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CHAPTER 606: GENERAL PROVISIONS; ADMINISTRATION AND ENFORCEMENT

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§ 606.01 DEFINITIONS.

As used in this code, unless otherwise expressly provided, or unless the context clearly indicates that a different meaning is intended:

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

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

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

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

(E) **SERIOUS PHYSICAL HARM TO PERSONS.** Any of the following:

(1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(2) Any physical harm which carries a substantial risk of death;

(3) Any physical harm which involves some permanent incapacity, whether partial or total, or which involves some temporary, substantial incapacity;

(4) Any physical harm which involves some permanent disfigurement or which involves some temporary, serious disfigurement;

(5) Any physical harm which involves acute pain of such duration as to result in substantial suffering or which involves any degree of prolonged or intractable pain;

(F) **SERIOUS PHYSICAL HARM TO PROPERTY.** Any physical harm to property which does either of the following:

(1) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;

(2) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time;

(G) **RISK.** A significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist;

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

(I) **OFFENSE OF VIOLENCE.** Any of the following:

(1) A violation of R.C. § 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.211, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2907.12, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2917.01, 2917.02, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, or a violation of §§ 636.02, 636.04, 636.05, 642.09, 648.01, 648.07 or 672.02 of this General Offenses Code;

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

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

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

(J) (1) **PROPERTY.** Any property, real or personal, tangible or intangible, and any interest or license in such property. **PROPERTY** includes, but is not limited to, cable television service, computer data, computer software, financial instruments associated with computers, and other documents associated with computers, or copies of the documents, whether in machine or human readable form. **FINANCIAL INSTRUMENTS ASSOCIATED WITH COMPUTERS** include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms,

marketable securities or any computer system representations of any of them.

(2) As used in this division and division (S) of this section, **CABLE TELEVISION SERVICE, COMPUTER, COMPUTER SOFTWARE, COMPUTER SYSTEM, COMPUTER NETWORK** and **DATA** have the same meaning as in § 642.01.

(K) **LAW ENFORCEMENT OFFICER.** Any of the following:

(1) A sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under R.C. § 3735.31(D), or state highway patrol trooper;

(2) An officer, agent or employee of the state or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority;

(3) The Mayor in his/her capacity as chief conservator of the peace within the municipality;

(4) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of such member's appointment or commission;

(5) A person lawfully called pursuant to R.C. § 311.07 to aid a sheriff in keeping the peace for the purposes and during the time when such person is called;

(6) A person appointed by the Mayor pursuant to R.C. § 737.10 as a special patrol trooper or officer during riot or emergency, for the purposes and during the time when such person is appointed;

(7) A member of the organized militia of the state or the Armed Forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or to protect against domestic violence;

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or the Municipal Prosecutor;

(9) An Ohio veteran's home police officer appointed under R.C. § 5907.02.

(10) A member of a police force employed by a regional transit authority under R.C. § 306.35(Y).

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

(M) **PUBLIC OFFICIAL.** Any elected or appointed officer or employee or agent of the state or the municipality, whether in a temporary or permanent capacity, and including without limitation, legislators, judges and law enforcement officers.

(N) **PUBLIC SERVANT.** Any of the following:

(1) Any public official;

(2) Any person performing ad hoc a governmental function, including without limitation a juror, member of a temporary commission, master, arbitrator, advisor or consultant;

(3) A person who is a candidate for public office, whether or not he/she is elected or appointed to the office for which he/she is a candidate. A person is a candidate for the purposes of this division if he/she has been nominated according to law for election or appointment to public office, or if he/she has filed a petition or petitions as required by

law to have his/her name placed on the ballot in a primary, general or special election, or if he/she campaigns as a write-in candidate in any primary, general or special election.

(O) **PARTY OFFICIAL.** Any person who holds an elective or appointive post in a political party in the United States or this state, by virtue of which he/she directs, conducts or participates in directing or conducting party affairs at any level of responsibility.

(P) **OFFICIAL PROCEEDING.** Any proceeding before a legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath and includes any proceeding before a referee, hearing examiner, commissioner, notary or other person taking testimony or a deposition in connection with an official proceeding.

(Q) **DETENTION.** Arrest, confinement in any vehicle subsequent to an arrest, confinement in any facility for custody of persons charged with or convicted of crime or alleged or found to be a delinquent child or unruly child, hospitalization, institutionalization, or confinement in any facility that is ordered pursuant to or under the authority of R.C. §§ 2945.37, 2945.371, 2945.38, 2945.39 or 2945.40; confinement in any vehicle for transportation to or from any such facility, detention for extradition or deportation, except as provided in this division, supervision by any employee of any such facility that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility or supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution other than release on parole or shock probation. For a person confined in a county jail who participates in a county jail industry program pursuant to R.C. § 5147.30, **DETENTION** includes time spent at an assigned work site and going to and from the work site. **DETENTION** does not include supervision of probation or parole. **DETENTION** does not include constraint incidental to release on bail unless the constraint incidental to release on bail consists of a period of confinement of the person in question in the person's home or in other premises specified by the court and unless, during the period of confinement, all of the following apply:

(1) The person is required to remain in his or her home or in the other premises for the period of the confinement, except for periods of time during which the person is at his or her place of employment or at other premises as authorized by the court;

(2) One of the following applies:

(a) The person is subject to monitoring by an electronic monitoring device as defined in R.C. § 2929.23;

(b) The person is required by the court to report periodically to a person designated by the court;

(c) The person is subject to monitoring by an electronic monitoring device and is required to report periodically to a person designated by the court.

(3) The person is subject to any other restrictions and requirements imposed by the court.

(R) **DETENTION FACILITY.** Any place used for the confinement of a person charged with or convicted of any crime or alleged or found to be a delinquent child or unruly child.

(S) **CONTRABAND.** Any property described in the following categories:

(1) Property that in and of itself is unlawful for a person to acquire or possess;

(2) Property that is not in and of itself unlawful for a person to acquire or possess, but that has been determined by a court of this state, in accordance with law, to be contraband because of its use in an unlawful activity or manner, of its nature, or of the circumstances of the person who acquires or possesses it;

(3) Property that is specifically stated to be contraband by a section of the Ohio Revised Code or by an ordinance, regulation or resolution;

(4) Property forfeitable pursuant to a section of the Ohio Revised Code, or an ordinance, regulation or resolution, including, but not limited to forfeitable firearms, dangerous ordnance and obscene materials;

(5) Any controlled substance as defined in § 624.01, or any device, paraphernalia, money as defined in R.C. § 1301.01 or other means of exchange that has been, is being or is intended to be used in an attempt or conspiracy to violate, or in a violation of, R.C. Chapter 2925 or 3719, or Chapter 624 of the General Offenses Code;

(6) Any gambling device, paraphernalia, money as defined in R.C. § 1301.01, or other means of exchange that has been, is being or is intended to be used in an attempt or conspiracy to violate, or in the violation of R.C. Chapter 2915 or Chapter 630 of the General Offenses Code;

(7) Any equipment, machine, device, apparatus, vehicle, vessel, container, liquid, or substance that has been, is being or is intended to be used in an attempt or conspiracy to violate, or in the violation of, any law of this state relating to alcohol or tobacco;

(8) Any personal property that has been, is being or is intended to be used in an attempt or conspiracy to commit, or in the commission of, any offense or in the transportation of the fruits of any offense;

(9) Any property that is acquired through the sale or other transfer of contraband or through the proceeds of contraband, other than by a court or a law enforcement agency acting within the scope of its duties;

(10) Any computer, computer system, computer network or computer software that is used in a conspiracy to commit, an attempt to commit or in the commission of any offense, if the owner of the computer, computer system, computer network or computer software is convicted of or pleads guilty to the offense in which it is used.

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

(U) ***ELECTRONIC MONITORING DEVICE.*** Has the same meaning as in R.C. § 2929.23. (R.C. §§ 2901.01, 2921.01) ('70 Code, § 606.01)

§ 606.02 CULPABLE MENTAL STATES.

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

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

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

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

respect to circumstances when, because of a substantial lapse from due care, he/she fails to perceive or avoid a risk that such circumstances may exist.

(E) When the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element. (R.C. § 2901.22) ('70 Code, § 606.02)

§ 606.03 CLASSIFICATION OF OFFENSES.

As used in this General Offenses Code:

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

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

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

(D) Any offense not specifically classified is a minor misdemeanor if the only penalty which may be imposed is a fine not exceeding **\$150.00**. (R.C. § 2901.02) ('70 Code, § 606.03)(Ord. 2010-108, passed 11-22-2010)

§ 606.04 OFFENSES DEFINED.

(A) No conduct constitutes a criminal offense against the municipality unless it is defined as an offense in this General Offenses Code or in any other ordinance or resolution, rule or regulation of the municipality.

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

(C) This section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment or decree. (R.C. § 2901.03) ('70 Code, § 606.04)

§ 606.05 RULE OF CONSTRUCTION.

(A) Sections of this General Offenses Code defining offenses or penalties shall be strictly construed against the municipality and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Ohio Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy and sure administration of justice. (R.C. § 2901.04) ('70 Code, § 606.05)

Statutory reference:

Burden of proof, see R.C. § 2901.05

§ 606.06 LIMITATION ON CRIMINAL PROSECUTIONS.

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

- (1) For a misdemeanor other than a minor misdemeanor, two years;

(2) For a minor misdemeanor, six months.

(B) If the period of limitation provided in division (A) of this section has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year after discovery of the offense either by an aggrieved person or by his/her legal representative who is not himself or herself a party to the offense.

(C) If the period of limitation provided in division (A) of this section has expired, prosecution shall be commenced for an offense involving misconduct in office by a public servant, as defined in § 606.01, at any time while the accused remains a public servant, or within two years thereafter.

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

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

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

(G) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused absented himself/ herself from the municipality or concealed his/her identity or whereabouts is prima-facie evidence of his/her purpose to avoid prosecution.

(H) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this state, even though the indictment, information or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal. (R.C. § 2901.13) ('70 Code, § 606.06)

Statutory reference:

Criminal law prosecution, see R.C. § 2901.11

§ 606.07 REQUIREMENTS FOR CRIMINAL LIABILITY.

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

(1) His/her liability is based on conduct which includes either a voluntary act or an omission to perform an act or duty which he/she is capable of performing;

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

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

(C) As used in this section:

(1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his/her control thereof for a sufficient time to have ended his/her possession.

(2) Reflexes, convulsions, body movements during unconsciousness or sleep and body movements that are not otherwise a product of the actor's volition are involuntary acts.

(3) **CULPABILITY.** Purpose, knowledge, recklessness or negligence, as defined in § 606.02, or any other specific mental state required by any section of this General Offenses Code. (R.C. § 2901.21) ('70 Code, § 606.07)

§ 606.08 ORGANIZATIONAL CRIMINAL LIABILITY.

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

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

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

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

(4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated or performed by the Board of Directors, trustees, partners or by a high managerial officer, agent or employee acting in behalf of the organization and within the scope of his/her office or employment.

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

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

(D) As used in this section, **ORGANIZATION** means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated association, estate, trust or other commercial or legal entity. **ORGANIZATION** does not include an entity organized as or by a governmental agency for the execution of a governmental program. (R.C. § 2901.23) ('70 Code, § 606.08)

§ 606.09 PERSONAL ACCOUNTABILITY FOR ORGANIZATIONAL CONDUCT.

(A) An officer, agent or employee of an organization may be prosecuted for an offense committed by such organization if he/she acts with the kind of culpability required for the commission of the offense and any of the following applies:

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

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

(B) When a person is convicted of an offense by reason of this section, he/she is subject to the same penalty as if he/she had acted in his/her own behalf. (R.C. § 2901.24) ('70 Code, § 606.09)

§ 606.10 FALSIFICATION.

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following apply:

(1) The statement is made in any official proceeding.

(2) The statement is made with purpose to incriminate another.

(3) The statement is made with purpose to mislead a public official in performing his/her official function.

(4) The statement is made with purpose to secure the payment of unemployment compensation, aid to dependent children, disability assistance as defined in R.C. § 9.66, or other benefits administered by a governmental agency or paid out of a public treasury.

(5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release or provider agreement.

(6) The statement is sworn or affirmed before a notary public or other person empowered to administer oaths.

(7) The statement is in writing on or in connection with a report or return which is required or authorized by law.

(8) The statement is in writing, and is made with purpose to induce another to extend credit to or employ the offender, or to confer any degree, diploma, certificate of attainment, award of excellence or honor on the offender, or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom such statement is directed relies upon it to his/her detriment.

(9) The statement is made with purpose to commit or facilitate the commission of a theft offense.

(10) The statement is knowingly made to a probate court in connection with any action, proceeding, or other matter within its jurisdiction, either orally or in a written document, including, but not limited to, an application, petition, complaint, or other pleading, or an inventory, account, or report.

(11) The statement is made on an application for a marriage license under R.C. § 3101.05.

(12) The statement is made, either orally or in writing, in connection with an application for legal representation submitted to a court, the state public defender, a county public defender, or a joint county public defender by a defendant in a criminal case for the purpose of a determination of indigency and eligibility for legal representation by the state public defender, a county defender, a joint county public defender, or court-appointed counsel.

(13) The statement is made in connection with the purchase of a firearm as defined in R.C. § 2923.11, and in connection with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about

the purchaser's identity.

(14) The statement is made on a fireworks purchaser form under R.C. § 3743.07(C), 3743.20(B), 3743.44(B), or 3743.45(A).

(15) The statement is made to a newspaper employee in the course of the employee's duty.

(16) The statement is made in the records of accounts of a licensed agricultural commodity handler that are required to be kept pursuant to R.C. § 926.11.

(17) The statement is made on a stamp or label on a tank car barrel, keg, can, or other vessel containing flaxseed or linseed oil.

(18) The statement is made on a form required by R.C. § 3751.03, certification on a form required under that section, a record upon which the information on a form required under that section is based, or other information or records required to be kept or submitted under R.C. Ch. 3751 and rules adopted under that chapter.

(19) The statement is made on a return, application, or permit under R.C. § 5728.02, 5728.03, or 5728.08.

(B) No person, in connection with the purchase of a firearm as defined in R.C. § 2923.11, shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) It is no defense to a charge under division (A)(4) of this section that the oath or affirmation was administered or taken in an irregular manner.

(D) Where contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

(E) (1) Whoever violates any provision of division (A)(1) through (8), (10), (11), (14) through (18) of this section is guilty of falsification, a misdemeanor of the first degree.

(2) Whoever violates division (A)(9) of this section is guilty of falsification of a theft offense. Except as otherwise provided in this division, falsification is a misdemeanor of the first degree. If the amount of the claim is \$500 or more, falsification in a theft offense is a felony and shall be prosecuted under appropriate state law.

(3) Whoever violates division (A)(12) of this section is guilty of falsification, a misdemeanor of the first degree. If as a result of the false statement that is the basis of the conviction under division (A)(12) of this section the offender received legal representation to which he or she was not entitled from the state public defender, a county public defender, a joint county public defender, or court-appointed counsel, the court shall order the offender to make restitution, in an amount equal to the value of the legal representation provided by the state public defender, county public defender, joint county public defender, or court-appointed counsel, to the public entity that paid for the legal representation.

(4) Whoever violates division (A)(13) or (B) of this section is guilty of falsification to purchase a firearm, a felony and shall be prosecuted under appropriate state law. (R.C. § 2921.13) ('70 Code, § 606.10) Penalty, see § 698.02

§ 606.11 COMPOUNDING A CRIME.

(A) No person shall knowingly demand, accept or agree to accept anything of value in consideration of abandoning or agreeing to abandon a pending criminal prosecution.

(B) It is an affirmative defense to a charge under this section when both of the following apply:

(1) The pending prosecution involved is for a violation of §§ 642.02, 642.14 or 642.15(B)(2) of this General Offenses Code or a felony offense under R.C. §§ 2913.02, 2913.11, 2913.21(B)(2) or 2913.47 of which the actor under this section was the victim.

(2) The thing of value demanded, accepted or agreed to be accepted in consideration of abandoning or agreeing to abandon the prosecution did not exceed an amount that the actor reasonably believed due him/her as restitution for the loss caused him/her by the offense.

(C) When a prosecuting witness abandons or agrees to abandon a prosecution under division (B) of this section, the abandonment or agreement in no way binds the municipality to abandoning the prosecution.

(D) Whoever violates this section is guilty of compounding a crime, a misdemeanor of the first degree. (R.C. § 2921.21) (70 Code, § 606.11) Penalty, see § 698.02

§ 606.12 FAILURE TO REPORT A CRIME OR DEATH.

(A) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no physician, limited practitioner, nurse or person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by him/her, any serious physical harm to persons that he/she knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers the body or acquires the first knowledge of the death of any person shall fail to report the death immediately to any physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, ambulance service, emergency squad or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred or knowledge concerning the death is obtained.

(D) No person shall fail to provide, upon request of the person to whom he/she has made a report required by division (C) of this section, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within his/her knowledge that may have a bearing on the investigation of the death.

(E) (1) As used in this division, **BURN INJURY** means any of the following:

- (a) Second or third degree burns;
- (b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air;
- (c) Any burn injury or wound that may result in death.

(2) No physician, nurse, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious, or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious, or criminal manner, shall fail to report the burn injury immediately to the local arson bureau, if there is such a bureau in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or (3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the state fire marshal. The report shall be made on a form provided by the state fire marshal.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports shall be immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding R.C. § 4731.22, the physician-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted pursuant to division (E) of this section.

(F) Division (A) or (D) of this section does not require disclosure of information, when any of the following applies:

(1) The information is privileged by reason of the relationship between attorney and client, doctor and patient, licensed psychologist or licensed school psychologist and client, clergyman or rabbi or minister or priest and any person communicating information confidentially to him/her for a religious counseling purpose in his/her professional character, or husband and wife.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under R.C. §§2739.04 or 2739.12.

(4) Disclosure of the information would amount

to disclosure by an ordained clergyman of an organized religious body confidential communication made to him/her in his/her capacity as such by a person seeking his/her aid or counsel.

(5) Disclosure would amount to revealing information acquired by the actor in the course of his/her duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or organization registered pursuant to R.C. § 3793.10.

(6) Disclosure would amount to revealing information acquired by the actor in the course of his/her duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of R.C. §§2907.02, 2907.05, or 2907.12. As used herein **COUNSELING SERVICES** include services provided in an informal setting by a person who, by education or experience, is competent to provide such services.

(G) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(H) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A) of this section is a misdemeanor of the fourth degree. Violation of division (B) of this section is a misdemeanor of the second degree.

(I) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(J) (1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree. (R.C. § 2921.22) ('70 Code, § 606.12) Penalty, see § 698.02

§ 606.13 FAILURE TO AID A LAW ENFORCEMENT OFFICER.

(A) No person shall negligently fail or refuse to aid a law enforcement officer when called upon for assistance in preventing or halting the commission of an offense or in apprehending or detaining an offender, when such aid can be given without a substantial risk of physical harm to the person giving it.

(B) Whoever violates this section is guilty of failure to aid a law enforcement officer, a minor misdemeanor. (R.C. § 2921.23) ('70 Code, § 606.13) Penalty, see § 698.02

§ 606.14 OBSTRUCTING OFFICIAL BUSINESS.

(A) No person, without privilege to do so and with purpose to prevent, obstruct or delay the performance by a public official of any authorized act within his/her official capacity, shall do any act which hampers or impedes a public official in the performance of his/her lawful duties.

(B) Whoever violates this section is guilty of obstructing official business, a misdemeanor of the second degree. (R.C. § 2921.31) ('70 Code, § 606.14) Penalty, see § 698.02

§ 606.15 OBSTRUCTING JUSTICE.

(A) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction or punishment of another for crime, or to assist another to benefit from the commission of a crime, shall do any of the following:

(1) Harbor or conceal such other person;

(2) Provide such other person with money, transportation, a weapon, a disguise or other means of avoiding discovery or apprehension;

(3) Warn such other person of impending discovery or apprehension;

(4) Destroy or conceal physical evidence of the crime, or induce any person to withhold testimony or information or to elude legal process summoning him/her to testify or supply evidence;

(5) Communicate false information to any person.

(B) Whoever violates this section is guilty of obstructing justice. If the crime committed by the person aided is a misdemeanor, obstructing justice is a misdemeanor of the same degree as the crime committed by the person aided. If the crime committed by the person aided is a felony, obstructing justice is a felony to be prosecuted under state law. (R.C. § 2921.32) ('70 Code, § 606.15) Penalty, see § 698.02

§ 606.16 RESISTING ARREST.

(A) No person, recklessly or by force, shall resist or interfere with a lawful arrest of himself/herself or another.

(B) Whoever violates this section is guilty of resisting arrest, a misdemeanor of the second degree. If the offense is committed by an offender who brandishes a deadly weapon or who attempts to gain control of a deadly weapon that is in the possession of a law enforcement officer, resisting arrest is a felony and shall be prosecuted under

appropriate state law.

(C) As used in this section, **DEADLY WEAPON** has the same meaning as in § 672.01 and R.C. § 2923.11. (R.C. § 2921.33) ('70 Code, § 606.16) Penalty, see § 698.02

§ 606.17 HAVING AN UNLAWFUL INTEREST IN A PUBLIC CONTRACT.

