatic felonies regardless of value are removed except in the case of stolen anhydrous ammonia and firearms or dangerous ordinances. Additionally, all special victim enhancements throughout R.C. Chapter 2913 have been removed.

R.C. 2913.90 contains a general value-based enhancement scheme that is applicable to all value-based R.C. Chapter 2913 offenses. Nearly every value-based offense has a baseline penalty of a third degree misdemeanor, first degree misdemeanor, or fifth degree felony based on the seriousness of the crime and can be escalated up to a first degree felony based on value. Each baseline penalty is contained in the section of the substantive offense and can be enhanced by the general value-based enhancement scheme in R.C. 2913.90. For instance, most value-based offenses have a baseline penalty of a third degree misdemeanor and can be enhanced to a first degree misdemeanor if the measured value is $500 or more, a fifth degree felony if the measured value is $2,500 or more, etc. Because each value-based offense uses the same general value-based enhancement scheme in R.C. 2913.90, a value-based offense would be enhanced by value-based enhancements only if the enhancement would result in a higher offense level than is indicated in the section creating the offense. For example, a value-based offense with a third degree misdemeanor baseline penalty is enhanced by value to a first degree misdemeanor at $500 and a fifth degree felony at $2,500, but a value-based offense with a first degree misdemeanor baseline penalty would not be enhanced by value at $500 but would be enhanced by value at $2,500 to a fifth degree felony.

R.C. 2913.90 also contains a new enhancement based on repeat violations of value-based offenses. If an offender violates a value-based offense and the offender has previously been found guilty or pleaded guilty to two or more violations of any value-based offense within 5 years, the offense will be enhanced by one degree except in the case where a third degree misdemeanor would be enhanced based on repeat violations directly to a first degree misdemeanor. This repeat offender enhancement is in addition to the value-based offenses. In other words, an offender could have an offense enhanced twice: once based on value and another based on his prior record.

Sec. 2913.02. Theft. Two divisions dealing with enhancements based on the type of property are merged from former R.C. 2913.72 into this section: enhancing a theft offense to an automatic fifth degree felony regardless of value if the property stolen was anhydrous ammonia and enhancing a theft offense to an automatic third degree felony regardless of value if the property stolen was a firearm or dangerous ordinance. Theft is a value-based offense with a third degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.03. Unauthorized use of a vehicle. This section prohibits a person from knowingly using a motor-propelled vehicle without the consent of the owner or person authorized to give consent. Unauthorized use of a vehicle is a third degree misdemeanor, but if the person violates the section by either removing the vehicle from Ohio or by keeping possession of it for more than 48 hours, then unauthorized use of a vehicle is a first degree misdemeanor. Value-based enhancements ar removed from this section.

Sec. 2913.04. Unauthorized use of Property. Former division (B) and (G), which essentially dealt with gaining access to computers without authorization, are moved to a newly created section in R.C. 2913.08. "Attempt" language is removed from the substantive offenses so that if a person attempts to violate this section, R.C. 2923.02 is the proper pathway for criminalizing attempt violations. Unauthorized use of property under division (A) is a value-based offense with a third degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90. However, unauthorized use of the law enforcement database under division (B) and unauthorized use of the Ohio law enforcement gateway under division (C) are both fifth degree felonies.

Sec. 2913.041. Possession or sale of unauthorized cable television device. This section prohibits a person from knowingly possessing or selling any device for unlawfully gaining access to cable television service. The former penalty section under former division (C) made possessing one of these devices under division (A) a fifth degree felony and selling one of these devices under division (B) a fourth degree felony. The penalty section under division (C) is changed to remove the fourth degree felony distinction for selling one of these devices, essentially punishing both possession or sale of one of these devices as a fifth degree felony.

Sec. 2913.05. Telecommunications Fraud. Telecommunications fraud is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements.

Sec. 2913.06. Unlawful use of telecommunications device. Language is removed that essentially prohibited a person from knowingly manufacturing or possessing a telecommunications device with purpose to obtain telecommunications service with purpose to avoid a lawful charge for that service; if an offender avoids a lawful charge of a

telecommunications service, R.C. 2913.02 - Theft should be the proper vehicle for criminalizing conduct where a person is avoiding a lawful charge of services.

Sec. 2913.07. Motion Picture Piracy. There are no substantive changes to this section.

Sec. 2913.08. Unauthorized use of computer, cable, or telecommunication property. This newly created section is almost copied verbatim from former division (B) and (G) of R.C. 2913.04. "Attempt" language is removed from the substantive offenses so that if a person attempts to violate this section, R.C. 2923.02 is the proper pathway for criminalizing attempt violations. Unauthorized use of a computer, cable, or telecommunication property under division (A) is a fifth degree felony. Aggravated unauthorized use of a computer, cable, or telecommunication property is a value-based offense with a fifth degree felony baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90. Unauthorized use of a computer is one of the few value-based crimes in R.C. Chapter 2913 to have a fifth degree felony baseline because of the seriousness of a person possibly gaining access to computers with personal information that could lead to identity theft.

Sec. 2913.11. Passing bad checks. Passing bad checks is a value-based offense with a third degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.21. Misuse of credit cards. Misuse of credit cards is a value-based offense with a third degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90

Sec. 2913.31. Forgery. Former R.C. 2913.32 – Criminal Simulation is merged into this section. Former division (A)(2) is removed because of its redundant proscribed conduct when compared to division (A)(1); while division (A)(2) prohibited forging any writing in very specific instances such as a writing that purports to be genuine when it is actually spurious or a copy of an original writing when no such original exists, division (A)(1) already encompasses former division (A)(2)'s conduct by providing a comprehensive, blanket prohibition on forging any writing.

Similarly, removed former division (B), which prohibited a person from knowingly forging, selling, or distributing a forged identity card, because division (A) already covers this type of conduct. Division (A)(1) prohibits forging any writing and "writing" is defined under R.C. 2901.01 as including "identification" among other types of documents. Furthermore, division (A)(2) prohibits a person from uttering any writing that the person knows to have been forged; "utter" under R.C. 2901.01 means to "issue, publish, transfer, use, put or send into circulation, deliver or display," thereby covering selling or distributing forged identity cards.

Forgery is a value-base offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

[Former] Sec. 2913.32. Criminal Simulation. As mentioned above in R.C. 2913.31, *supra*, this section is repealed and merged into R.C. 2913.31 – Forgery.

[Former] Sec. 2913.33. Making or using slugs. This section essentially prohibited a person from inserting a slug in a coin machine with the purpose to defraud. Because this section essentially prohibited a person from fraudulently depriving services and property from a coin machine owner, R.C. 2913.02 - Theft already covers this proscribed conduct.

Sec. 2913.32. Tampering with Coin Machines. This section prohibits a person, with purpose to commit theft or to defraud, from knowingly entering, tampering with, or inserting any part of an instrument into a coin machine. This newly created section is copied verbatim from R.C. 2911.32 and moved to this chapter because this section proscribes conduct that is collateral to the type of theft and fraud conduct proscribed in R.C. Chapter 2913.

Sec. 2913.34. Trademark Counterfeiting. This section is edited to consolidate the former R.C. 2913.34(A)(1), (2), (3), (4) and (5) into a simplified and easier-to-read prohibition. Former division (A)(1) essentially prohibited manufacturing goods or services bearing counterfeit marks, which is represented in the new division (A)(1) by language prohibiting manufacturing any items or services bearing a counterfeit mark. Former division (A)(2) prohibited possessing or selling personal property with the knowledge that its designed for the production of counterfeit marks, which is represented in the new division (A)(2) by the language prohibiting possession or sale of any item designed for the production of counterfeit marks. Former division (A)(3) prohibited purchasing or acquiring goods bearing counterfeit marks with an intent to sell those goods, which is represented in the new division (A)(1) by language prohibiting a person from possessing with intent to sell or distribute any items bearing a counterfeit mark. Former (A)(4) and (A)(5) prohibited the sale or offer for sale of goods or services bearing a counterfeit mark, which is represented in the new division (A)(1) by language that prohibits a person from distributing, offering for sale, or selling any items or services bearing a counterfeit mark. Part of the new language is based on Pennsylvania's Trademark Counterfeit statute under 18 Pa.C.S. § 4119.

Trademark Counterfeiting is a value-based offense with a first degree misdemeanor baseline penalty subject to value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.40. Medicaid Fraud. Medicaid Fraud is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.41. Medicaid Eligibility Fraud. Medicaid Eligibility Fraud is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.41. Defrauding a rental agency or hostlery. This section is repealed because it does not state a prohibition; it merely sets up a presumption of "purpose to defraud" in the specific case of defrauding a rental agency or hostelry when certain enumerated facts are realized.

Sec. 2913.42. Tampering with Records. Tampering with Records is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90. Tampering with Government Records is a value-based offense with a third degree felony baseline subject to both value-based and repeat offender enhancements under R.C. 2913.90. Removed enhancements from a former division that escalated the penalty if the writing or record was an unrevoked will.

[Former] Sec. 2913.421. Illegally transmitted multiple commercial electronic mail messages (spamming) – unauthorized access of computer. This section essentially prohibited a person from knowingly using a computer to send spam messages. This section is repealed because of its nonuse by state prosecutors, overly long and verbose language, disproportional penalties, and its overlap with R.C. 2913.08, which deals with accessing computers without the owner's consent, and R.C. 2917.21, which deals with, among many other prohibitions, abuse or harassment via computers.

Sec. 2913.43. Securing Writings by Deception. Securing Writings by Deception is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

[Former] Sec. 2913.44. Personating an officer. This section is repealed because of the section's complete and unnecessary overlap with other sections in Title 29. This former section essentially prohibited a person from personating a law enforcement officer with purpose to defraud or induce another to purchase property or services. This entire section's language is already encompassed by the language in R.C. 2921.54 – Impersonation of peace officer or private police officer, which has a blanket prohibition on impersonating a peace officer, private police officer, federal law enforcement officer, or investigation of the bureau of criminal identification and investigation. Furthermore, R.C. 2913.02 already covers theft by deception.

[Former] Sec. 2913.441. Unlawful display of law enforcement emblem. This former section prohibited a person from knowingly displaying, without authority, an emblem of a law enforcement agency on a motor vehicle. Repealed because, similar to former R.C. 2913.44, *supra*, this section's language is already covered under R.C. 2921.54; for example, "displaying the identification" of a law enforcement agency is listed in the definition of "impersonate."

Sec. 2913.45. Defrauding creditors. Defrauding creditors is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.46. Illegal use of food stamps or WIC program benefits. Illegal use of food stamps or WIC program benefits is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90

Sec. 2913.47. Insurance Fraud. Removed a division that essentially criminalized aiding, abetting, or conspiring with another to violate this section; R.C. 2923.01 – Conspiracy and R.C. 2923.03 – Complicity should be the proper pathway for criminalizing conspiracy or complicity violations. Insurance fraud is a value-based offense with a first degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements.

Sec. 2913.48. Workers' compensation fraud. Workers' compensation fraud is a value-based offense with a first degree misdemeanor baseline penalty subject t value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.49. Identity Fraud. Removed a division that essentially criminalized aiding or abetting another person in violating a separate division of this section; R.C. 2923.03 – Complicity should be the proper pathway for criminalizing complicity violations. Identity Fraud is a value-based offense with a fifth degree felony baseline penalty subject to value-based and repeat offender enhancements under R.C. 2913.90.

Sec. 2913.51. Receiving stolen property. Similar to R.C. 2913.02 – Theft, *supra*, merged two divisions from former R.C. 2913.72, enhancing a theft offense to an automatic fifth degree felony regardless of value if the property stolen was anhydrous ammonia or an automatic third degree felony regardless of value if the property stolen was a firearm or dangerous ordinance. Receiving Stolen Property is a value-based offense with a third degree misdemeanor baseline penalty subject to both value-based and repeat offender enhancements under R.C. 2913.90.

[Former] Sec. 2913.61. Finding of value of stolen property as part of verdict. As mentioned above in R.C. 2901.51 – Valuation of Property, *supra*, this section determined how the value of stolen property is found as part of a verdict. Former R.C. 2909.11 had a similar section determining the value of physically damaged as part of a verdict. Both of these former sections are repealed and merged to form a new convenient section under R.C. 2901.51 for determining the valuation of property that applies to all of Title 29.

[Former] Sec. 2913.71. Felony of fifth degree regardless of the value of the property. This former section enhanced certain types of stolen property (e.g., credit card, blank check) to an automatic fifth degree felony regardless of its value. This section is repealed because enhancing penalties for stolen property should be tied to value unless the property is inherently dangerous (e.g., anhydrous ammonia and firearms enhancements in Theft and Receiving Stolen Property). Stolen credit cards and blank checks are not inherently dangerous because both credit cards and blank checks can be cancelled before any harm is done.

Sec. 2913.73. Evidence that victim lacked capacity to give consent. There are no substantive changes to this section.

Sec. 2913.82. Towing or storage fees to be paid by person convicted of theft offense that involves motor vehicle. There are no substantive changes to this section.

Sec. 2913.90. Enhancement of offenses. As mentioned above in this chapter's introduction, *supra,* this section provides value-based enhancements and repeat offender enhancements for all R.C. Chapter 2913 value-based offenses.

Value-based offenses are enhanced by value through this section only if it would result in a higher offense level than is indicated in the section creating the offense. The former value-based enhancements required proof that the property stolen both exceeded a minimum value and was less than a maximum value (e.g., one thousand dollars or more but less than seven thousand five hundred dollars). This new uniform section removed the maximum dollar amount requirement so that prosecutors seeking to charge based on value-based enhancements are required to prove only that the value exceeded the minimum threshold for that particular value-based enhancement. For instance, if the value of the offense is $500, or more, the offense is a first degree misdemeanor. If the value of the offense is $2,500 or more, the offense is a fifth degree felony. If the value of the offense is $10,000 or more, the offense is a fourth degree felony. If the value of the offense is $100,000 or more, the offense is a third degree felony. If the value of the offense is $250,000 or more, the offense is a second degree felony. If the value of the offense is $500,000 or more, the offense is a first degree felony.

In addition to value-based enhancements, if the offender has previously been found guilty or pleaded guilty of two or more value-based offense violations within 5 years, then any subsequent violation of a value-based offense can also be enhanced by one degree except in the case of a value-based offense with a third degree misdemeanor baseline penalty being enhanced directly to a first degree misdemeanor.

CHAPTER 2915 – GAMBLING

The fundamental thrust of R.C. Chapter 2915 is to prohibit unlicensed or unregulated gambling and assure adherence to regulations on legal gambling. Because almost all sections within this chapter have no substantive changes, these comments will not go section-by-section like the other comments for each chapter. However, a couple changes were made to penalties throughout the chapter for the sake of proportionality. R.C. 2915.09 – Illegally conducting bingo game contains a couple fourth degree felonies that are now changed to fifth degree felonies. Likewise, the fifth degree felony enhancements for prior convictions that were found in R.C. 2915.081(G), 2915.082(F), 2915.091(D), 2915.092(C), and 2915.094(E)(1) have been removed, essentially capping the penalties of those respective sections at a first degree misdemeanor.

CHAPTER 2917 – OFFENSES AGAINST THE PUBLIC PEACE

R.C. Chapter 2917 deals with crimes whose adverse affects are usually felt by large segments of the public, or which affect an important public interest. Changes to this chapter centered on rewording or eliminating language that ostensibly ran afoul of the Ohio and U.S. Constitutions. For instance, First Amendment concerns arose when overly broad or content-based speech restrictions prohibited a person from making utterances or gestures that would outrage or offend others in certain situations (e.g., R.C. 2917.11 and 2917.12). Likewise, other language is removed that contained vague language or standards, effectively running afoul of the Fifth and Fourteenth Amendments (e.g., R.C. 2917.11). Additionally, language from different sections that prohibited the same type of conduct is either removed or merged (e.g., R.C. 2917.11 and 2917.13; merging R.C. 2917.31 and 2917.32) and some changes were made to penalties for the sake of proportionality (e.g., R.C. 2917.11, 2917.32, 2917.41).

Sec. 2917.01. Inciting to violence. The former R.C. 2917.01 prohibited a person from knowingly engaging in conduct designed to incite another to commit any offense of violence if either the conduct took place under circumstances that created a clear and present danger that an offense of violence will be committed or the conduct proximately resulted in the commission of an offense of violence.

The "clear and present danger" phrase within the substantive offense is somewhat antiquated considering the newer standard constitutional standard of what constitutes dangerous, unprotected speech under *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Under *Brandenberg,* the U.S. Supreme Court did not explicitly overrule the "clear and present danger" test, but instead articulated a new standard for determining what threatening or inciting speech the government can prohibit under the first Amendment. *Id.* The *Brandenberg* Court declared that such speech could be prohibited only if it is "directed to inciting or producing imminent lawless action" and it is "likely to incite or produce such action." *Id.* Although the Supreme Court of Ohio has briefly noted that the "clear and present danger" language in R.C. 2917.01(A) does comply with the *Brandenburg* standard, *State v. Lessin*, 67 Ohio St.3d 487, 498-99 (Ohio 1993) (Douglas, J., dissenting), the committee changed the current language of this section to reflect the newer constitutional standard rather than have lawyers and laymen "read in" the *Brandenberg* standard on top of this old language. Under this section's former prohibition, there is no mention of "imminent" danger or that the danger is "likely" to produce imminent lawless action—two very important distinctions found in *Brandenberg*. As a result, the phrase "clear and present" is replaced with "imminent," and the word "likely" is also added (e.g., "The conduct takes place under circumstances that create an imminent danger that any offense of violence will likely be committed.").

Under the former prohibition, a person could have been be charged for merely inciting another to commit an offense of violence even though no offense of violence was committed.

The disjunctive in the substantive offense is changed to a conjunctive, effectively requiring both that the conduct creates an imminent danger that an offense of violence will likely be committed *and* that the conduct proximately results in the commission of the offense of violence.

A change is also made to the penalty section for the sake of proportionality. The former section had a blanket first degree misdemeanor penalty if the target offense of violence was any misdemeanor. Likewise, the former section also had a blanket third degree felony if the target offense of violence was a felony. Rather than create a situation where the person inciting the offense of violence would receive a more serious charge than the person committing the target offense of violence, the penalty section was changed so that the inciting person would be charged with the next lesser degree of penalty than the target offense of violence committed with some special circumstances if the target offense of violence is unclassified.

Sec. 2917.02. Aggravated Riot. Division (A) essentially prohibits a person from participating with four or more people in a course of disorderly conduct with the purpose to commit a felony or offense of violence or intends to use a deadly weapon. Language is added to explain that the type of participation required as an element of the offense is "actual" participation in the riot.

Sec. 2917.03. Riot. Similar to R.C. 2917.02 – Aggravated Riot, *supra*, language is added to explain the type of participation required as an element of the offense is "actual" participation in the riot.

Sec. 2917.031. Required proof for offenses of riot and aggravated riot. There are no substantive changes to this section.

Sec. 2917.04. Failure to disperse. Failure to disperse is changed from a minor misdemeanor to a fourth degree misdemeanor so that law enforcement can arrest a person violating this section rather than being relegated to simple citations. Similarly, failure to disperse when the failure to obey the order creates the likelihood of physical harm to persons or damage to property is changed from a fourth degree misdemeanor to a third degree misdemeanor to differentiate the seriousness of this conduct from the change in penalty to the regular failure to obey.

Sec. 2917.05. Use of force to suppress riot or in protecting persons or property during riot. There are no substantive changes to this section.

Sec. 2917.11. Disorderly conduct. Former division (A) prohibits a person from "recklessly causing inconvenience, annoyance, or alarm to another" in specific ways listed in former divisions (A)(1) through (A)(5). The mental state in division (A) is changed from "recklessly" to "knowingly."

Division (A)(5) is merged into division (A)(1) because both divisions deal with harm to persons or damage to property. Former division (A)(1) prohibited "engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior"; the phrase "in violent or turbulent behavior" is removed because it is vaguely worded and is most likely already covered by former division (A)(5)'s (now merged with (A)(1)) prohibition on "creating a condition . . . that presents a risk of physical harm to persons or physical damage to property." Former division (A)(4) prohibited "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. The phrase "on a public street, road, highway, or right of way" is removed because the division already covers "public or private property."

Former division (B) prohibits a voluntarily intoxicated person from conduct that is specifically listed in division (B)(1) and (B)(2). The "recklessly" mental state is added to division (B). Former division (B)(1) prohibited a voluntarily intoxicated person from, "[i]n a public place or in the presence of two or more persons, engag[ing] in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm of persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, is likely to have that effect on others." The phrase "likely to be offensive" is removed because prohibiting engaging in conduct "likely to be offensive" is too vague and overbroad. Additionally, references to "ordinary sensibilities" are removed because it is not a defined term and it does not qualify any other section in R.C. Chapter 2917 where the phrase "inconvenience, alarm, or annoyance" is found (e.g., R.C. 2917.04(A), 2917.11(A), in part in 2917.31, and former 2917.32).