(A) No public official shall knowingly do any of the following.

(1) During his/her term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by him/her or by a legislative body, commission or board of which he/she was a member at the time of authorization, unless the contract was let by competitive bidding, or let by competitive bidding in which his/her is not the lowest and best bid;

(2) Have an interest in the profits or benefits of a public contract entered into by or for the use of the municipality or governmental agency or instrumentality with which he/she is connected;

(3) Have an interest in the profits or benefits of a public contract which is not let by competitive bidding if required by law and which involves more than \$150.

(B) In the absence of bribery or a purpose to defraud, a public official, member of his/her family or any of his/her business associates shall not be considered as having an interest in a public contract or the investment of public funds if all of the following apply:

(1) The interest of such person is limited to owning or controlling shares of the corporation, or being a creditor of the corporation or other organization which is the contractor on the public contract involved, or which is the issuer of the security in which public funds are invested;

(2) The shares owned or controlled by such person do not exceed 5% of the outstanding shares of the corporation, and the amount due such person as creditor does not exceed 5% of the total indebtedness of the corporation or other organization;

(3) Such person, prior to the time the public contract is entered into, files with the municipality an affidavit giving his/her exact status in connection with the corporation or other organization.

(C) This section does not apply to a public contract in which a public official, a member of his/her family or one of his/her business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the municipality;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the municipality as part of a continuing course of dealing established prior to the public official's becoming associated with the municipality;

(3) The treatment accorded the municipality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the municipality of the interest of the public official, member of his/her family or business associate, and the public official takes no part in the deliberations or decision of the municipality with respect to the public contract.

(D) It is not a violation of this section for a prosecuting attorney to appoint assistants and employees in accordance with R.C. §§ 309.06 and 2921.421, or for the chief legal officer of the municipality or an official

designated as prosecutor in the municipality to appoint assistants and employees in accordance with R.C. §§ 733.621 and 2921.421.

(E) As used in this section,

PUBLIC CONTRACT means any of the following:

(1) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the municipality or any agency or instrumentality of the municipality, including the employment of an individual by the municipality or any agency or instrumentality of the municipality;

(2) A contract for the design, construction, alteration, repair or maintenance of any public property.

CHIEF LEGAL OFFICER has the same meaning as in R.C. § 733.621.

(F) Whoever violates this section is guilty of having an unlawful interest in a public contract, a misdemeanor of the first degree. (R.C. § 2921.42) ('70 Code, § 606.17) Penalty, see § 698.02

§ 606.18 SOLICITING OR RECEIVING IMPROPER COMPENSATION.

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:

(1) Any compensation, other than as allowed by R.C. § 102.03(G), (H), and (I) or other provisions of law, to perform his/her official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform his/her official duties.

(B) No public servant for his/her own personal or business use and no person for his/her own personal or business use or for the personal or business use of a public servant or party official, shall solicit or accept anything of value in consideration of either of the following:

(1) Appointing or securing; maintaining or renewing the appointment of any person to any public office, employment or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to his/her compensation, duties, placement, location, promotion, or other material aspects of his/her employment.

(C) No person for the benefit of a political party, campaign committee, legislative campaign fund, or political action committee shall coerce any contribution in consideration of either of the following:

(1) Appointing or securing, maintaining or renewing the appointment of any person to any public office, employment or agency;

(2) Preferring, or maintaining the status of, any public employee with respect to his/her compensation, duties, placement, location promotion or other material aspects of his/her employment.

(D) Whoever violates this section is guilty of soliciting improper compensation, a misdemeanor of the first degree.

(E) A public servant who is convicted of a violation of this section is disqualified from holding public office,

employment or position of trust in this municipality for a period of seven years from the date of conviction.

(F) Divisions (A), (B) and (C) of this section do not prohibit any person from making voluntary contributions to a political party, campaign committee, legislative campaign fund, or political action committee or prohibit a political party, campaign committee, legislative campaign fund, or political action committee from accepting voluntary contributions. (R.C. § 2921.43) ('70 Code, § 606.18) Penalty, see § 698.02

§ 606.19 DERELICTION OF DUTY.

(A) No law enforcement officer shall negligently do any of the following:

- (1) Fail to serve a lawful warrant without delay;
- (2) Fail to prevent or halt the commission of an offense or to apprehend an offender, when it is in his/her power to do so alone or with available assistance.

(B) No law enforcement, ministerial or judicial officer shall negligently fail to perform a lawful duty in a criminal case or proceeding.

(C) No officer, having charge of a detention facility, shall negligently do any of the following:

- (1) Allow the detention facility to become littered or unsanitary;
- (2) Fail to provide persons confined in the detention facility with adequate food, clothing, bedding, shelter and medical attention;
- (3) Fail to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another;
- (4) Allow a prisoner to escape;
- (5) Fail to observe any lawful and reasonable regulation for the management of the detention facility.

(D) No public official of the municipality shall recklessly create a deficiency, incur a liability or expend a greater sum than is appropriated by Council for the use in any one year of the department or agency of the municipality with which the public official is connected.

(E) No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to his/her office, or recklessly do any act expressly forbidden by law with respect to his/her office.

(F) Whoever violates any of the provisions of this section is guilty of dereliction of duty, a misdemeanor of the second degree. (R.C. § 2921.44) ('70 Code, § 606.19) Penalty, see § 698.02

§ 606.20 INTERFERING WITH CIVIL RIGHTS.

(A) No public servant, under color of his/her office, employment or authority, shall knowingly deprive or conspire or attempt to deprive, any person of a constitutional or statutory right or a right created by ordinance, resolution or regulation.

(B) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree. (R.C. § 2921.45) ('70 Code, § 606.20) Penalty, see § 698.02

§ 606.21 ATTEMPT.

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

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

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

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

(E) Whoever violates this section is guilty of an attempt to commit an offense. An attempt to commit any misdemeanor is a misdemeanor of the next lesser degree than the misdemeanor attempted. In the case of an attempt to commit an offense other than a violation of R.C. Chapter 3734 that is not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony under the Ohio Revised Code, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. An attempt to commit a minor misdemeanor or to engage in a conspiracy is not an offense under this section. (R.C. § 2923.02) ('70 Code, § 606.21) Penalty, see § 698.02

§ 606.22 COMPLICITY.

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

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

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

(C) No person shall be convicted of complicity under this section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of § 606.21

(D) If an alleged accomplice of the defendant testifies against the defendant in a case in which the defendant is charged with complicity in the commission of or an attempt to commit an offense, an attempt to commit an offense or an offense, the court when it charges the jury, shall state substantially the following:

"The testimony of an accomplice does not become inadmissible because of his/her complicity, moral turpitude or self-interest, but the admitted or claimed complicity of a witness may affect his/her credibility and make his/her testimony subject to grave suspicion, and require that it be weighed with great caution.

It is for you, as jurors, in the light of all the facts presented to you from the witness stand, to evaluate such

testimony and to determine its quality and worth or its lack of quality and worth."

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

(F) Whoever violates this section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he/she were a principal offender. A charge of complicity may be stated in terms of this section, or in terms of the principal offense. (R.C. § 2923.03) ('70 Code, § 606.22) Penalty, see § 698.02

§ 606.23 DETENTION OF SHOPLIFTERS, DISORDERLY PERSONS AND THIEVES; ARREST WITHOUT WARRANTY.

(A) A merchant, or his/her employee or agent, who has probable cause to believe that items offered for sale by a mercantile establishment have been unlawfully taken by a person, may, for the purposes set forth in division (C) of this section, detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity.

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

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

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

(C) An officer, agent or employee of a library, museum or archival institution pursuant to division (B) of this section or a merchant or his/her employee or agent pursuant to division (A) of this section may detain another person for any of the following purposes:

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

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

(3) To obtain a warrant of arrest.

(D) The officer, agent or employee of the library, museum or archival institution, or the merchant or his/her employee or agent acting under divisions (A) or (B) of this section, shall not search the person, search or seize any property belonging to the person detained without the person's consent, or use undue restraint upon the person detained.

(E) Any peace officer may arrest without a warrant any person that he/she has probable cause to believe has committed any act described in division (B)(1) or (2) of this section or that he/she has probable cause to believe has committed an unlawful taking in a mercantile establishment. An arrest under this subsection shall be made within a reasonable time after the commission of the act or unlawful taking.

(F) As used in this section:

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

(2) **MUSEUM.** Any public or private nonprofit institution that is permanently organized for primarily educational or aesthetic purposes, owns or borrows objects or items of public interest, and cares for and exhibits to the public the objects or items. (R.C. § 2935.041) ('70 Code, § 606.23)

Statutory reference:

Arrest without warrant for misdemeanor, see R.C. § 2935.03

Procedure on affidavit or complaint; withdrawal of unexecuted warrants, see R.C. § 2935.10

§ 606.24 DISPOSITION OF PROPERTY HELD BY POLICE DIVISION.

(A) (1) Any property, other than contraband that is subject to the provisions of R.C. §§ 2933.43, other than property that is subject to R.C. § 3719.141, and other than property that has been lawfully seized in relation to a violation of R.C. § 2923.32, that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that is in the custody of a law enforcement agency, shall be kept safely pending the time it no longer is needed as evidence, and shall be disposed or pursuant to this section. Each law enforcement agency that has custody of any property that is subject to this section shall adopt a written internal control policy that addresses the keeping of detailed records as to the amount of property taken in by the agency, that addresses the agency's disposition of the property under this section, that provides for the keeping of detailed records of the disposition of the property, and that provides for the keeping of detailed financial records of the amount and disposition of any proceeds of a sale of the property under division (D)(8) of this section and of the general types of expenditures made out of the proceeds retained by the agency and the specific amount expended on each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. A written internal control policy adopted under this division is a public record open for inspection under R.C. § 149.43.

(2) (a) Every law enforcement agency that has any such lost, abandoned, stolen, seized or forfeited property in its custody shall comply with its internal control policy adopted under this division relative to the property. Each agency that has any such property in its custody, except for property to be disposed of under division (D)(4) of this section, shall maintain an accurate record, in accordance with its internal control policy, of each item of the property. The record shall include the date on which each item of property came into the agency's custody, the manner in which it was disposed of, the date of its disposition, the name of the person who received the property if it was not destroyed, and all other information required by the agency's internal control policy; however, the record shall not identify or enable the identification of the individual officer who seized any item of property. The record of any property that no longer is needed as evidence, and all other financial records of the amount and disposition of any proceeds of a sale under division (D)(8) of this section and of the general types of expenditures made out of the proceeds retained by the agency and the specific amount of each general type of expenditure, shall be open to public inspection during the agency's regular business hours.

Each law enforcement agency that during any calendar year has any such seized or forfeited property in its custody shall prepare a report covering the calendar year that cumulates all of the information contained in all of the records kept by the agency pursuant to this division for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the Attorney General. Each such report so received by the Attorney General is a public record open for inspection under R.C. § 149.43. The Attorney General shall make copies of each such report so received, and, no, later than the 15th day of April in the calendar year in which the reports were received, shall send a copy of each such report to the Office of the President of the Senate and the Office of the Speaker of the House of Representatives.

(b) Each law enforcement agency that receives in any calendar year any proceeds of a sale under division (D)(8) of this section shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (D)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the Attorney General. Each such report so received by the Attorney General is a public record open for inspection under R.C. § 149.43. The Attorney General shall make copies of each such report so received, and, no later than the 15th day of April in the calendar year in which the reports were received, shall send a copy of each such report to the Office of the President of the Senate and the Office of the Speaker of the House of Representatives.

(B) A law enforcement agency that has property in its possession that is required to be disposed of pursuant to this section shall make a reasonable effort to locate the persons entitled to possession of the property in its custody, to notify them of when and where it may be claimed and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to custody, it is sufficient notice to advertise in a newspaper of general circulation in the county, briefly describing the nature of the property in custody, and inviting persons to view and establish their right to it.

(C) A person loses any right he/she may have to the possession of property if either of the following apply:

(1) The property was the subject, or was used in a conspiracy or attempt to commit, or in the commission, of an offense other than a traffic offense, and such person is a conspirator, accomplice or offender with respect to the offense;

(2) When a court determines that the property should be forfeited because, in light of the nature of the property or the circumstances of such person, it is unlawful for the person to acquire or possess the property.

(D) Unclaimed or forfeited property in the custody of a law enforcement agency other than contraband that is subject to the provisions of Ohio R.C. 2933.43 and other than property that has been lawfully seized in relation to a violation of R.C. § 2923.42, shall be disposed of on application to and order of any court of record that has territorial jurisdiction over the municipality as follows:

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

(2) Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use, or as museum pieces or collectors' items, may be sold at public auction pursuant to division (D)(8) of this section. Other firearms and dangerous ordnance shall be destroyed by the agency or shall be sent to the Bureau of Criminal Identification and Investigation for destruction by the Bureau.

(3) Obscene material shall be destroyed.

(4) Beer, intoxicating liquor or alcohol seized from a person who is not the holder of a permit issued under R.C. Chapters 4301 and 4303, or is an offender, and forfeited to the State under R.C. §§ 4301.45 or 4301.53 shall be sold by the Department of Liquor Control, if the Department determines that the beer, intoxicating liquor or alcohol is fit for sale. If any tax imposed under R.C. Title XLIII has not been paid in relation to the beer, intoxicating liquor or alcohol, the proceeds of the sale shall first be used to pay the tax. All other money collected under division (D)(4) of this section shall be paid into the State Treasury. Any such beer, intoxicating liquor or alcohol that the Department determines to be unfit for sale shall be destroyed.

(5) Money received by an inmate of a correctional institution from an unauthorized source or in an unauthorized manner shall be returned to the sender, if known, or deposited in the inmates' industrial and entertainment fund if the sender is not known.

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

(7) (a) Computers, computer networks, computer systems and computer software suitable for police work may be given to a law enforcement agency for that purpose, other computers, computer networks, computer systems and computer software shall be disposed of pursuant to division (D)(8) of this section.

(b) As used in this section, **COMPUTERS**, **COMPUTER NETWORKS**, **COMPUTER SYSTEMS** and **COMPUTER SOFTWARE** have the same meaning as in R.C. § 2913.01

(8) Other unclaimed or forfeited property, with the approval of the court, may be used by the law enforcement agency that has possession of it. If the other unclaimed or forfeited property is not used by the law enforcement agency, it may be sold at public auction, or disposed of in another manner that the court considers proper in the circumstances.

(E) (1) If the property was in the possession of the law enforcement agency in relation to a delinquent child proceeding in a juvenile court, 10% of the proceeds from the property disposed of pursuant to this section shall be applied to one or more alcohol and drug addiction treatment programs that are certified by the Department of Alcohol and Drug Addiction Services under R.C. § 3793.06 and that are specified by the court in its order issued under division (D) of this section. A Juvenile Court shall not specify an alcohol or drug addiction treatment program in the order unless the program is a certified alcohol and drug addiction treatment program and, except as provided in this section, unless the program is located in the county in which the court that issues the orders is located or in a contiguous county. If no certified alcohol and drug addiction treatment program is located in any of those counties, the Juvenile Court may specify in the order a certified alcohol and drug addiction treatment program located anywhere within this state. The remaining 90% of the proceeds shall be applied as provided in division (E)(3).

(2) If the property was in the possession of the law enforcement agency other than in relation to a delinquent child proceeding in a Juvenile Court, all of the proceeds from the property disposed of pursuant to this section shall be applied as provided in division (E)(3).

(3) Except as provided in divisions (D)(4), (5), (E)(4) and after compliance with division (E)(1) of this section when that division is applicable, the proceeds from property disposed of pursuant to this section shall be placed in the General Fund of the municipality.

(4) Upon receipt of a notice of the recognition of a citizens' reward program by the county, each law enforcement agency shall pay 25% of the proceeds from each sale of property disposed of pursuant to this section to the citizens' reward program for use exclusively for the payment of rewards.

(F) This section does not apply to the collection, storage or disposal of abandoned junk motor vehicles. This section shall not be construed to rescind or restrict the authority of the law enforcement agency to keep and dispose of lost, abandoned, stolen, seized or forfeited property under an ordinance of the municipality; provided that if the municipality has received notice as provided in division (E)(2) of this section and disposes of property under such an ordinance, it shall pay 25% of the proceeds from any sale or auction to the citizens' reward program as provided under division (E)(2) of this section. (R.C. § 2933.41) ('70 Code, § 606.24)

Cross-reference:

Division of police, see Ch. 137

§ 606.25 IMPERSONATING AN OFFICER.

(A) As used in this section:

(1) **PEACE OFFICER.** A sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this state, a member of a police force employed by a metropolitan housing authority under R.C. § 3735.31(D), a member of a police force employed by a regional transit authority under R.C. § 306.35(Y), a state university law enforcement officer appointed under R.C. § 3345.04, an Ohio veterans' enforcement officer appointed under R.C. § 5907.02, or a state highway patrol trooper and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances or rules of the state or any of its political subdivisions.

(2) **PRIVATE POLICE OFFICER.** Any security guard, special police officer, private detective or other person who is privately employed in a police capacity.

(3) **IMPERSONATE.** To act the part of, assume the identify of, wear the uniform or any part of the uniform of, or display the identification of a particular person or of a member of a class of persons with purpose to make another person believe that the actor is that particular person or is a member of that class of persons.

(B) No person shall impersonate a peace officer or a private police officer.

(C) No person, by impersonating a peace officer or a private police officer, shall arrest or detain any person, search any person or search the property of any person.

(D) No person, with purpose to commit or facilitate the commission of an offense, shall impersonate a peace officer, a private police officer or an officer, agent or employee of the state or the municipality.

(E) It is an affirmative defense to a charge under division (B) of this section that the impersonation of the peace officer was for a lawful purpose.

(F) Whoever violates division (B) of this section is guilty of a misdemeanor of the fourth degree. Whoever violates divisions (C) or (D) of this section is guilty of a misdemeanor of the first degree, provided the purpose of a violation of division (D) of this section is not to commit or facilitate the commission of a felony. (R.C. § 2921.51) ('70 Code, § 606.25) Penalty, see § 698.02

§ 606.26 DISPLAY OF LAW ENFORCEMENT AGENCY EMBLEM.

(A) No person who is not entitled to do so shall knowingly display on a motor vehicle the emblem of a law enforcement agency or an organization of law enforcement officers.

(B) Whoever violates this section is guilty of the unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers, a minor misdemeanor. (R.C. § 2913.441) ('70 Code, § 606.26) Penalty, see § 698.02

§ 606.27 REGISTRATION OF FELONS.

'70 Code, § 606.27) (Ord. 1980-53, passed 4-28-80) Penalty, see § 698.02

(Repealed 11-22-2010, Ord. 2010-108)

CHAPTER 612: ALCOHOLIC BEVERAGES

Section

- 612.01 Definitions
- 612.02 Sales to minors; prohibitions and misrepresentations
- 612.021 Regulations if uniform drinking age is repealed
- 612.03 Sales to intoxicated persons
- 612.031 Minors under 18 years; low-alcohol beverages
- 612.04 Liquor consumption in motor vehicle
- 612.05 Permit required
- 612.06 Posting liquor age warning signs
- 612.07 Open container prohibited; exceptions
- 612.08 Hours of sale or consumption

§ 612.01 DEFINITIONS.

As used in the Codified Ordinances:

ALCOHOL. Ethyl alcohol, whether rectified or diluted with water or not, whatever its origin may be, and includes synthetic ethyl alcohol. Such term does not include denatured alcohol and wood alcohol.

BEER, MALT LIQUOR or MALT BEVERAGES. All brewed or fermented malt products containing 0.5% or more of alcohol by weight but not more than 6% of alcohol by volume weight.

CIDER. All liquids that are fit to use for beverage purposes that contain 0.5% of alcohol by weight that are made through the normal alcoholic fermentation of the juice of sound, ripe apples, including, without limitation, flavored, sparkling, or carbonated cider and cider made from pure condensed apple must.

INTOXICATING LIQUOR or LIQUOR. All liquids and compounds, other than beer as defined in this section, containing 0.5% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called and whether the same are medicated, proprietary or patented. The phrase includes wine, as defined in R.C. § 4301.01 even if it contains less than 4% of alcohol by volume, mixed beverages, as defined in R.C. § 4301.01 even if they contain less than 4% of alcohol by volume, cider as defined above, alcohol, and all solids and confections which contain any alcohol.

LOW ALCOHOL BEVERAGE. Any brewed or fermented malt product or any product made from the fermented juices of grapes, fruits, or other agricultural products that contains either no alcohol or less than 0.5% of alcohol by volume. The beverages described in this division do not include a soft drink such as root beer, birch beer, or ginger beer.

MANUFACTURE. All processes by which beer or intoxicating liquor is produced, whether by distillation, rectifying, fortifying, blending, fermentation, brewing, or in any other manner.

MANUFACTURER. Any person engaged in the business of manufacturing beer or intoxicating liquor.

MIXED BEVERAGES. Bottled and prepared cordials, cocktails, and highballs, produced by mixing any type of whiskey, neutral spirits, brandy, gin or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product shall contain not less than 0.5% of alcohol by volume and not more than 21% of alcohol by volume.

PERSON. Firms and corporations.

SALE and SELL. The exchange, barter, gift, offer for sale, sale, distribution, and delivery of any kind, and the transfer of title or possession of beer and intoxicating liquor either by constructive or actual delivery by any means or devices whatever, including the sale of beer or intoxicating liquor by means of a controlled access alcohol and beverage cabinet pursuant to R.C. § 4301.21. Such terms do not include the mere solicitation of orders for beer or intoxicating liquor from the holders of permits issued by the department of liquor control authorizing the sale of the beer or intoxicating liquor, but no solicitor shall solicit any orders until the solicitor has been registered with the department pursuant to R.C. § 4303.25.

WINE. All liquids fit to use for beverage purposes containing not less than 0.5% of alcohol by volume and not more than 21% of alcohol by volume, which is made from the fermented juices of grapes, fruits, or other agricultural products. Except as provided in R.C. § 4301.01(B)(3), the term does not include cider. (R.C. § 4301.01)

UNDERAGE PERSON. A person under the age of 21. (Ord. 1989-101, passed 10-23-89)
(70 Code, § 612.01)

§ 612.02 SALES TO MINORS, PROHIBITIONS AND MISREPRESENTATIONS.

Except as otherwise provided in this chapter, no person under the age of 21 years shall order, pay for, share the cost of, or attempt to purchase any beer or intoxicating liquor, or consume any beer or intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, or possess any beer or intoxicating liquor, in any public or private place. (R.C. § 4301.632)

(A) Except as otherwise provided in this chapter, no person shall sell beer or intoxicating liquor to an underage person, shall buy beer or intoxicating liquor for an underage person, or shall furnish it to an underage person, unless given by a physician in the regular line of his/her practice or given for established religious purposes, or unless the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian.

In proceedings before the liquor control commission, no permit holder, his/her employee or agent charged with a violation of this division shall, for the same offense, be charged with a violation of division R.C. § 4301.22(A).

(B) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the public or private place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian and the parent, spouse who is not an underage person, or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor.

An owner of a public or private place is not liable for acts or omissions in violation of this division that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(C) No person shall engage or use accommodations at a hotel, inn, cabin, campground, or restaurant when he/she knows or has reason to know either of the following:

(1) That beer or intoxicating liquor will be consumed by an underage person on the premises of the accommodations that the person engages or uses, unless the person engaging or using the accommodations is the spouse of the underage person and who is not himself or herself an underage person, or is the parent or legal guardian of all of the underage persons, who consume beer or intoxicating liquor on the premises and that person is on the premises at all times when beer or intoxicating liquor is being consumed by an underage person:

(2) That a drug of abuse will be consumed on the premises of the accommodations by any person, except a person who obtained the drug of abuse pursuant to a prescription issued by a practitioner and has the drug of abuse in the original container in which it was dispensed to the person.

(D) (1) No person is required to permit the engagement of accommodations at any hotel, inn, cabin, or campground by an underage person or for an underage person, if the person engaging the accommodations knows or has reason to know that the underage person is intoxicated, or that the underage person possesses any beer or intoxicating liquor and is not accompanied by a parent, spouse who is not an underage person, or legal guardian who is or will be present at all times when the beer or intoxicating liquor is being consumed by the underage person.

(2) No underage person shall knowingly engage or attempt to engage accommodations at any hotel, inn, cabin, or campground by presenting identification that falsely indicates that he/she is 21 years of age or older for the purpose of violating this section.

(E) No underage person shall knowingly possess or consume any beer or intoxicating liquor, in any public or private place, unless he/she is accompanied by a parent, spouse who is not an underage person, or legal guardian, or unless the beer or intoxicating liquor is given by a physician in the regular line of his/her practice or given for established religious purposes.

(F) No parent, spouse who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or other sections of this chapter or R.C. Chapter 4301.

(G) The operator of any hotel, inn, cabin, or campground shall make the provisions of this section available in writing to any person engaging or using accommodations at the hotel, inn, cabin, or campground.

(H) As used in this section:

(1) **DRUG OF ABUSE** has the same meaning as in R.C. § 3719.011.

(2) **HOTEL** has the same meaning as in R.C. § 3731.01.

(3) **MINOR**. A person under the age of 18 years.

(4) **PRACTITIONER** and **PRESCRIPTION** have the same meanings as in R.C. § 3719.01. (R.C. § 4301.69) (Ord. 1989-101, passed 10-23-89)

(I) Whoever violates this section is guilty of a misdemeanor of the first degree. (R.C. § 4301.99 (C)) ('70 Code, § 612.02) Penalty, see § 698.02

§ 612.021 REGULATIONS IF UNIFORM DRINKING AGE IS REPEALED.

If the United States Congress repeals the mandate established by the *Surface Transportation Assistance Act of 1982* relating to a national uniform drinking age of 21 or if a court of competent jurisdiction declares the mandate to be unconstitutional or otherwise invalid, then upon the certification by the secretary of state that this mandate has been repealed or invalidated, the following shall apply:

(A) Beer or intoxicating liquor may be served to a person not seated at a table unless there is reason to believe that the beer will be consumed by a person under 19 years of age or that the intoxicating liquor will be consumed by a person under 21 years of age.

(B) No person under the age of 21 years shall purchase intoxicating liquor, nor shall a person under the age of 19 years purchase beer.

(C) No person under the age of 19 years shall order, pay for, share the cost of, or attempt to purchase any beer or intoxicating liquor, or consume any beer or intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, in any public or private place, except as provided in R.C. § 4301.69.

(D) No person under the age of 21 years shall order, pay for, share the cost of, or attempt to purchase any intoxicating liquor, or consume any intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, except as provided in R.C. § 4301.69.

(E) No person shall knowingly furnish any false information as to the name, age or other identification of any person under 21 years of age for the purpose of obtaining or with the intent to obtain, beer or intoxicating liquor for a person under 19 years of age, or intoxicating liquor for a person under 21 years of age, by purchase, or as a gift.

(F) No person under the age of 19 years shall knowingly show or give false information concerning his/her name, age or other identification for the purpose of purchasing or otherwise obtaining beer or intoxicating liquor in any place in this municipality where beer or intoxicating liquor is sold under a permit issued by the Department of Liquor Control or sold by the Department of Liquor Control.

(G) No person under the age of 21 years shall knowingly show or give false information concerning his/her name, age, or other identification for the purpose of purchasing or otherwise obtaining intoxicating liquor in any place in this municipality where intoxicating liquor is sold under a permit issued by the Department of Liquor Control or sold by the Department of Liquor Control.

(H) No person shall sell intoxicating liquor to a person under the age of 21 years or sell beer to a person under the age of 19, or buy intoxicating liquor for, or furnish it to, a person under the age of 21 years, or buy beer for or furnish it to a person under the age of 19, unless given by a physician in the regular line of his/her practice, or by a parent or legal guardian.

In proceedings before the Liquor Control Commission, no permit holder, his/her employee or agent charged with a violation of this section shall, for the same offense, be charged with a violation of division R.C. § 4301.22(A)(1).

(I) No person who is the owner or occupant of any public or private place shall knowingly allow any person under the age of 21 to remain in or on the place while possessing or consuming intoxicating liquor, or knowingly allow any person under the age of 19 to remain in or on the place while possessing or consuming beer, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent or legal guardian and the parent or legal guardian is present at the time of the person's possession or consumption of the intoxicating liquor or beer.

(J) The Department of Liquor Control shall revise the warning sign required by R.C. § 4301.637 so that the sign conforms to this section.
(R.C. § 4301.691)

(K) Whoever violates division (B) of this section is guilty of a minor misdemeanor. Whoever violates any part other than division (B) of this section, is guilty of a misdemeanor of the first degree. (R.C. § 4301.99 (A),(C)) ('70 Code, § 612.02) (Ord. 1989-101, passed 10-23-89) Penalty, see § 698.02

§ 612.03 SALES TO INTOXICATED PERSONS.

(A) No permit holder and no agent or employee of a permit holder shall sell or furnish beer or intoxicating liquor to an intoxicated person.

(B) No intoxicating liquor shall be sold to any individual who habitually drinks intoxicating liquor to excess, or to whom the department has, after investigation, determined to prohibit the sale of intoxicating liquor, because of cause shown by the husband, wife, father, mother, brother, sister, or other person dependent upon, or in charge of the individual, or by the mayor of the municipality in which the individual resides. The order of the department in such case shall remain in effect until revoked by the department. (R.C. § 4301.22) (Ord. 7085, passed 10-8-62)

(C) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the third degree. (R.C. § 4301.99(D)) ('70 Code, § 612.03) Penalty, see § 698.02

§ 612.031 MINORS UNDER 18 YEARS; LOW-ALCOHOL BEVERAGES.

(A) As used in this section, *UNDERAGE PERSON* means a person under 18 years of age.

(B) No underage person shall purchase any low-alcohol beverage.

(C) No underage person shall order, pay for, share the cost of, or attempt to purchase any low-alcohol beverage.

(D) No person shall knowingly furnish any false information as to the name, age, or other identification of any underage person for the purpose of obtaining or with the intent to obtain any low-alcohol beverage for an underage person, by purchase or as a gift.

(E) No underage person shall knowingly show or give false information concerning his name, age, or other identification for the purpose of purchasing or otherwise obtaining any low-alcohol beverage in any place in this state.

(F) No person shall sell or furnish any low-alcohol beverage to, or buy any low-alcohol beverage for, an underage person, unless given by a physician in the regular line of his practice or given for established religious purposes, or unless the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian.

(G) (1) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming any low-alcohol beverage, unless the low-alcohol beverage is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian, and the parent, spouse who is not an underage person, or legal guardian is present when the person possesses or consumes the low-alcohol beverage.

(2) An owner of a public or private place is not liable for acts or omissions in violation of division (G)(1) that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(H) No permit issued by the department of liquor control shall be suspended, revoked, or cancelled because of a violation of either division (F) or (G).

(I) No underage person shall knowingly possess or consume any low-alcohol beverage in any public or private place, unless he/she is accompanied by a parent, spouse who is not an underage person, or legal guardian, or unless the low-alcohol beverage is given by a physician in the regular line of his/her practice or given for established religious purposes.

(J) No parent, spouse who is not an underage person, or legal guardian of an underage person shall knowingly permit the underage person to violate this section. (R.C. § 4301.631) Penalty, see § 698.02

§ 612.04 LIQUOR CONSUMPTION IN MOTOR VEHICLE.

(A) No person shall consume any beer or intoxicating liquor in a motor vehicle. This section does not apply to persons described in § 612.07(D) or R.C. § 4301.62(D). (R.C. § 4301.64) (Ord. 65-10, passed 1-25-65)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (R.C. § 4301.99(B)) ('70 Code, § 612.04) Penalty, see § 698.02

§ 612.05 PERMIT REQUIRED.

(A) No person by himself/herself or by his/her clerk, agent or employee shall manufacture, manufacture for sale, offer, keep or possess for sale, furnish or sell, or solicit the purchase or sale of any beer or intoxicating liquor in this municipality, or transport, import or cause to be transported or imported any beer, intoxicating liquor or alcohol in or into this municipality for delivery, use or sale, unless such person shall have fully complied with R.C. Chapters 4301 and 4303 or is the holder of a permit issued by the Department of Liquor Control and in force at the time. (R.C. § 4303.25) (Ord. 7085, passed 10-8-62)

(B) Whoever violates this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. ('70 Code, § 612.05) Penalty, see § 698.02

§ 612.06 POSTING LIQUOR AGE WARNING SIGNS.

(A) Except as otherwise provided in R.C. § 4301.691, every place in this municipality where beer, intoxicating liquor, or any low-alcohol beverage is sold for beverage purposes shall display at all times, in a prominent place on the premises thereof, a printed card, which shall be furnished by the Department of Liquor Control and which shall read substantially as follows:

“WARNING TO PERSONS UNDER AGE

If you are under the age of 21

Under the statutes of the state of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or possess or consume beer or intoxicating liquor in any public place, or furnish false information as to name, age, or other identification, you are subject to a fine of up to \$1,000, or imprisonment up to 6 months, or both.

If you are under the age of 18

Under the statutes of the state of Ohio, if you order, pay for, share the cost of, or attempt to purchase, or possess or consume, any type of beer or wine that contains either no alcohol or less than one-half of one per cent of alcohol by volume in any public place, or furnish false information as to name, age, or other identification, you are subject to a fine of up to \$250 or to imprisonment up to 30 days, or both.”

(B) No person shall be subject to any criminal prosecution or any proceedings before the Department or the Liquor Control Commission for failing to display this card. No permit issued by the department shall be suspended, revoked, or canceled because of the failure of the permit holder to display this card.

(C) Every place in this municipality for which a D permit has been issued under R.C. Ch. 4303 shall be issued a printed card by the Department of Liquor Control that shall read substantially as follows:

“WARNING

If you are carrying a firearm

Under the statutes of Ohio, if you possess a firearm in any room in which liquor is being dispensed in premises for which a D permit has been issued under Chapter 4303 of the Revised Code, you may be guilty of a felony and are subject to a term of actual incarceration of one or two years.”

(D) No person shall be subject to any criminal prosecution or any proceedings before the Department of Liquor control or the Liquor Control Commission for failing to display this card. No permit issued by the Department shall be suspended, revoked, or canceled because of the failure of the permit holder to display this card. (R.C. § 4301.637) ('70 Code, § 612.06)

§ 612.07 OPEN CONTAINER PROHIBITED; EXCEPTIONS.

(A) As used in this section:

CHAUFFEURED LIMOUSINE means a vehicle registered under R.C. § 4503.24.

STREET, HIGHWAY and **MOTOR VEHICLE** have the same meanings as in R.C. § 4511.01.

(B) No person shall have in his/her possession an opened container of beer or intoxicating liquor in any of the following circumstances:

(1) In a state liquor store;

(2) On the premises of the holder of any permit issued by the Department of Liquor Control;

(3) In any other public place;

(4) Except as provided in division (D) of this section, while operating or being a passenger in or on a motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking;

(5) Except as provided in division (D) of this section, while being in or on a stationary motor vehicle on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(C) This section does not apply to beer or intoxicating liquor which has been lawfully purchased for consumption on the premises where bought of a holder of an A-1-A, A-2, D-1, D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-7, E, F and F-2 permit or to beer or intoxicating liquor consumed on the premises of a convention facility as provided in R.C. § 4303.201.

(D) This section does not apply to a person who pays all or a portion of the fee imposed for the use of a chauffeured limousine pursuant to a prearranged contract or the guest of such a person, when all of the following apply:

(1) The person or guest is a passenger in the limousine;

(2) The person or guest is located in the limousine, but is not occupying a seat in the front compartment of the limousine where the operator of the limousine is located;

(3) The limousine is located on any street, highway, or other public or private property open to the public for purposes of vehicular travel or parking.

(R.C. § 4301.62)

(E) Whoever violates or fails to comply with this section is guilty of a minor misdemeanor. (R.C. § 4301.99(A)) (70 Code, § 612.07) Penalty, see § 698.02

§ 612.08 HOURS OF SALE OR CONSUMPTION.

(A) No beer or other malt beverage shall be sold, delivered or be permitted to be consumed on weekdays upon the premises of a C-1, C-2, D-1, D-2 or D-4 permit holder between the hours of 1:00 a.m. and 5:30 a.m.

(B) No wine, prepared highball, cocktail or other mixed drink, as defined in the Liquor Control Act, shall be sold, delivered or be permitted to be consumed on weekdays upon the premises of an A-2, C-2, D-2 or D-4 permit holder between the hours of 1:00 a.m. and 5:30 a.m.

(C) No beer or intoxicating liquor shall be sold, delivered or be permitted to be consumed on weekdays on the premises of a D-3A, D-5, D-5A, or A-1-A permit holder between the hours of 2:30 a.m. and 5:30 a.m. and no intoxicating liquor shall be sold, delivered or be permitted to be consumed on weekdays on the premises of a D-3 permit holder between the hours of 1:00 a.m. and 5:30 a.m.

(D) No beer or intoxicating liquor shall be sold, delivered or be permitted to be consumed on weekdays on the premises of a D-4 permit holder between the hours of 1:00 a.m. and 5:30 a.m.

(E) Except as otherwise provided by law, no intoxicating liquor shall be sold, delivered or be permitted to be consumed on the premises of any permit holder during the hours between Saturday midnight and Sunday midnight, i.e. all day Sunday.

(F) No beer, whether by the package or by the glass, shall be sold, delivered or permitted to be consumed on the premises of a permit holder on Sunday between the hours of 1:00 a.m. and 5:30 a.m. except on the premises of a holder of a D-3A permit who is also the holder of a D-1 permit or the holder of a D-5, D-5A or A-1-A permit. In the case of the excepted classes, neither shall sell, deliver or permit beer to be consumed on the premises between the hours of 2:30 a.m. and 5:30 a.m.

(G) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor.
(70 Code, § 612.08) Penalty, see § 698.02

Cross-reference:

Driving or physical control while intoxicated, see § 333.01

Intoxicated pedestrians, see § 371.11

Disorderly conduct while voluntarily intoxicated, see § 648.04(B)

Using weapons while intoxicated, see § 372.03

Statutory reference:

Liquor control law, see R.C. Ch. 4301

Liquor permits, see R.C. Ch. 430

CHAPTER 618: ANIMALS

Section

- 618.01 Animals running at large
- 618.02 Abandoning animals
- 618.03 Killing or injuring animals
- 618.04 Poisoning animals
- 618.05 Cruelty to animals
- 618.06 Coloring rabbits and baby poultry; sale or display of poultry
- 618.07 Barking or howling dogs
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- 618.14 Animal owner liable for damage to property
- 618.15 Bee keeping
- 618.16 Vicious and Dangerous animals
- 618.17 Impounding and disposition; records
- 618.18 Report of escape of exotic or dangerous animal
- 618.19 Assaulting police dog, horse, or handicapped assistance dog
- 618.20 Prohibited Use of Choker Collar or like devises

§ 618.01 ANIMALS RUNNING AT LARGE.

(A) *Definitions.* As used in this section:

(1) **ANIMAL.** Any and all types of animals, both domesticated and wild, male and female, singular and plural.

(3) **AT LARGE.** Off the premises of the owner or custodian of the animal or fowl, and not under the immediate control of the owner or custodian.

(2) **FOWL.** Any and all fowl, domesticated and wild, male and female, singular and plural.

(B) *Violations.* No person, being the owner or keeper, or harboring or having charge of any animal or fowl, shall permit the same to run at large in any street, road, alley or other public place, or permit the same to go upon private ground not the property of such person within the municipality. ('70 Code, § 618.01) (Ord. 1969-105, passed 7-28-69) Penalty, see § 698.02

§ 618.02 ABANDONING ANIMALS.

(A) No owner or keeper of a dog, cat or other domestic animal shall abandon such animal. (R.C. § 959.01)

(B) Whoever violates this section is guilty of a minor misdemeanor. (R.C. § 959.99(A)) ('70 Code, § 618.02) Penalty, see § 698.02

§ 618.03 KILLING OR INJURING ANIMALS.

(A) No person shall maliciously, or willfully, and without the consent of the owner, kill or injure a farm animal,

dog, cat, or other domestic animal that is the property of another. This section does not apply to a licensed veterinarian acting in an official capacity. (R.C. § 959.02)

(B) Except as otherwise provided in this division, whoever violates this section is guilty of a misdemeanor of the second degree. If the value of the animal killed or the injury done amounts to \$300 or more, whoever violates this section is guilty of a misdemeanor of the first degree. (R.C. § 959.99(B)) ('70 Code, § 618.03) Penalty, see § 698.02

§ 618.04 POISONING ANIMALS.

(A) No person shall maliciously, or willfully and without the consent of the owner, administer poison, except a licensed veterinarian acting in such capacity, to any animal that is the property of another; and no person shall, willfully and without the consent of the owner, place any poisoned food where it may be easily found and eaten by any of such animals, either upon his/her own lands or the lands of another. (R.C. § 959.03)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (R.C. § 959.99(C)) ('70 Code, § 618.04) Penalty, see § 698.02

§ 618.05 CRUELTY TO ANIMALS.

(A) No person shall:

(1) Torture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate or kill, or impound or confine an animal without supplying it during such confinement with a sufficient quantity of good wholesome food and water;

(2) Impound or confine an animal without affording it, during the confinement, access to shelter from wind, rain, snow or excessive direct sunlight, if it can reasonably be expected that the animal would otherwise become sick or in some other way suffer. This division does not apply to animals impounded or confined prior to slaughter. For the purpose of this section, **SHELTER** means a man-made enclosure, windbreak, sunshade, or a natural windbreak or sunshade that is developed from the earth's contour, tree development, or vegetation;

(3) Carry or convey an animal in a cruel or inhuman manner;

(4) Keep animals, other than cattle, poultry or fowl, swine, sheep, or goats in an enclosure without wholesome exercise and change of air, or feed cows on food that produces impure or unwholesome milk;

(5) Detain livestock in railroad cars or compartments longer than 28 hours after they are so placed without supplying them with necessary food, water, and attention, nor permit the stock to be so crowded as to overlie, crush, wound, or kill each other.