Former division (D) stated that "if a person appears to an ordinary observer to be intoxicated, it is probably cause believe that person is voluntarily intoxicated for purposes of division (B) of this section." Based on the 1974 Committee Comments to Sub. H.B. No. 511 and a few court cases, the intention for division (D) was to provide law enforcement "a device for taking intoxicated persons into custody to permit their commitment and treatment" rather than providing courts a standard for determining when a person is "voluntarily intoxicated" under this section. Some courts have properly noted this and provided a separate standard for determining "intoxication" in light of the legislature's intention for division (D). *State v. Thompson*, Case No. 92CA1906, 1993 Ohio App. LEXIS 5377, at *16 (Ct. App. Nov. 9, 1993), but other courts have disregarded the 1974 Committee Comments and used division (D) as the standard for determining the "voluntary intoxication" element for that section. *State v. Napier*, 2010-Ohio-563, ¶ 14. Division (D) is reworded to effectuate the 1974 Committee Note's original intention.

Division (E) is the penalty section of R.C. 2917.11. Former division (E)(3)(b) enhances to a fourth degree misdemeanor if the "offense is committed in the vicinity of a school or in a school safety zone." It is presumed this division was added to deter disorderly conduct around schools because of the danger to children. As a result, language is added to qualify that division (E)(3)(b) enhances only "when children are present" to prevent enhancement situations where an offender is in the proximate area of a school or safety zone in the middle of the night when no

children are present. Additionally, removed division (E)(3)(b) and (E)(3)(d) because of its overlap with R.C. 2917.13 - Misconduct at Emergency.

Sec. 2917.12. Disturbing a lawful meeting. Former division (A)(1) prohibits a person from doing any "act which obstructs or interferes with the due conduct of such meeting, procession or gathering." The term "substantially" is added to qualify "obstruct or interferes" to prevent a person from being charged under this section for inconsequential interfering with a meeting.

Removed former division (A)(2), which prohibited a person from "[m]aking any utterance, gesture, or display, which outrages the sensibilities of the group," for a couple reasons. First, the conduct proscribed in former division (A)(2) was redundant because it is already encompassed by division (A)(1)'s proscribed conduct. Second, a person's utterance, gesture, or display is a content restriction on speech and would receive strict scrutiny under a First Amendment constitutional challenge, but the proscribed speech is not narrowly tailored enough to accomplish the government's interest in prohibiting lawful meetings from being interrupted.

Sec. 2917.13. Misconduct at emergency. This section essentially prohibits a person from hampering the lawful operations of police, firefighters, or any other emergency personnel that are engaged in the their duties at the scene of an emergency. Former division (C) stated that this section was a fourth degree misdemeanor but a first degree misdemeanor if the violation created a risk of physical harm to persons or property. Division (C)'s penalty is changed from a fourth degree misdemeanor to a second degree misdemeanor and the first degree misdemeanor enhancement was removed because the conduct prohibited by this section carries with it an inherent risk of physical harm to persons or property; the first degree misdemeanor enhancement is redundant and the former fourth degree misdemeanor penalty is too low a degree considering the inherent risk of the proscribed conduct.

Sec. 2917.21. Telecommunications Harassment. There are no substantive changes to this section.

Sec. 2917.31. Inducing panic. The mental state "recklessly" is added to division (A)(1) and (A)(2). R.C. 2917.32 - Making false alarms is merged into this section for the sake of simplicity with one caveat: R.C. 2917.31(A)(1) effectively replaces former R.C. 2917.32(A)(1). R.C. 2917.31(A)(1) and former 2917.32(A)(1) both prevent a person from "initiating or circulating a [false] report or warning of an alleged or impending fire, explosion, crime, or other catastrophe" except R.C. 2917.31(A)(1) requires the prosecutor to prove the false report actually caused a public evacuation or serious public inconvenience or alarm whereas former R.C. 2917.32(A)(1) required that the prosecutor merely show that a public inconvenience or alarm was likely to happen.

Penalties in division (D) have been changed for the sake of proportionality. Former division (D)(3) enhanced the penalty from a first degree misdemeanor to a fourth degree felony

if a violation of division (A) resulted in physical harm to any person, but the division is now changed to a fifth degree felony enhancement. Former division (D)(4) enhanced the penalty from a first degree misdemeanor to either a fifth degree, fourth degree, or third degree felony based on economic harm, but economic harm is now capped at a fifth degree felony. Former division (D)(5) enhanced a violation of division (A)(1) to a third degree felony if the violation occurred at a school, but this was changed to a fourth degree felony enhancement. Furthermore, an exception to the (D)(5) enhancement was added to help prevent juveniles from receiving a felony where a violation of division (A)(1) at a school would not be enhanced and remain a first degree misdemeanor if the offender is a juvenile student of the school where the offense is committed, no physical harm to persons or physical damage to property occurred, and no pecuniary loss occurred. Division (D)(6) is retained and enhances the penalty to a fifth degree felony if the violation pertains to the use of chemical, biological, or nuclear weapon. However, former divisions (D)(7) and (D)(8) have been removed; former division (D)(7) enhanced the penalty to a third degree felony if the violation pertained to the use of chemical, biological, or nuclear weapon and resulted in physical harm, and division (D)(8) enhanced the penalty to a third degree if the violation pertained to the use of chemical, biological, and radiological weapon and the violation resulted in a certain amount of economic harm.

Sec. 2917.32. Making false alarms. As mentioned above in R.C. 2917.31 – Inducing Panic, *supra*, this section has been merged into R.C. 2917.31 – Inducing Panic.

Sec. 2917.33. Unlawful possession or use of a hoax chemical weapon, biological weapon, or radiological or nuclear weapon. The mental state "knowingly" is added to division (A). Language in the substantive offense that criminalized an "attempt" or "conspiring" to violate this section is removed; the proper pathways for punishing "attempt" or "conspiracy" violations are R.C. 2923.02 or 2923.01, respectively.

Sec. 2917.40. Safety at live entertainment performances. This section is moved from Title 29 and placed in Title 37 because the section is largely filled with very specific safety regulations for live entertainment performances.

Sec. 2917.41 Misconduct involving public transportation system. The mental state "knowingly" is added to division (A), (C), and (D). Former division (C) prohibited a person from playing sound equipment without the proper use of a private earphone, smoking, eating, or drinking in any area where the activity is marked as prohibited, and expectorating upon a person, facility, or vehicle. Former division (C) is removed because the proscribed conduct should either be handled as a civil matter or not be criminalized.

Sec. 2917.46. Unauthorized use of a block parent symbol. The committee reached out to the Division of Criminal Justice Services at the Department of Public Safety ("DPS"), and DPS recommended this section's repeal because the Block Parent program ended in 2007 and its

replacement, the McGruff House program, ended in 2011, effectively making this section useless.

Sec. 2917.47. Improperly handling infections agents. There are no substantive changes to this section.

CHAPTER 2919 – OFFENSES AGAINST THE FAMILY

The changes to this chapter were primarily designed to enhance readability and clarity. Many of the crimes in this chapter, like endangering children and domestic violence, have multiple ways to commit the offense and a myriad of penalties, depending on the specific act committed. This draft attempts to clearly identify the degrees of offenses, to make determining the appropriate level of offense more straightforward. In addition, several sections in this chapter needed mens reas added to address the culpable mental state.

The Committee did not examine or address any of the abortion related provisions in this chapter.

Sec. 2919.01 Bigamy. This section was clarified to ensure that bigamy does not apply to mere cohabitation with another; otherwise the substantive prohibition on a married person marrying another remains.

Sec. 2919.12 through 2919.205 Abortion Related Sections. The Committee did not examine, alter, or change any aspect of these section. The only changes that were made were formatting convention changes to harmonize the style of these sections to the remainder of Title 29.

Sec. 2929.21 Criminal Nonsupport. The changes to this section were designed to clarify the mens rea, remove duplicitous sections and simplify the elements. Nonsupport of the person's parents was removed because there is no duty otherwise in law to support a person's parents. This section is limited to nonsupport of others the person has a duty to support by law, such as a spouse, child, or a person to whom a court orders support.

Aiding and abetting a person becoming a dependent or neglected child was also removed because that prohibition does not belong in nonsupport; it is covered in other sections.

A violation of this section is a first degree misdemeanor. The crime can be enhanced to a fifth degree felony if the person has two prior findings of guilt for nonsupport. The violation can also be a fifth degree felony with only one prior finding of guilt if the person failed to pay support for half of a year, 26 out of 52 weeks.

The sentencing court is encouraged, but not mandated, to consider probation with emphasis on employment for a person found guilty of a violation of this section.

Sec. 2919.22. Endangering Children. The changes in this section were designed to clarify mens rea, remove duplicity, and clarify the law surrounding endangering children. The division regarding sex offenses was removed and incorporated into Chapter 2907, because that conduct fit better in the sex offence chapter.

The degrees of the offenses were not changed, they were simply rewritten for clarity and to remove references to mandatory prison.

Finally, the changes substantially clarify the interplay between OVI and endangering children by OVI. The changes allow a court to sentence an offender for each child that was in the vehicle when a person committed an OVI, because those offenses do not merge due to multiple victims.

Sec. 2919.221. Permitting Child Abuse. No substantive changes

Sec. 2919.222. Parental Education Program. Clarified that the mens rea is purposefully; no further changes.

Sec. 2919.224 through .227 Child Care Disclosures. No substantive changes

Sec. 2919.23 Interference with Custody. This section was broadened to prohibit a person taking and hiding a person adjudicated incompetent from their appointed guardian. The affirmative defense was also expanded to provide for a defense to any interference with custody where the person reasonably believed the person's conduct was necessary to preserve the protected person's health or safety, and the person notified the proper authorities in a reasonable time.

Sec. 2919.231. Interference with Support Order/Paternity. This former section was merged with interference with establishing paternity, to create a prohibition on threatening or harassing a person to interfere with a spousal or child support order, or an action to establish paternity. A violation is a first degree misdemeanor.

Sec. 2919.24. Contributing to the Unruliness of a Minor. This section was changed to limit its overbreadth and address culpability. First, consistent with changes made in other chapters, we added a knowledge component to the age. A person who violates this statute must know or be reckless in that regard that the minor is under eighteen years old. This section then prohibits the aiding, abetting, or inducing a minor to become unruly or delinquent.

The former prohibition on "acting in a way tending to cause a child to become unruly was stricken due to its extreme breadth and potential vagueness. Acting in a way tending to cause is unnecessarily broad when compared to the specific prohibitions in (A)(1), which adequately cover the culpable behavior.

Sec. 2919.25. Domestic Violence. The elements of domestic violence were slightly altered to conform to changes made elsewhere in the draft. As with all other offenses, the attempt

to cause language was removed, in favor of an attempt being charged exclusively through the attempt statute. In addition, reasonably was added to the menacing portion of domestic violence to mirror the changes made in the actual menacing section. Otherwise, the elements of domestic violence were unchanged.

The degree of offenses were changed to escalate repeat violations and enhance and align the punishments with the degree of harm caused. Domestic Violence by causing physical harm, as in current law, is a first degree misdemeanor. It is enhanced to a fifth degree felony if the person has ever previously been found guilty, as an adult, of any act of violence against a family or household member, and to a fourth degree felony if the person twice has been found guilty of such an act. The crimes that enhance the penalty for domestic violence are broader than current law and take into account committing any violent offense against a family or household member.

In addition, to mirror felonious assault, domestic violence is a second degree felony if the person caused serious physical harm to the victim or if the victim was pregnant and the offender caused serious physical harm to the unborn or caused a termination of the pregnancy.

Sec. 2919.26. Arrest Policy for Domestic Violence. This section governs the arrest policy for police with regard to domestic violence. It remains substantially identical to the former version located in R.C. 2935.03. The provisions dealing with domestic violence were removed from that section and relocated here, in order to enhance the visibility of the policy and logically contain Domestic Violence policies together.

Sec. 2919.27. Written policy and procedure for responding to domestic violence incidents or protection order violations. This section governs written policies for responding to domestic violence incidents. It is substantially identical to the former version located in R.C. 2935.032.

Sec. 2919.28. Bail in Certain Domestic Violence Cases

This section requires that a person charged with any violent offense against a family or household member to appear before a court for the setting of bail. The changes made to this section were designed to enhance readability and clarity, and there were no substantive changes.

CHAPTER 2921 – OFFENSES AGAINST JUSTICE AND PUBLIC INTEGRITY

Chapter 2921 (Offenses against Justice and Public Integrity) primarily deal with actions that hamper and impede investigations and elements of the criminal justice system. As such, these can be some of the most severe crimes in the Revised Code. However, in the previous version of this chapter, many of these crimes had a "one-size-fits-all" approach to punishment, which over-penalized relatively minor conduct with little effect on the criminal justice system, while also failing to sufficiently punish egregious or serious acts

which impaired the system. Thus, the changes to this chapter primarily fall into three categories – limiting overbreadth, reducing repetition, and altering the degrees of offenses to reflect the seriousness of the act. These sections focus on acts which actually hamper and impede justice, and mete out punishment accordingly.

Sec. 2921.02 Bribery. No substantive changes

Sec. 2921.03 Intimidation. The former Intimidation of an Attorney/Witness was merged into this section, so that the crime of intimidation is consolidated. That expands the class of people this section covers to any attorney or witness, whether the proceeding be civil, criminal, or juvenile. The language was also rewritten to provide more clarity. While most changes were intended only to make the statute more readable, there were two substantive changes: First, the attempt language was stricken, so that for the completed attempt there must be actual influence, intimidation, or hindrance. Second, the language regarding filing a false or fraudulent writing was expanded to remove the purpose requirements. Thus, recklessly filing a materially false or fraudulent writing that the person knows will intimidate, influence, or hinder is sufficient to violate division (A).

Division (B) is the less serious version of intimidation, which protects against recklessly intimidating a victim or witness. A violation of division (A) is a third degree felony, while a violation of (B) is only a first degree misdemeanor.

Sec. 2921.05. Retaliation. This section was largely unchanged, but was rewritten to mirror the prohibitions in intimidation and to provide more clarity.

Sec. 2921.11. Perjury. The substantive elements of perjury are unchanged; the changes to this section are in the degree of offense. The intent of the changes is to make proportional the degree of offense to the harm caused. Within the realm of criminal law, Perjury is significantly more serious when the proceeding involves aggravated murder than when it involves petty theft, for example. In addition, for perjury in misdemeanor matters, it is intended to give the court that was directly impacted by the perjury – i.e. the municipal or county court – the ability to have jurisdiction over the punishment of that perjury.

To that end, perjury is a second degree felony when the proceeding involved aggravated murder, murder, aggravated rape, or any first degree felony. Perjury remains a third degree felony for all non-criminal proceedings and criminal proceedings involving second or third degree felonies. Perjury is a fourth degree felony when the proceeding was a fourth or fifth degree felony or first degree misdemeanor. It is a first degree misdemeanor when the proceeding involved a second, third, or fourth degree misdemeanor, and only a third degree misdemeanor when the perjury occurred in proceedings related to a minor misdemeanor only.

Sec. 2921.12. Tampering with Evidence. The changes in this section were designed to eliminate the "one-size-fits-all" tampering with evidence and instead tailor the degree of offense

to the degree to which the evidence was impaired. The concern with the previous version of this section was that the act of throwing a bag of drugs out the car window, which were then easily and quickly recovered, was punished the same as the act of completely destroying, beyond recovery, evidence of a serious crime. The new section retains tampering as a felony, due to its impact on the administration of justice, put tailors the degree of offense to more harshly punish the person that actually destroys or impairs the evidence, than the person who merely delays its discovery my mere minutes.

While tampering always remains a felony, the elements of the offense were separated but otherwise unchanged. A person who alters, damages, or destroys evidence with purpose to impair its value as evidence is guilty of a third degree felony if the evidence was completely destroyed; a fourth degree felony if the evidence was substantially altered or damaged in a manner that actually impairs its availability as evidence; a fifth degree felony if the evidence was not actually damaged or impaired.

Similarly, a person who conceals or removes evidence is only guilty of a third degree felony if the evidence is completely unavailable for use; if the evidence which was concealed or removed is found and suitable for use, a violation is only a fifth degree felony.

Sec. 2921.13. Falsification. Falsification is designed to be the primary charge for all false statements that do not rise to the level of perjury. The main changes to this section were to reduce duplicity between falsification and other offenses. The most significant change was to alter (A)(3), which previously applied to any false statement with purpose to mislead a public official. This was broader than the former Obstructing Official Business, which made it a lesser degree of misdemeanor to mislead a public official, only when that actually hindered or impeded the official. In order to harmonize those provisions, (A)(3) falsification was changed to apply when an oral statement actually caused the public official to be misled or hampered; however, if the statement was in writing, it was a violation if the purpose was to mislead or hinder. The reason behind the distinction is the formality of the statement; an oral statement can be more spur of the moment and without studied consideration, whereas the formality of writing a false statement down invokes greater culpability. That distinction also holds true for the changes to (A)(13), which limits falsification about police misconduct to only those statements made in writing.

Falsification under division (A)(3) is also a lesser-included offense of Obstructing Justice, 2921.32(A)(5), which makes it a more serious crime to communicate false information which materially hinders an investigation.

In addition, false statements with purpose to commit or facilitate theft were eliminated from this section. Fraud or theft by deception were better covered in Chapter 2913, and were merely duplicative and unnecessary in this section.

Finally, falsification with regard to obtaining a concealed handgun license was expanded, from a false certification of competence to any knowing false statement in conjunction with applying for a concealed handgun license under Chapter 311.

Sec. 2921.21 Compounding a Crime. The changes in this section were designed to encourage pre-trial restitution agreements. To that end, the statute was expanded so that any victim of an offense that is eligible to receive restitution is protected from violating this section. In addition, to prevent abuses, the section requires that the prosecuting attorney assigned to the case be notified about the restitution agreement.

Sec. 2921.23. Failure to Aid a Law Enforcement Officer. This section broadens the former offense of failure to aid a law enforcement officer by adding new language regarding when an officer is in danger of suffering serious physical harm. The new language has a higher mens rea – knowingly – and criminalizes failing to assist a law enforcement officer who is in danger of receiving serious injuries if the person knows the officer has requested help, knows that the officer is in danger of serious physical harm, and can assist the officer without endangering the person. A violation of the new section is a first degree misdemeanor, while negligently failing to assist remains a minor misdemeanor.

Sec. 2921.24. Nondisclosure of Addresses. The changes to this section are minimal and designed to clarify the scope of the law. First, officer s and employees of municipalities mayor's courts were added to the list of persons prohibited from releasing the addresses of law enforcement under this section. In addition, the standard for a judge ordering disclosure was changed from good cause to a compelling interest, to more closely align with case law and modern practices.

Sec. 2921.26. Failure to Report a Crime or Death. This section and the following two sections, R.C. 2921.27 and .28, are the rewritten elements of former 2921.22, Failure to Report a Crime. These sections were separated and re-written for clarity and to group like offenses together. This section applies to all persons and criminalizes knowingly failing to report a felony, and negligently failing to report the discovery of a body to law enforcement. Division (B) provides exceptions to the crimes, based upon privilege and upon relationship.

Sec. 2921.27. Failure to Report Serious Physical Injury. Unlike 2921.26, which applies to all persons, this section mandates that physicians, nurses, and other professional persons giving aid to injured persons report gunshots, stab wounds, or serious physical harm that likely was caused from violence to law enforcement officers. It also requires professionals who interact with potential victims of domestic violence, such as counselors, social workers, psychologists, and therapist, to note suspected cases of domestic violence in their patient or client notes. A violation of this section is a second degree misdemeanor.

Sec. 2921.28 Failure to Report Burn Injury. This section requires physician and nurses to report burn injuries by explosion, incendiary devices, or those caused in a violent manner to

the arson investigative unit or local law enforcement. Like the previous version of this law, it also requires a written report to be filed with the state fire marshal. A negligent violation of this section is a minor misdemeanor, and a knowing violation is a second degree misdemeanor.