(B) Upon the written request of the owner or person in custody of any particular shipment of livestock, which written request shall be separate and apart from any printed bill of lading or other railroad form, the length of time in which the livestock may be detained in any cars or compartment without food, water, and attention may be extended to 36 hours without penalty therefor. This section does not prevent the dehorning of cattle.

(C) All fines collected for violations of this section shall be paid to the society or association for the prevention of cruelty to animals, if there is one in the municipality; otherwise, all fines shall be paid to the general fund. (R.C. § 959.13)

(D) Whoever violates this section is guilty of a misdemeanor of the second degree. In addition, the court may order the offender to forfeit the animal or livestock and may provide for its disposition including, but not limited to, the sale of the animal or livestock. If an animal or livestock is forfeited and sold pursuant to this division, the proceeds from the sale first shall be applied to pay the expenses incurred with regard to the care of the animal from the time it

was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, shall be paid to the former owner of the animal. (R.C. § 959.99(D)) ('70 Code, § 618.05) Penalty, see § 698.02

§ 618.06 COLORING RABBITS AND BABY POULTRY; SALE OR DISPLAY OF POULTRY.

(A) No person shall dye or otherwise color any rabbit or baby poultry, including, but not limited to, chicks and ducklings. No person shall sell, offer for sale, expose for sale, raffle or give away any rabbit or baby poultry which has been dyed or otherwise colored. No poultry younger than four weeks of age may be sold, given away or otherwise distributed to any person in lots of less than six. Stores, shops, vendors and others offering young poultry for sale or other distribution shall provide and operate brooders or other heating devices that may be necessary to maintain poultry in good health, and shall keep adequate food and water available to the poultry at all times. (R.C. § 925.62)

(B) Whoever violates this section is guilty of a minor misdemeanor. ('70 Code, § 618.06) Penalty, see § 698.02

§ 618.07 BARKING OR HOWLING DOGS.

(A) No person shall keep or harbor any dog within the municipality which, by frequent and habitual barking, howling or yelping, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet and good order of the municipality. Any person who allows any dog habitually to remain or be lodged or fed within any dwelling, building, yard or enclosure, which he/she occupies or owns, shall be considered to be harboring such dog.

(B) Whoever violates this section is guilty of a minor misdemeanor. ('70 Code, § 618.07) Penalty, see § 698.02

§ 618.08 REGISTRATION OF DOGS REQUIRED.

(A) No owner, keeper or harbinger of a dog more than three months of age, nor owner of a dog kennel, shall fail to file an application for registration required by R.C. § 955.01, nor shall he/she fail to pay the legal fee therefor. (R.C. § 955.21)

(B) Whoever violates this section is guilty of a minor misdemeanor. (R.C. § 955.99(A)) ('70 Code, § 618.08) Penalty, see § 698.02

§ 618.09 HINDERING CAPTURE OF UNLICENSED DOG.

(A) No person shall obstruct or interfere with anyone lawfully engaged in capturing an unlicensed dog or making an examination of a dog wearing a tag. (R.C. § 955.24)

(B) Whoever violates this section is guilty of a minor misdemeanor. (R.C. § 955.99(B)) ('70 Code, § 618.09) Penalty, see § 698.02

§ 618.10 UNLAWFUL TAGS.

(A) No person shall own, keep or harbor a dog wearing a fictitious, altered or invalid registration tag or a registration tag not issued by the County Auditor in connection with the registration of such animal. (R.C. § 955.25)

(B) Whoever violates this section is guilty of a minor misdemeanor. (R.C. § 955.99(B)) ('70 Code, § 618.10) Penalty, see § 698.02

§ 618.11 ANIMAL BITES; QUARANTINE AND REPORTING.

(A) Whenever a person is bitten by a dog, cat, or other animal, the report of such bite shall be made within 24

hours to the Health Commissioner.

(B) When it is reported to the Health Commissioner that any dog or cat has bitten a person, that dog or cat shall be quarantined, under an order issued by the Health Commissioner. The dog or cat shall be quarantined under the care of its owner, other person responsible, or at a pound or kennel. The quarantine shall continue until the Health Commissioner, his authorized representative, or veterinarian, has determined that the dog or cat is not afflicted with rabies. The quarantine period hereby required shall not be less than ten (10) days from the date on which the person was bitten. No owner or person in custody or possession of such animals shall fail to comply with such quarantine order. All expenses incurred for the keeping or impounding of any animal or the necessary tests to determine whether rabies exists shall be borne exclusively by the owner or keeper of such animal. No person, having knowledge of the existence of any rabies, or the fact that any animal has bitten any other person, shall fail to report such information to the Health Commissioner.

(C) No dog or cat shall be released from the required quarantine unless and until it has been properly vaccinated against rabies. The owner or person responsible for the animal shall provide acceptable evidence to the Health Commissioner that the dog or cat has received a current rabies vaccination by a doctor of veterinary medicine. If acceptable evidence of a current rabies vaccination cannot be presented, the Health Commissioner can order the owner or person responsible for, to have their dog or cat vaccinated against rabies.

(D) Whoever violates this section is guilty of a misdemeanor of the third degree. (70 Code, § 618.11) Penalty, see § 698.02

§ 618.12 NOISOME, FILTHY OR OFFENSIVE ANIMALS.

(A) No person shall permit a place where any animal or fowl is kept to become noisome, filthy or offensive in any manner, so that such place is injurious to the health or comfort of persons living or employed in the vicinity of such place. No person shall keep, transport, unload or collect any animal or fowl in such a manner that the stench therefrom or noise caused thereby is annoying or offensive to any person. (Ord. 1969-105, passed 7-28-69)

(B) The owner, keeper or harbinger of any animal (excepting dogs & cats) shall not install, keep, maintain, use, have or possess any pen, kennel, coop, cage, hutch, or other enclosure, within one hundred (100) feet from any building used as a residence or commercial use wherein persons are employed.

(C) The following animals shall be prohibited, other than on an Agricultural Zoned parcels or the County Fairgrounds, from being kept or harbored within the City of Marion: Cows, Horses, Mules, Lamas, Minks, Ferrets, Swine, (except pot belly pigs are permitted if each parcel has two or less) goats, sheep and roosters.

The Safety Director may grant a specific exemption, on a temporary or permanent basis, from any of the provisions of this section to any person with a legitimate scientific, educational, commercial or other purpose for maintaining the prohibited animals.

(D) The following animals shall be prohibited unless the owner, keeper or harbinger complies with the registration process, possess a valid permit from the City Safety Director and complies with all rules and conditions adopted by the Safety Director: Fowl and Rabbits. (Except parakeets, parrots and finches maintained as domestic pets indoors and less that 4 shall not be required to be registered)

(1) Within 30 days of the adoption of the legislation enacting the provisions herein, all persons keeping, harboring or maintaining any fowl shall register with the City Safety Director and obtain a permit. The permit application shall include, but is not limited to, owner, keeper, or harbors name, address, type and number, schematic of the parcel showing location of the animals to be kept.

(2) The Safety Director shall adopt all necessary rules regarding the keeping of fowl within the City in order to ensure same does not become nuisance. Rules shall include, but are not limited to requiring a clean and dry

shelter of such size as to permit adequate bedding and feeding area. The permitted premises shall be maintained in such sanitary condition that no person will be offended by any odors or pests caused by the keeping of such animals or fowl. The permit holder shall permit the Safety Director and/or his/her agent to conduct regular inspections of the area in which the animals are maintained. Registration shall not be required on any Agricultural Zoned parcels, the County Fairgrounds, veterinary hospitals or where animals are housed to participate in or be shown in actual sanctioned competitions.

(3) Upon any finding of the existence of a violation of the rules adopted in regard to item 1. above, the Safety Director shall notify the permit holder of the date and time of a hearing upon the finding and give the permit holder the opportunity to respond. The Safety Director after conducting a hearing, if the same had been requested by the owner, keeper or harbinger, shall either continue the permit or revoke the permit.

A person aggrieved by the decision of the Safety Director may appeal his/her determination pursuant to the rights provided in O.R.C. 2506

(E) Whoever violates this section is guilty of a misdemeanor of the fourth degree. ('70 Code, § 618.12, Ord. 2010-94 amended 12-13-2010) Penalty, see § 698.02

§ 618.13 HUNTING PROHIBITED.

(A) The hunting of animals or fowl within the municipality is prohibited. No person shall hunt, kill or attempt to kill any animal or fowl by the use of firearms or any other means.

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. ('70 Code, § 618.13) Penalty, see § 698.02

§ 618.14 ANIMAL OWNER LIABLE FOR DAMAGE TO PROPERTY.

(A) The owner, keeper or harbinger of any animal which damages or destroys public or private property shall be held liable for the full value of the property damaged or destroyed in addition to any penalty imposed for a violation of any of the provisions of this chapter.

(B) Any animal which, by barking, biting, howling or in any other way or manner, injures or disturbs the quiet of any person, or which destroys or damages any lawn, tree, shrub, plant, building or other property, other than the property of the owner or person in charge or control of such animal, by scratching, digging, running, defecating, urinating or otherwise, is hereby declared to be a nuisance. No person being the owner or person in charge or control of any animal shall permit such animal to be or create a nuisance as herein defined. The foregoing prohibition as to defecation shall not apply when the person in charge of such animal immediately removes all feces deposited by it and disposes of the same in a sanitary manner approved by regulation of the Health Commissioner of the Board of Health. Further, such prohibition as to defecation shall not apply to seeing-eye guide dogs owned by disabled persons.

(C) Whoever violates this section is guilty of a minor misdemeanor. ('70 Code, § 618.14) (Ord. 1980-102, passed 11-10-80) Penalty, see § 698.02

§ 618.15 BEE KEEPING.

(A) No person shall keep any bees in or within any premises in the municipality within 2,000 feet of any building used as a residence or for industrial or commercial use wherein persons are employed.

(B) Nothing in this section shall be deemed or construed to prohibit the keeping of bees in a hive or box located or kept within a schoolhouse for the purpose of study or observation.

(C) Keeping of bees in violation of this section is hereby declared to be a nuisance. (Ord. 1969-105, passed

7-28-69)

(D) Whoever violates this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. ('70 Code, § 618.15) Penalty, see § 698.02

§ 618.16 VICIOUS AND DANGEROUS ANIMALS.

(A) No owner, keeper, or harbinger of any female dog shall permit it to go beyond the premises of the owner, keeper, or harbinger at any time the dog is in heat unless the dog is properly in leash.

(B) Except when a dog is lawfully engaged in hunting and accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of any dog shall fail at any time to do either of the following:

(1) Keep the dog physically confined or restrained upon the premises of the owner, keeper, or harbinger by a leash, tether, adequate fence, supervision, or secure enclosure to prevent escape;

(2) Keep the dog under the reasonable control of some person.

(C) Except when a dangerous or vicious dog is lawfully engaged in hunting or training for the purpose of hunting and is accompanied by the owner, keeper, harbinger, or handler of the dog, no owner, keeper, or harbinger of a dangerous or vicious dog shall fail to do either of the following:

(1) While that dog is on the premises of the owner, keeper, or harbinger, securely confine it at all times in a locked pen that has a top, locked fenced yard, or other locked enclosure that has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;

(2) While that dog is off the premises of the owner, keeper, or harbinger, keep that dog on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

(a) Keep that dog in a locked open that has a top, locked fenced yard, or other locked enclosure that has a top;

(b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

(c) Muzzle that dog.

(D) No owner, keeper, or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than one hundred thousand dollars because of damage or bodily injury to or death of a person caused by the vicious dog.

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

(1) Debark or surgically silence a dog that the person knows or has reason to believe is a vicious dog;

(2) Possess a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(3) Falsely attest on a waiver form provided by the veterinarian under division (F) of this section that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form.

(F) Before a veterinarian debarks or surgically silences a dog, the veterinarian may give the owner of the dog a written waiver form that attests that the dog is not a vicious dog. The written waiver form shall include all of the following:

(1) The veterinarian's license number and current business address;

(2) The number of the license of the dog if the dog is licensed;

(3) A reasonable description of the age, coloring, and gender of the dog as well as any notable markings on the dog;

(4) The signature of the owner of the dog attesting that the owner's dog is not a vicious dog;

(5) A statement that section 618.18(E) of the Marion City Code prohibits any person from doing any of the following:

(a) Debarking or surgically silencing a dog that the person knows or has reason to believe is a vicious dog;

(b) Possessing a vicious dog if the person knows or has reason to believe that the dog has been debarked or surgically silenced;

(c) Falsely attesting on a waiver form provided by the veterinarian under division (F) of this section that the person's dog is not a vicious dog or otherwise provide false information on that written waiver form.

(G) It is an affirmative defense to a charge of a violation of division (E) of this section that the veterinarian who is charged with the violation obtained, prior to debarking or surgically silencing the dog, a written waiver form that complies with division (F) of this section and that attests that the dog is not a vicious dog.

(H) Any animal warden, police officer or other person so authorized may impound any animal which has bitten or attacked a person without sufficient provocation. Such officer or other authorized person shall give prompt notice of such impounding to the owner, if the owner is known and can be reasonably notified. If the owner so desires, he/she may have the animal impounded with any licensed veterinarian of his/her choice and at his/her expense. If, within ten days after such impounding, the owner fails to pay the cost of impounding and to make suitable arrangements for the care and control of such animal, then such animal may be destroyed, unless it is deemed advisable to keep it under observation for a longer period of time, in which case the owner shall be given additional time within which to pay such cost. The determination of the care and control of such animal shall be made by the Health Department of the municipality after due notice of hearing. Such orders shall be appealable under R.C. Chapter 2506 entitled Appeals from Orders of Administrative Officers and Agencies.

(1) Any animal that is vicious by definitions contained herein may, by Order of the Municipal Court, ordered immediately and permanently removed from this municipality or destroyed.

(J) As used in this section:

(1) (a) "Dangerous dog" means a dog that, without provocation, and subject to division (J)(1)(b) of this section, has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person, while that dog is off the premises of its owner, keeper, or harbinger and not under the reasonable control of its owner, keeper, harbinger, or some other responsible person, or not physically

restrained or confined in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top.

(b) "Dangerous dog" does not include a police dog that has chased or approached in either a menacing fashion or an apparent attitude of attack, or has attempted to bite or otherwise endanger any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties.

(2) "Menacing fashion" means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person.

(3) "Police dog" means a dog that has been trained, and may be used, to assist one or more law enforcement officers in the performance of their official duties.

(4) (a) "Vicious dog" means a dog that, without provocation and subject to division (J)(4)(b) of this section, meets any of the following:

(i) Has killed or caused serious injury to any person;

(ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog .

(iii) Belongs to a breed that is commonly known as a pit bull dog. The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.

(b) "Vicious dog" does not include either of the following:

(i) A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog.

(5) "Without provocation" means that a dog was not teased, tormented, or abused by a person, that the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

(K) Within ten days after the transfer of ownership or possession of any dog, if the seller or other transferor of the dog has knowledge that the dog is a dangerous or vicious dog, he shall give to the buyer or other transferee, the board of health for the district in which the buyer or other transferee resides, and the dog warden of the county in which the buyer or other transferee resides, a completed copy of a written form on which the seller shall furnish the following information:

(1) The name and address of the buyer or other transferee of the dog;

(2) The age, sex, color, breed, and current registration number of the dog.

In addition, the seller shall answer the following questions which shall be specifically stated on form as follows:

"Has the dog ever chased or attempted to attack or bite a person? if yes, describe the incident(s) in which the

behavior occurred."

"Has the dog ever bitten a person? if yes, describe the incident(s) in which the behavior occurred."

"Has the dog ever seriously injured or killed a person? if yes, describe the incident(s) in which the behavior occurred."

The dog warden of the county in which the seller resides shall furnish the form to the seller at no cost.

(L) No seller or other transferor of a dog shall fail to comply with the applicable requirements of divisions (K) to (M) of this section.

(M) Whoever violates any of the following sections: C, D, E or subsections of anyone thereof is guilty of a misdemeanor of the first degree. Whoever violates any of the following sections: A, B, H, K, L or subsections of anyone thereof is guilty of a misdemeanor of the fourth degree.

Whoever violates a section or subsection herein for which no penalty is provided shall be guilty of a minor misdemeanor on the first offense, a subsequent violation of the same section within twelve months shall be a misdemeanor of the fourth degree. ('70 Code, § 618.16) (Ord. 1982-70, passed 6-14-82; Ord. 2003-30, passed 05-12-2003) Penalty, see § 698.02

§ 618.17 IMPOUNDING AND DISPOSITION; RECORDS.

(A) The Police Division or Dog Warden may impound every dog or other animal found in violation of § 618.01. If such dog is found not wearing a valid dog license tag, the dog shall forthwith be turned over to an officer charged by law with the custody and disposal of such dogs. If such dog is wearing a valid dog license tag or the identity of the owner or custodian is otherwise established, notice shall immediately be given to the licensee, owner or custodian that the dog has been impounded. Such notice may be by telephone or by ordinary mail to the last known address of such licensee, owner or custodian. The dog shall not be released except upon the payment of reasonable expenses for its taking and keeping. Any dog remaining unclaimed within ten days of the mailing of written notice, or of actual notice thereof, shall be sold or otherwise disposed of as provided by law.

(B) A record of all dogs impounded, the disposition of the same, the owner's name and address, where known, and a statement of any costs or receipts against such dog shall be kept and furnished monthly to the Mayor. ('70 Code, § 618.17)

§ 618.18 REGULATION OF EXOTIC OR DANGEROUS ANIMALS

(A) No person shall knowingly keep, maintain or have in his possession or under his control within the City any dangerous or carnivorous wild animal or reptile, or any other animal or reptile of wild, vicious or dangerous propensities (not including canines and domesticated cats), except to the extent that an exemption may be applicable pursuant to subsections (D) or (E) hereof. As used in this section, dangerous or vicious animal means and includes the following:

(1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(2) Any animal which attacks a human being or domestic animal without provocation; or

(3) Any animal owned or harbored primarily or in part for the purpose of fighting or any animal trained for fighting.

(B) Where an animal not prohibited herein or for which is granted an exception herein, the owner or keeper from which the animal escapes from his/her custody or control shall, within one hour after he/she discovers or reasonably should have discovered the escape, report it to:

- (1) A law enforcement officer of the municipality; and
- (2) The Clerk of the Municipal Legislative Authority where the escape occurred.

(a) If the office of the Clerk of the Legislative Authority is closed to the public at the time a report is required by division (A) of this section, then it is sufficient compliance with division (B)(2) of this section if the owner or keeper makes the report within one hour after the office is next open to the public.

(C) For purposes of this section, there shall be an irrebuttable presumption that, when kept or maintained within the City of Marion, the animals listed below are considered dangerous animals to which the prohibition of subsection (a) hereof, in the absence of an exemption pursuant to subsections (d) or (e) hereof, applies:

- (1) All crotalid, elapid and venomous colubroid snakes;
- (2) Apes: Gibbons (hylobates); gorillas (Gorilla); orangutans (Pongo); and siamangs (Symphalangus);
- (3) Baboons (Papoi, Mandrillus);
- (4) Bears (Ursidae);
- (5) Bison (Bison);
- (6) Cheetahs (Acinonyx jubatus);
- (7) Crocodilians (corcodilia) and Alligators when twenty-four (24) inches in length or more;
- (8) Constrictor snakes exceeding six (6) feet in length;
- (9) Coyotes (Cants latrans);
- (10) Deer (cervidae) includes all members of the deer family, for example, white-tailed deer, elk, antelope and moose;
- (11) Elephants (Elephas and Loxodonta);
- (12) Foxes (Canis vulpes);
- (13) Game cocks and other fighting birds;
- (14) Hippopotami (Hippopotamidae);
- (15) Hyenas (Hyaenidae);
- (16) Jaguars (Panthera onca);
- (17) Leopards (Panthera pardus);
- (18) Lions (Panthera leo);
- (19) Lynxes (Lynx);
- (20) Ostriches (Struthio);
- (21) Piranha fish (Characidae), except those considered vegetarians;
- (22) Pumas (Felis concolor), also known as cougars, mountain lions and panthers;
- (23) Rhinoceroses (Rhinocerotidae);
- (24) Sharks (Class Chondrichthyes);
- (25) Snow leopards (Panthera uncia);
- (26) Swine (Suidae); (excepting pot bellied pigs)
- (27) Tigers (Panthera tigris);
- (28) Wolves (Canis lupus) or Wolf hybrids;
- (29) Scorpions;
- (30) Birds of prey, except for those held by licensed falconers;
- (31) Venomous fish;
- (32) Poisonous spiders, except for tarantulas;
- (33) Stinging insects (except honey bees);
- (34) Bats being confined

(D) Licensed menageries, zoological gardens, circuses, and the Marion County Fairgrounds shall be exempt from the provisions of subsection (A) hereof if all of the following conditions are applicable:

(1) The location conforms to the provisions of the City Zoning Code;

(2) All animals and animal quarters are kept in a clean, humane and sanitary condition and so maintained as to eliminate objectionable odors;

(3) Animals are maintained in quarters so constructed as to prevent their escape; and

(4) No person resides within fifty (50) feet of the quarters in which the animals are kept.