Sec. 2921.29. Failure to Disclose Name/Address. This section was more narrowly tailored to limit criminal liability and an arrest under this section to a willful refusal to provide the requested name and address. A person is required to disclose their name and address to a law enforcement officer when the officer reasonably suspects the person has, or is about to, commit a criminal offense or the person is a witness to certain felonies. In addition, the officer must inform the person that disclose of their address is required by law because of the officer's reasonable suspicion. An officer may not arrest a person for failure to disclose unless the person has been advised the disclosure is required by law and continues to refuse to disclose after that advisement has been made. In addition, the requirement to disclose age was stricken from the former version.

Sec. 2921.31. Obstructing Official Business. In order to avoid duplicity, obstructing official business was restricted from applying to law enforcement investigations. Obstructing a law enforcement investigation is more appropriately handled in two other sections – falsification and obstructing justice. If a person makes a false statement to a law enforcement officer, a first degree misdemeanor under 2921.13(A)(3) [falsification] is the appropriate charge; more seriously, if a person materially hinders an investigation, a potential felony charge under 2921.32 [Obstructing Justice] is appropriate. Obstructing official business was otherwise too broad and not specifically tailored to protect law enforcement investigations as efficiently as charges under falsification and the more serious obstructing justice.

Other than limiting this section's application to law enforcement investigations, no changes were made and the offense remains a second degree misdemeanor.

Sec. 2921.32. Obstructing Justice. Obstructing Justice has been significantly expanded beyond its former version, which was very similar to the common law accessory after the fact. In this version, obstruction can occur during an investigation and prior to charges being filed.

First, it is an offence to purposefully and materially hinder an investigation, prosecution, punishment, or the discovery or apprehension of a person who has committed a crime. This is broader than the prior version and encompasses any act taken to materially hinder any aspect of the criminal justice system after a crime has been committed.

The prohibited acts in division (A) have also been both broadened and more targeted to the harm caused, to avoid duplicity with other sections. For example, (A)(5) prohibits the communicating of false information to any person, but only when that information materially hinders the criminal justice system. As such, it is a more serious offense than falsification, which merely criminalizes the false statement without regard to the effect the false statement had. The destruction or concealment of evidence was also stricken from division (A)(4), in favor of tampering with evidence, the more appropriate charge.

New language was also added in division (B) to criminalize violating an order to remain in a place during the pendency of a lawful investigative detention. For example, this language would apply to a person who flees an officer who is conducting a *Terry* stop based on reasonable suspicion. A violation of this division is a second degree misdemeanor.

With regard to the degree of offense, obstructing justice is enhanced as the offense committed becomes more serious. As a baseline matter, obstructing justice is a fifth degree felony if no enhancements apply. It is enhanced to a second degree felony if the crime committed or under investigation is aggravated murder, murder, aggravated rape or an act of terrorism if the offender knew, or reasonably should have known, the crime committed.

Similarly, obstructing justice is a third degree felony when the crime committed or under investigation was a first or second degree felony, when the person knew, or reasonably should have known, the crime committed. With regard to the person's knowledge of the crime committed, if the person obstructed the investigation into a crime that that person committed, the person would always satisfy the knowledge element required for the enhancement. If the person obstructing is not the person who committed the crime, the enhancement would only apply if it can be shown that the person had actual or constructive knowledge of the type of crime committed, even if the person did not know the degree of offense committed.

Finally, if the person obstructed in a misdemeanor offense, obstruction is a misdemeanor of the same degree as the crime committed.

Sec. 2921.321. Assault of Police Animal. As an initial matter, due to innovative use of animal training, some police departments are expanding the types of animals used in law enforcement investigations. Thus, this statute was broadened to include any animal specifically trained for law enforcement use, and also retained the protections for assistance dogs.

Also, due to the severity of the level of offense for assault of a police animal and potential constitutional concerns, the elements of the offense were more narrowly tailored to actions which either interfere with the officer's ability to conduct an investigation with the animal, or actions which may cause harm to the animal. Division (A) criminalizes causing harm to any protected animal, when the animal is assisting the person it was trained to assist, or when the person has actual knowledge the animal is a police animal or assistance dog.

Division (B) criminalizes recklessly obstructing or interfering with a police animal or assistance dog. Taunting or throwing objects at the animal, which do not interfere with or obstruct the dog, were removed from the elements of the offense as overbroad. Criminalizing trivial actions against the animals which do not interfere with them is disproportionate to the seriousness of the offense and may raise First Amendment concerns.

Finally, specific and mandatory restitution was removed from the section in favor of the general restitution provisions in Chapter 2929. Removing the specific restitution provisions does not

restrict the scope of restitution; all losses caused by the offense are still eligible for restitution. However, the provisions under Chapter 2929 provide all the remedies needed, and it is cumbersome and unwieldy to have a specific restitution provision that is not harmonized with the general restitution in the sentencing chapter.

All other changes to the section were technical in nature, to remove duplicity and generally enhance the readability of the statute. The degrees of offenses remained unchanged.

Sec. 2921.33 Resisting Arrest. The changes in this section were designed to simplify the elements of the offense, while providing enhancements based on the level of resistance and harm caused by the offense. By adding the element of knowingly, it requires the person to subjectively know they or another person are under arrest, and then knowingly take some action to resist or interfere with the lawful arrest.

A base violation of this section is a second degree misdemeanor. Due to the availability of assault or felonious assault charges for knowingly causing physical harm, the enhancements were designed to complement those sections by preventing the reckless causing of physical harm in the act of resisting. To that end, recklessly causing physical harm is a first degree misdemeanor, recklessly causing harm by means of a deadly weapon is a fourth degree felony, and recklessly causing serious physical harm is a third degree felony.

Sec. 2921.331 Failure to Comply. This section was largely unchanged and most changes were designed to enhance readability and clarity. The mental states were clarified to recklessly prohibit failing to comply with a traffic order, while purposefully was substituted for willfully fleeing or eluding a police officer.

With regard to sentencing, the provision requiring mandatory consecutive sentences for a violation of this section was removed as inconsistent with Chapter 2929. The sentencing court has discretion under Chapter 2929 to determine the appropriate sentence, and the mandatory provision in this section conflicted with the general sentencing statutes.

Finally, greater discretion was given to the court in determining the length of license suspension to issue under this section, expanding the permissible ranges and clarifying the procedure.

Sec. 2921.34 Escape. While this section was largely unchanged, it was limited in one regard; breaking supervised release was removed as a form of escape. DRC has sufficient administrative penalties to adequately punish those who break supervised release, and an additional felony charge was not appropriate for those category of offenders.

Language regarding persons breaking supervision under Chapter 2971 was removed because it was no longer necessary. Under Chapter 2971, a person serves a prison term until they are suitable for release; thus, they would be subject to escape for breaking out of prison.

Escape is a second degree felony if the person breaks out of prison while serving a sentence for aggravated murder, murder, aggravated rape, or any first or second degree felony. Escape is a thirds degree felony when the person breaks out of prison while serving a sentence for any other felony. Finally, escape is a fifth degree felony when the person breaks detention for a misdemeanor, or confinement due to a finding of not guilty by reason of insanity.

For juveniles, escape is a third degree felony if the crime for which they were adjudicated delinquent would be a third degree felony or more serious if committed by an adult, and a fifth degree felony for all other felonies. Escape is a first degree misdemeanor for all other offenses.

Sec. 2921.35. Aiding Escape. The only change to this section was eliminating the element of "resistance to lawful authority," to ensure this crime was narrowly tailored only to those acts which could facilitate an escape. Resistance to lawful authority is overbroad and could be construed to criminalize hunger strikes and other forms of passive resistance which are best handled administratively by DRC, instead of criminally when they have no relationship to facilitating escape.

Sec. 2921.36 Illegal Conveyance. There were two main changes to this section. First, delivering tobacco products to an inmate was added as a prohibition, to address tobacco smuggling. Secondly, an affirmative defense was added to protect persons who involuntarily convey contraband to a detention facility due to their arrest and involuntary transport. A person who is arrested with contraband on their person faces a constitutional dilemma upon their transport to a detention facility: to waive their right against self-incrimination and disclose the contraband (and face additional charges for that contraband), or maintain their right against self-incrimination, keep silent, and be charged with a third degree felony upon the discovery of the drug at intake, in addition to the felony drug charge. This limited affirmative defense merely protects those persons from an additional charge of illegal conveyance when the transportation of the person to the detention facility is involuntary.

Sec. 2921.37. Arrest powers of person in charge of detention facility. No changes

Sec. 2921.38. Harassment by Bodily Substance. No changes

Sec. 2921.41. Theft in Office. The only substantive change was to align the theft thresholds with the changes made to the theft values in Chapter 2913. Otherwise, all changes here were convention changes.

Finally, the restitution language regarding public retirement accounts was moved from this section to the sentencing chapter, specifically R.C. 2929.153, where it more naturally fits as a part of sentencing and restitution. Although the language was moved, it was substantively unchanged.

Sec. 2921.42. Unlawful Interest in Public Contract. No changes.

Sec. 2921.421. Prosecuting attorney, elected chief legal officer, or township law director appointment of assistants or employees. No changes.

Sec. 2921.43. Improper Compensation. No changes.

Sec. 2921.44 Dereliction of Duty. The edits to this section were to help enhance readability and clarity and were not intended to change the substantive meaning of the prohibitions. The penalty for violations of divisions (D) and (E) were raised to a first degree misdemeanor, because of the heightened mens rea of reckless needed to commit the offense.

Sec. 2921.45 Interference with Civil Rights. No changes.

Sec. 2921.51 Impersonating a Peace Officer. The changes to this section were designed to clarify that the impersonation of the officer must me knowing to constitute a violation of the section. In addition, the penalties for the section were altered to create a clear escalation of seriousness. For example, merely impersonating an officer, with no criminal purpose is a second degree misdemeanor. Impersonating with intent to commit a misdemeanor, or intent to detain or search a person, is a first degree misdemeanor. Impersonating an officer with purpose to commit or facilitate a felony is a felony one degree higher than the felony committed or facilitated; if the felony was aggravated murder, murder, or aggravated rape, impersonating is a first degree felony.

Sec. 2921.52. Using a Sham Legal Process. Similarly to Impersonating, above, the changes to this section reflect an escalating level of seriousness, while retaining the elements of the crime. Knowingly using a sham legal process is a fourth degree misdemeanor, rising to a first degree misdemeanor if the sham process was used to commit or facilitate a misdemeanor. Using a sham process to commit a felony is a third degree felony.

In addition, a new division was added which prohibits the use of a sham process to fraudulently record a purported judgment, lien, or claim of indebtedness against any person. The harm caused by such a false lien can be significant and long-lasting, leading to punishing a violation of that section as a third degree felony.

CHAPTER 2923 INCOHATE OFFENSES AND WEAPON CONTROL

Sec. 2923.01 Conspiracy. Primarily, conspiracy was rewritten to provide greater clarity and readability. The elements of conspiracy were re-written with these goals in mind, but they were not substantively changed. However, in lieu of a list of specified crimes that a person could conspire to commit, the list was simplified to aggravated murder, murder, aggravated rape, and any first or second-degree felony. In addition, all the specific merger sections were removed, because the primary merger statute, R.C. 2941.25, is the exclusive section to determine merger.

Another change regards co-conspirator testimony. Previously, a person could not be found guilty of conspiracy if the only evidence was provided by the testimony of a co-conspirator. If a co-

conspirator testified against the defendant, the court also had to read a specific jury instruction. Those sections, however, contradict the rules of evidence which allow that the testimony of any one person, if believed, is sufficient to prove any element. Therefore, the specific evidentiary bans were removed from the code in favor of division (I), which requires that a finding of guilt based solely on a co-conspirator unless the jury has been made aware of all facts and circumstances surrounding the co-conspirator's decision to testify and the involvement of the offense.

Sec. 2923.02 Attempt. Except for an attempt to commit aggravated rape, this section is designed to be the exclusive manner through which to charge attempts to commit any offense. The attempt statute requires the same mental state needed to commit the underlying offense. The substantive elements of attempt are unchanged. Just like above, the merger elements were omitted to not conflict with the merger statute.

Sec. 2923.03 Complicity. The elements of complicity were consolidated to prohibit a person, acting with the same mental state needed for the commission of the offense, from soliciting or causing another to commit the offense, or aid and abet another into committing the offense.

Like conspiracy, the specific jury instruction for accomplice liability was stricken in favor of a general command to ensure the jury is made aware of the circumstances surrounding the accomplice's testimony, including any inducement to testify and the accomplice's involvement in the offense.

Finally, a change was made in the charging ability of complicity. Previously, a charge of complicity could be stated in terms of the principle offense, and there was no requirement to separately charge or allege complicity. That was changed to require complicity to be charged separately from the principle offense, for basic notions of due process. Allowing the charge to be stated in terms of the principle offense deprives the defendant of notice and an opportunity to prepare the defense to the allegations. It also allows the prosecution to present dual theories of the crime, where it is simultaneously argued that the defendant was both the principle offender and aided or caused the crime to be committed. In those circumstances, the jury is not required to find one or the other believed beyond a reasonable doubt; rather, it is enough for a guilty verdict that some believe the defendant committed the crime, and others believe that the defendant aided and abetted the crime.

Nothing in the changes to this section affects the ability of the prosecution to indict the defendant and argue both principle offender and aiding and abetting. The change only means that the defendant get prior notice that the prosecution intends to argue complicity, and that the jury be required to find the defendant guilty of a specific crime, rather than a mix of two crimes.

Finally, the ultimate punishment for a violation of this section remains unchanged; a person complicit in a crime is equally culpable, and is to be punished as if the person committed the underlying offense.

Sec. 2941.25 Merger of Offenses. Merger of offenses is conceptually considered with the inchoate offenses because it deals with the nature of defining offenses and considering when multiple offenses are culpably contained within a single action or multiple. At its core, merger of offenses is designed to express the General Assembly's intent that a person only be punished a single time for a single action, even if that action constitutes multiple offenses. In that sense, this statutory protection expands upon Double Jeopardy elements by looking beyond the statutory factors to the conduct of the defendant.

Structurally, this statute is designed to codify the Ohio Supreme Court's decision in *State v. Ruff,* 2015-Ohio-995, and replace the old, outdated, and confusing language.

The default rule is that the person may always be charged with, and found guilty of, multiple offenses that are supported by the person's conduct. The merger analysis thus occurs after the finding of guilt phase and analyzes only whether a person may be sentenced for multiple offenses.

The presumption is that a person may be sentenced for each offense for which the person was found guilty. The offenses only merge if, after analyzing the specific conduct of the defendant, all of the following are true:

(1) The offenses were committed by conduct so connected by time and place as to constitute a single event.
(2) The offenses were committed with the same intent.
(3) The offenses involved the same victim.
(4) The offenses caused the same type of harm.

If the above factors are present, the action which gave rise to the multiple charges was so connected as to form the basis for only one punishment; if any of the above factors are not met, the offenses do not merge.

When offenses merge, the prosecutor elects which offense the court should sentence the offender on, and the merged count is assumed by the elected count. Although the offender was found guilty on the multiple accounts, the person is only convicted of the count for which the person was sentenced, by definition (*see* **finding of guilt** definition vs. **conviction** definition).

A person appealing from a judgment with merged counts may appeal the unsentenced findings of guilt in addition to the convictions. If any conviction is overturned on appeal and remanded, the prosecutor may re-elect sentencing on any finding of guilt previously merged.

Ch. 2923 Weapons Overview

The changes to the weapons portion of this chapter were rarely substantive; the biggest change deals mostly with removing cluttered sections to more appropriate locations. With that goal in mind, all of the licensing provisions dealing with concealed handgun licenses were moved to Chapter 311, the sheriffs code. These sections were inappropriate in the criminal code because they merely regulated the Sheriff in the discharge of the sheriff's duty to issue the licenses. That is appropriately contained out of Title 29. It must be noted that, when shifting the sections to Ch. 311, no substantive changes were made to the

licensing provisions at all. They were simply moved and structured for clarity with no changes.

The criminal provisions contained within the licensing structure were maintained within this chapter, specifically R.C. 2923.124 and .125. The other changes in this section mostly dealt with removing clutter, clarifying mens rea, and ensuring the clarity of the statutes.

Sec. 2923.11 Law Enforcement Firearms Exceptions. This section consolidates and uniformly applies a law enforcement exception to the applicable R.C. sections. These exceptions previously were repeated in similar form in each section for which the law enforcement officer received an exception. This merely consolidated the exceptions for efficiency.

Sec. 2923.12 Carrying Concealed Weapons. This section was substantively unchanged with several duplicative sections removed. Initially, the prohibitions regarding the conduct of a person with a concealed handgun license were removed and consolidated in a new section, R.C. 2923.124. Consistent with the uniform definition of affirmative defense, the language regarding the exceptions and defenses was edited for clarity, but no other substantive changes were made.

Sec. 2923.121 Illegal Possession of a Firearm in A Liquor Permit Premises. The only change to this section is moving the mens rea from a sentencing enhancement to an element of the crime, clarifying the knowingly mental state applies to each element of the offense, including knowledge that the premises is serving alcoholic beverages. Otherwise, the edits were for clarity and to remove duplicity.

Sec. 2923.122 Possession of Deadly Weapon in School Safety Zone. This section was edited only for simplicity and clarity; the only relevant change was removing a specialized driver's license suspension in circumstances where there was no nexus to the vehicle and no rational basis for a license suspension.

Sec. 2923.123 Possession of Deadly Weapon in Courthouse. As above, this section was edited only for clarity and simplicity, with no substantive changes.

Sec. 2923.124 Concealed Handgun License Duties. This section is a new section designed to consolidate all the duties a person issued a concealed handgun license must comply with, especially the duties to keep the person's hand in plain sight and not reach for the firearm when interacting with a law enforcement officer. It also covers falsification of a handgun license and possession of a revoked or suspended license.

Sec. 2923.125 Criminal Trespass with Weapon. This section authorizes any private property to post a sign in a conspicuous location prohibiting the possession of firearms onto that land or premises. If a person knowingly violates that prohibition, except on a parking lot, the person is guilty of criminal trespass with a weapon, a fourth-degree misdemeanor. The offense is enhanced to a first-degree misdemeanor if the premises is a child-care center or day-care home.

Sec. 2923.13 Weapon Under Disability. The changes to this section were designed to clearly delineate who may and who may not lawfully possess a firearm. Fugitive from justice was defined as a person who is willfully eluding police when the person knows they are wanted

with any offense other than a minor misdemeanor. In addition, the undefined prohibition on chronic alcoholics possessing firearms was replaced with a bright-line rule – a felony OVI disqualifies a person from possessing a firearm. Further, the prohibition from owing a firearm upon indictment for an offense only beings when the person knows, or has reasonable cause to believe, the person is under indictment. Finally, the mental-health prohibition on possessing a firearm begins when the person would otherwise be ineligible to purchase a gun, in lieu of the outdated and undefined former term "mental defective."

A violation of this section based on being a fugitive from justice or a finding of guilt of a prohibited offense remains a third-degree felony; the disabilities flowing from something other than a finding of guilt are a fourth-degree felony.

Sec. 2923.131 Possession of a Deadly Weapon while Under Detention. The changes to this section were designed to delineate the seriousness of the offense as evinced by the crime for which the person was convicted. This is intended to provide a greater disincentive for the longer-term violent prisoners as compared to those only in jail or other, more temporary detention

A violation of this section by a person under detention for aggravated murder, murder, or aggravated rape is a first-degree felony; for the remainder of adult prisoners who have been found guilty, the offense is one degree lesser than the most serious offense for which they are being detained, while always remaining a felony. Any person detained pre-trial, or any juvenile violating this section is guilty of a fifth-degree felony.

Sec. 2923.132 Violent Career Criminal. This section was designed to incorporate the concept of Sub. SB 97 of the 131st GA to enhance the punishment for a violent career criminal to possess a firearm. This section is meant to be read in conjunction with R.C. 2942.16.

The violent career criminal specification in R.C. 2942.16 applies when a person is found guilty of a specifically defined violent offense, and also has previously been found guilty of a separate violent offense in the preceding eight years. The specification attaches to the underlying violent offense, and if a person is found guilty of the specification, they are adjudicated a violent career criminal for five years after release from prison or probation on the underlying offense.

For those five years the violent career criminal finding is active, the person is prohibited from using or brandishing a firearm; aa violation of this section is a first-degree felony which carries a mandatory sentence from within the range for first degree felonies.

Sec. 2929.14 Relief from Weapon Disability. No substantive changes

Sec. 2923.15 Weapon while Intoxicated. The only change to this section was to make clear this is a strict liability offense; if the person is found to be in possession of a firearm while under the influence of alcohol or drug of abuse, the person is strictly liable for that conduct. Under the influence has the same meaning in this section as in OVI, R.C. 4511.19.

Sec. 2923.16 Improper Handling in a Motor Vehicle. The only substantive change to this section is moving the concealed handgun license holder duties from this section to R.C. 2923.124, similar to the changes made in carrying concealed weapons, above. The remainder of

the changes are conforming changes, to fix cross references, adopt the convention changes, and provide for clarity.

Sec. 2923.161 Discharge at School Safety Zone. No substantive changes

Sec. 2923.162 Discharge in Prohibited Locations. Clarified the mental state is knowingly, except for discharge onto or over a public roadway, which is prohibited if it is reckless. No other substantive changes.

Sec. 2923.17 Possession of Dangerous Ordinance. The degree of offense for this section was raised to a fourth-degree felony, from a fifth. No other changes.

[former] Sec. 2923.18. Moved to Ch. 311

Sec. 2923.19 Failure to Secure Dangerous Ordinance. No substantive changes

Sec. 2923.20 Prohibited Weapons. No substantive changes

Sec. 2923.201 Possessing a Defaced Firearm. No substantive changes

Sec. 2923.21 Furnish Firearm to Minor. Consistent with the changes throughout the code, a mens rea regarding the element of age was added. The person needs to know the other person is a minor, or be reckless in that regard. No other substantive changes.

Sec. 2923.22 Underage Purchase of Firearm. No substantive changes

Sec. 2923.23 Surrender of Firearm. No substantive changes

Sec. 2923.24 Possession of Criminal Tools. The felony enhancement to criminal tools was eliminated, due to the disproportionate impact mere possession of otherwise innocent items could have in enhancing an offense to a felony.

Sec. 2923.241 Hidden Compartments. No substantive changes

Sec. 2923.32 – 2923.36 Promoting Corrupt Activity. The changes to this section were designed to clearly delineate between an existence of a corrupt enterprise and mere conspiracy to commit offenses, the proverbial two men in a truck committing burglaries. An enterprise, a separate element, must be separate and distinct from the pattern of corrupt activity to support a charge under this section.

Otherwise, the elements of this section were largely unchanged and designed to more clearly represent what is unlawful under this section. The punishment for a violation of this section was also changed; a violation is one degree more serious than the most serious offense the offender committed in the pattern of corrupt activity. The collateral sanctions, restitution, and civil liens contained in this sequence of sections are unchanged.

Sec. 2923.42 Participating in a Criminal Gang. The singular change in this section is the creation of an affirmative defense. It is now a defense to this section that the criminal conduct which led to a charge under this section was separate from, and not in furtherance, of the criminal gang. This section otherwise criminalizes all criminal conduct committed while a

member of the gang, so this affirmative defense would allow the gang member to take the stand and assert the underlying criminal conduct with which the gang member was charged was completely separate from his gang activity. This was designed to be a high hurdle to clear.

CHAPTER 2925 - DRUG OFFENSES

R.C. Chapter 2925 defines the various prohibitions on possession, use, sale, or furnishing of any drug, intoxicating substance, or drug paraphernalia. With the possible exception of R.C. 2929, R.C. Chapter 2925 has seen the most changes throughout this recodification effort. Every change made to this chapter is with the intent of clearly delineating the most culpable (those in the business of selling drugs and harming others) from the least culpable (those caught in a cycle of addiction). To that end, severe mandatory penalties were retained for aggravated trafficking of large amounts, while expanded treatment paths and supervision were added to assist those with addictions to better themselves.

The former R.C. 2925.03 - Trafficking in Drugs and R.C. 2925.11 - Possession in Drugs sections have been reorganized and moved to the beginning of the chapter because of their prominence when compared to other R.C. Chapter 2925 sections. The first three section—Aggravated Trafficking in Drugs ("Aggravated Trafficking"), Trafficking in Drugs ("Trafficking"), and Petty Trafficking in Drugs ("Petty Trafficking")—deal with varying levels of trafficking depending on the amount of drugs in the offense. One key difference in Aggravated Trafficking and Trafficking is that these higher levels of trafficking do not require the prosecution to prove the "sale" or "distribution" element traditionally associated with trafficking offenses; merely possessing a large amount of drugs creates an irrebutable presumption of trafficking because of the large amount of drugs involved and is sufficient to charge a person with Aggravated Trafficking or Trafficking. While mere possession is sufficient for an Aggravated Trafficking and Trafficking charge, language relating to selling or distributing drugs has also been retained in these sections to preempt any proximate cause issues that may arise from using Aggravated Trafficking or Trafficking as a predicate felony for felony murder.

Because Aggravated Trafficking and Trafficking can be charged without the proof of sale, traditional "possession" charges have now been relegated strictly to low-level drug amounts and associated penalties (i.e., misdemeanor and fourth and fifth degree felonies). Marijuana and Hashish have been separated into one unified "Marijuana Possession" section for convenience and readability, effectively making two Possession sections: R.C. 2925.04 – Possession of Drugs and R.C. 2925.041 – Marijuana Possession. Petty Trafficking, Possession of Drugs, and Possession of Marijuana are offenses that are eligible for treatment options.

Offenses with drug amounts now have a minimum required amount that must be detectable: either twenty-five one thousandths of a gram or one fourth of one unit dose,

whichever is applicable. Fentanyl has been addressed by broadening the definition of heroin to include any mixture of the substances; the entire weight of any compound, mixture, preparation, or substance containing any amount of the drug is weighted for purposes of this chapter. In addition, collateral sanctions with no real deterrent effect, such as mandatory driver's license suspensions and mandatory fines, were eliminated as counterproductive and unduly harsh.

The holistic effect of these changes is to make it easier to punish those who are in the business of selling drugs and causing harm, while ensuring that the least culpable have pathways to treatment.

Sec. 2925.01. Aggravated Trafficking in Drugs. Aggravated Trafficking deals with first and second degree felony drug amounts and provides mandatory minimum prison terms within the range of those felony degrees. Aggravated Trafficking also retains the "major drug offender" designation for the offenders with the highest level of drug amounts, but it has been reworked to apply only to cocaine, opiates, and controlled substance analogs and acts as a blanket mandatory prison term of 10 or 11 years. The felony drug amounts and associated penalties for this section are listed in the chart on the following page:

DRUG	AMOUNT	LEVEL
Schedule I or II	≥ 50 → <100 x bulk	F-2 (mandatory within the range)
	≥ 100 x bulk	F-1 (mandatory within the range)
Marijuana	≥ 40 kg	F-2 (mandatory within the range)
Cocaine: Powder or Crack	≥ 50 g → < 100 g	F-2 (mandatory within the range)
	≥ 100 g → < 250 g	F-1 (mandatory within the range)
	≥ 250 g	F-1 (MDO – 10 or 11 year mandatory)
LSD: Solid	≥ 500 UD → < 5000 UD	F-2 (mandatory within the range)
	≥ 5000 UD	F-1 (mandatory within the range)
LSD: Liquid	≥ 50 g → < 500 g	F-2 (mandatory within the range)
	≥ 500 g	F-1 (mandatory within the range)
Heroin/Fentanyl	≥ 30 g → < 50 g; ≥ 300 UD → < 500 UD	F-2 (mandatory within the range)
	≥ 50 g → < 100 g; ≥ 500 UD → < 1000 UD	F-1 (mandatory within the range)
	≥ 100 g; ≥ 1000 UD	F-1 (MDO – 10 or 11 year mandatory)
Hashish	≥ 2 kg	F-2 (mandatory within the range)
Controlled Substance Analog	≥ 30 g → < 40 g	F-2 (mandatory within the range)
	≥ 40 g → < 50 g	F-1 (mandatory within the range)
	≥ 50 g	F-1 (MDO – 10 or 11 year mandatory minimum)

Sec. 2925.02. Trafficking in Drugs. Trafficking deals with third degree felony drug amounts and contains no presumptions of prison or mandatory minimum prison terms. While possession of a third degree felony amount of drugs is still sufficient for a Trafficking charge, Trafficking provides a partial affirmative defense that lowers third degree felony Trafficking to fourth degree felony Possession if an offender proves that the drug involved was solely for personal use. Additionally, if an offender establishes this partial affirmative defense, the offender

becomes eligible to apply for intensive supervision under R.C. 2951.11(A)(1). The felony drug amounts are listed and associated penalties in the chart below:

DRUG	AMOUNT	LEVEL
Schedule I or II	$\geq$ 5 x bulk $\rightarrow$ < 50 x bulk	F-3
Schedule III, IV, or V	$\geq$ 50 x bulk	F-3
Marijuana	$\geq$ 5 kg $\rightarrow$ < 40 kg	F-3
Cocaine: Powder or Crack	$\geq$ 27 g $\rightarrow$ < 50 g	F-3
LSD: Solid	$\geq$ 200 UD $\rightarrow$ < 500 UD	F-3
LSD: Liquid	$\geq$ 20 g $\rightarrow$ < 50 g	F-3
Heroin/Fentanyl	$\geq$ 10 g $\rightarrow$ < 30 g; $\geq$ 100 UD $\rightarrow$ < 300 UD	F-3
Hashish	$\geq$ 200 g $\rightarrow$ < 2 kg	F-3
Controlled Substance Analog	$\geq$ 20 g $\rightarrow$ < 30 g	F-3

Sec. 2925.03. Petty Trafficking in Drugs. Petty trafficking in Drugs deals with low-level fourth and fifth degree felony drug amounts and, like R.C. 2925.02, *supra*, contains no presumptions of prison or mandatory minimum prison terms. Unlike R.C. 2925.01 and 2925.02 where sale or distribution is not required to be proven, *supra*, Petty Trafficking in Drugs is not afforded the same irrebutable trafficking presumption with low-level drug amounts without proving actual sale, offer to sell, or distribution. Additionally, persons charged with violation of this offense may apply for intensive supervision under R.C. 2951.11. The felony drug amounts and associated penalties for this section are listed in the chart below:

DRUG	AMOUNT	LEVEL
Schedule I or II0	≥ 0.025g → < bulk	F-5
	≥ x bulk → < 5 x bulk	F-4
Schedule III, IV, or V	≥ 0.025g → < bulk	F-5
	≥ bulk → < 50 x bulk	F-4
Marijuana	Gift ≤ 20g	Minor Misdemeanor
	≥ 0.025g → < 1 kg	F-5
	≥ 1 kg → < 5 kg	F-4
Cocaine: Powder or Crack	≥ 0.025g → < 10 g	F-5
	≥ 10 g → < 27 g	F-4
LSD: Solid	≥ 0.25 UD → < 50 UD	F-5
	≥ 50 UD → < 200 UD	F-4
LSD: Liquid	≥ 0.025g → < 5 g	F-5
	≥ 5 g → < 20 g	F-4
Heroin/Fentanyl	≥ 0.025g → < 1 g; ≥ 0.25 UD → < 10 UD	F-5
	≥ 1 g → < 10 g; ≥ 10 UD → < 100 UD	F-4
Hashish	≥ 0.025g → < 50 g	F-5
	≥ 50 g → < 200 g	F-4
Controlled Substance Analog	≥ 0.025g → < 10g	F-5
	≥ 10 g → < 20 g	F-4

Sec. 2925.04. Unlawful Possession of Drugs. Unlawful Possession of Drugs deals with low-level fourth and fifth degree felony drug amounts except marijuana or hashish. Like R.C. 2925.02 and 2925.03, *supra,* this section contains no presumptions of prison or mandatory minimum prison terms. Similar to R.C. 2925.03, *supra*, a person charged with a violation of this section may apply for intensive supervision under R.C. 2951.11. The drug amounts and associated penalties for this section are listed in the chart below:

DRUG	AMOUNT	LEVEL
Schedule I or II	≥ 0.025g → < bulk	F-5
	≥ x bulk → < 5 x bulk	F-4
Schedule III, IV, or V	≥ 0.025g → < 5 x bulk	F-5
	≥ 5 x bulk → < 50 x bulk	F-4
Cocaine: Powder or Crack	≥ 0.025g → < 10 g	F-5
	≥ 10 g → < 27 g	F-4
LSD: Solid	≥ 0.25 UD → < 50 UD	F-5
	≥ 50 UD → < 200 UD	F-4
LSD: Liquid	≥ 0.025g → < 5 g	F-5
	≥ 5 g → < 20 g	F-4
Heroin/Fentanyl	≥ 0.025g → < 1 g; ≥ 0.25 UD → < 10 UD	F-5
	≥ 1 g → < 10 g; ≥ 10 UD → < 100 UD	F-4
Controlled Substance Analog	≥ 0.025g → < 10g	F-5
	≥ 10 g → < 20 g	F-4

Sec. 2925.041. Marijuana Possession. Marijuana Possession deals with low-level amounts of marijuana and hashish (i.e., fourth and fifth degree felonies and various misdemeanors). Like R.C. 2925.02, 2925.03, and 2925.04, this section contains no presumptions of prison or mandatory minimum prison terms. Like R.C. 2925.03 and 2925.04, a person charged with a violation of this section may apply for intensive supervision R.C. 2925.11. The marijuana and hashish amounts and associated penalties for this section are listed in the chart below:

DRUG	AMOUNT	LEVEL
Marijuana	≥ 0.025g → < 200 g	Minor Misdemeanor
	200 g < 400 g	M-4
	400 g < 1 kg	F-5
	1 kg < 5 kg	F-4
Hashish	≥ 0.025g → < 10 g	Minor Misdemeanor
	10 g < 20 g	M-4
	20 g < 50 g	F-5
	50 g < 250 g	F-4

Sec. 2925.05. Corrupting another with drugs. Along with removing the school and safety zone enhancements within this section, the enhancement for furnishing a drug to a pregnant woman has been removed. Reference to the "major drug offender" specification has been removed from this section and replaced with a functionally equivalent mandatory prison term enhancement within the range of prison terms prescribed for a first degree felony.

Sec. 2925.06. Illegal manufacture of drugs - illegal cultivation of marijuana - methamphetamine offenses. This former section prohibited a person from knowingly cultivating marijuana or manufacturing or engaging in any part of the production of a controlled substance. The word "substantial" is added to qualify the phrase "part of the production" so that a person is prohibited from knowingly . . . "engag[ing] in any substantial part of the production of a controlled substance." This section's prohibition should target people that are actually manufacturing drugs rather than targeting inchoate conduct or conduct that is already covered by a separate section like possession of chemicals for manufacture of drugs under R.C. 2925.061.

Additionally, language is added to preclude a person from being found guilty of both this section and R.C. 2925.061, which deals with possessing chemicals used to manufacture drugs, if the chemicals used to illegally manufacture drugs are the same chemicals that would give rise to a charge under R.C. 2925.061. Currently, trial courts do not merge R.C. 2925.04 and 2925.041 as allied offenses because the defendant's actions will often constitute separate conduct. For instance, defendants will often purchase chemicals with an intent to manufacture drugs on day 1 (violation of R.C. 2925.061), but the defendant will wait until day 2 to manufacture the drugs using the chemicals bought on day 1 (violation of R.C. 2925.06). If R.C. 2925.041 is understood as essentially criminalizing the inchoate conduct leading to a potential violation of R.C. 2925.04, then R.C. 2925.041 can arguably be characterized as criminalizing an "attempt" to violate R.C. 2925.04. R.C. 2923.02 punishes any "attempt" to violate a section and essentially states that no person can be convicted of an attempt to commit an offense if that person is also convicted of committing the completed offense. The same policy should cover a person convicted under R.C. 2925.04 if the same chemicals that were used to manufacture illegal drugs would also support a conviction under R.C. 2925.041.

The penalties associated with illegal cultivation of marijuana have been capped at a fourth degree felony. Likewise, drug amounts associated with illegal cultivation of marijuana are changed to mirror the new marijuana possession amounts in R.C. 2925.041, *supra*. For instance, this former section made illegal cultivation of marijuana a fourth misdemeanor if the amount involved exceeded 100 grams but was less than 200 grams because a fourth degree misdemeanor marijuana possession also involved those same amounts. The changes to this section make illegal cultivation of marijuana a fourth degree misdemeanor if the amount exceeded 200 grams but is less than 400 grams because a fourth degree misdemeanor marijuana possession now involves those same amounts.

Finally, mandatory prison terms are removed throughout this section except for the mandatory prison term of 10 or 11 years that was previously an MDO specification.

Sec. 2925.061. Illegal assembly or possession of chemicals for manufacture of drugs. Lowered the penalty from a third degree felony to a fifth degree felony and removed all mandatory prison terms and enhancements for prior offenses.

Sec. 2925.07. Funding, aggravated funding of drug or marijuana trafficking. This section essentially prohibits a person from providing money to another so that the other person can obtain a certain amount of a controlled substance. The former section made funding drugs a crime when the amount of drugs being funded were at least a fourth degree felony amount of drugs under the former possession of controlled substances section. The drug amounts in the penalty section are changed to match the new fourth degree felony drug amounts in both R.C. 2925.04 and 2925.041. For instance, this former section made funding of cocaine a crime when the amount being funded was at least 5 grams of cocaine because 5 grams of cocaine under the former possession of controlled substances section was a fourth degree felony. Likewise, the changes to this section make funding of cocaine a crime when the amount being funded is at least 10 grams of cocaine because 10 grams of cocaine under the new possession of controlled substances section, R.C. 2925.04, is a fourth degree felony.

Additionally, the penalties have been changed because they are grossly disproportionate to other similar sections' penalties in this chapter. For instance, under this former section, it was a first degree felony for funding what would otherwise be an third degree felony possession amount of schedule I or II drugs. As a result, aggravated funding of drugs (schedule I or II) is changed from a first degree felony to a third degree felony, funding of drugs (schedule III, IV or V) is changed from a second degree felony to a fourth degree felony, and funding of marijuana trafficking is changed from a third degree felony to a fourth degree felony.

Finally, all mandatory fines and mandatory prison terms have been removed, except for the mandatory prison term of 10 or 11 years that was previously an MDO specification.

Sec. 2925.08. Illegal administration or distribution of anabolic steroids. Notwithstanding removing mandatory license suspensions and fines, there are no substantive changes to this section.

Sec. 2925.09. Unapproved drugs - dangerous drug offenses involving livestock. The mental state "knowingly" was added to the prohibition under division (A).

Sec. 2925.10. Fines. Most of this section's language was taken from former R.C. 2925.03, allowing it to apply to a broader range of sections in R.C. Chapter 2925. This section details exactly how a court clerk shall distribute fine moneys to different agencies responsible for or involved in making the arrest of, and in prosecuting, the offender. In the case of law enforcement agencies, a court clerk can distribute money only if the law enforcement agency

adopted a written internal control policy to address the use of fine moneys to pay to subsidize the agency's efforts pertaining to drug offenses.

Sec. 2925.11. Driving License Suspensions. This section centralizes all of the former mandatory driver's or commercial driver's license suspensions so that this one section applies to the entire chapter. However, this section changes license suspensions so that they discretionary rather than mandatory. Furthermore, a court can suspend a driver's license only if the violation occurred while the offender was operating a motor vehicle or motorcycle when the violation occurred or offender was using a motor vehicle or motorcycle to facilitate the violation.

This section also establishes that the court can suspend a license up to a maximum period of five years. Changes were also made to allow an offender to petition the court to terminate the license suspension after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender was released from prison, whichever is later. Additionally, a person may also file a petition for limited driving privileges. Furthermore, an offender who received a mandatory license suspension prior to the effective date of this new section may also file a petition to terminate his or her suspension unless the offender was found guilty of violating R.C. 4511.19 or similar law.

[Former] Sec. 2925.12. Possessing drug abuse instruments. This former section was repealed and merged with R.C. 2925.14 and former 2925.141 into R.C. 2925.14.

Sec. 2925.13. Permitting drug abuse. Notwithstanding the removal of mandatory license suspensions, there are no substantive changes to this section.

Sec. 2925.14. Illegal use or possession of drug paraphernalia. For the sake of convenience and simplicity, this section has incorporated two very similarly worded and similarly themed sections: R.C. 2925.12, Possessing drug abuse instruments, and 2925.141, Illegal use or possession of marijuana drug paraphernalia. Notwithstanding the removal of mandatory license suspensions, all three sections have not been substantively changed.

[Former] Sec. 2925.141. Illegal use or possession of marijuana drug paraphernalia. This former section was repealed and merged with R.C. 2925.14 and former R.C. 2925.12 into R.C. 2925.14.