(E) Notwithstanding any of the foregoing, the Director of Public Service/Safety may grant a specific exemption, on a temporary or permanent basis, from any of the provisions of this section to any person with a legitimate scientific, educational, commercial or other purpose for maintaining the prohibited animals, in accordance with the following provisions:

(1) Written application for exemption shall be filed by any person desiring to obtain an exemption with the Director of Public Service/Safety. The application shall state the applicant's name, address, type and number of animals desired to be kept, general purpose for which the animals will be kept, and a general description of provisions which will be made for safe, sanitary and secure maintenance of the animals.

(2) The Director of Public Service/ Safety may grant, deny or restrict the terms of an application for exemption; provided, however, that he shall take some official action on an application within 120 days of its filing.

(3) In considering the merits of an application for exemption, the Director of Public Service/Safety may cause one or more inspections of the applicant's premises to be made by appropriate City employees or representatives, and may also refer the application to persons who are technically knowledgeable with respect to the animals involved for an advisory opinion.

(4) In evaluating an application for exemption, the Director of Public Service/Safety shall give consideration to the following criteria:

a. The experience and knowledge of the applicant relative to the animals involved;

b. Whether the applicant has obtained a federal or state permit relative to the animals involved;

c. The relative danger, safety and health risks to the general public, to persons residing or passing near the applicant's premises, and to the applicant in connection with the animals involved;

d. The provisions which have been or will be made for the safe, sanitary and secure maintenance of the animals for the protection of the general public, persons residing or passing near the applicant's premises, and the applicant, to include the provision of insurance coverage's;

e. The provisions which have been made or will be made to protect the safety and health of the animals involved;

f. Any other logically relevant information.

(5) An application for exemption under this subsection (E) shall be denied unless the Director of Public Service/Safety determines that, in view of all the relevant criteria and any restrictions which he may provide, reasonably appropriate measures commensurate with the degree of risk associated with the animals involved have

been or will be taken to assure at least a minimum acceptable level of protection from danger to the health and safety of the general public, persons residing or passing near the applicant's premises, and the applicant.

(6) An exemption granted pursuant to this subsection (E) may be withdrawn by action of the Director of Public Service/Safety in the event that the Director determines that there has been a change in the conditions or assumptions under which it was originally granted or in the event that the applicant fails to comply with restrictions originally placed on the exemption, including the right of the Director or his designee to access the confinement premises at any time for inspection.

(F) No exemption granted pursuant to any provision of this section shall be construed, nor is it intended by the City of Marion as a guaranty or warranty of any kind, whether express or implied, to any person, including without limitation the general public, persons residing or passing near the applicant's premises, or the applicant, either in general or individually, as to the danger or lack thereof, or degree of risk or health or safety of any animal, specifically or generally, or any premises where any animal is maintained or kept pursuant to such exemption.

(G) Penalty - Whoever violates any provision of this section shall be guilty of a misdemeanor of the third degree. However, if during the preceding twelve months there has been a previous conviction the offense shall be a misdemeanor of the first degree (Ord. passed July, 1, 2006) (R.C. § 2927.21) ('70 Code, § 618.18, amended 7-10,2006) Penalty, see § 698.02

Cross-reference:

Driving animals upon roadway, see § 303.03

Offensive odors from places where animals are kept or fed, see § 660.04

Statutory reference:

Power to restrain and impound animals, see R.C. § 715.23

§ 618.19 ASSAULTING POLICE DOG, HORSE, OR HANDICAPPED ASSISTANCE DOG.

(A) No person shall knowingly cause, or attempt to cause, physical harm to a police dog or horse in either of the following circumstances:

(1) The police dog or horse is assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted.

(2) The police dog or horse is not assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog or horse is a police dog or horse.

(B) No person shall knowingly cause, or attempt to cause, physical harm to a handicapped assistance dog in either of the following circumstances:

(1) The handicapped assistance dog is assisting a blind, deaf, or mobility impaired person at the time the physical harm is caused or attempted.

(2) The handicapped assistance dog is not assisting a blind, deaf, or mobility impaired person at the time the physical harm is caused or attempted, but the offender has actual knowledge that the dog is a handicapped assistance dog.

(C) (1) Whoever violates division (A) of this section is guilty of assaulting a police dog or horse. Except as otherwise provided in this division, assaulting a police dog or horse is a misdemeanor of the second degree. If the violation results in physical harm to the police dog or horse other than death or serious physical harm, assaulting a police dog or horse is a misdemeanor of the first degree. If the violation results in serious physical harm or the death of the dog or horse, assaulting a police dog or horse is a felony to be prosecuted under appropriate state law.

(2) Whoever violates division (B) of this section is guilty of assaulting a handicapped assistance dog. Except as otherwise provided in this division, assaulting a handicapped assistance dog is a misdemeanor of the second degree. If the violation results in physical harm to the dog other than death or serious physical harm, assaulting a handicapped assistance dog is a misdemeanor of the first degree. If the violation results in serious physical harm or the death of the dog, assaulting a handicapped assistance dog is a felony to be prosecuted under appropriate state law.

(D) This section does not apply to a licensed veterinarian whose conduct is in accordance with R.C. Chapter 4741.

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

BLIND and **MOBILITY IMPAIRED PERSON** have the same meaning as in R.C. § 955.011

HANDICAPPED ASSISTANCE DOG. A dog that serves as a guide or leader for a blind person or as a listener for a deaf person or that provides support or assistance for a mobility impaired person.

PHYSICAL HARM. Any injury, illness, or other psychological impairment, regardless of its gravity or duration.

POLICE DOG OR HORSE. A dog or horse that has been trained, and may be used, to assist law enforcement officers in the performance of their official duties.

SERIOUS PHYSICAL HARM. Any of the following:

(1) Any physical harm that carries a substantial risk of death.

(2) Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming.

(3) Any physical harm that causes acute pain of a duration that results in substantial suffering.
(R.C. § 2921.321) Penalty, see § 698.02

§ 618.20 PROHIBITED USE OF CHOKER COLLAR OR LIKE DEVICES.

(A) No person shall use a choker collar or similar device which is construction, made or able, when placed upon any animal, to close like a noose while the animal is tethered or tied-up without direct adult human supervision. Direct adult human supervision is further defined as being within fifty (50) feet of the animal. This section also prohibits the use of “logging chains” on any dog at any time.

(B) Whoever violates this section is guilty of illegal use of a choker collar or like device a misdemeanor of the fourth degree. If the person has been convicted of a similar offense within the prior twelve month period, the offense shall be a misdemeanor of the first degree. (Am. Ord. 2004-102, passed 10-11-2004)

CHAPTER 620: DISTRIBUTING OF HANDBILLS

Section

- 620.01 Definitions
- 620.02 Prohibitions
- 620.99 Penalty

§ 620.01 DEFINITIONS.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein.

COMMERCIAL HANDBILL. Any printed or written matter, any sample or device, circular, leaflet, paper, pamphlet, booklet or any other printed or otherwise reproduced original copies of any matter of literature:

(1) Which advertises for sale any merchandise, product, commodity or thing; OR (Ord. 2015-11, passed 4-13-2015)

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind where an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expense incident to such meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order. However, nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition or event of any kind, without a license, where such license is or may be regulated by any law of this state, or under any ordinance of this municipality; or

(4) Which, while containing reading matter other than advertising matter, is predominately and essentially an advertisement, is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as an advertiser or distributor.

NEWSPAPER. Any newspaper of general circulation as defined by general law for which a subscription is paid by the recipient, and any newspaper duly entered with the Post Office Department of the United States, in accordance with the Federal statute or regulation for which a subscription is paid by the recipient, and any newspaper filed and recorded with any recording officer as provided by any general law for which a subscription is paid by the recipient; and, in addition thereto, includes any periodical or current magazine regularly published with not less than four issues per year for which a subscription is paid by the recipient and sold to the public. (Ord. 2015-11, passed 4-13-2015)

NONCOMMERCIAL HANDBILL. Any printed or written matter, any sample, device, circular, leaflet, paper, pamphlet, newspaper, magazine, booklet or any other printed or otherwise reproduced original or copies of any matter of literature not included in the aforesaid definitions of a commercial handbill or newspaper.

PERSON. Any person, firm, partnership, association, corporation, company or organization of any kind. Person is further defined to expressly include the publisher of the handbill. (Ord. 2015-11, passed 4-13-2015)

PRIVATE PREMISES. Any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and includes any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such

dwelling, house, building or other structure.

PUBLIC PLACE. Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings. ('70 Code, § 620.01) (Ord. 1983-110, passed 10-9-84)

REQUESTED BY ANYONE OCCUPYING A PRIVATE PREMISES NOT TO DO SO. A writing delivered to the distributor, publisher or entity responsible for the handbill which has been delivered to its' business address by the person requesting by certified mail service, return receipt requested **OR BY PERSONAL SERVICE** a copy of said writing with said return receipt serving as evidence of the notice having been provided which shall be good for a period of not less than 84 months after receipt.

TEMPORARILY OR CONTINUOUSLY UNINHABITED OR VACATED. Any Private Premises which is not occupied whether temporarily or continuously with "not occupied" being indicated by the presence upon said premises of a previously distributed commercial handbill near the location where it had previously been thrown or deposited. (Ord. 2015-11, passed 4-13-2015)

§ 620.02 PROHIBITIONS.

(A) No person shall throw or deposit any commercial or noncommercial handbill in or upon any sidewalk, street or other public place within the municipality. However, it shall not be unlawful on any sidewalk, street or other public place within the municipality for any person to a hand out or distribute, without charge to the receiver thereof, any noncommercial handbill to any person willing to accept it. (Ord. 2015-11, passed 4-13-2015)

(B) No person shall throw or deposit any commercial or noncommercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

(C) No person shall throw, deposit or distribute any commercial or noncommercial handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on such premises in a conspicuous position near the entrance thereof, a sign bearing the words: "No Trespassing," "No Peddlers or Agents," "No Advertisements" or any similar notice, indicating that the occupants of such premises do not desire to be molested or have their right of privacy disturbed, or to have any such handbills left upon such premises.

(D) No person shall throw, deposit or distribute any commercial or noncommercial handbill in or upon private premises which are inhabited, except by handling or transmitting such handbill directly to the owner, occupant or other person then present in or upon such private premises. However, in the case of inhabited private premises which are not posted as provided in division (C), such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill on the front porch or within ten (10) feet of the front door of the private premises, and except that mailboxes may not be used when so prohibited by federal postal law or regulation. (Ord. 2015-11, passed 4-13-2015)

(E) The provisions of this section do not apply to the distribution of mail by the United States nor to newspapers except that newspapers shall be placed on private property in such manner that prevents their being carried or deposited by the elements upon any street, sidewalk, within the right-of-way, or other public place or upon private property. ('70 Code, § 620.02) (Ord. 1983-110, passed 10-9-84) (Ord. 2015-11, passed 4-13-2015) Penalty, see § 620.99

§ 620.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a minor misdemeanor. Each day such violation is committed or permitted to continue shall constitute a separate offense. If the offender has previously been convicted of a violation of this Chapter within twelve (12) months prior to the subsequent offense the penalty shall be a misdemeanor of the fourth degree. Punishment shall be as provided in § 698.02. ('70 Code, § 620.99) (Ord. 1983-110, passed 10-9-84) (Ord. 2015-11, passed 4-13-2015)

Cross-reference:

Littering, see § 660.03

Trespass, see § 642.12

CHAPTER 624: DRUGS

Section

- 624.01 Definitions
- 624.02 [Reserved]
- 624.03 Drug abuse
- 624.04 Possession of drug abuse instruments
- 624.05 Permitting drug abuse
- 624.06 Abusing harmful intoxicants
- 624.07 Trafficking in harmful intoxicants
- 624.08 [Reserved]
- 624.09 Possession, sale and disposal of hypodermics
- 624.10 Evidence
- 624.11 Double jeopardy
- 624.12 Controlled substance schedules
- 624.13 Controlled substance or prescription labels
- 624.14 Use, possession or sale of drug paraphernalia
- 624.15 Counterfeit controlled substances

§ 624.01 DEFINITIONS.

As used in this chapter:

ADMINISTER or **ADMINISTRATION**. The direct application of a drug, whether by injection, inhalation, ingestion or any other means, to a person or animal. (R.C. § 3719.01(A))

BULK AMOUNT of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whichever of the following is applicable:

(a) An amount equal to or exceeding 10 grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I opiate or opium derivative;

(b) An amount equal to or exceeding 10 grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding 30 grams or 10 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I hallucinogen other than tetrahydrocannabinol, or lysergic acid amide, or a schedule I stimulant or depressant;

(d) An amount equal to or exceeding 20 grams or 5 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II or schedule III opiate or opium derivative;

(e) An amount equal to or exceeding 1 gram or 10 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of lysergic acid amide or tetrahydrocannabinol;

(f) An amount equal to or exceeding 5 grams or 10 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(g) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of, a schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws, that is or contains any amount of a schedule II depressant substance or a schedule II hallucinogenic substance;

(h) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws;

(2) An amount equal to or exceeding 120 grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III or IV substance other than an anabolic steroid or a schedule III opiate or opium derivative;

(3) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule V substance. (See editor's note)

(4) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III anabolic steroid. (2925.01(D))

COMMITTED IN THE VICINITY OF A JUVENILE. An offense is **COMMITTED IN THE VICINITY OF A JUVENILE** if the offender commits the offense within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense. (R.C. 2925.01(BB))

COMMITTED IN THE VICINITY OF A SCHOOL. An offense is **COMMITTED IN THE VICINITY OF A SCHOOL** if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises. (R.C. 2925.01(P))

CONTROLLED SUBSTANCE. A drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV or V. (R.C. § 3719.01(D))

COUNTERFEIT CONTROLLED SUBSTANCE means:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name or other identifying mark used without authorization of the owner of rights to that trademark, trade name or identifying mark; or

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed or distributed by a person other than the person that manufactured, processed, packed or distributed it; or

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance; or

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size and color, or its marking, labeling, packaging, distribution or the price for which it is sold or offered for sale. (R.C. § 2925.01(O))

DANGEROUS DRUG. Any of the following

(1) Any drug which, under the “Federal Food Drug and Cosmetic Act,” or R.C. Chapters 3715 or 3719 may be dispensed only upon a prescription;

(2) Any drug which contains a Schedule V controlled substance and which is exempt from R.C. Chapter 3719, or to which such chapter does not apply; or

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body. (R.C. § 4729.02(D))

DISPENSE. Sell, leave with, give away, dispose of or deliver. (R.C. § 3719.01(F))

DISTRIBUTE or DISTRIBUTOR. To deal in, ship, transport or deliver but does not include administering or dispensing a drug. (R.C. § 3719.01(G))

DRUG.

(1) Any article recognized in the official United States pharmacopeia, or national formulary, or any supplement to either of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

(3) Any article, other than food, intended to affect the structure or any function of the body of man or other animals; or

(4) Any article intended for use as a component of any article specified in divisions (1), (2) or (3) of this section; but does not include devices or their components, parts or accessories. (R.C. § 4729.02(C))

DRUG ABUSE OFFENSE.

(1) A violation of R.C. § 2913.02(B) that constitutes theft of drugs, or a violation of R.C. §§ 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36 or 2925.37 (Note: the previous sections listed are various felony offenses), or §§ 624.02, 624.03, 624.04, 624.05, 624.06, 624.07 or 624.08 of this General Offenses Code;

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

(3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using or otherwise dealing with a controlled substance is an element; or

(4) A conspiracy or attempt to commit, or complicity in committing or attempting to commit, any offense under subsection (1), (2) or (3) of this division. (R.C. § 2925.01(G))

DRUG OF ABUSE. Any **CONTROLLED SUBSTANCE**, as defined in this section, any **HARMFUL INTOXICANT**, as defined in this section and any **DANGEROUS DRUG**, as defined in this section. (R.C. § 3719.011(A))

FELONY DRUG ABUSE OFFENSE. Any drug abuse offense that would constitute a felony under the laws of

this state, any other state, or the United States. (R.C. § 2925.01(H))

HARMFUL INTOXICANT. Does not include beer or intoxicating liquor, but means any compound, mixture, preparation or substance the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects and includes, without limitation, any of the following:

- (1) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline or other preparation containing a volatile organic solvent;
- (2) Any aerosol propellant;
- (3) Any fluorocarbon refrigerant; or
- (4) Any anesthetic gas. (R.C. § 2925.01(I))

HASHISH. The resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form. (R.C. § 2925.01(Z))

HOSPITAL. An institution for the care and treatment of the sick and injured, certified by the State Department of Health and approved by the State Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the professional use of controlled substances under the direction of a practitioner or pharmacist. (R.C. § 3719.01(L))

HYPODERMIC. A hypodermic syringe or needle, or other instrument or device for the subcutaneous injection of medication. (R.C. § 3719.01(M))

LABORATORY. A laboratory approved by the State Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instructions. (R.C. § 3719.01(O))

MANUFACTURER. A person who plants, cultivates, harvests, processes, makes, prepares or otherwise engages in any part of the production of a controlled substance by propagation, compounding, conversion or processing, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container and other activities incident to production, except that this term does not include a pharmacist who prepares, compounds, packages or labels a controlled substance as an incident to dispensing a controlled substance in accordance with a prescription and in the usual course of professional practice. (R.C. § 3719.01(P))

MARIHUANA. All parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. **MARIHUANA** does not include **HASHISH**. (R.C. § 3719.01(Q); R.C. § 2925.01(AA))

MINOR DRUG POSSESSION OFFENSE. Either of the following:

- (1) A violation of § 138.03 or R.C. § 2925.11 (as it existed prior to 7-1-96)
- (2) A violation of § 138.03 or R.C. § 2925.11 (as it exists on and after 7-1-96) that is a misdemeanor or a

felony of the fifth degree. (R.C. § 2925.01(EE))

NARCOTIC DRUGS. Coca leaves, opium, isonipecaine, amidone, isoamidone, ketobemidone, as defined herein and every substance not chemically distinguished from them and every drug, other than cannabis, which may be included in the meaning of **NARCOTIC DRUG** under the Federal drug abuse control laws. **COCA LEAVES** includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances for which cocaine or ecgonine may be synthesized or made. **ISONIPECAINE** means any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated. **AMIDONE** means any substance identified chemically as 4-4-diphenyl-6-dimethylamino-heptanone-3, or any salt thereof, by whatever trade name designated. **ISOAMIDONE** means any substance identified chemically as 4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt thereof, by whatever trade name designated. **KETOBEMIDONE** means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyle ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated. (R.C. § 3719.01(R))

NOXIOUS ADDITIVE. Any element or compound designated by the State Board of Pharmacy for use as a safe and effective ingredient in any product containing the ingredient toluene, the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, which will discourage the intentional smelling or inhaling of the fumes of such product. A noxious additive shall not be added to such product if such addition would make the product unsuitable for its intended use or adversely affect the performance of the product. The addition of a noxious additive to such product is not required if the Board determines that the normal chemical composition of the product creates a level of noxiousness that is sufficient to discourage the intentional smelling or inhaling of the product's fumes. (R.C. § 3719.01(S))

NURSE. A person licensed to engage in the practice of nursing in this state. (R.C. § 3719.01(T))

PERSON. Any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity. (R.C. § 3719.01(X))

PHARMACIST. A person registered with the State Board of Pharmacy as a compounder and dispenser of drugs. (R.C. § 3719.01(Y))

PHARMACY. Any area, room, rooms, place of business, department, or portion of any of the foregoing, where prescriptions are filled or where drugs, dangerous drugs or poisons are compounded, sold, offered or displayed for sale, dispensed or distributed to the public. (R.C. § 3719.01(Z))

POSSESS or POSSESSION. Having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found. (R.C. § 2925.01(K))

PRACTITIONER. A person who is licensed pursuant to R.C. Chapter 4715, 4731 or 4741 and authorized by law to write prescriptions for drugs or dangerous drugs. (R.C. § 3719.01(BB))

PRESCRIPTION. A written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the Director of the United States Drug Enforcement Administration, pursuant to the Federal drug abuse control laws. (R.C. 3719.01(CC))

SALE. Includes delivery, barter, exchange, transfer or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee. (R.C. § 3719.01(EE))

SAMPLE DRUG. A drug or pharmaceutical preparation that would be hazardous to health or safety if used

without the supervision of a practitioner, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer. (R.C. § 2925.01(L))

SCHEDULE I, SCHEDULE II, SCHEDULE III, SCHEDULE IV and SCHEDULE V. Controlled substance Schedules I, II, III, IV and V, respectively, established pursuant to § 624.12, as amended pursuant to R.C. §§ 3719.43 or 3719.44. (R.C. § 3719.01(FF))

UNIT DOSE. An amount or unit of a compound, mixture or preparation containing a controlled substance, that is separately identifiable and is in a form indicating that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual. (R.C. § 2925.01(E))

WHOLESALE. A person who, on official written orders other than prescriptions, supplies controlled substances that he/she himself/herself has not manufactured, produced or prepared and includes **WHOLESALE DISTRIBUTOR OF DANGEROUS DRUGS** as defined in R.C. § 4729.02. (R.C. § 3719.01(GG))

Words, terms and phrases and their derivatives used in this chapter which are not defined in this section shall have the meanings given to them in the Ohio Revised Code. ('70 Code, § 624.01)

§ 624.02 [RESERVED].