Sec. 2925.22. Deception to obtain a dangerous drug. This section prohibits a person, through deception, from knowingly procuring a prescription for a dangerous drug or possessing an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug. The former penalty section made a violation of this section a fifth degree felony and enhanced to a fourth degree felony if the offender was previously found guilty of a drug abuse offense. The changes to the penalty section now lower the penalty from a fifth degree felony to a first degree misdemeanor if the offender merely possessed a blank prescription pad used for writing prescriptions for dangerous drugs. Also, the felony enhancement if the offender was

previously found guilty of a drug abuse offense is removed. However, deception to obtain a dangerous drug is still a fifth degree felony if the offender procured the administration of, a prescription for, or the dispensing of, a dangerous drug. Likewise, enhancements are retained for a violation of this section involving first, second, and third degree felony scheduled drug amounts, but the enhancement felony amounts are changed to reflect the changed drug amounts in R.C. 2925.01, 2925.02, and 2925.03, *supra*.

Sec. 2925.23. Illegal processing of drug documents. Notwithstanding the removal of mandatory fines, there are no substantive changes to this section.

Sec. 2925.24. Tampering with drugs. There are no substantive changes to this section.

Sec. 2925.31. Abusing harmful intoxicants. Former R.C. 2925.31 makes abusing harmful intoxicants a first degree misdemeanor and enhanced to a fifth degree felony if the offender has previously been convicted of a drug abuse offense. The fifth degree felony enhancement has been removed.

Sec. 2925.32. Trafficking in harmful intoxicants – improperly dispensing or distributing nitrous oxide. This former section essentially prohibited a person from knowingly dispensing or distributing a harmful intoxicant to a person eighteen years old or over under division (A)(1) and to persons under eighteen years old under division (A)(2) for the purpose of abusing the harmful intoxicant. Because the prohibitions in division (A)(1) and (A)(2) contain the same prohibition except for arbitrary age threshold, division (A)(1) and (A)(2) have been merged to prohibit knowingly dispensing or distributing a harmful intoxicant to any person. Additionally, the mental state "knowingly" is added to division (B)(3).

Sec. 2925.33. Possessing nitrous oxide in motor vehicle. The mental state "knowingly" was added to division (A).

Sec. 2925.34. Restriction against sale of or offer for sale of a pure caffeine product; misdemeanor. There are no substantive changes to this section.

Sec. 2925.36. Illegal dispensing of drug samples. Notwithstanding the removal of all mandatory license suspensions and changing the MDO specification to a mandatory prison term of 10 or 11 years, there are no substantive changes to this section.

Sec. 2925.37. Counterfeit controlled substance offenses. The mental state "knowingly" was added to division (C) and (D). Additionally, former division (E) is removed because the committee believes it should not be a crime for a person to represent a counterfeit controlled substance as a controlled substance by describing the physical or psychological effects of a controlled substance.

Sec. 2925.38. Notice of conviction of professionally licensed person sent to regulatory or licensing board or agency. There are no substantive changes to this section.

Sec. 2925.42. Criminal forfeiture of property relating to felony drug abuse offense. There are no substantive changes to this section.

Sec. 2925.50. Conviction of acquittal under federal drug abuse control laws bar to state prosecution. There are no substantive changes to this section.

Sec. 2925.51. Evidence in drug offense cases. This section is reworded and reorganized for better readability but no substantive changes have been made.

Sec. 2925.511. Reimbursement for costs of positive drug tests. There are no substantive changes to this section.

Sec. 2925.52. Motion for destruction of chemicals for methamphetamine production. There are no substantive changes to this section.

Sec. 2925.55. Unlawful purchase of pseudoephedrine or ephedrine product. There are no substantive changes to this section.

Sec. 2925.56. Unlawful sale of pseudoephedrine or ephedrine. A smaller section, R.C. 2925.58, is merged into this section because the entirety of R.C. 2925.58 was dedicated to an affirmative defense specifically for this section. Additionally, the mental state "knowingly" is added to division (C) and (D).

Sec. 2925.57. Illegal pseudoephedrine or ephedrine product transaction scan. The mental state "knowingly" to division (C)(1), (2), (3), and (4).

Sec. 2925.61. Lawful administration of naloxone. There are no substantive changes to this section.

Sec. 2951.11 Intensive Supervision. This section is grouped with the drug chapter because it was designed to be the pathway to treatment options for those caught in the cycle of addiction. This model was heavily based on Hawaii's HOPE model and is based on a swift, certain, and fair model. Offenders supervised under this section will have frequent, random drug tests. If they fail, they will swiftly and certainly be sent to jail for a brief period to punish their behavior to help equate drug use with punishment. This is designed to divert those persons who, with proper judicial oversight, can stop using drugs from those that need more intensive help, covered in intervention in lieu, below.

An offender is eligible for intensive supervision if the offender committed a drug possession offense or a fourth or fifth degree felony when drug or alcohol use was a factor leading to the criminal offense. If the person has previously been found guilty of a serious offense of violence or a sexually oriented offense, the person is ineligible. If the person committed a drug possession offense or the person has not previously been granted intensive supervision before on a non-possession fourth or fifth degree felony, the person is automatically

eligible upon request. If the person previously has been granted intensive supervision for a non-possession offense, the judge has discretion on whether to allow the person into intensive supervision. A decision granting or denying eligibility for intensive supervision is a final, appealable order.

If a person is charged with a third degree felony offense or higher resulting from the act which gave rise to an offense that is eligible for intensive supervision, the person is only eligible if the third degree felony is severed or otherwise disposed of prior to intensive supervision.

At its core, intensive supervision is consent based. In order to be accepted into the program, the offender must plead guilty to the charge and consent to each of the conditions specified in division (C)(2), including consenting to possible incarceration for a failed drug test. If the person does not consent, the person is not eligible; if, after consenting, the person withdraws consent, the guilty plea will be accepted and the person will be sentenced.

A person supervised under this section shall be supervised for two to four years, unless successfully released early. The person is subject to frequent and random drug testing. If the person resides in a different county than where the crime occurred, division (D)(2) governs transfer of supervision.

If an offender violates supervision, the court's next action is determined by the nature of the violation. If the violation is for substantial noncompliance – for example, committing a new felony or OVI, absconding, or repeated minor violations – the court can revoke supervision. If the violation is for a new offense, absconding, or withdrawing consent, the court may proceed directly to sentencing. If the violation is repeated minor violations, the court shall have the person screened for intervention, as discussed below.

For a minor violation – for example, skipping an appointment, arriving late, or a positive drug test – the court may not revoke supervision, but instead shall sentence the person to a term of local incarceration, not to exceed thirty days per incident and ninety days in the aggregate.

If the person successfully completes intervention, the charges will be dismissed with prejudice and may be immediately sealed. The person may also be released early, after one year, if the person has an exemplary record under supervision.

Sec. 2951.12 Intervention in Lieu (Drugs)

Stage Two of the two step drug-treatment process is the more intensive intervention in lieu. An offender may apply directly for intervention in lieu, or may be referred to this section due to repeated failed drug tests under intensive supervision. A person who applies for intervention may be granted or denied intervention, at the court's discretion.

Once a court grants intervention or the person is referred intervention due to failed drug tests under intensive supervision, the person is examined by a community treatment provider. If

the person is amenable to treatment, they shall be put on a treatment plan. Successful completion of the treatment plan constitutes dismissal of the charges. If a person violates the treatment plan, the court has discretion whether to revoke the plan and sentence the person, or punish the person with up to thirty days in jail and continue them on treatment.

CHAPTER 2927 – MISCELANEOUS OFFENSES

Chapter 2927 serves as the repository for offenses which cannot be placed in other chapters of the criminal code. There were not many changes to this chapter. Beyond adding or changing mental states throughout sections in this chapter, only two sections received patent changes. R.C. 2927.01 - Abuse of a corpse is changed to include specific prohibitions against abusing a corpse rather than relying on an undefined standard. R.C. 2927.02, dealing with illegal distribution of cigarettes to children, is changed to a $1,000 civil penalty for each violation similar to other tobacco-related prohibitions in this section.

Sec. 2927.01. Abuse of a corpse. This former section prohibited a person, except where authorized by law, from treating a human corpse in a way that would outrage either reasonable family sensibilities under former division (A) or reasonable community sensibilities under former division (B); former division (A) was a first degree misdemeanor and former division (B) was a fifth degree felony. Former division (A) is removed for several reasons.

Former division (A)'s "reasonable family sensibilities" is problematic because it is not a defined term and seemingly provides an odd standard for the jury to consider. The 1974 Committee Comments to Am. Sub. H.B. No. 511 seems to indicate that the "family sensibilities" standard is subjective because it references "members of the family," using the definitive article to indicate the particular "family" at issue. However, the plain text of the statute seems to indicate that "reasonable family sensibilities" is an objective standard and that the jury must consider if a hypothetical reasonable family would have been outraged under similar circumstances.

The 1974 Committee Comments to Am. Sub. H.B. No. 511 indicate that this former section covered conduct prohibited "by specific prohibitions against grave robbing and unlawful dissection of a corpse." Rather than continue with an odd standard like "reasonable family sensibilities," prohibitions were added back in to cover these specific types of abhorrent conduct. For instance, division (A)(2) and (3) makes it a fifth degree felony to "engage in sexual activity with a human corpse" or, except as authorized by law, "disinter, damage, dissect, or carry away a human corpse." For less abhorrent conduct not specifically listed in division (A)(2) or (3), former division (B)'s prohibition on outraging "reasonable community sensibilities" is retained as a first degree misdemeanor under new division (A)(1) and functions as a residual clause. Unlike the problems with "reasonable family sensibilities," if juries are considered to be a fair cross-section of the community, then the jury is the perfect candidate to determine what would outrage reasonable "community sensibilities."

Sec. 2927.02. Illegal distribution of or permitting children to use tobacco products, papers used to roll cigarettes, or alternative nicotine products. R.C. 2927.022, an entire section that contained no prohibition but dealt exclusively with affirmative defenses for this section, is merged into this section. Additionally, the fourth degree misdemeanor penalty has been removed from this section and replaced with a civil penalty of up to $1,000 dollars for each violation similar to other sections in this chapter dealing with tobacco prohibitions (e.g., R.C. 2927.021 and 2927.023).

Sec. 2927.021. Engaging in illegal tobacco or alternative nicotine product transaction scan. The mental state "recklessly" is added to division (C)(1), (2), (3), and (4).

[Former] Sec. 2927.022. Affirmative defense to cigarette, tobacco, or alternative nicotine product charge. This section is merged into R.C. 2927.02 because this section deals with affirmative defenses exclusive to R.C. 2927.02.

Sec. 2927.023. Unlawful transportation of tobacco products. Former division (A) and (B) essentially prohibited a person from shipping any cigarettes to any unauthorized recipient of tobacco products while division (C) essentially prohibits a person that ships cigarettes in a packaging other than the original packaging from failing to visibly mark the exterior packaging with the words "cigarettes." The mental state "recklessly" is added to division (A) and (C) and changed from "knowingly" to "recklessly" in division (B). Additionally, the prohibition in division (A) and (B) is extended to all "tobacco products," which encompasses "cigarettes."

Sec. 2927.03. Injure, intimidate, or interfere with fair housing rights. The mental state "willfully" is changed to "purposefully" to be consistent throughout Tile 29's four delineated mental states under R.C. 2901.22 (e.g., purposefully, knowingly, recklessly, and negligently). Additionally, "attempt" language is removed from division (A)'s prohibition so that an "attempt" at violating this section will use the attempt statute, R.C. 2923.02 – Attempt to commit an offense, as the proper vehicle for criminalizing an "attempt" violation of this section.

[Former] Sec. 2927.11. Desecration. This section is repealed and merged with R.C. 2909.05 – Vandalism, Criminal Damaging and Criminal Mischief.

Sec. 2927.12. Ethnic intimidation. There are no substantive changes made to this section.

Sec. 2927.13. Selling or donating contaminated blood. There are no substantive changes to this section.

Sec. 2917.15. Unlawful collection of a bodily substance. There are no substantive changes to this section.

[Former] Sec. 2917.17. Advertising of massage services. This section is repealed and merged with R.C. 2907.39.

Sec. 2927.21. Receiving proceeds of an offense subject to forfeiture proceedings. The value-based penalty enhancements are changed to reflect the value-based enhancement changes in R.C. Chapter 2913, *supra*.

Sec. 2927.24. Contaminating substance for human consumption or use or contamination with hazardous chemical, biological, or radioactive substance – spreading false report contamination. This section is repealed and merged with R.C. 2909.29.

Sec. 2927.27. Illegal bail bond agent practices. The mental state "recklessly" is added to division (A) and (B). Additionally, references to "peace officer" is replaced with "law enforcement officer" to be consistent throughout the section.

CHAPTERS 2929/2951.03/2953.08/2967 – SENTENCING, PAROLE, AND OTHER RELATED SECTIONS

The comprehensive changes to the sentencing code were designed with three goals in mind: to prioritize prison for dangerous and violent offenders, to incentivize offenders to target and change their behavior and prepare them for reintegration into society, and to empower judges to exercise their discretion to fairly and proportionately sentence offenders. This chapter maintains certainty in sentencing while addressing proportionality among criminal acts and offenders. As an example, felony sentencing was changed to an indeterminate system, where the sentencing court selects individualized sentences for each offense, and then imposes a maximum sentence of fifty percent of the single longest sentence. Such an individualized, targeted sentencing scheme provides incentives to productively use the offender's time in prison to better the person and prepare for reintegration. To that end, institutional rule breaking, violence, and lack of progress are grounds to hold an offender beyond the minimum, and to impose stringent supervision on the person once released. Conversely, those that behave well in prison and actively seek out programming have the potential for presumptive release at the minimum sentence, limited earned credit, and unsupervised release.

In addition, judges are empowered to exercise their discretion in crafting an appropriate sentence for each offender, considering all relevant factors to arrive at a proportional sentence. The chapter has also returned to traditional words commonly understood within the criminal justice system, such as probation and parole. Mechanical, technical recitations of talismanic words are eliminated in favor of the sentencing court examining the facts and circumstances surrounding the offender and offense. In addition, appeals of sentences are expanded and clarified to work in harmony with the sentencing judge's discretion.

The key principle of this chapter is empowering those who make sentencing decisions, to incarcerate and incapacitate those that mean to do harm and violence while providing positive incentives to others who can use the opportunity to better themselves and become productive members of society.

The committee intentionally did not address, and did not substantively change, any sections relating to aggravated murder and murder contained in R.C. 2929.02 through 2929.06.

Chapter 2929

Sec. 2929.11. Purpose and Principles of Sentencing. The overriding purposes and principles of sentencing contained in this section apply to sentences for all felonies other than capital offenses and life sentences. The three overriding purposes of sentencing are to 1) protect the public from future crime by the offender and others 2) to punish the offender, and 3) to reduce recidivism and rehabilitate the offender for safe and successful reentry into this State's communities.

This section was designed to codify the General Assembly's purposes of sentencing and set the tone for the entire sentencing chapter; however, it does not create any specific factors to consider or mandatory procedure on the sentencing court, and this section does not give rise to any appellate rights. Those provisions are contained in the remainder of the chapter.

Sec. 2929.12. Sentencing Considerations include all relevant factors. The purpose of this section is to give the sentencing court the broadest possible discretion to consider any and all relevant sentencing factors when determining sentence. The purposes and principles of sentencing contained in R.C. 2929.11 are intended to guide the court's discretion in sentencing. Division (A) then contains a series of 33 specific sentencing factors that may be, but are not always, relevant to the specific case at hand. The court may also consider any other factor that is relevant to the facts of the case. The factors listed in division (A) are not limited or categorized as aggravated or mitigating, and are not limited in their application. This section is merely designed to guide the court in exercising its broad discretion based on the individual facts of the case.

Division (B) mandates that the court, in sentencing a person who was under the age of eighteen at the time of the offense, consider the additional factors regarding juveniles found in R.C. 2929.121.

Finally, division (C) governs the requirements the sentencing court must comply with in pronouncing sentence. This language is intended to remove any requirement for the court to state specific words or findings on the record. Indeed, no specific phrasing or findings must ever be made under this chapter. Instead, division (C) requires the court, in its own words, to state its reasons for imposing the specific sentence. The court does not have to recite each element in division (A), nor does the court have to refer back to any specific factor in division (A) at all. The court merely must explain, on the record in whatever form the court wishes, the factual reasons for imposing a sentence. For example, the court could justify a more severe maximum sentence by stating that the harsher sentence was due to the defendant's criminal history and harm to the victim, which would satisfy division (C)'s mandate. Conversely, the court could

justify a suspended sentence and probation by acknowledging the offense the defendant committed was relatively minor and there was no violence or harm to a victim.

Division (C) must also be read in conjunction with the new appeal of sentence section, R.C. 2953.08. As long as the trial court stated some reasoning on the record, and as long as that reasoning is factually accurate, no appeal is permitted due to the judge's failure to consider or state any factor on the record. It is irrebuttably presumed the court considered all relevant factors prior to imposing a sentence.

Sec. 2929.121 Juvenile Factors in Sentencing. This section list additional factors and procedures a common pleas court must do when sentencing a person who was under eighteen at the time of the offense. First, it mandates that the court consider youthfulness as a mitigating factor. Then, it provides a list of eight additional factors the court must consider prior to imposing sentence. Finally, it requires that the court order and consider a presentence investigation which must include a mental health evaluation, among other specified requirements.

Sec. 2929.13 Stated Minimum Prison Terms. This section is the most significant section for felony sentence and governs the procedure for imposing sentence. Sentences imposed under this chapter will be indeterminate, with the judge choosing the minimum term(s) from among ranges, then calculating a maximum term based upon the length of the minimum. As a summary, division (A) governs the imposition of the stated minimum term. Division (B) governs multiple prison terms, while division (C) governs specifications. Finally, division (D) governs the calculation of the maximum prison term.

Overview of R.C. 2929.13

When sentencing a felony offender, the court will first choose a minimum prison term for each offense, from the range provided for that degree of offense. The court will select a minimum term for each offense for which the offender faces sentencing. Next, if there are multiple offenses, the court will decide whether to run the sentence for each offense consecutively or concurrently. Then, the court will determine the sentences for the specifications, if any, and decide if the sentences for the specifications should run consecutively or concurrently. The court will then calculate the total minimum sentence, by adding all sentences which run consecutively together; if the sentences run concurrently, the minimum sentences is the longest of the concurrent sentences. Once the court has calculated the minimum sentence, then the court will calculate the maximum sentence. The maximum sentence is fifty percent of the longest sentence for any one offense. For example:

> An offender was found guilty of Aggravated Burglary (F1), Aggravated Robbery (F1), and Rape (F1), each with a three year firearm specification. It is determined under the merger statute, R.C. 2941.25, that none of the offenses merge. Therefore, the offender is facing sentencing on three first degree felonies. In addition, under R.C. 2929.13(C)(4),

the offender is facing sentencing on two specifications. Therefore, the sentencing court must impose sentence on three F1s and two firearms specifications (3 years each).

1. First, the court must determine sentence on each of the offenses. In this example, the court chooses 10 years for the Rape, 10 years for the Agg. Burglary, and 6 years for the Agg. Robbery.
2. Next, the court must determine whether to run the offenses consecutively or concurrently. In this example, the court determines that the 10 years for Rape and 10 years for Agg. Burglary are to run consecutively to each other. The 6 years for the Agg. Robbery is ordered to run concurrently to the other two offenses.
3. Next, the court must consider the specifications. In this case, the court orders one gun specification to run consecutively to the underlying offenses, and one to run concurrently to the underlying offenses.
4. Then, the court must calculate the aggregate minimum sentence. In this case, that is determined by adding the consecutive sentences; 10 years (Rape) + 10 years (Agg. Burg.) for a total of 20 years. **Note:** The concurrent Agg. Robbery is not added to the total since it runs concurrently and is equal to or shorter than the length of the other charges. The specification is not included in the computation of the aggregate minimum prison term because it is served consecutively to, and prior to, the aggregate minimum term.
5. Finally, the court determines the maximum sentence. The maximum sentence is computed by adding 50% of the single longest sentence. In this case, the single longest sentence is 10 years, so the court adds 5 years to determine the maximum.
6. The final sentence is three years for the spec plus a minimum term of 20 years and a maximum of 25 years. The offender will serve a 23 years before the person is eligible for release.

Division (A)

Division (A) governs the determination of the minimum prison term for each offense. The court, under guidance from R.C. 2929.12, shall chose from the following ranges:

	Not Less Than:	Not More than:
First Degree Felony	3 years	11 Years
Second Degree Felony	2 Years	8 years
Third Degree Felony	9 Months	60 Months
Fourth Degree Felony	6 Months	18 Months
Fifth Degree Felony	6 Months	12 Months
Unclassified Felony (other than Aggravated Murder, Murder, or Aggravated Rape)	Unless Otherwise Specified, 6 months	Unless Otherwise Specified 12 Months

If a prison term is mandatory, the court shall note that the term for that offense is mandatory. If the mandatory prison term does not exceed the maximum allowable prison term, the court may sentence the offender to a longer prison term than the mandatory term. In that case, only the portion of the term that is mandatory shall be denoted as such. Mandatory terms are served prior to nonmandatory terms.

Division (B)

Division (B) governs prison terms for multiple felonies. The court has discretion to order any sentence on multiple felonies to run consecutively or concurrently. The presumption is all sentences are concurrent unless the court specifically orders sentences run consecutively. Division (B)(3) provides factors to guide the court's discretion in determining whether sentences should be run consecutively. However, the court is not required to make any findings to sentence consecutively and failure to state consideration of any of these factors on the record is not grounds to appeal.

Division (C)

Division (C) governs sentencing for specifications. The specific sentence for specifications are contained in the section in Chapter 2942 setting forth the specification. If there are multiple specifications for a single offense, they all run concurrently to each other. If there are multiple specifications attached to multiple counts in a single indictment, then the court shall only impose the longest specification contained in that multiple-count indictment; however, if one of the offenses in the indictment is aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, aggravated rape, or rape, the court may impose the two longest specifications attached to different counts.

All specifications are mandatory, but the court has discretion whether to impose the specification consecutively or concurrently to the underlying offense. The court may also sentence the offender to a prison term on the specification but suspend the sentence on the underlying offense and place the person on probation for the underlying offense in lieu of additional prison time.

Division (D)

This division governs the calculation of the aggregate minimum tern and the maximum sentence. Once a court has determined a sentence for each offense and specification, and decided whether the offenses are to be served concurrently or consecutively, the court must calculate the total sentence. For all concurrent sentences, the court selects the longest of the concurrent sentences. The court then adds to that all consecutive sentences, to calculate a total minimum term. This is considered the aggregate stated minimum term. Next, the court imposes a maximum sentence, which is calculated by taking 50% of the single longest minimum term imposed for a single offense. The court then pronounces sentence by stating the sentence as an indeterminate range,

being no less than the aggregate stated minimum term and no longer than the maximum term. (*See example, above*)

In the event that the aggregate stated minimum term is twelve months or less, the court shall comply with the rules governing prison terms of one year or less as specified in R.C. 2929.341.

Division (E)

Division (E) specifies the maximum fines a court can impose per degree of felony, as follows:

If the level of offense is a:	the maximum fine is:
First Degree Felony	$100,000.00
Second Degree Felony	$ 50,000.00
Third Degree Felony	$ 20,000.00
Fourth Degree Felony	$ 7,500.00
Fifth Degree Felony	$ 5,000.00
Unclassified Felony other than Aggravated Murder, Murder, or Aggravated Rape	As specified in statute setting forth the offense or $5,000 dollars if none is specified

The procedure for imposing fines is specified in R.C. 2929.16

Division (F)

Division (F) specifies the procedures governing the release of the offender prior to the expiration of the maximum term, and duties and procedures of the parole board. While Chapter 2967 contains the detailed provisions relating to release on parole and supervision, this section makes clear that Chapter 2967 governs all aspects of release and supervision. To briefly summarize, there is a presumption that offenders are to be released upon expiration of the minimum term, unless prison behavior or other factors warrant the continued incarceration of the offender. The offender must be released upon expiration of the maximum term of imprisonment. If the offender is released prior to the expiration of the maximum term, the offender will be subject to supervision and possible reimposition of the remaining prison term, as governed under Chapter 2967. Time served on parole or probation does not reduce the remaining prison term that may be imposed.

Division (G)

Finally, division (G) governs sentencing for both felonies and misdemeanors. First, if a person is sentenced to a prison term that equals or exceeds the jail term on a misdemeanor, the misdemeanor must run concurrently to the prison term. Subject to the special rules governing prison terms of twelve months or less, a person with a longer prison term than jail term will serve the term in prison instead of jail. If the misdemeanor jail term exceeds the felony prison term, the prison term will run concurrently to the jail term, and the sentence will be served in a local correctional facility.

Divisions (G)(2) and (3) allow jail terms to be run consecutively to felony sentences is certain circumstances. Finally, consecutive jail sentences for misdemeanors cannot exceed eighteen months.

Sec. 2929.14. Misdemeanor Sentences. Sentences for misdemeanors are determinate and at the sole discretion of the sentencing court. The maximum sentences and fines for misdemeanors is as follows:

	Maximum Jail Term	Maximum Fine
First Degree Misdemeanor	180 days	$ 2,500.00
Second Degree Misdemeanor	90 days	$ 1,000.00
Third Degree Misdemeanor	60 days	$ 750.00
Fourth Degree Misdemeanor	30 days	$ 500.00
Minor Misdemeanor	No Jail Term Authorized	$ 300.00
Unclassified Misdemeanor	As specified in the statute setting forth the offense, or 30 days if none is specified	As specified in the statute setting forth the offense, or $500 if none is specified.

The court may impose a jail term, a fine, or both as a sentence in a misdemeanor case. The court has discretion in determining if misdemeanor sentences are to be served concurrently or consecutively, but in no case shall consecutive sentences for misdemeanors exceed eighteen months.

Sec. 2929.15. Restitution. At sentencing, the court may order restitution to be paid to the victim, the victim's survivors, or certain specified public institutions. Restitution is limited to economic loss the person or entity suffered as a proximate cause of the offender's criminal conduct. The order of restitution is a civil judgement against the offender in favor of the State, which is enforceable by the prosecutor, the victim, or victim's estate. The restitution order may not exceed actual economic loss caused by direct and proximate result of the commission of the criminal offense. The court must hold a hearing to determine the amount of restitution, unless the amount is stipulated to by all parties.

Sec. 2929.151-155 Restitution from Public Retirement Sections

Merged and consolidated from former law, applies to all orders of restitution from public retirement accounts.

Sec. 2929.16. Fines and Costs. Division (A) governs the imposition of fines as a part of the sentence. Before imposing a fine, the court must hold a hearing to determine the offender's ability to pay the fine. At the hearing, the court considers the offenders current ability to pay, based upon current assets and income and the restitution already ordered by the court. The court also may consider the offender's future ability to generate income in determining the ability to pay. The offender must submit to the court all relevant financial information to assist the court in determining ability to pay. The court is authorized to establish a payment plan to pay the fine, and may suspend any amount of the fine based on changes in the offender's ability to pay.

Division (B) permits the court the discretion to order payment of court courts. If the costs are not complete at time of sentencing, the order to pay costs does not need to specify the total amount at time of sentencing. Division (C) allows additional costs to be collected as specified.

Sec. 2929.17 Organizational Penalties.

Aggravated Murder, Murder, or Aggravated rape	The greater of $1,000,000 or the value of the organization.
First Degree Felony	The greater of $500,000 or one-half the value of the organization.
Second Degree Felony	The greater of $250,000 or one-tenth the value of the organization.
Third Degree Felony	Up to $50,000.
Fourth Degree Felony	Up to $35,000.
Fifth Degree Felony	Up to $25,000.
Unclassified Felony other than aggravated murder, murder, or aggravated rape	As specified in the statute setting forth the offense, or up to $25,000 if no amount is specified.
First Degree Misdemeanor	Up to $10,000.
Second Degree Misdemeanor	Up to $5,000.
Third Degree Misdemeanor	Up to $2,500.
Fourth Degree Misdemeanor	Up to $1,500.
Minor Misdemeanor	Up to $1,000.
Unclassified Misdemeanor	As specified in the statute setting forth the offense or up to one thousand five hundred dollars if no amount is specified.

Sec. 2929.18. Negotiated Pleas. This section governs all negotiated pleas. If the parties agree to enter a guilty plea conditioned upon a jointly recommended sentence or sentencing range, such plea agreement must be reduced to writing. If the court accepts the pela and imposes the jointly recommended sentence or imposes a sentence within the jointly recommended range, the defendant agrees to waive all right to appeal the finding of guilt and sentence. The waiver of the right to appeal guilt and sentence must be in writing and advise the defendant of the waiver.

If the court does not impose the jointly recommended sentence, the defendant has an absolute right to withdraw the guilty plea. The decision to withdraw the plea must be made within two business days of the imposition of sentence, or the right to withdraw the plea is waived and the sentence is final.

If the defendant, after a plea based upon a joint recommendation, ever obtains a reversal of the conviction, the original complaint, indictment, or bill of information is to be reinstated and the parties returned to the position of the case prior to the plea.

Sec. 2929.19. Suspension of Sentence/Probation. This section governs probation and suspended sentences. A court may suspend the entire prison sentence imposed, or any part of a jail sentence imposed, and place the person on probation. In determining whether a sentence of probation is appropriate, the court should look to the sentencing factors articulated in R.C. 2929.12 and balance justice and mercy to arrive at a fair, just, and proportional sentence. The court has discretion on when to suspend a sentence and place a person on probation, except for the following offenses:

1) Aggravated Murder or Murder

2) Aggravated Rape or Rape

3) Conspiracy, complicity, or attempt to commit an offense listed above

4) Mandatory prison terms

5) Mandatory specification sentences

The term of probation may not exceed five years for first, second, or third degree felonies, three years for fourth degree felonies, and two years for fifth degree felonies or misdemeanors. The court may release an offender from probation earlier than originally sentenced if the offender has paid all restitution and costs, and the court has provided notice and an opportunity to be heard for the prosecutor and victims. If the offender does not pay restitution, fines, and costs, the length of probation may be administratively extended to the maximum allowed until the financial obligations have been paid. The court also has discretion to extend the term of probation to the maximum term, in order to adequately rehabilitate the offender.

A split sentence on a felony case, including up to 120 days in local incarceration or 180 days in a community-based correctional facility, is authorized under this section. In addition, the court has full discretion to craft the conditions of probation appropriate for the offense, including any standard conditions of probation and any special condition specified or reasonably calculated to protect the public and rehabilitate the offender.

Sec. 2929.191. Violation of Probation Conditions. If a person violated a term or condition of probation, the person is subject to a hearing and sanctions under this section. Once a violation is committed, the probation officer or prosecutor in the case may file an allegation of violation in the offender's original case, supported by affidavit. Upon filing of an allegation, the court will hold a hearing on the allegation of violation, which must be proven by clear and convincing evidence.

If a violation is proven, the court may:

1) Terminate probation and order the suspended prison or jail term imposed;

2) Stay the term of probation until the offender is released from a separate prison or jail term, with probation to resume upon release from the unrelated charge;

3) Continue the offender on probation, update or alter any of the terms or conditions of probation, and sentence the offender to up to 120 additional days in local incarceration or 180 days in a community-based correctional facility.

Sec. 2929.20. Judicial Release. The sentencing court may release an eligible offender from prison earlier than originally sentenced under this section. An offender is eligible for judicial release under this section if the person has served all specification time, if any; has served all mandatory time, if any; and is currently serving a nonmandatory portion of the minimum stated prison term. In addition, any person who has ever been found guilty of aggravated murder, murder, aggravated rape, rape, or any felony while serving a prison term is also ineligible.

An offender may file a motion for judicial release based on the percentage of the aggregate stated minimum prison term the offender has served. For any offender sentenced to an aggregate stated minimum term of less than 36 months, the motion may be filed after the offender has served 30 days in prison. For any offender sentenced to an aggregate stated minimum term of 36 months but less than 60 months, the motion may be filed after the offender has served 180 days in prison. If the aggregate stated minimum prison term is 60 months or more, judicial release is not permissible until the offender has served 50% of their sentence.

A court must hold a hearing prior to granting a motion for judicial release; however, a court may deny a motion for judicial release without a hearing. If the court denies a motion with prejudice, no further motions for judicial release may be considered unless on the court's own motion or

upon recommendation of the Director of DRC. If a motion is denied without prejudice, the court may consider additional motions for release.

If the motion for judicial release is granted, the court will suspend the remaining balance of the prison sentence and place the offender on probation, subject to the probation violation section in R.C. 2929.191. The court sets the period of probation, not to exceed the maximum term in R.C. 2929.19 with one exception – persons granted judicial release on third degree felonies may only be placed on probation up to the maximum of three years.

Sec. 2929.201. Parole Consideration for Extended Prison Term. This section is a special statutory parole provision designed to apply to all offenders currently incarcerated in prison. It provides a one-time parole board review for all prisoners serving an extended prison term for multiple offenses. An offender is eligible to request the one-time parole board review if all the following conditions are met:

1. The offender is serving an aggregate term of imprisonment that exceeds the following:
    a. More than five years when the most serious charge is a fifth degree felony
    b. More than eight years when the most serious charge is a fourth degree felony
    c. More than twelve years when the most serious charge is a third degree felony
2. The offender has never been found guilty of the following offenses:
    a. Aggravated murder or murder
    b. Aggravated rape or rape
    c. Any first degree felony
    d. Any felony sex offense
    e. Any felony serious offense of violence

In the event the inmate qualifies for review, the inmate may petition the parole board for a meaningful review of the offender's sentence. The parole board shall consider the offender for parole, and may grant parole in its discretion, after considering all the relevant factors for parole. If an inmate is released on parole under this section, they will be supervised for three years if the most serious charge was a third degree felony, and two years if the charge was a fourth or fifth degree felony.

If the parole board denies parole, with or without a hearing, the decision is final and the offender is not entitled to any additional hearings or consideration under this section.

Sec. 2929.21. Eligibility for Parole. This section governs when an offender become eligible for parole. For life sentences, an offender becomes eligible for parole at the expiration of the specified minimum term of years. If the sentence is life without parole, the offender never becomes eligible for parole. If the offender is sentenced to a life sentence plus additional, consecutive prison terms, the offender must serve the specified minimum prison terms prior to serving the life sentence; if the offender is sentenced to multiple, consecutive life sentences, and

if each of the life sentences contains parole eligibility, the offender becomes eligible for parole after serving the minimum specified term on each of the life sentences.

All offenders sentenced to a non-life sentence on or after the effective date of this section becomes eligible for parole after serving the minimum term of the sentence. If the offender is serving consecutive sentences, they must serve the minimum term on each of the consecutive sentences before becoming eligible for parole.

Sec. 2929.211. Special Parole Eligibility for Juvenile Offenders. This section, which grants special parole eligibility, only applies to persons who were under age eighteen at the time of the offense. In an effort to minimize juvenile life sentences and craft a system with more individualized assessments of juvenile offenders, parole eligibility will be granted to such offenders as follows:

1. If the juvenile was sentenced to a term of imprisonment of fifteen years or longer, including any life sentence with parole eligibility, the person is eligible for parole after serving fifteen years
2. If the person was sentenced to life without parole, except for persons who kill more than two victims, the person will become eligible for parole at age forty.

Although this section grants the possibility of parole as described above, there is no presumption in favor of parole, and the parole board will have full discretion to determine release using established means.

Sec. 2929.22. Mentally Ill Person Subject to Court Order. This section codifies existing law in allowing the adult parole authority or probation department to invoke R.C. Chapters 5122 and 5123 regarding the involuntary commitment of mentally ill persons or persons with intellectual disability.

Sec. 2929.23. Confinement Credit. This section deals with calculating the days of confinement a person has served locally for an offense. The sentencing court has a duty to calculate all days the person has spent in confinement in connection with the offense the person was found guilty of, and then order the department of rehabilitation and corrections to reduce the minimum and maximum terms by the total number of days calculated.

The court retains continuing jurisdiction over the calculation of confinement credit after the person has been transferred to prison; thus, if an error was made in calculating the days, an offender may move the sentencing court to recalculate the number of days. The sentencing court shall rule as expeditiously as possible on a motion to recalculate, and the offender is granted the authority under this section to file an action in mandamus to order the trial court to rule after 30 days have elapsed.

Sec. 2929.24. Person on Parole Committing New Felony. This section applies to all persons on parole or unsupervised release who commit a new felony. If the offender is found guilty of committing a new felony while the person was on parole or unsupervised release, the sentencing court on the new felony has additional options available with regard to sentencing the person. In addition to the sentence for a new felony, the court order the offender to serve a definite prison term equal to the amount of time remaining on the offender's previous maximum sentence. Such a sentence can run consecutively or concurrently to the new sentence; if the court exercises that option, the parole supervision or unsupervised release in the old case is terminated and the offender will serve out the remainder of the maximum sentence. The sentencing court may order the offender to serve the balance of the old sentence even if the court suspends imposition of the new sentence in order to place the offender on probation. In that case, the period of probation would not begin until the offender is released from prison on the prior maximum sentence. If the court elects not to impose the remaining balance of the old sentence, the court may order the period of parole or unsupervised release stayed pending release from prison of jail on the new charge.

Sec. 2929.29. Sentencing Hearing and Sentencing Judgment Entry. This section governs the procedural process regarding sentencing hearings and sentencing judgment entries. It is designed to guide a sentencing judge through each step of the sentencing process to ensure that the judge imposes the sentence in a proper manner. It also provides authority for the Supreme Court to create a standardized sentencing entry which, if used by the sentencing court, is presumed to be valid and complete and shall not be deemed void.

Sec. 2929.34. Where Imprisonment to be Served. This section makes a relatively noteworthy change to the facilities where a term of imprisonment is to be served. Division (B)(3) institutes the common law principle regarding the length of a sentence needed to send a person to prison, traditionally one year.

However, to emphasize, this section does not, in any way, limit the discretion of the sentencing court in imposing a term of imprisonment authorized under this chapter. The court still has full authority to sentence an offender to a term of one year or less. However, if they do, the person must serve such term in a local jail, community-based-correction facility, or community alternative sentencing center.

The location where an offender serves a prison term of less than one year was changed to align Ohio with the vast majority of other states and to reserve prison space for serious offenders whose crimes made them deserve more than a year's imprisonment. Offenders with less than a year to serve in prison are unable to take advantage of the institutional programming and guidance that a longer prison term entails. In addition, exposure to the more violent and serious offenders has been shown to be detrimental and harmful to low-level, non-violent offenders. Also of note, at least forty other states restrict access to their prisons if the person has less than a year to serve.

However, even though the location of the term of imprisonment has change, the Committee rejected any attempt to limit the discretion of the sentencing court, which still has full discretion to order a minimum prison term of six to twelve months on any offender who is eligible for such a sentence, and that person may still be confined as ordered by the court.

Sec. 2929.341. Imprisonment for One Year or Less. This section clarifies the procedures when a person has been sentenced to an aggregate stated minimum term of imprisonment of one year or less. A court who sentences a person to such a sentence must comply with this section, by first ordering the facility or combinations of facilities where the person is to serve their sentence.

The court imposing the sentence retains jurisdiction over the offender to determine when the offender is suitable for release, after the expiration of the offender's minimum term. The court must hold a hearing within 30 days after the expiration of the minimum term to determine release. At that time, the court may release the person and either place them on probation for one year (analogous to parole release for presumptive parole-eligible offenders), or the court may grant them unsupervised release for one year. If the offender commits a new felony while on probation or unsupervised release under this section, they may be sentenced to the remaining balance of their sentence on the new felony under the provisions of R.C. 2929.24.

If the court does not release the offender from incarceration at the initial hearing, the court has discretion to hold one or more additional hearings at any time to determine release. The court may not continue to detain the person past the expiration of the person's maximum term.

Sec. 2929.37. Confinement Cost Policy. This section clarifies when a local authority may create a policy to require reimbursement for the costs of local confinement. This section retains the provisions of former law authorizing the creation of the policy, but it requires the sentencing court to impose the costs at the time of sentencing. In addition, the court ordering reimbursement must examine the offender's ability to pay under the fines and costs section, R.C. 2929.16, prior to imposing the reimbursement costs.

Sec. 2929.42. Notification of Conviction sent to Licensing Board. This section retains the former law requirement that the prosecutor send notice of a conviction to the appropriate licensing board specified in the section.

Sec. 2929.43. Procedure when Defendant is a Peace Officer. This section adds procedural requirements when charging and prosecuting a peace officer. Similar to former law, it requires notification that a conviction will result in the termination of employment as a peace officer and procedures for surrendering a peace officer certificate.

Sec. 2929.61. Sentencing under Prior Law. This section clarifies that the changes made in this sentencing draft only apply prospectively, and that persons whose offenses were

committed before specified dates generally shall be sentenced under the law in effect at the time of the commission of the offense.

Sec. 2929.71. Investigative Costs. This section, moved from its former location in the arson chapter, allows the governmental agencies who investigate and prosecute specified offenses, such as arson, criminal damaging with inherently dangerous substances, or a terrorism related offense the ability to recoup their investigative response costs. Costs of this nature must be imposed under R.C. 2929.16

Sec. 2951.03. Pre-Sentence Investigations. Pre-Sentence Investigations are very important to help guide a sentencing court's discretion in determining an appropriate sentence; in addition, they are critically important to DRC to help determine release decisions on parole.