§ 624.03 DRUG ABUSE.

(A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4729, 4731, or 4741, or R.C. § 4723.56.

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration.

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the Federal Food, Drug, and Cosmetic Act, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a practitioner, where the drug is in the original container in which it was dispensed to such person.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II of R.C. § 3719.41, with the exception of marihuana, or is cocaine, L.S.D., heroin, or a compound, mixture or preparation containing such drug, drug abuse is a felony to be prosecuted under appropriate state law.

(2) If the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV, or V of R.C. § 3719.41, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following division, possession of drugs is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, it is a misdemeanor of the

second degree. If the drug involved in the violation is an anabolic steroid included in schedule III and if the offense is a misdemeanor of the third degree under this division, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (F) of this section or R.C. § 2951.02(F).

(b) If the amount of the drug involved exceeds the bulk amount, possession of drugs is a felony to be prosecuted under appropriate state law.

(3) If the drug involved in the violation is marihuana, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds 100 grams but does not exceed 200 grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved exceeds 200 grams, possession of marihuana is a felony to be prosecuted under appropriate state law.

(4) If the drug involved in the violation is hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in the following divisions, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but does not exceed ten grams of hashish in a solid form or equals or exceeds one gram but does not exceed two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved exceeds ten grams of hashish in a solid form or equals or exceeds two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony to be prosecuted under appropriate state law.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term authorized or required by division (C) of this section, § 624.14, and R.C. §§ 2929.13 and 2929.14 and in addition to any other sanction that is imposed for the offense under this section or R.C. §§ 2929.11 through 2929.181, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do the following if applicable regarding the offender:

(1) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in R.C. § 2925.03(F).

(2) The court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section as provided in R.C. § 2925.11(E).

(3) If the offender is a professionally licensed person or a person who has been admitted to the Bar by

order of the Supreme Court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court shall comply with R.C. § 2925.38, as provided in R.C. § 2925.11(E).

(F) If an offender pleads guilty to a violation of this section prior to the commencement of the trial in the criminal action, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place an offender who is a misdemeanor on conditional probation under this division, with the terms of the sanction or probation stated in R.C. § 2925.11(F) and (G).

(G) It is an affirmative defense, as provided in R.C. § 2901.05, to a charge of possessing marihuana under this section that the offender, pursuant to prior written recommendation of a licensed physician, possessed the marihuana solely for medicinal purposes. (R.C. § 2925.11) Penalty, see § 698.02

§ 624.04 POSSESSION OF DRUG ABUSE INSTRUMENTS.

(A) No person shall knowingly make, obtain, possess or use any instrument, article or thing whose customary and primary purpose is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(B) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with R.C. Chapters 3719, 4715, 4729, 4731 and 4741.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender has previously been convicted of a drug abuse offense, violation of this section is a misdemeanor of the first degree.

(D) (1) Notwithstanding the fines otherwise required to be imposed pursuant to R.C. §§ 2929.21 or 2929.31 for violations of this section and notwithstanding R.C. § 2929.22, the court shall impose a mandatory fine of \$1,000 if the violation of this section was a misdemeanor of the first degree and a mandatory fine of \$750 if the violation of this section was a misdemeanor of the second degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (D)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to R.C. §§ 2929.21 or 2929.31.

(3) No court shall impose a mandatory fine pursuant to division (D)(1) of this section upon an offender who alleges, in an affidavit filed with the court prior to his/her sentencing, that he/she is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(E) In addition to any other penalty imposed for a violation of this section, the court may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the Bar by order of the Supreme Court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with R.C. § 2925.38. (R.C. § 2925.12) ('70 Code, § 624.04) Penalty, see § 698.02

Statutory reference:

Disbursement of fine monies and bail forfeitures, see R.C. § 2925.12(D)(3) and (4)

§ 624.05 PERMITTING DRUG ABUSE.

(A) No person, who is the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other

vehicles as defined in paragraph (A) of R.C. §4501.01, shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

(B) No person, who is the owner, lessee, or occupant, or who has custody, control, or supervision of premises, or real estate, including vacant land, shall knowingly permit the premises, or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person.

(C) Whoever violates this section is guilty of permitting drug abuse, a misdemeanor of the first degree, except that permitting drug abuse is a felony of the fourth degree, punishable under appropriate state law if any of the following apply:

(1) The offender previously has been convicted of a drug abuse offense;

(2) The felony drug abuse offense in question is a violation of R.C. § 2925.02 or R.C. § 2925.03(A)(1), (5), (7) or (10) that was committed in either of the following ways:

(a) On school premises, in a school building, or within 1000 feet of the boundaries of any school premises;

(b) Within 100 feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within 100 feet or within view of the commission of the offense, or the juvenile views the commission of the offense.

(D) (1) Notwithstanding the fines otherwise required to be imposed pursuant to R.C. §§ 2929.11 or 2929.31 for violations of this section and notwithstanding R.C. § 2929.14, the court shall impose a mandatory fine of \$1,500 if the violation of this section was a felony of the fourth degree and a mandatory fine of \$1,000 if the violation of this section was a misdemeanor of the first degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (D)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to R.C. §§ 2929.11 or 2929.31.

(3) No court shall impose a mandatory fine pursuant to division (D)(1) of this section upon an offender who alleges, in an affidavit filed with the court prior to his/her sentencing, that he/she is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(E) In addition to any other penalty imposed for a violation of this section, the court may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the Bar by order of the Supreme Court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with R.C. § 2925.38.

(F) Vehicles used in violation of division (A) of this section shall be seized and forfeited to the municipality upon motion to the common pleas court. Forfeiture shall not apply to common carriers or innocent owners, nor shall they affect the rights of a holder of a valid lien. (R.C. § 2925.13) ('70 Code, § 624.05) Penalty, see § 698.02

Cross-reference:

Driving or physical control while under the influence, see § 333.01

Alcoholic beverages, see Ch. 612

Statutory reference:

Disbursement of fine monies and bail forfeitures, see R.C. § 2925.13(D)(3) and (4)

§ 624.06 BUSING HARMFUL INTOXICANTS.

(A) Except for lawful research, clinical, medical, dental, or veterinary purposes, no person, with purpose to induce intoxication or similar physiological effects, shall obtain, possess, or use a harmful intoxicant.

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a misdemeanor of the fourth degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a misdemeanor of the first degree.

(C) In addition to any other sanction imposed for a violation of this section, the court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the Bar by order of the Supreme Court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with R.C. § 2925.38. (R.C. § 2925.31) ('70 Code, § 624.07) Penalty, see § 698.02

Cross-reference:

Intoxicated pedestrians, see § 371.11

Disorderly conduct while voluntarily intoxicated, see § 648.04(B)

Using weapons while intoxicated, see § 672.03

§ 624.07 TRAFFICKING IN HARMFUL INTOXICANTS.

(A) No person shall knowingly dispense or distribute any harmful intoxicant except gasoline to any juvenile if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of § 624.06 of this chapter, unless a written order from the parent or guardian is provided to the dispenser or distributor. Six months after the Board of Pharmacy has designated the noxious additive, as defined in § 634.01 of this chapter, that is to be included in any product containing toluene, the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, no person shall dispense or distribute a product that is required to include a noxious additive unless such product includes the noxious additive in the amounts and proportions prescribed by the Board.

(B) Any product that is required by division (A) of this section to include a noxious additive shall have such contents clearly stated on the label.

(C) The prohibitions of this section shall not apply after a prescribed noxious additive has been added to the harmful intoxicant or upon determination by the board of pharmacy that addition of a noxious additive is not required.

(D) Whoever violates this section is guilty of trafficking in harmful intoxicants, a misdemeanor of the fourth degree. If the offender previously has been convicted of a drug abuse offense, trafficking in harmful intoxicants is a misdemeanor of the third degree.

(E) This section does not apply to products used in making, fabricating, assembling, transporting, or constructing a product or structure by manual labor or machinery, for sale or lease to another person, or to the mining, refining, or processing of natural deposits.

(F) In addition to any other sanction imposed for a violation of this section, the court shall suspend for not less than six months nor more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the Bar by order of the Supreme Court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with R.C. § 2925.38. (R.C. § 2925.32) ('70 Code, § 624.07) Penalty, see § 698.02

Cross-reference:

Placing harmful substance in food or confection, see § 636.16

§ 624.08 [RESERVED].

§ 624.09 POSSESSION, SALE AND DISPOSAL OF HYPODERMICS.

(A) Possession of a hypodermic is authorized for:

(1) Any manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, and any authorized agent or employee of such manufacturer, distributor or dealer, in the regular course of business;

(2) A hospital, owner of a pharmacy or pharmacist, in the regular course of business;

(3) Any practitioner, nurse or other person authorized to administer injections, in the regular course of his/her profession or employment;

(4) Any person, when the hypodermic in his/her possession was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed by a practitioner for the treatment of disease;

(5) Any person whose use of a hypodermic is for legal research, clinical or medicinal purposes;

(6) Any farmer, for the lawful administration of a drug to an animal;

(7) Any person whose use of a hypodermic is for lawful, professional, mechanical, trade or craft purpose.

(B) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no owner of a pharmacy or pharmacist, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to division (A) of this section shall negligently fail to take reasonable precautions to prevent any hypodermic in his/her possession from theft or acquisition by any unauthorized person or negligently discard a hypodermic without first having rendered it completely unusable for its original purpose.

(C) A pharmacist or person under the direct supervision of a pharmacist may furnish hypodermics to another without a prescription by a practitioner, but the pharmacist or person under his/her supervision shall require positive identification of each person to whom hypodermics are furnished and shall keep a written record of each transaction, including the date, the type and the quantity of the articles furnished, and the name, address and signature of the person to whom such articles are furnished. No pharmacist or person under his/her supervision shall fail to comply with this division in furnishing hypodermics. (R.C. § 3719.172)

(D) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the third degree on a first offense. If an offender has previously been convicted of a violation of any of the provisions of this section, R.C. §§ 3719.05, 3719.06, 3719.13, 3719.31(B) or (E), or a drug abuse offense, a violation is a misdemeanor of the first degree. (R.C. § 3719.99(E)) ('70 Code, § 624.09) Penalty, see § 698.02

§ 624.10 EVIDENCE.

(A) (1) In any criminal prosecution for a violation of any of the provisions of this chapter, a laboratory report from the State Bureau of Criminal Identification and Investigation, a laboratory operated by another law enforcement agency or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the Association of American Universities or the North Central Association of Colleges and Secondary Schools, primarily for the purpose of providing scientific services to law enforcement agencies and signed by the person performing the analysis, stating that the substance which is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit

dosages, is prima-facie evidence of the content, identity and weight or the existence and number of unit dosages of the substance.

(2) Attached to that report shall be a copy of a notarized statement by the signer of the report giving the name of the signer and stating that he/she is an employee of the laboratory issuing the report and that performing the analysis is a part of his/her regular duties, and giving an outline of his/her education, training and experience for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused, or on the accused if he/she has no attorney, prior to any proceeding in which the report is to be used against the accused other than at a preliminary hearing or Grand Jury proceeding where the report may be used without having been previously served upon the accused.

(C) The report shall not be prima-facie evidence of the contents, identity and weight or the existence and number of unit dosages of the substance if the accused or his/her attorney demand the testimony of the person signing the report, by serving the demand upon the prosecuting attorney within seven days from the accused or his/her attorney's receipt of the report. The time may be extended by a trial judge in the interests of justice.

(D) Any report issued for use under this section shall contain notice of the right of the accused to demand, and the manner in which the accused shall demand, the testimony of the person signing the report.

(E) Any person who is accused of a violation of any of the provisions of this chapter is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or if he/she is indigent, by a qualified laboratory analyst appointed by the court. Such portion shall be a representative sample of the entire substance that is the basis of the alleged violation and shall be of sufficient size, in the opinion of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance. The prosecuting attorney shall provide the accused's analyst with the sample portion at least 14 days prior to trial, unless the trial is to be held in a court not of record or unless the accused person is charged with a minor misdemeanor, in which case the prosecuting attorney shall provide the accused's analyst with the sample portion at least three days prior to trial. If the prosecuting attorney determines that such a sample portion cannot be preserved and given to the accused's analyst, the prosecuting attorney shall so inform the accused person, or his/her attorney. In such a circumstance, the accused person is entitled, upon written request made to the prosecuting attorney, to have his/her privately employed or court appointed analyst present at an analysis of the substance that is the basis of the alleged violation, and, upon further written request, to receive copies of all recorded scientific data that result from the analysis and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the identity of the substance subject to the analysis.

(F) In addition to the rights provided under division (E) of this section, any person who is accused of a violation of any of the provisions of this chapter that involves a bulk amount of a controlled substance, or any multiple thereof, or who is accused of a violation of § 624.03, other than a minor misdemeanor violation, that involves marihuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of his/her choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court, present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions, findings or opinions concerning the weight, volume or number of unit doses of the substance subject to the measurement or weighing. (R.C. § 2925.51) ('70 Code, § 624.10)

Statutory reference:

Conditional probation for drug dependent persons, see R.C. § 2951.04

Drug treatment in lieu of conviction, see R.C. § 2951.041

§ 624.11 DOUBLE JEOPARDY.

No person shall be prosecuted for a violation of any of the provisions of this chapter if such person has been acquitted or convicted under the federal narcotic laws, as defined in R.C. § 3719.01(K), of the same act or omission which, it is alleged, constitutes a violation of any of the provisions of this chapter. (R.C. §§ 2625.50, 3719.19) ('70 Code, § 624.11)

§ 624.12 CONTROLLED SUBSTANCE SCHEDULES.

Controlled substance Schedules I, II, III, IV and V are hereby established, which Schedules include the following, subject to amendment pursuant to R.C. §§ 3719.43 or 3719.44.

Editor's note: The schedules referred to in this section contain comprehensive lists of the following classes of substances.

Schedule I

- (A) Narcotics - opiates
- (B) Narcotics - opium derivatives
- (C) Hallucinogens
- (D) Depressants
- (E) Stimulants
- (F) Temporary listing of substances subject to emergency scheduling

Schedule II

- (A) Narcotics - opium and opium derivatives
- (B) Narcotics - opiates
- (C) Stimulants
- (D) Depressants
- (E) Hallucinogenic substances
- (F) Immediate precursors
- (G) Other substances

Schedule III

- (A) Stimulants
- (B) Depressants
- (C) Narcotic antidotes

(D) Narcotics - narcotic preparations

Schedule IV

(A) Narcotic drugs

(B) Depressants

(C) Fenfluramine

(D) Stimulants

(E) Other substances

Schedule V

(A) Narcotic drugs

(B) Narcotics - narcotic preparations

(C) Stimulants (R.C. § 3719.41) ('70 Code, § 624.12)

§ 624.13 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.

(A) No person shall alter, deface or remove any label affixed by a manufacturer, wholesaler, pharmacist or practitioner who dispenses a controlled substance in a package or container, as long as any of the original contents remain, except when lawfully filling a prescription. (R.C. § 3719.08)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree. If the offender has previously been convicted of a violation of this section, R.C. §§ 3719.07 or 3719.08 or a drug abuse offense, a violation is a felony and shall be prosecuted under appropriate state law. (R.C. § 3719.99(C)) ('70 Code, § 624.13) Penalty, see § 698.02

§ 624.14 USE, POSSESSION OR SALE OF DRUG PARAPHERNALIA.

(A) As used in this section, **DRUG PARAPHERNALIA** means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introduced into the human body, a controlled substance in violation of this chapter. **DRUG PARAPHERNALIA** includes, but is not limited to, any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled

substance;

(5) A scale or balance for weighing or measuring a controlled substance;

(6) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance;

(7) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;

(8) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;

(9) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;

(10) A container or device for storing or concealing a controlled substance;

(11) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;

(12) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if an object is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner, or by anyone in control, of the object, concerning its use;

(2) The proximity in time or space of the object, or of the act relating to the object, to a violation of any provision of this chapter or R.C. Chapter 2925;

(3) The proximity of the object to any controlled substance;

(4) The existence of any residue of a controlled substance on the object;

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the object, to deliver it to any person whom he/she knows intends to use the object to facilitate a violation of any provision of this chapter or R.C. Chapter 2925. A finding that the owner, or anyone in control, of the object, is not guilty of a violation of any other provision of this chapter or R.C. Chapter 2925, does not prevent a finding that the object was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the object concerning its use;

(7) Any descriptive material accompanying the object and explaining or depicting its use;

(8) National or local advertising concerning the use of the object;

(9) The manner and circumstances in which the object is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the object to the total sales of the business

enterprise;

(11) The existence and scope of legitimate uses of the object in the community;

(12) Expert testimony concerning the use of the object.

(C) (1) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if he/she knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if he/she knows that the purpose of the advertisement is to promote the illegal sale in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) This section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719, 4715, 4729, 4731, or 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by R.C. § 3719.172.

(E) Notwithstanding R.C. §§ 2933.42 and 2933.43, any drug paraphernalia that was used, possessed, sold, or manufactured in violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to R.C. § 2933.41 (D)(8).

(F) (1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) (1) Notwithstanding the fines otherwise required to be imposed pursuant to R.C. §§ 2929.21 or 2929.31 for violations of this section and notwithstanding R.C. § 2929.22, the court shall impose a mandatory fine of \$1,000 if the violation of this section was a misdemeanor of the first degree, a mandatory fine of \$750 if the violation of this section was a misdemeanor of the second degree, and a mandatory fine of \$250 if the violation of this section was a misdemeanor of the fourth degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (G)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to R.C. §§ 2929.21 or 2929.31.

(3) No court shall impose a mandatory fine pursuant to division (G)(1) of this section upon an offender who alleges, in an affidavit filed with the court prior to his/her sentencing, that he/she is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(H) In addition to any other penalty imposed for a violation of this section, the court may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation

of this section. If the offender is a professionally licensed person or a person who has been admitted to the Bar by order of the Supreme Court in compliance with its prescribed and published rules, in addition to any other penalty imposed for a violation of this section, the court forthwith shall comply with R.C. § 2925.38.
(R.C. § 2925.14) ('70 Code, § 624.14) Penalty, see § 698.02

Statutory reference:

Disbursement of fine monies and bail forfeitures, see R.C. § 2925.14(G)(3) and (4)

§ 624.15 COUNTERFEIT CONTROLLED SUBSTANCES.

(A) No person shall knowingly possess any counterfeit controlled substance.

(B) Whoever violates this section shall be guilty of possession of counterfeit controlled substances, a misdemeanor of the first degree.

(C) Notwithstanding any contrary provision of R.C. § 3719.21, the Clerk of Court shall pay a fine imposed for a violation of this section pursuant to R.C. § 2929.18(A) in accordance with and subject to the requirements of § 138.02(E) and R.C. § 2925.03(F). The agency that receives the fine shall use the fine as specified in § 138.02(E) and R.C. § 2925.03(F). (R.C. § 2925.37)

(D) The provisions of this section shall not apply to a practitioner, pharmacist, pharmacy owner or other person whose conduct is in accordance with R.C. Chapters 3715, 3719, 4715, 4729, 4731 and 4741.
(‘70 Code, § 624.15) Penalty, see § 698.02

Statutory reference:

Disbursement of fine monies and bail forfeitures, see R.C. § 2925.37(L)(3) and (4)

Mandatory fines for felony offenses, see R.C. § 2925.37(L)(1)

CHAPTER 630: GAMBLING

Section

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§ 630.01 DEFINITIONS.

As used in this chapter:

BET. The hazarding of anything of value upon the result of an event, undertaking or contingency, but does not include a bona fide business risk.

BINGO.

(1) A game with all of the following characteristics:

(a) The participants use bingo cards that are divided into 25 spaces arranged in five horizontal and five vertical rows of spaces, with each space, except the central space, being designated by a combination of a letter and a number and with the central space being designated as a free space.

(b) The participants cover the spaces on the bingo cards that correspond to combinations of letters and numbers that are announced by a bingo game operator.

(c) A bingo game operator announces combinations of letters and numbers that appear on objects that bingo game operator selects by chance, either manually or mechanically, from a receptacle that contains 75 objects at the beginning of each game, each object marked by a different combination of a letter and a number that corresponds to one of the 75 possible combinations of a letter and a number that can appear on the bingo cards.

(d) The winner of the bingo game includes any participant who properly announces during the interval between the announcements of letters and numbers as described in subsection (1)(C) that a predetermined and preannounced pattern of spaces has been covered on a bingo card being used by the participant.

(2) Any scheme or game other than a game as defined in subsection (1) with the following characteristics:

(a) The participants use cards, sheets or other devices that are divided into spaces arranged in horizontal, vertical or diagonal rows of spaces, with each space, except free spaces, being designated by a single letter, number or symbol; by a combination of letters, numbers or symbols; by a combination of a letter and a number, a letter and a symbol, or a number and a symbol; or by any combination of letters, numbers and symbols, with some or none of the spaces being designated as a free, complimentary or similar space.

(b) The participants cover the spaces on the cards, sheets or devices that correspond to letters,

numbers, symbols or combinations of such that are announced by a bingo game operator or otherwise transmitted to the participants.

(c) A bingo game operator announces, or otherwise transmits to the participants, letters, numbers, symbols or any combination of such as set forth in subsection (2)(a) that appear on objects that a bingo game operator selects by chance that correspond to one of the possible letters, numbers, symbols or combinations of such that can appear on the bingo cards, sheets or devices.

(d) The winner of the bingo game is any participant who properly announces that a predetermined and preannounced pattern of spaces has been covered on a card, sheet or device being used by the participant.

BINGO GAME OPERATOR. Any person, except security personnel, who performs work or labor at the site of a bingo game, including, but not limited to, collecting money from participants, handing out bingo cards or objects to cover spaces on the bingo cards, selecting from a receptacle the objects that contain the combination of letters and numbers that appear on the bingo cards, calling out the combinations of letters and numbers, distributing prizes to the winner of the bingo game, and preparing, selling and serving food or beverages.

BINGO SESSION. A period, not to exceed five continuous hours, during which a person conducts one or more bingo games.

BOOKMAKING. The business of receiving or paying off bets.

CHARITABLE BINGO GAME. Any bingo game that is conducted by a charitable organization that has obtained a bingo license pursuant to R.C. § 2915.08 and the proceeds of which are used for a charitable purpose.

CHARITABLE ORGANIZATION. Any tax exempt religious, educational, veteran's, fraternal, service, nonprofit medical, volunteer rescue service, volunteer firefighter's, senior citizen's, youth athletic, amateur athletic (as defined in R.C. § 2915.01), or youth athletic park organization. An organization is tax exempt if the organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10) or 501(c)(19) of the Internal Revenue Code. To qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer firefighter's organization, shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under R.C. § 2915.08 or the conducting of any scheme of chance or game of chance as provided in R.C. § 2915.02(C) or § 630.02(C).

CONDUCT. To back, promote, organize, manage, carry on or prepare for the operation of a scheme or game of chance but does not include any act performed by a bingo game operator.

EDUCATIONAL ORGANIZATION. Any organization within this state that is not organized for profit, the primary purpose of which is to educate and develop the capabilities of individuals through instruction, and that operates or contributes to the support of a school, academy, college or university.

FRATERNAL ORGANIZATION. Any society, order or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members and that has been in continuous existence in the state for a period of five years.

GAMBLING DEVICE.

- (1) A book, totalizer or other equipment for recording bets;
- (2) A ticket, token or other device representing a chance, share or interest in a scheme of chance, except a

charitable bingo game, or evidencing a bet;

(3) A deck of cards, dice, gaming table, roulette wheel, slot machine, punch board or other apparatus designed for use in connection with a game of chance;

(4) Any equipment, device, apparatus or paraphernalia specially designed for gambling purposes.

GAMBLING OFFENSE.

(1) A violation of §§ 630.02, 630.03, 630.04, 630.05, 630.06, 630.07 or 630.08 of this General Offenses Code, of R.C. § 2915.07, or of a felony offense under R.C. §§ 2915.02, 2915.03, 2915.05 or 2915.09.

(2) A violation of an existing or former ordinance of this or any other municipality or law of this or any other state or the United States, substantially equivalent to any section listed in subsection (1) of this section or a violation of R.C. § 2915.06 as it existed prior to 7-1-96;

(3) An offense under an existing or former ordinance of this or any other municipality or law of this or any other state or the United States, of which gambling is an element;

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

GAME OF CHANCE. Poker, craps, roulette, a slot machine, a punch board or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely or wholly by chance.

GROSS RECEIPTS. All money or assets, including admission fees, that a person receives from a bingo session that the person conducts without the deduction of any amounts for prizes paid out during the session or for the expenses of conducting the bingo session. ***GROSS RECEIPTS*** does not include any money taken in directly from the sale of food or beverages by a charitable organization conducting a bingo session, or by a bona fide auxiliary unit or society of a charitable organization, at a bingo session conducted by the charitable organization, provided all of the following apply:

(1) The auxiliary unit or society has been in existence as a bona fide auxiliary unit or society of the charitable organization for at least two years prior to the bingo session.

(2) The person who purchases the food or beverage receives nothing of value except the food or beverage and items customarily received with the purchase of that food or beverage.

(3) The food and beverages are sold at customary and reasonable prices.

(4) No person preparing, selling, or serving the food or beverages at the site of the bingo game receives directly or indirectly any form of compensation for the preparation, sale, or service of the food or beverages.

INTERNAL REVENUE CODE. The “Internal Revenue Code of 1986,” 100 Stat. 2085, 26 U.S.C. 1, as now or hereafter amended.

NONPROFIT MEDICAL ORGANIZATION. Any organization that has been incorporated as a nonprofit corporation for at least five years and that has continuously operated and will be operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, hospital, medical, research or therapeutic services for the public.

PARTICIPANT. Any person who plays bingo by covering the spaces on a bingo card that correspond to

combinations of letters and numbers that are announced by a bingo game operator.

RELIGIOUS ORGANIZATION. Any church, body of communicants or group that is not organized or operated for profit and that gathers in common membership for regular worship and religious observances.

SCHEME or GAME OF CHANCE CONDUCTED FOR PROFIT. Any scheme or game of chance designed to produce income for the person who conducts or operates the scheme or game of chance, but does not include a charitable bingo game.

SCHEME OF CHANCE. A lottery, numbers game, pool or other scheme in which a participant gives a valuable consideration for a chance to win a prize.

SECURITY PERSONNEL. Any person who either is a sheriff, deputy sheriff, marshal, deputy marshal, township constable, or member of an organized police department of a municipal corporation or has successfully completed a peace officer's training course pursuant to R.C. §§ 109.71 to 109.79 and who is hired to provide security for the premises on which a bingo game is conducted.

SENIOR CITIZEN'S ORGANIZATION. Any private organization, not organized for profit, that is organized and operated exclusively to provide recreational or social services for persons who are 55 years of age or older and that is described and qualified under subsection 501(c)(3) of the Internal Revenue Code.

SERVICE ORGANIZATION. Any organization, not organized for profit, that is organized and operated exclusively to provide, or to contribute to the support of organizations or institutions organized and operated exclusively to provide, medical and therapeutic services for persons who are crippled, born with birth defects or have any other mental or physical defect or those organized and operated exclusively to protect, or to contribute to the support of organizations or institutions organized and operated exclusively to protect, animals from inhumane treatment.

TO USE GROSS RECEIPTS FOR A CHARITABLE PURPOSE. The proceeds of the bingo game are used by, or given, donated or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code; that the proceeds of the bingo game are used by, or given, donated or otherwise transferred to, a veteran's organization, as defined in this section, that is a post, chapter or organization of war veterans, or an auxiliary unit or society of, or a trust or foundation for, any such post, chapter or organization organized in the United States or any of its possessions, at least 75% of the members of which are war veterans and substantially all of the other members of which are individuals who are veterans (but not war veterans) or are cadets, or are spouses, widows or widowers of war veterans, or such individuals, provided that no part of the net earnings of such post or organization inures to the benefit of any private shareholder or individual, and further provided that the bingo game proceeds are used by the post or organization for the charitable purposes set forth in R.C. § 5739.02(B)(12), awarding scholarships to or for attendance at an institution mentioned in R.C. § 5739.02(B)(12), donated to a governmental agency, or used for nonprofit youth activities, the purchase of United States or Ohio flags that are donated to schools, youth groups or other bona fide nonprofit organizations, promotion of patriotism, or disaster relief; that the proceeds of the bingo game are used by, or given, donated or otherwise transferred to, a fraternal organization that has been in continuous existence in the state for 15 years for use exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals and contributions for such use would qualify as a deductible charitable contribution under subsection 170 of the Internal Revenue Code; or that the proceeds of the bingo game are used by a volunteer firefighter's organization and are used by the organization for the purposes set forth in that section.

VETERAN'S ORGANIZATION. Any individual post of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post or auxiliary unit has been incorporated as a nonprofit corporation for at least two years and has received a letter from the state headquarters of the National Veteran's Association indicating that the individual post or auxiliary unit is in good standing with the National

Veteran's Association. As used in this division, **NATIONAL VETERAN'S ASSOCIATION** means any veteran's association that has been in continuous existence as such for a period of at least ten years and either is incorporated by an act of the United States Congress or has a national dues-paying membership of at least 5000 persons.

VOLUNTEER FIREFIGHTER'S ORGANIZATION. Any organization of volunteer firefighters, as defined in R.C. § 146.01, that is organized and operated exclusively to provide financial support for a volunteer fire department or a volunteer fire company.

VOLUNTEER RESCUE SERVICE ORGANIZATION. Any organization of volunteers organized to perform emergency medical service as defined in R.C. § 4731.82(E).

YOUTH ATHLETIC ORGANIZATION. Any organization, not organized for profit, that is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 21 years of age or younger by means of sponsoring, organizing, operating or contributing to the support of an athletic team, club, league or association.

YOUTH ATHLETIC PARK ORGANIZATION. Any organization, not organized for profit, that satisfies both of the following:

(1) It owns, operates, and maintains playing fields that satisfy both of the following:

(a) The playing fields are used at least 100 days per year for athletic activities by one or more organizations, not organized for profit, each of which is organized and operated exclusively to provide financial support to, or to operate, athletic activities for persons who are 18 years of age or younger by means of sponsoring, organizing, operating, or contributing to the support of an athletic team, club, league, or association;

(b) The playing fields are not used for any profit-making activity at any time during the year.

(2) It uses the proceeds of the bingo games it conducts exclusively for the operation, maintenance, and improvement of its playing fields of the type described in subsection (1).
(R.C. § 2915.01) ('70 Code, § 630.01)

§ 630.02 GAMBLING IN GENERAL.

(A) No person shall:

(1) Engage in bookmaking, or knowingly engage in conduct that facilitates bookmaking;

(2) Establish, promote or operate, or knowingly engage in conduct that facilitates, any scheme or game of chance conducted for profit;

(3) Knowingly procure, transmit, exchange or engage in conduct that facilitates the procurement, transmission or exchange of, information for use in establishing odds or determining winners in connection with bookmaking or with any scheme or game of chance conducted for profit;

(4) Engage in betting or in playing any scheme or game of chance, except for a charitable bingo game, as a substantial source of income or livelihood;

(5) With purpose to violate subsection (1), (2), (3) or (4) hereof, acquire, possess, control or operate any gambling device.

(B) For purposes of division (A)(1) of this section a person facilitates bookmaking if he/she in any way knowingly aids an illegal bookmaking operation, including, without limitation, placing a bet with a person engaged in

or facilitating illegal bookmaking. For purposes of division (A)(2) of this section a person facilitates a scheme or game of chance conducted for profit if he/she in any way knowingly aids in the conduct or operation of any such scheme or game, including, without limitation, playing any such scheme or game.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(D) This section does not apply to:

(1) Schemes of chance conducted by a charitable organization that is, and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is, exempt from Federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, provided that all of the money or assets received from such scheme of chance after deduction only of prizes paid out during the conduct of the scheme of chance are used by, or given, donated or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code, and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, and provided that the scheme of chance is not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only pursuant to § 630.09;

(2) Games of chance, if all of the following apply:

(a) The games of chance are not craps for money, roulette for money or slot machines:

(b) The games are conducted by a charitable organization that is, and has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the organization is, exempt from Federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(c) The games are conducted at festivals of the organization that are conducted either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days not more than once a year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games or on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance. A charitable organization shall not lease premises from a veteran's or fraternal organization, or lease from a governmental unit premises located in a county with a population exceeding 500,000 to conduct a festival described in this subsection, if the veteran's or fraternal organization or governmental unit already has leased the premises twice during the preceding year to charitable organizations for that purpose. If a charitable organization leases premises from a veteran's or fraternal organization to conduct a festival described in this subsection, the charitable organization shall not pay a rental rate for the premises per day of the festival that exceeds the rental rate per bingo session that a charitable organization may pay under § 630.06 when it leases premises from another charitable organization to conduct bingo games.

(d) All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, or given, donated or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2) or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(e) The games are not conducted during, or within ten hours of, a bingo game conducted for amusement only pursuant to § 630.09.

(f) No person shall receive any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation, directly or indirectly, for operating or assisting in the operation of any scheme or game of chance.

(3) Any tag fishing tournament operated under a permit issued under R.C. § 1533.92 as **TAG FISHING TOURNAMENT** is defined in R.C. § 1531.01.

(E) Division (D) of this section shall not be construed to authorize the sale, lease or other temporary or permanent transfer of the right to conduct schemes of chance or games of chance, as granted by division (D) of this section, by any charitable organization that is granted that right.

(F) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted of any gambling offense, gambling is a felony of the fifth degree and shall be prosecuted under appropriate state law. (R.C. § 2915.02) ('70 Code, § 630.02) Penalty, see § 698.02

§ 630.03 OPERATING A GAMBLING HOUSE.

(A) No person, being the owner or lessee, or having custody, control or supervision of premises, shall:

- (1) Use or occupy such premises for gambling in violation of § 630.02;
- (2) Recklessly permit such premises to be used or occupied for gambling in violation of § 630.02.

(B) Premises used or occupied in violation of this section constitute a nuisance subject to abatement pursuant to R.C. §§ 3767.01 to 3767.99.

(C) Whoever violates this section is guilty of operating a gambling house, a misdemeanor of the first degree. If the offender previously has been convicted of a gambling offense, operating a gambling house is a felony of the fifth degree and shall be prosecuted under appropriate state law. (R.C. § 2915.03) ('70 Code, § 630.03) Penalty, see § 698.02

§ 630.04 PUBLIC GAMING.

(A) No person, while at a hotel, restaurant, tavern, store, arena, hall or other place of public accommodation, business, amusement or resort, shall make a bet or play any game of chance.

(B) No person, being the owner or lessee, or having custody, control or supervision of a hotel, restaurant, tavern, store, arena, hall or other place of public accommodation, business, amusement or resort shall recklessly permit such premises to be used or occupied in violation of division (A) of this section.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(D) Premises used or occupied in violation of division (B) of this section constitute a nuisance subject to abatement pursuant to R.C. §§ 3767.01 to 3767.99.

(E) Whoever violates any of the provisions of this section is guilty of public gaming, a minor misdemeanor. If the offender has previously been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree. (R.C. § 2915.04) ('70 Code, § 630.04) Penalty, see § 698.02

§ 630.05 CHEATING.

(A) No person, with purpose to defraud or knowing that he/she is facilitating a fraud, shall engage in conduct designed to corrupt the outcome of any of the following:

- (1) The subject of a bet;

- (2) A contest of knowledge, skill, or endurance that is not an athletic or sporting event;
- (3) A scheme or game of chance.

(B) Whoever violates this section is guilty of cheating, a misdemeanor of the first degree. If the potential gain from the cheating is \$500 or more, or if the offender has previously been convicted of any gambling offense or of any theft offense as defined in § 642.01, then cheating is a felony of the fifth degree and shall be prosecuted under appropriate state law. (R.C. § 2915.05) ('70 Code, § 630.05) Penalty, see § 698.02

Statutory reference:

Felony offense of corrupting sports, see R.C. § 2915.05

§ 630.06 RESPONSIBILITY OF CHARITABLE ORGANIZATION CONDUCTING BINGO GAME.

(A) A charitable organization that conducts a bingo game shall do all of the following:

(1) Own all of the equipment used to conduct the bingo game or lease such equipment from a charitable organization that is licensed to conduct a bingo game from a rental rate that is not more than is customary and reasonable for such equipment;

(2) Use all of the gross receipts from the bingo game for paying prizes, for the charitable purposes listed in its bingo license application, for purchasing or leasing bingo cards and other equipment used in conducting the bingo game, hiring security personnel for the bingo game, or advertising the bingo game provided that the amount of the receipts so spent is not more than is customary and reasonable for a similar purchase, lease, hiring or advertising, for renting premises in which to conduct the bingo game, except that if the building in which the game is conducted is owned by the charitable organization conducting the game, the charitable organization may deduct from the total amount of the gross receipts from each session a sum equal to the lesser of \$600 or 45% of the gross receipts from the session as consideration for the use of the premises;

(3) Conduct the bingo game on premises owned by the charitable organization, on premises owned by another charitable organization and leased from that charitable organization for a rental rate not in excess of \$450 per bingo session, or premises leased from a person other than a charitable organization for a rental rate that is not more than is customary and reasonable for premises that are similar in location, size and quality, but not in excess of \$450 per bingo session, or on premises owned by a person other than a charitable organization, that are leased from that person by another charitable organization, and that are subleased from that other charitable organization by the charitable organization for a rental rate not in excess of \$450 per bingo session. If the charitable organization leases from a person other than a charitable organization the premises on which it conducts bingo games, the lessor of the premises shall provide only the premises to the organization and shall not provide the organization with bingo game operators, security personnel, concessions or concession operators, bingo equipment, or any other type of service or equipment. A charitable organization shall not lease or sublease premises that it owns or leases to more than one other charitable organization per calendar week for the purpose of conducting bingo games on the premises. A person who is not a charitable organization shall not lease premises that he/she owns, leases or otherwise is empowered to lease to more than one charitable organization per calendar week for conducting bingo games on the premises. In no case shall more than two bingo sessions be conducted on any premises in any calendar week.

- (4) Display its bingo license conspicuously at the location where the bingo game is conducted;
- (5) Conduct the bingo game in accordance with the definition of bingo set forth in § 630.01.

(B) A charitable organization that conducts a bingo game shall not do any of the following:

- (1) Pay any compensation to a bingo game operator for operating a bingo game that is conducted by the

charitable organization or for preparing, selling, or serving food or beverages at the site of the bingo game, permit any auxiliary unit or society of the charitable organization to pay compensation to any bingo game operator who prepares, sells or serves food or beverages at a bingo session conducted by the charitable organization, or permit any auxiliary unit or society of the charitable organization to prepare, sell or serve food or beverages at a bingo session conducted by the charitable organization, if the auxiliary unit or society pays any compensation to the bingo game operators who prepare, sell or serve the food or beverages;

(2) Pay consulting fees to any person for any services performed in relation to the bingo game;

(3) Pay concession fees to any person who provides refreshments to the participants in the bingo game;

(4) Conduct more than two bingo sessions in any seven-day period except that a volunteer fire fighter's organization or a volunteer rescue service organization that conducts not more than five bingo sessions in a calendar year may conduct more than two bingo sessions in a seven day period after notifying the Attorney General when it will conduct the sessions;

(5) Pay out more than \$3,500 in prizes during any bingo session that is conducted by the charitable organization;

(6) Conduct a bingo session at any time during the ten-hour period between midnight and 10:00 a.m., at any time during, or within ten hours of, a bingo game conducted for amusement only pursuant to § 630.09, or at any location not specified on its bingo license, or on any day of the week or during any time period not specified on its bingo license. If circumstances beyond its control make it impossible for the charitable organization to conduct a bingo session at the location specified on its bingo license or if a charitable organization wants to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its bingo license, the charitable organization may apply in writing to the Attorney General for an amended bingo license, pursuant to Ohio R.C. § 2915.08(F). A charitable organization may apply only once in each calendar year for an amended license to conduct bingo sessions on a day of the week or at a time other than the day or time specified on its bingo license. If the amended license is granted, the organization may conduct bingo sessions at the location, on the day of the week, and at the time specified on its amended license.

(7) Permit any person whom the charitable organization knows, or should have known, is under the age of 18 to work as a bingo game operator;

(8) Permit any person whom the charitable organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator;

(9) Permit the lessor of the premises on which bingo is conducted, if the lessor is not a charitable organization, to provide the charitable organization with bingo game operators, security personnel, concessions, bingo equipment, or any other type of service or equipment.

(C) A bingo game operator shall not receive or accept any commission, wage, salary, reward, tip, donation, gratuity or other form of compensation, directly or indirectly, regardless of the source, for operating a bingo game or providing other work or labor at the site of the bingo game.

(D) Notwithstanding the provisions of division (A)(3) of this section, a charitable organization that has, prior to December 6, 1977, entered into written agreements for the lease of premises it owns to another charitable organization or other charitable organizations for the conducting of bingo sessions so that more than two bingo sessions are conducted per calendar week on the premises, and a person who is not a charitable organization that has prior to December 6, 1977, entered into written agreements for the lease of premises he/she owns to charitable organizations for the conducting of more than two bingo sessions per calendar week on the premises, may continue to lease such premises to those charitable organizations, provided that no more than four sessions are conducted per calendar week, provided that the lessor organization or person has notified the Ohio Attorney General in writing of the organizations

that will conduct the sessions and the days of the week and the times of the day on which the sessions will be conducted, provided that the initial lease entered into with each organization that will conduct the sessions was filed with the Ohio Attorney General prior to December 6, 1977, and provided that each organization that will conduct the sessions was issued a license to conduct bingo games by the Ohio Attorney General prior to December 6, 1977.