In order to provide more information to sentencing courts and DRC, PSI's are generally required prior to sentencing an offender for a felony. However, PSI's can be waived if both parties agree to waive a PSI, if the court imposes a jointly recommended sentence, or if the court is sentencing a person for aggravated murder, murder, or another offense where the court is required to impose a specific sentence.

No changes were made to the content of the reports or the confidentiality provisions.

Sec. 2953.08. Appeal of Sentence. This section was created to be the exclusive statutory avenue for felony sentencing appeals. It is designed to clearly delineate which sentences may be appealed and for what reason, while limiting the total number of sentencing appeals. It was also designed, in conjunction with the Appellate Law and Policy division of the Ohio Judicial Conference, to clearly guide the appellate courts in the exercise of their appellate review of sentences, to enhance consistency of sentencing review.

No felony appeal may be brought unless authorized by this section, and any sentencing appeal must precisely delineate the specific authority and grounds on which the person is appealing the sentence.

A person may not appeal a sentence for aggravated murder or murder, any life sentence, or a sentence that was jointly recommended in the case.

Offender's Appeal

An offender sentenced on a felony may appeal only on the following grounds:

1. The sentence imposed was not within the authorized range of sentences, prison was imposed when prison was not a permissible sentence, or the court miscalculated the minimum or maximum sentence.

This is a narrow ground for appeal, and covers situations where the sentence is unauthorized by law, such as where the sentencing court imposes a sentence that exceeds the applicable range for the degree of offense, or miscalculates the aggregate minimum sentence or maximum sentence.

2. The sentencing court failed to articulate any rationale for the sentence whatsoever, or erroneously applied a factor in aggravation of the sentence that was inapplicable to the case.

This division was meant to be read in harmony with R.C. 2929.12(C). As described in that section, a trial court must merely state, in its own words, its reasons for imposing the specific sentence. The court does not have to recite or refer to any specific words, nor does the court have to refer back to any specific factor in division (A) at all. The court merely must explain, on the record in whatever form the court wishes, the factual reasons for imposing a sentence. The adequacy of that recitation is not a ground for appeal; an appeal is only proper if the court completely fails to recite any rationale in support of the sentence.

In addition, a sentence is also reversible under this division if the court applies a fact in aggravation of the sentence that is clearly inapplicable. For example, a court may sentence an offender to a maximum sentence. While addressing the offender, the court could explain that the maximum sentence was appropriate because the offender was a police officer and abused a position of trust. If, however, the offender was not factually a police officer, this division would allow the offender to appeal that the factor in aggravation is simply not factually applicable to the case. Only factual allegations in aggravation of the sentence with no support in the record, i.e. clearly erroneous, will be subject to review under this division.

3. The sentencing court sentenced the offender to consecutive sentences that exceeded a term of years relative to the most serious degree of offense.

This section allows a robust appeal for the most severe, long sentences a trial court imposes. The purpose of this division was to retain the full discretion of the sentencing court to impose an appropriate sentence, while still providing a meaningful and robust appellate review of the longest, outlier sentences. Therefore, this division gives offenders who were sentenced to an aggregate minimum prison term that exceeds the threshold a meaningful chance at review. An appeal under this division is reviewed for substantive reasonableness, explained below.

4. The sentencing court imposed a fine without considering the offenders ability to pay.

R.C. 2929.16 requires that the sentencing court consider the offender's ability to pay a fine before imposing one. This section allows an appeal if the sentencing court completely failed to consider the ability to pay. If the court did reasonably consider the ability to pay before imposing a fine, this section does not authorize an appeal based on the outcome of that determination.

State's Appeal

The state can also appeal sentences under this section on the following grounds.

1. The prison term for an offense was not within the authorized range, the court miscalculated the minimum and maximum sentences, or the court suspended a sentence and placed the offender on probation when such suspension was unauthorized.

Like the first ground for an offender's appeal, this is a narrow ground for appeal if the sentencing court erred in imposing the sentence as a matter of law because the sentence was unauthorized.

2. The sentencing court failed to articulate any rationale for the sentence whatsoever, or erroneously applied a factor in mitigation of the sentence that was inapplicable to the case.

This second ground also mirrors the second ground for an offender's appeal. The State may appeal if the court completely fails to articulate any rationale in support of the sentence, or if the court mitigates a sentence by means of a factually inaccurate determination, such as the offender's lack of criminal history when the offender did have a significant criminal history.

3. The court suspended a sentence and placed the offender on probation for a first or second degree felony.
4. The court granted judicial release to a person serving a sentence for a first or second degree felony.

These rights of appeal are extremely similar and are analogous to the offender's right to appeal lengthy consecutive sentences for a meaningful review. Although a sentencing court has the discretion to suspend most sentences in favor of probation, the State has the right to appeal such a determination for meaningful appellate review. An appeal under these divisions are reviewed for substantive reasonableness, explained below.

5. The prosecutor and defendant jointly recommended a sentence, and the court sentenced the offender to a sentence below that joint recommendation

Finally, the State may appeal in circumstances where the court sentenced the offender to less than the joint recommendation. This division is intended to balance the right the defendant has to withdraw the plea if sentenced above the joint recommendation. If the court sentences below the joint recommendation, the State can appeal based on substantive reasonableness.

Substantive Reasonableness

Any sentence reviewed for substantive reasonableness is designed to allow the court of appeals a meaningful review of the merits of the sentence. The appellate court is instructed to give due deference to the sentencing court's determination and weighing of all sentencing factors, which will be reflected in the court's explanation of the rationale. Then, the court is to review the merits of the sentence, primarily examining whether the sentence is consistent and proportional to the

offense. Consistency means comparing the sentence imposed in a specific case to sentences imposed upon similar offenders in similar circumstances throughout the state. Proportionality means imposing a sentence that is proportional to the conduct of the offender with the overriding principle of achieving consistency.

Consistency and proportionality are designed to work harmoniously together. Consistency is more objective and looks to similar sentences imposed upon similar offenders. Proportionality, on the other hand, recognizes that consistency must be balanced with the specific conduct of the offender to reach a reasonable sentence. The appellate courts, therefore, review the entire sentencing record and review whether the sentence imposed is substantively reasonable, given the conduct and harm caused by the offender, all other relevant factors, and the consistency and proportionality of the offense. The burden is on the appellant by clear and convincing evidence to show substantive unreasonableness.

In order to preserve a substantive reasonableness review on appeal, the appellant must have raised the issue in the trial court prior to or during the sentencing hearing; otherwise, they have waived all but plain error.

If an appellate court reverses a sentence as substantively unreasonable, the court shall enter an order increasing, decreasing, or otherwise modifying the trial court's sentence. The appellate court then remands only for imposition of the ordered sentence.

Chapter 2967 – Parole

Sec. 2967.02. Administration by Adult Parole Authority. This section establishes the scope of Chapter 2967. The Adult Parole Authority administers this chapter and parole generally.

Sec. 2967.021. Applicability of Chapter. This section confirms that all persons sentenced under pre-1996 old law will continue to be governed by the parole law in effect at the time of the offense. Chapter 2967, as it exists prior to the effective date of this draft, continues to apply to all persons serving a stated prison term under the law. This new chapter only applies to persons currently serving a life sentence and all persons sentenced after this chapter takes effect.

Sec. 2967.03. Duties and Powers of Parole. Initially, this section divides all persons subject to parole into two categories – presumptive parole-eligible offenders, and non-presumptive parole eligible offenders.

A presumptive parole-eligible offender is a person sentenced under the new law for any offense that is not a life sentence or first- or second-degree felony serious offense of violence. Those offenders have a presumption of parole at the expiration of their aggregate stated minimum prison term. DRC is empowered to write rules regarding implementation of the presumption, which must include analyzing the offender's institutional record, rule breaking, violence, and the completion of any available programming to address the offender's risks.

The intent of the presumption of parole was to incentivize non-violent offenders to work towards their release by positive behavior in the institution and completing available programs and classes to prepare for release. The minimum sentence borrows from the current law's ranges, so the minimum sentence is by its nature satisfactory to punish and rehabilitate the offender. The additional maximum sentence is designed to be the stick to incentive good behavior and punish those who would be a danger if released.

If an offender is presumptively released at the expiration of the minimum sentence, DRC can administratively provide for such release and no parole board hearing would be necessary.

For non-presumptive parole eligible offenders, which include violent F1/F2s and life sentences, there is no presumption of parole and the parole board has discretion when to release the offender, using criteria specified in division (D). In these cases, the maximum sentence is designed for DRC to hold offenders who are unsuitable for release due to violent or dangerous tendencies to be held longer, to protect the public.

Sec. 2967.04. Supervision of Parolees. This section governs they type and length of supervision when a person is released from prison on parole after serving less than the maximum sentence. All parolees must be supervised under this section, unless they qualify for and are granted unsupervised release.

For persons released after serving a sentence for aggravated murder, murder, or aggravated rape, DRC must supervise them for not less than 5 years. First degree felons and sex offenses are to be supervised for five years, while second and third degree parolees are to be supervised for three years. Finally, those released on F4/F5 charges are to be supervised for one year.

Unsupervised release under this section means that DRC has waived active supervision of the person, but that they are still subject to reimposition of the remaining balance of the person's maximum sentence if they commit a new felony during the period of unsupervised release. Unsupervised release may be granted as follows:

For a third degree felony or fourth or fifth degree felony sex offense, unsupervised release may be granted upon release from prison if DRC has administered a risk assessment to the person and found that the person's risk assessment and institutional behavior do not warrant supervision. For all other F4/F5s, unsupervised release may be granted at DRC's discretion. Unsupervised release upon release from prison is not applicable to any first or second degree felonies.

In addition, DRC may review the behavior of a person on parole at any time and has the discretion to extend the period of supervision of a person up to a maximum of five years from the date of release. They may also grant a person supervised on a second or third degree felony unsupervised release after that person has served half of the term of active supervision.

Sec. 2967.041. Conditions of Supervised Release. This section is substantively unchanged from former law and governs the conditions a person supervised on parole is subject to. Persons on unsupervised release are not subject to this section.

Sec. 2967.042. Unsupervised Release. This section clarifies the period of unsupervised release, if a person was granted it under R.C. 2967.04. A person on unsupervised release on a F4/F5 will be subject to reimposition of the maximum term of imprisonment for a period of one year from release. For an F2 or F3, that period is three years.

Sec. 2967.05. Violation Condition of Parole. This section is substantively unchanged from former law and governs the procedure when a person on supervised release violates the terms or conditions of that release. The parole board has discretion to revoke parole and reinstitute any portion of the remaining maximum sentence for parole violations.

Sec. 2967.06. Full Board Hearings. This section retains, in essence, former R.C. 5149.101's rules for full parole board hearings. Under this section, a full board hearing is mandated, upon request of the victim or victim's representative, for any offender serving a sentence for aggravated murder, murder, aggravated rape, or any other life sentence. For any other offense, a full board hearing is at the discretion of the parole board.

Sec. 2967.07. Release as if on parole of dying prisoner. This section expands the ability of DRC to parole a prisoner who is terminally ill, in imminent danger of death, or is otherwise medically incapacitated. The Director of DRC is granted the authority to parole such individual, upon certification of a physician that the offender is in imminent danger of death. If the offender recovers, the offender may be returned to the institution. This section does not apply to an offender serving a life sentence or a sentence for aggravated rape.

Sec. 2967.08. Earned Credit. This section allows limited earned credit opportunities for certain inmates to incentivize those persons taking advantage of beneficial programming and completing a high-school equivalency. This section authorizes an inmate serving a sentence for a fourth or fifth degree felony to earn credit up to a maximum of fifteen percent of the inmate's sentence. DRC is empowered to write rules specifying the types of activities and programs that are eligible for credit and to ensure the inmate satisfactorily completes the program.

In addition to the 15% credit for F4/F5s, all inmates not serving a life sentence may receive a single, 90 day credit for successfully completing a high school equivalency. This credit is designed to incentivize inmates to complete their education prior to leaving the institution, to better prepare themselves for reintegration into the communities.

All credit earned under this section is provisional and does not vest until the inmate would be release if the credit were to apply. DRC is authorized to deny or withdraw previously earned credit for institutional infractions and behavior, by rule.

Sec. 2967.12. Notice of Pendency of Parole. This section substantively retains the prior law's rules requiring DRC to notify certain persons about parole hearings and the pendency of parole. Although substantial clarification occurred to this section, nothing was substantively changed.

Sec. 2967.13. Notice of Early Release Sent to Prosecutor and Court. This section retains the former law's requirement that DRC notify the prosecutor and court at least two weeks before certain violent offenders are released from prison.

Sec. 2967.14. Halfway House. This section leaves unchanged DRC's ability to place parolees in halfway houses upon their release.

Sec. 2967.15. Violation Sanction Center. This section is substantively unchanged.

Sec. 2967.16. Certificate of Final Release. This section clarifies when DRC may issue a certificate of final release to an offender, thereby terminating their control over the person. For any person paroled and supervised, the certificate may not be issued until the person has completed their term of supervision.

If a person is granted unsupervised release at any time, the person shall be issued a conditional certificate of final release at the time of the granting of unsupervised release. The certificate shall be conditional and not effective until the person has completed the term of unsupervised release. The conditional certificate will have a notice to the offender printed on it which informs them the certificate is not effective until the date certain that the unsupervised release terminates, and that if the person commits a new felony offense prior to that date, the person may be sentenced to the remaining maximum sentence. DRC may not issue a certificate of final release to any person sentenced under R.C. Chapter 2971 (Sexually Violent Predators).

Sec. 2967.17. Administrative Release. This section is substantively unchanged.

Sec. 2967.18. Prison Overcrowding and Release. This section is designed to address systemic overcrowding in our State's prisons while protecting the discretion of courts in sentencing offenders to prison. Under this section, when the state's prison population exceeds a threshold number (43,500 for men, 3,500 for women) for thirty consecutive days, the parole board is authorized to begin releasing up to 500 inmates a month to reduce the prison population under the specified threshold. In determining who to release, the parole board shall consider the inmates who have served the greatest percentage of their sentence and who present the least threat of reoffending. In addition, inmates are ineligible for overcrowding release if they have not completed serving all mandatory and specification time, if they have ever been found guilty of specified crimes, including aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, aggravated rape, rape, aggravated arson, aggravated robbery, engaging in a pattern of corrupt activity, or any other offense punishable by life imprisonment. In addition, any person serving a term of imprisonment for an offense committed

while the person possessed a firearm, or a person who has committed a prison rule infraction is ineligible for overcrowding release. A person released under the authority of this section will be considered a parolee for at least one, but not more than five, years as determined by the parole board.

The purpose of this section was to recognize that prison is a finite resource that should prioritize the most violent and dangerous inmates. At the same time, releasing inmates who have served the greatest percentage of their sentence is more sound public policy than restricting the discretion of judges and prosecutors in exercise of their charging and sentencing discretion. Judges and prosecutors would know that prison beds are a finite resource, and every person sentenced to prison in the future would necessarily result in another prisoner being released, if the population density of our State's prisons remained too high.

Sec. 2967.26. Transitional Control. With one substantive change, the transitional control program otherwise remains largely intact. Due to the success of transitional control in supervising an offender's transition back to the community, the former judicial veto for transitional control of an offender serving less than two years was removed. In all other respects, the program was unchanged.

CHAPTER 2932 – PROTECTION ORDERS

The intent of the changes to the protection order statutes was done with one overreaching purpose in mind – to better protect victims of violent crimes from their abusers by making the process more straightforward, easy to navigate, and convenient. The biggest problem with the former protection order regime is the complex maze of five different types of protection orders, each with different venues, rules, requirements, and forms. In fact, a protection order issued under one section is limited to only the relief that section provides. Additionally, clerical errors stemming from using the wrong type of protection order form can impede and hamper justice and the safety of the protected person.

This proposal seeks to remedy these issues by creating a single protection order, with two pathways to obtain an order; criminal, and civil. Victims can therefore choose the most efficient and convenient path, such as appearing at a criminal arraignment to receive an order, or filing a petition in a civil court of proper jurisdiction. The proposal also contains mandatory transfer provisions, so if the petition is filed in the wrong court, the petition can be quickly and efficiently transferred to the proper court.

This proposal is also designed to discourage forum shopping by encouraging the petition to be filed in the court with jurisdiction over the underlying dispute, and ensuring that any emergency order necessary to protect the safety of any minor children is target to protect the person until a court with jurisdiction over the children can issue a more permanent order.

Ex parte protection orders issued under this chapter are orders of a limited duration that nevertheless are considered full protection orders under this chapter. The specific sections regarding these orders makes clear when a court may issue an ex parte order, and how long the order will remain in effect until the court can have a full hearing on the matter to comport with due process.

Overall, this proposal will protect all victims of violent crime from further abuse and victimization while ensuring the most streamlined, efficient, and effective method possible to provide speedy protection to those in need of a judicial order.

Sec. 2932.01 Criminal Protection Orders. This section governs protection orders granted during the pendency of a criminal case. As an initial matter, a protection order under this section is available to a victim of any serious offense of violence or sexually oriented offense, with or without a pre-existing relationship. This choice was made to help protect victims of rape and other serious offenses from further victimization while protecting the availability and robustness of protection orders for victims of domestic violence. All victims of serious offenses should be able to have an enforceable order to protect themselves from further violence.

Criminal protection orders help assist the efficiency of the protection order process and promote convenience and effectiveness of the orders by allowing them to be issued by the same court and judge handling the criminal case, who will be familiar with the facts of the offense. In addition, it promotes efficiency by allowing the defendant to be represented by trial counsel and allowing adherence to the protection order to be a condition of bail. While a civil protection order issued by a competent court will take precedence over a criminal order, the speed and efficiency of a criminal order fills a crucial gap in the overall chapter.

This section allows any victim or family or household victim to file a request for a protection order in the court where the criminal case is pending. The court may determine the issuance of the protection order ex parte upon the victim's motion. The court, on its own motion or upon the request of the prosecutor, may also grant an ex parte protection order under this authority. In determining whether to grant the protection order, the court must consider the factors listed in R.C. 2932.04.

Once an ex parte order is issued, the defendant may object to the issuance or terms of the order. Upon the defendant's objection, the court shall hold a hearing within ten days to issue a permanent order. At the hearing, the defendant will be represented by counsel and the court will determine the issuance of, and terms and conditions of, the protection order. The court may modify the terms of the order at any time during the pendency of the criminal case, upon motion of either party. A protection order under this section is effective until the criminal case is resolved, either by dismissal, finding of not guilty, or sentencing upon a finding of guilt.

If the protection order is originally issued in a municipal court, and the case is subsequently transferred to common pleas court, the protection order remains in effect and is transferred as well.

At the time of sentencing, the court will consider whether to extend the protection order until the defendant is released from prison or jail, or otherwise terminated from probation or parole. The protection order is appealable only when the court extends the protection order beyond the date of sentencing.

Sec. 2932.02 Civil Protection Orders. The civil protection order statute borrows heavily from the former R.C. 3113.31 and is intended to supersede any criminal order and be the preferred method to provide protection. The eligible crimes for which a protection order may be granted are broader than the criminal protection order and are specifically designed for victims of domestic violence.

The petition is to be filed in the court with jurisdiction over the parties and minor children, if any. The general rule is that a petition for a protection order may be filed in common pleas court where either party resides. If the parties are married, it would go to a court with jurisdiction over an action for division, dissolution, annulment, or separation, or where such action is already pending. If a party is seeking protection for minor children and a court has already issued an order regarding that child, the proper court is the court that has already issued the order.

The court may issue an ex parte order upon petition within one day of receiving the petition; a full hearing then must be held within ten days. If immediate relief is not requested, a full hearing must be held within 28 days.

A protection order may be issued for up to five years, and may be renewed or altered upon motion of either party. R.C. 2932.05 governs the terms and conditions.

Sec. 2932.05 Terms and Conditions of Protection Order. This section comprehensively provides the terms and conditions a court may order in a protection order. The former law did not make these terms clear, and many terms or conditions of protection orders did not have statutory support.

The terms in division (A) are general terms and may be imposed in any case. Several of the terms only apply if the person being protected and the respondent are related or cohabitating.

The terms in division (B) relate to emergency orders relating to minor children. This section is designed to allow a court to issue an immediate order to protect the person and children; but, if another court has issued an order regarding the children, this emergency order is designed to protect the parties while the court of competent jurisdiction can consider the matter more fully. The courts under this section are required to communicate with each other to protect the parties.

The key aspect of this section is clear delineation over conflicting orders. Temporary emergency orders regarding children supersede previously issued orders allocating parental rights and responsibilities. Division (C) also makes clear that stay away orders issued under a criminal case supersede any other order to the contrary.

CHAPTER 2942 – SPECIFICATIONS

Chapter 2942 is a new chapter that is intended to redraft almost all of the specifications as they currently exist into uniform prohibitions containing elements of a crime and sentencing provisions that are the functional equivalent of the former specifications. Prior to this redraft, elements for specifications were found in R.C. Chapter 2941 or sporadically elsewhere, the sentence for the specification was found in R.C. Chapter 2929, and the substantive offense for which the specification attaches merely referenced the specification without providing elements or sentencing provisions.

First, only specifications that added additional mandatory time to sentences were retained as "specifications" in this Chapter. If a former specification only altered the sentence for a substantive offense without adding additional mandatory time to it, the specification was moved directly into the substantive offense as an enhancement penalty. This occurs three times: the Major Drug Offender ("MDO") specification is incorporated into the applicable R.C. Chapter 2925 sections; the Furtherance of Human Trafficking specification is incorporated into each substantive offense as an additional element that the prosecution can prove to enhance the penalty; the Attempted Rape specifications are merged into R.C. 2907.01 – Aggravated Rape.

Second, the specifications retained as specifications in this chapter are drafted in a manner that makes clear the elements of the specification, defenses, if any, and the penalty associated with the specification. The "general form" of the specification will remain in R.C. 2941.141 to serve as a guide for how the specification should be charged in the indictment.

Third, the specifications were drafted in a manner to require an additional element to be added to the substantive offense to justify the additional sentence. For example, a gun specification is prohibited from being added to a crime that requires proof of an actual firearm to commit the offense, such as carrying a concealed handgun. Because possession of the firearm is punished as an essential element of the substantive offense, the gun spec does not add an additional element to the underlying offense, and therefore the additional sentence is not justified. The Multiple OVI specification was also limited to only apply to third degree felony OVI offenses, to avoid the problem of duplicity and double charging, where the proof for the OVI is the same for, and not in addition, to the proof needed for the substantive offense.

Finally, the repeat violent offender specification is slightly changed for clarity and to alter the sentencing for the specification. The court may add an additional one to ten years for the specification only when the court elects to sentence the offender to the maximum prison term for the underlying offense; if the court does not impose the maximum, the RVO spec authorizes an additional one, two, or three years.

CHAPTER 2950 REGISTRATION OFFENSES

Due to the complexity of the sex offender registry, the notes for this section will depart from their typical section-by-section breakdown and instead focus on the changes to the registry. The Committee chose to retain the existing structure and specifics of the registry except for the explicit changes summarized herein.

The sex offender registry changes were expressly designed to focus only on sex offenses and to maintain the effectiveness of the registry for the worst sex offenders, to protect the public. To that end, although the registry remains offense-based as a starting point, judges were empowered to a limited degree to alter classifications or allow deregistration after a period of time to those who conclusively demonstrated they were no longer a risk to reoffend. This theme of greater discretion to the judges and prioritizing the most dangerous offenders on the registry is designed to prioritize registration for those who remain a danger to the community and not to dilute the registry with offenders who no longer remain a danger to reoffend.

Finally, due to technological advancements, the registry is designed to ease the burdens on Ohio's sheriffs who must maintain the registry and advance the capabilities of the registry into the twenty-first century.

Summary

As the following points will illustrate, the proposed system is a mix of judicial discretion for lower-tiered offenses, with mandatory lifetime registration for the most serious offenses. For Tier III offenders, there will be no judicial discretion, and the offender will be required to register for life, with in person registration every 90 days, as in current law. For Tier II and I offenders, a hearing on registration would occur around 60 days before the offender is due to be released from prison or immediately after sentencing if the offender is sentenced to community control. For Tier II offenders, there is a presumption in favor of registration for 25 years, which the defendant can overcome by clear and convincing evidence that the offender is not a danger to the community or likely to reoffend. A Tier I offender is subject to registration if the judge finds that the offender is not a danger to the community or likely to reoffend. All Tier II or I offenders will be subject to a standardized, objective risk-based assessment, which would form the basis for allowing an offender to avoid the registration requirement.

In addition, similar to judicial release, offenders would have a limited opportunity to apply to be released from the registration requirement or downgraded to a lesser tier. For Tier III offenders, they may apply after 15 years of registration. For Tier II offenders, the request may be filed after 10 years and for Tier I, after 5. When a judge receives a request for deregistration, the court may take one of three options:

1. Deny the request without a hearing
2. Order a risk assessment of the offender; subsequently deny the request without a hearing after receiving the results of the risk assessment.
3. Order a risk assessment of the offender; grant a hearing after receiving the results of the risk assessment; appoint counsel if the defendant is indigent.

Offenders may only receive two hearings, with the second hearing no earlier than 5 years after the initial hearing. Victim notification will occur if the court grants a hearing.

I. Retain Tier-Based classification system and reclassify Tiers

For simplicity and continued consistency, the offense-based Tier system should be retained. Tier I is annual registration for 15 years; Tier II is semi-annual registration for 25 years, and Tier III is quarterly registration for life. However, the Tiers of classification should be changed as follows:

Tier I	Tier II	Tier III
2907.04 Unlawful Sexual Conduct with a Minor **(from Tier II)**	2907.03 Sexual battery **(from Tier III)**	2907.01 Aggravated Rape **(rape of children)**
2907.05(A)(1), (2), (3), or (5) Gross Sexual Imposition	2907.05(A)(4) Gross Sexual Imposition of a Victim under 13	2905.01(A)(4) Kidnapping a Minor to Engage in Sexual Activity
2907.06 Sexual Imposition	2907.21 Compelling Prostitution	2903.01 Agg. Murder with Sexual Motivation
2907.07 Importuning	2907.322 Pandering Sexually-Oriented Material involving a Minor	2903.02 Murder with Sexual Motivation
2907.08 Voyeurism	2907.323(A)(1) and (2) Illegal Use of Minor in Nudity-Oriented Material	Any offense with a Sexually Violent Predator Specification
2907.323(A)(3) and (4) Illegal Use of Minor in Nudity-Oriented Material	2903.03 Voluntary Manslaughter with Sexual Motivation	Any sexual offense occurring after an offender has been classified a Tier II or III offender
2903.22(A)(3) Menacing by Stalking with Sexual Motivation	2903.11 Felonious Assault with Sexual Motivation **(from Tier III)**	
2905.03(B) Unlawful Restrain	2905.01(A)(1), (2), (3), or (5)	

with Sexual Motivation	Kidnapping with Sexual Motivation	
2905.05(B) Child Enticement with Sexual Motivation	2905.02(B) Abduction with Sexual Motivation	
Attempt, Conspiracy, or Complicity in a Tier II offense**(from Tier II)**	Any sexual offense occurring after an offender has been classified as a Tier I offender	
	Attempt, Conspiracy, or Complicity in a Tier III offense **(from Tier III)**	
	2907.02 Rape (**excludes rape of a child, from Tier III)**	

A. **Tier III offenses will remain mandatory registration for life**

A Tier III offender will be notified at the sentencing hearing of the mandatory registration for life, with in-person notification every 90 days. The offender will be able to petition to be removed from the registration requirement after 15 years.

B. **Tier II offenses**

A Tier II offender will have a hearing on registration which will occur between 60-15 days prior to the offender's release from jail or prison, or immediately after sentencing if the offender is sentenced to probation. There will be a presumption in favor of registration. An offender may overcome that presumption by clear and convincing evidence that the offender is not likely to reoffend or a danger to the community. If the defendant overcomes the presumption in favor of Tier II registration, the court may impose a Tier I registration duty or no registration duty; however, if the victim of the Tier II offense was a minor, the court shall impose at least a Tier I registration duty. A risk assessment will be conducted on the defendant prior to the hearing, and the defendant will have the right to appointed counsel at this hearing.

C. **Tier I offenses**

A Tier I offender will have a hearing on registration which will occur between 60-15 days prior to the offender's release from jail or prison, or immediately after sentencing if the offender is sentenced to probation. There will be no presumption of registration. The judge may order the offender to register as a Tier I offender, or the court may allow the offender to avoid registration if it finds that the offender is not likely to reoffend and is not a danger to the community. A risk assessment will be conducted on the defendant prior to the hearing, and the defendant will have the right to appointed counsel at this hearing.

II. Period of Registration

The period of registration will begin when the offender is released from jail or prison on the offense which gave rise to registration, or on the day of sentencing if the offender is sentenced to probation. Upon release from jail or prison, or at the time of sentencing to probation, ODRC, the

sheriff, or the court shall notify the offender of the beginning and end date of the period of registration. Once begun, the period of registration does not toll.

III. Notification of Duty to Register at Plea

The offender shall be notified of the potential registration requirements, registration procedure, and potential penalties in a meaningful and substantial way during a plea change colloquy. This will replace the need to read a form to the offender on the record, while also serving to safeguard the offender's rights to a knowing, intelligent, and voluntary plea. Failure to substantially notify the offender of the registration requirements, procedure, and penalties would be grounds to withdraw a plea in a manner consistent with current law. The offender and his counsel will review and sign the registration form prior to the hearing.

IV. Remove Residency Restrictions

This proposal would remove residency restrictions prohibiting offenders from living in certain locations. Empirical data shows there is no evidence to support that residency restrictions impact public safety; conversely, restrictions place significant burdens on offender's ability to establish a support network and housing in order to become a productive member of society.

V. Community Notification

For Tier III offenses, community notification would occur at the time of initial registrations. Updates to the community notification would be sent annually or upon the offender's change of address.

VI. Petition to Deregister

A. All offenders will be permitted a limited pathway to petition the court to remove their duty to register or lower their tier. After a set period of time, offenders could petition the sentencing court to remove their duty to register. For Tier III offenders, a petition to deregister could be filed after 15 years of registration. For Tier II offenders, a petition could be filed after 10 years, and for Tier I, after 5. Upon the filing of the petition, the court could take any of three actions:
    1. Deny the request without a hearing
    2. Order a risk assessment of the offender; subsequently deny the request without a hearing after receiving the results of the risk assessment.
    3. Order a risk assessment of the offender; grant a hearing after receiving the results of the risk assessment; appoint counsel if the defendant is indigent.

    If the court denies the request without a hearing, the offender may not reapply for one year. If the court grants a hearing, the court shall conduct a risk assessment and appoint counsel for the defendant if the defendant is indigent. There will be victim notification as to the time and place of the hearing. At the hearing, the court may terminate the offender's duty to register or lower the tier to limit the amount of time the offender is required to register, if the court finds that the

offender is not a danger to the community or likely to reoffend. If the court denies the petition to deregister after a hearing, the offender will only be permitted to reapply one additional time, after five more years.

B. For offenders classified under the current law, a petition to deregister may be filed after the same waiting period contained above (after 15 years of registration for Tier III, 10 years of registration for Tier II, and 5 years for Tier I.) For "old law" pre-SB 10 registrants, they could petition for deregistration after 15 years of registration.

VII. Risk Assessment

This proposal would give rulemaking authority to the Attorney General to certify minimum standards for the objective risk-based assessment, to ensure uniformity and consistency across the State. Risk assessment tools have become increasingly reliable, effective, and cost-effective. A model discussed at length during the Sentencing Commission was an assessment that the court's probation officers were trained to administer, at reasonable cost. These risk-based assessments must meet the minimum standards set forth by the Attorney General's office, and an offender would have the option to pay for a private assessment to supplement the assessment done by the court, so long as the private assessment met all criteria specified by the Attorney General's office.

VIII. Centralized System

This proposal calls for the implementation of a state-wide system and database of offenders to replace the patchwork county-by-county system that has significant flaws and gaps. The current county-by-county system builds artificial walls to information between jurisdictions and adds a high administrative burden. The current system does not effectively record when an offender's duty to register has expired. If the offender lives in one county but works in another, the offender must register in both counties, but the information contained in those dual registrations is not shared between county systems. A single, statewide database that all sheriffs can access would solve the administrative burden our current system contains. An offender would still be required to provide information relative to the person's residence, place of employment, and school, but the offender could provide all that information in one county, to one sheriff. The system would then update that information to all of the relevant counties. The system would also allow offenders to update information other than a change of address electronically, instead of in person.

IX. Penalties for Failure to Register

At its core, failing to register is a technical violation, and the punishment of the violations should match the character. Therefore, a mens rea of knowingly should be added to the crime of failure to register. The penalty should be a M1 for the first offense, as a wake-up call to the offender. Subsequent violations will be F5s.

X. Miscellaneous

A. Eliminate Dual Registration Requirements

The period of registration should be the registration requirement that runs the longest, and dual registration requirements should be eliminated.

B. Eliminate Unconstitutional Law

Currently, due to Supreme Court opinions, there are several codified sections that have been declared unconstitutional, specifically the Public Registry Qualified Juvenile Offender Registrant (PRQJOR) requirement, in 2950.01 and 2152.86 (*In re C.P.).* All unconstitutional provisions should be struck from the code.

C. Hearing Requirements

The court will retain continuing jurisdiction to hold registration hearings if, for some reason, a hearing on registration is not held within the 60-15 day range prior to release. ODRC will notify the court of the offender's release date so that a hearing can be timely scheduled. While in-person hearings are preferred, a video hearing can be held at the court's discretion.

CHAPTER 2971 SEXUALLY VIOLENT PREDATORS

The changes to this chapter were designed with one goal in mind – refocus this chapter on its core mission – to provide serious sentences and a lifetime of supervision to the worst form of sex offenders – sexually violent predators. Under former law, this Chapter had morphed beyond its intended purpose to encompass a range of sentences for offenses that were not sexually violent. Those lengthy sentences were better addressed in the specific sections (such as aggravated rape's life sentence). Therefore, this Chapter only applies to persons who have been found guilty of the sexually violent predator specification.

In addition, this chapter provides for life sentences and a lifetime of monitoring for all offenders sentenced under this chapter. The release mechanism has been simplified from the former version. Rather than providing for a bifurcated release mechanism between the parole board and the sentencing court, this proposal simplifies the release. The offender is released under this chapter by the parole board, but the sentencing court retains additional punishments to impose if an offender commits a new crime for the rest of the person's life.

Sec. 2971.01 Applicability of the Chapter. This chapter only applies when a person has been found guilty of a sexually violent predator specification, R.C. 2942.15, and an underlying sexually violent offense.

Sec. 2971.02 Specification to be decided by Court or Jury. This section allow a person charged with a sexually violent predator specification to allow the court or jury to decide the specification. Since evidence of the specification would generally be inadmissible in trial on the underlying offense, this section mandates bifurcation – the specification is decided only after the finding of guilt on the underlying qualifying offense. If a jury is the trier of fact, the same jury will decide the specification; if the defendant elects the court to determine the specification, that

hearing will take place after a finding of guilt on the underlying offense. A person may not waive that determination and plead guilty to the specification unless the person, in writing, was advised that the specification carries a mandatory life sentence and lifetime monitoring.

Sec. 2971.03 Sentencing Sexually Violent Predator. This section governs the sentences imposed on a sexually violent predator. Chapter 2929 and Chapter 2967 do not apply at all to a person sentenced under this section, except for fines and restitution.

A person eighteen or over sentenced as a sexually violent predator shall be sentenced as follows:

1. For aggravated Murder or Murder with specification, life without parole.

2. For Aggravated Rape with Specification, life without parole or life with parole after twenty-five or thirty years.

3. For any other sexually violent offense, life with parole eligibility after ten years.

Mindful of constitutional concerns of juvenile life sentences, a person under eighteen found guilty of a sexually violent predator shall be sentenced as follows:

1. For aggravated murder or murder, life with parole eligibility after twenty-five or thirty years

2. For any other sexually violent offense, life with parole after ten years.

Sec. 2971.04 Release of Offender on Parole, Supervision. A person is eligible for release on parole at the specified time under R.C. 2971.03, above. The parole board shall determine parole according to the board's established procedures, with one additional factor – the board must expressly consider whether the offender is a substantial risk to commit a sexually-oriented offense in the future.

An offender released on parole under this section shall be supervised for at least five years, and may be recommitted to prison for any length of time for any parole violation. After the five year minimum supervision, the Adult Parole Authority may switch the offender to a lesser period of supervision, monitored time. By switching an offender to monitored time, the APA is removing the offender from active supervision but continuing to monitor their criminal history for the rest of their life. A person on monitored time will remain on monitored time for life. If the person commits a new offense while on monitored time, R.C. 2971.05, below, applies.

Sec. 2971.05 Revocation of Release. A person on monitored time under R.C. 2971.04, above, is subject to return to prison if the person commits a new sexually-oriented or violent offense. If the person commits a sexually oriented offense, the sentencing court on the new offense shall reimpose the life sentence in addition to the sentence for the new offense. If the life sentence is reimposed, the offender shall continue to serve the life sentence.

If the new crime the offender committed was a sexually violent offense, the offender is never again eligible for parole and will not be released. If the offender committed a sexually-oriented offense that is not sexually violent, the person may be eligible for parole after the person has served their sentence for the new offense plus five additional years.

If the offense was a non-sexually-oriented offense of violence, the sentencing court on the new felony may sentence the offender to up to an additional five year definite minimum sentence, to be served prior to and consecutively to the indeterminate sentence imposed on the new offense.

MISCELLANEOUS SECTIONS

Sec. 2953.31 and 2953.32 - Sections dealing with sealing of records. A couple changes are made to the relevant sealing of records sections. First, under R.C. 2953.31, an eligible offender could have his or her records sealed as long as that offender has not had more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony and one misdemeanor. Under former R.C. 2953.31, only minor misdemeanors did not count as a conviction for purposes of this section. Language is added to also add fourth degree misdemeanors to the list of penalties that do not count as a conviction for purposes of this section.

Additionally, language is added to clarify the procedure used to seal records by ensuring BCI and other appropriate agencies receive copies of all orders to seal records. Furthermore, language is added that would automatically seal the records of a person whose conviction or criminal offense was pardoned by the Governor.

Sec. 2953.50 Sealing of Drug Records. This section was designed to extend an act of mercy to those charged with low-level drug offenses who have been able to demonstrate a sustained period of sobriety. It has two parts, prospective and retrospective. Prospectively, any person found guilty of a low-level drug possession charge is entitled to automatic sealing of records if the person can stay drug free and free of criminal charges for a year after the person's final discharge. In addition, retrospectively, this section allows for a person who is otherwise ineligible due to too many convictions to petition to seal specific drug possession charges from the person's past. The prosecutor can object, and the person must show a sustained and prolonged period of being drug free and a legitimate need to have the records sealed. This sealing is discretionary to the court and is only permissible for fourth and fifth degree felony drug charges.

Sec. 2953.52 Sealing of Records – Dismissal/ Not Guilty/No Bill. The changes with this section deal with allowing a person to seal their records prior to the expiration of the statute of limitations for a dismissal. In many cases, a dismissal is final once entered, and the prosecutor has no intention of refiling the charges. In those circumstances, a person will be able to ask the court to seal the records any time after the dismissal is entered. If the prosecutor objects due to a reasonable intention to refile, the court may order a limited sealing, which removes any

publically available reference to the case but allows the prosecutor and law enforcement to continue to investigate. If the case is refiled, the limited sealing order is lifted.

Sec. 2953.522. Sealing of Arrest Records. This section fills in a gap in current law when a person is arrested, but never charged. Several background check companies report arrests on their records, and a person who is arrested has no recourse to seal that record when the person has never been charged. This section remedies that injustice by allowing a pathway to sealing an arrest record after a year has passed with no charges. The sealing is discretionary to the court.

Sec. 2961.01. Forfeiture of rights and privileges by convicted felons. This former section precluded, among other things, certain people with felony convictions from circulating petitions and registering others to vote. Language is added to remove this restriction to allow convicted felons that have satisfied their sentences to more fully participate in the democratic process—something that further enhances their rehabilitation.

Sec. 2969.02. Payment of contract proceeds into recovery of offender's profits fund. R.C. 2969.02 provides for Ohio's version of the "Son of Sam" law, which are laws intended to preclude an offender from profiting from the experiences of his or her offense that is later turned into a book, movie, etc. The U.S. Supreme Court in *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105 (1901) declared unconstitutional a New York law that was substantially similar to R.C. 2969.02 due to its overbreadth and First Amendment concerns over regulating content-based speech (law received strict scrutiny, but court held that it had neither a compelling interest nor narrowly tailored means). The section is restructured so that instead of the government automatically taking a lien on the offender's proceeds from the offender's book, movie, etc. The section merely reopens the statute of limitations for a brief period where a victim that had not previously brought any tort claim against the offender could file a civil suit for tort claims involving personal injury, death, or property loss as a result of the offense.