(E) Whoever violates division (A)(2) of this section is guilty of illegally conducting a bingo game, a felony of the fourth degree, and shall be prosecuted under appropriate state law. Whoever violates any of the other provisions of this section is guilty of a minor misdemeanor for a first offense and a misdemeanor of the first degree for any subsequent offense. (R.C. § 2915.09) (70 Code, § 630.06) Penalty, see § 698.02

§ 630.07 MAINTENANCE OF RECORDS BY CHARITABLE ORGANIZATIONS.

(A) A charitable organization that conducts a bingo session or scheme or game of chance pursuant to § 630.02(D), shall maintain the following records for at least three years from the date on which the bingo session or scheme or game of chance is conducted:

(1) An itemized list of the gross receipts of each session or scheme or game of chance;

(2) An itemized list of all expenses other than prizes that are incurred in conducting the bingo session, the name of each person to whom the expenses are paid, and a receipt for all the expenses;

(3) A list of all prizes awarded during the bingo session or scheme or game of chance conducted by the charitable organization and the name and address of all persons who are winners of prizes of \$100 or more in value;

(4) An itemized list of the charitable recipients of the proceeds of the bingo session or scheme or game of chance, including the name and address of each recipient to whom the money is distributed, and if the organization uses the proceeds of a bingo session, or the money or assets received from a scheme or game of chance for any purpose set forth in the definition *TO USE GROSS RECEIPTS FOR A CHARITABLE PURPOSE* in § 630.01 or § 630.02(D), a list of each purpose and an itemized list of each expenditure for each purpose;

(5) The number of persons who participate in any bingo session or scheme or game of chance that is conducted by a charitable organization.

(6) A list of receipts from the sale of food and beverages by the charitable organization or one of its auxiliary units or societies, if the receipts were excluded from the definition of *GROSS RECEIPTS* in § 630.01.

(7) An itemized list of all expenses incurred at each bingo session conducted by the charitable organization in the sale of food and beverages by the charitable organization or by an auxiliary unit or society of the charitable organization, the name of each person to whom the expenses are paid, and a receipt for all of the expenses.

(B) (1) The Attorney General or any local law enforcement agency may:

(a) Investigate any charitable organization or any officer, agent, trustee, member or employee of the organization;

(b) Examine the accounts and records of the organization;

(c) Conduct inspections, audits and observations of bingo games or schemes or games of chance while they are in session;

(d) Conduct inspections of the premises where bingo games or schemes or games of chance are operated;

(e) Take any other necessary and reasonable action to determine if a violation of any provision of R.C. §§ 2915.07 and 2915.08 or §§ 630.01, 630.02, and 630.06 through 630.09 has occurred and to determine whether R.C. § 2915.11 has been complied with.

(2) If any local law enforcement agency has reasonable grounds to believe that a charitable organization or an officer, agent, trustee, member or employee of the organization has violated any provision of R.C. Chapter 2915 or any section of this chapter, the local law enforcement agency may proceed by action in the proper court to enforce R.C. Chapter 2915 or any section of this chapter, provided that the local law enforcement agency shall give written notice to the Ohio Attorney General when commencing an action as described in this subsection.

(C) No person shall destroy, alter, conceal, withhold or deny access to any accounts or records of a charitable organization that have been requested for examination, or obstruct, impede or interfere with any inspection, audit or observation of a bingo game or scheme or game of chance or premises where a bingo game or scheme or game of chance is operated, or refuse to comply with any reasonable request of, or obstruct, impede or interfere with any other reasonable action undertaken by the Attorney General or a local law enforcement agency pursuant to division (B) of this section.

(D) Whoever violates divisions (A) or (C) of this section is guilty of a misdemeanor of the first degree. (R.C. § 2915.10) ('70 Code, § 630.07) Penalty, see § 698.02

§ 630.08 QUALIFICATIONS OF BINGO GAME OPERATOR.

(A) No person shall be a bingo operator unless he/she is 18 years of age or older.

(B) No person who has been convicted of a felony or a gambling offense in any jurisdiction shall be a bingo game operator.

(C) Whoever violates division (A) of this section is guilty of a misdemeanor of the third degree. Whoever violates division (B) of this section is guilty of a misdemeanor of the first degree. (R.C. § 2915.11) ('70 Code, § 630.08) Penalty, see § 698.02

§ 630.09 EXEMPTION FOR BINGO GAMES CONDUCTED FOR AMUSEMENT.

(A) Sections 630.06 through 630.08 do not apply to bingo games that are conducted for the purpose of amusement only. A bingo game is conducted for amusement only if it complies with all of the following requirements:

(1) The participants do not pay any money or any other thing of value including an admission fee, or any fee for bingo cards, sheets, objects to cover the spaces, or other devices used in playing bingo, for the privilege of participating in the bingo game, or to defray any costs of the game, or pay tips or make donations during or immediately before or after the bingo game;

(2) All prizes awarded during the course of the game are nonmonetary, and in the form of merchandise, goods or entitlements to goods or services only, and the total value of all prizes awarded during the game is less than \$100;

(3) No commission, wages, salary, reward, tip, donation, gratuity or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game;

(4) The bingo game is not conducted either during or within ten hours of:

(a) A bingo session during which a charitable bingo game is conducted pursuant to §§ 630.06 through 630.08;

(b) A scheme or game of chance other than a bingo game conducted pursuant to this section.

(5) The number of players participating in the bingo game does not exceed 50.

(B) (1) The participants do not pay money or any other thing of value as an admission fee, and no participant is charged more than 25 cents to purchase a bingo card, sheet, objects to cover the spaces, or other devices used in playing bingo;

(2) The total amount of money paid by all of the participants for bingo cards, sheets, objects to cover the spaces, or other devices used in playing bingo does not exceed \$100;

(3) All of the money paid for bingo cards, sheets, objects to cover spaces, or other devices used in playing bingo are used only to pay winners monetary and nonmonetary prizes and to provide refreshments;

(4) Total value of all prizes awarded during the game does not exceed \$100;

(5) No commission, wages, salary, reward, tip, donation, gratuity, or other form of compensation, either directly or indirectly, and regardless of the source, is paid to any bingo game operator for work or labor performed at the site of the bingo game;

(6) The bingo game is not conducted during or within ten hours of either of the following:

(a) A bingo session during which a charitable bingo game is conducted pursuant to §§ 630.06 through 630.08;

(b) A scheme of change or game of chance other than a bingo game conducted pursuant to this section.

(7) All of the participants reside at the premises where the bingo game is conducted;

(8) The bingo games are conducted on different days of the week and not more than twice in a calendar week.

(C) The Ohio Attorney General or any local law enforcement agency may investigate the conduct of a bingo game that purportedly is conducted for purposes of amusement only if there is reason to believe that the purported amusement bingo game does not comply with the requirements in either division (A) or (B) of this section. A local law enforcement agency may proceed by action in the proper court to enforce this section if the local law enforcement agency gives written notice to the Ohio Attorney General when commencing the action. (R.C. § 2915.12) ('70 Code, § 630.09) Penalty, see § 698.02

§ 630.10 SEIZURE AND DESTRUCTION OF GAMBLING DEVICES.

Upon adjudication by a court of competent jurisdiction that any apparatus, books, tickets, tokens, tables, machines, instruments or devices were kept, used, maintained or intended for the purpose of gambling in violation of any of the provisions of this chapter or of state law, the court may forthwith order the destruction of all such property by the Police Division. ('70 Code, § 630.10) (Ord. 7085, passed 10-8-62)

Cross-reference:

Disposition of property held by Police Division, see § 606.24

Statutory reference:

Power to prohibit gambling, see R.C. § 715.49 and 715.55

Power to destroy devices, see R.C. § 715.51

CHAPTER 634 NOISE CONTROL

Section

- 634.01 Definition
- 634.02 Noise disturbances prohibited
- 634.03 Specifics Acts permitted.
- 634.04 Maximum permissible sound levels by zoning designations.
- 634.05 Motor vehicle noise.
- 634.06 Inspections by law enforcement officers.
- 634.07 Special variances.
- 634.08 Abatement Orders.
- 634.09 Notice of violation.
- 634.10 Other remedies
- 634.11 Exceptions.
- 634.12 Applicability.
- 634.13 Severability.
- 634.99 Penalty

Cross-reference:

Animals, excessive noise, see § 618.07

Disorderly Conduct, see § 648.04

Peeling, Cracking Exhaust Noises, see §331.37

Noise Emission from Motor Vehicles, see §345.04

§ 634.01 DEFINITIONS.

As used in this chapter:

(A) "A-Weighted sound level" means the sound pressure level in decibels as measured on a sound level meter using the A-Weighting network. The level so read is designated dB(a) or dBA.

(B) "Commercial area" means any office building, local retail general retail districts as set forth in the Marion City Zoning Code.

(C) "Construction" means any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition, for or on public or private rights of way, structures, utilities or similar property.

(D) "Cyclically varying noise" means any sound which varies in sound level such that the same level is obtained repetitively at reasonably uniform intervals of time.

(E) "Decibel" means a unit for measuring the volume of sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

(F) "Demolition" means any dismantling or intentional destruction or removal of structures, utilities, public or private right-of-way surfaces, or similar property.

(G) "Gross vehicle weight rating" means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the maximum loaded weight of the combination vehicle, shall be used.

(H) "Emergency" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.

(I) "Emergency work" means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(J) "Impulsive sound" means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

(K) "Industrial area" means any use which is contained in M.C.C. Section 1145 "Industrial Districts".

(L) "Motor vehicle" means every vehicle defined as a motor vehicle in Section 301 of the Marion City Traffic Code.

(M) "Motorcycle" means every vehicle defined as a motorcycle in Section 370 of the Marion City Traffic Code.

(N) "Motorized bicycle" means every vehicle defined as a motorized bicycle in Section 370 of the Marion City Traffic Code.

(O) "Noise" means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

(P) "Noise disturbance" means any sound which:

1. Endangers or injures the safety or health of humans or animals;
2. Annoys or disturbs a reasonable person of normal sensitivities; or
3. Endangers or injures personal or real property.

(Q) "Person" means any individual, association, partnership or corporation and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

(R) "Place of public entertainment" means any commercial facility open to the general public for purposes of entertainment.

(S) "Powered model vehicle" means any self-propelled airborne, waterborne, or landborne plane, vessel, or vehicle, which is not designated to carry persons, including, but not limited to, any model airplane, boat, car or rocket.

(T) "Public right of way" means any street, avenue, boulevard, highway, sidewalk, alley or similar place which is owned or controlled by a governmental entity.

(U) "Pure tone" shall mean any sound which can be distinctly heard as a single pitch or set of single pitches. For the purposes of measurement, a pure tone shall exist of the one-third (1/3) octave band sound pressure level in the band when the tone exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by 5dB for frequencies of 500 HZ and above, by 8dB for frequencies between 160 and 400 HZ, and by fifteen (15)dB for frequencies less than or equal to 125 HZ.

(V) "Real property boundary" means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intrabuilding real property divisions.

(W) "Repetitive impulsive noise" shall mean any noise which is composed of impulsive noises that are repeated at sufficiently slow rates such that a sound level meter set at "fast" meter characteristic will show changes in sound.

(X) "Residential area" means one-family, two-family, multi-family, and apartment districts.

(Y) "Sound" means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal or interval forces that cause compression and rarefaction of that medium, and which propagates at finite speed to distant points. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(Z)"Sound level" means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B or C specified in American National Standards Institute specifications for sound level meters Publication 51.4-1971, or the latest approved revision thereof. If the frequency weighting employed is not indicated, the AWeighting shall apply.

(AA) "Sound level meter" means an instrument, including a microphone, amplifier, RMS detector and integrator, time averager, output meter and/or visual display and weighting networks, that is sensitive to pressure fluctuations. The instrument reads sound pressure level when properly calibrated and is of type two (2) or better as specified in American National Standards Institute Publication 51.4-1971 or the latest approved revision thereof.

(BB) "Sound pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound energy.

(CC) "Sound pressure level" means twenty (20) times the logarithm of twenty (20) micropascals (20×10^{-6} N/m²). The sound pressure level is denoted Lp or SPL and is expressed in decibels.

§ 634.02 NOISE DISTURBANCES PROHIBITED.

In addition, to the general prohibitions outlined in this chapter, no person shall unreasonably make, continue, or cause to be made, continued or permitted, any noise disturbance. This section shall not apply to noncommercial public speaking and public assembly activities conducted on any public space or public right of way or any activity specifically permitted herein.

§ 634.03 SPECIFIC ACTS PERMITTED.

The following acts, and the causing or permitting thereof, are declared to not be in violation of this chapter.

(A) Air Conditioners. Maintaining or using any refrigeration machinery or air-conditioning, consisting of air compressors or rotating or reciprocating machinery.

(B) Constriction. Operating or permitting the operation of any tools or equipment used in construction, drilling, or demolition work between the hours of **6:00 a.m. and 2:00 a.m.** such that the sound therefrom creates a noise disturbance across a residential real property boundary, except for emergency work of public service utilities or by special variance. This subsection shall not apply to the use of domestic power tools subject to subsection (c) hereof.

(C) Domestic Power Tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, lawn mower or other similar device used outdoors, other than powered snow removal equipment, outdoors between the hours of 6:00 a.m. and 2:00 a.m., or Sunday after the hour of 9:00 a.m.

(D) Emergency Signaling Devices.

(1) The intentional sounding or permitting the sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device, for emergency purposes or for testing, as provided in this section. Testing of a stationary emergency signaling device shall occur at the same time of day each time such a test is performed, but not before 6:00 a.m. or after 2:00 a.m. or the closing time of a commercial establishment, whichever shall occur later. Any such testing shall use only the minimum cycle test time. In no case shall such test time exceed sixty (60) seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device, shall not occur before 6:00 a.m. or after 2:00 a.m. In no case shall such test exceed ten (10) minutes.

(2) Sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm if such alarm is automatically terminated within two (2) minutes of activation, or within a reasonable time after notification of activation.

(3) The sounding of any horn or other auditory signaling device on or in any motor vehicle on any public right of way or public space, as a warning of danger.

Loading and Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans or similar objects between the hours of 6:00 a. m. and 2:00 a. m.

(E) Loudspeakers/Public Address Systems.

(1) Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound therefrom on a public right of way or public space for any commercial purpose.

Provided however, such use or operation shall require a permit prior to commencement of said activity.

(2) Using, operating or permitting for any noncommercial purpose any loudspeaker, public address system, mobile sound vehicle or similar device between the hours of 6:00 a.m. and 2:00 a., so long as such sound therefrom does not create a unreasonably loud noise disturbance across a residential real property boundary.

(G) Places of Public Entertainment. Operating, playing or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier, or similar device' which produces, reproduces, or amplifies sound in any indoors, with doors and windows in a closed position, place of public entertainment at a sound level less than ninety-five (95) dBA as read with a slow response on a sound level meter at any point which is normally occupied by a customer, unless a conspicuous and legible sign is located inside such place near each public entrance, stating "WARNING: SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT".

(H) Powered Model Vehicles. Operating or permitting the operation of powered model vehicles so as to create a noise disturbance across a residential real property or in a public space between the hours of 6:00 a.m. and 2:00 a.m.

(I) Radios, Television Sets, Musical Instruments and Similar Devices. Operating, playing, or permitting the operation or playing of any radio, television, phonograph, drum, musical instrument, or similar device:

(1) Between the hours of 6:00 a.m. and 2:00 a.m., so long as such activity is conducted in such a manner as to not create an unreasonably loud noise disturbance across a residential real property boundary; or

(2) In such a manner as not to create a continuing noise disturbance at fifty (50) feet from such device, when operating in or on a motor vehicle on a public right of way or public space.

(J) Vehicle or Motorboat Repairs and Testing.

Repairing, rebuilding, modifying or testing any motor vehicle, motorcycle, motorized bicycle or motorboat so long as such activity does not cause an unreasonably loud noise disturbance across a residential real property boundary.

§ 634.04 MAXIMUM PERMISSIBLE SOUND LEVELS BY ZONING DESIGNATIONS.

(A) No person shall operate, cause to be operated, or permit on private property any source of sound in such a manner as to create a sound level which exceeds the limits set forth in the zoning designations category in Table I.

TABLE I
SOUND LEVELS BY ZONING DESIGNATIONS

Maximum number of decibels permitted from 6:00 a.m. to 9:00 p.m., until 12:00 midnight on Friday and Saturday:

Residential	70
Commercial	75
Industrial	80

Maximum number of decibels permitted from 9:00 p.m. until 12:00 midnight, except Friday & Saturday:

Residential	65
Commercial	70
Industrial	80

Maximum number of decibels permitted from 12:00 midnight until 6:00 a.m.:

Residential	60
Commercial	65
Industrial	80

(B) The sound level limits set forth in Table I shall be exceeded when any one or more of the following occur:

(1) The noise at any one point in time exceeds any of the established zone limits in Table I by a measured sound level of fifteen (15) dBA;

(2) The noise exceeds any of the established zone limits in Table I by a measured sound level of ten (10) dBA for a cumulative total of one minute or more out of any ten (10) minute period; or

(3) The noise exceeds any of the established zone limits in Table I by a measured sound level of three (3) dBA continually for a period of five (5) minutes, or a total of five (5) minutes out of any ten (10) minute period.

(C) For the purposes of this section, noise shall be measured at or beyond the property line of the property on which the noise source is located and shall be at least 50 feet from a sound source and shall be measured while stationary and at idle at a height of at least four feet above the immediate surrounding ground surface, in addition, shall be made at least ten (10) feet from any large reflecting surfaces.

(D) For any source which emits a pure tone, cyclically varying sound, or repetitive impulsive sound, the limits set forth in Table I shall be reduced by five (5) dBA.

(E) Any noise which occurs on property which, according to the Marion City Zoning Code, is being used in a legally nonconforming manner, and which noise relates to such use, shall be judged as if the property bore a zoning

designation under which the use would be conforming.

(F) If the zoning designation of the property on which the source of the noise is located differs from the zoning designation of the property on which the noise is measured, the maximum permissible noise level of the more restrictive zoning designation shall apply.

(G) The provisions of this section shall not apply to the following:

- (1) Activities covered by Section 755.03(b), (c) and (d);
- (2) Refuse collection vehicles.

§ 634.05 MOTOR VEHICLE NOISE.

(A) No person shall operate, cause to be operated, or permit a public or private motor vehicles, motorcycle, or motorized bicycle on a public right of way at any time in such a manner as to exceed the sound level for such motor vehicle, motorcycle, or motorized bicycle set forth in Table II.

TABLE II

Motorized Vehicle, Motorcycle and Motorized Bicycle Sound Limits

<u>Vehicle Class</u>	<u>Maximum number of Decibels Permitted</u>
Motor vehicles with a manufacturer's gross vehicle weight rating(GVWR) or gross combination weight rating (GCWR) of 10,000 pounds or more, or any combination of vehicles towed by such motor vehicle	86
Any other motor vehicle, motorcycle, motorized bicycle, or any combination of vehicles towed by any motor vehicle	80

(B) For the purposes of this section, noise shall be measured at a distance of at least fifty (50) feet from the centerline of motor vehicles, and shall be measured at a height of at least four (4) feet above the immediate surrounding ground surface, and shall be made at least ten (10) feet from any large reflecting surfaces.

(C) The provisions of this shall not apply to motor vehicles towing vehicles requiring service because of mechanical failure or accident.

§ 634.06 INSPECTIONS BY LAW ENFORCEMENT OFFICERS.

Any city law enforcement officer, in addition to any other authority vested in him, has the power, upon presentation of proper credentials, to enter and inspect any dwelling, multi-family dwelling, building, structure or premises within the City as may be necessary to enforce the provisions of this chapter, provided permission is obtained from the occupant or, in the case of unoccupied property, from the owner or his/her agent. If such permission is refused, or is otherwise unobtainable, a search warrant must be obtained upon the showing of probable cause to believe that a violation of this chapter may exist, before such entry or inspection is made.

§ 634.07 SPECIAL VARIANCES.

(A) The Safety/Service Director or his/her designated representative, shall have the authority, consistent with

this section, to grant special variances.

(B) Any person seeking a special variance pursuant to this section shall file an application with the Safety/Service Director, or his/her designated representative. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community, or on other persons. Notice of an application for a special variance shall be given by the Safety/Service Director or his/her representative to persons who frequent the area of the sound or activity and who may be adversely affected by the granting of the variance. Any individual who claims to be adversely affected by allowance of the special variance may file a statement with the Safety/Service or his/her representative containing any information to support his claim.

(C) In determining whether to grant or deny the application, the Safety/Service Director or his/her designated representative shall balance the hardship to the applicant, the community and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected, and any other adverse impact of granting the special variance. Applicants for special variances may be required to submit any information the Safety/Service Director or his/her representative may reasonably require. In granting or denying an application, the Safety/Service Director or his/her representative shall place on public file a copy of the decision and the reasons for denying or granting the special variance.

(D) Special variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any conditions of the special variances shall terminate it and subject the person holding it to those provisions of this chapter regulating the source of sound or activity for which the special variance was granted.

(E) Application for extension of time limits specified in special variances or for modification of other substantial conditions shall be treated like applications for initial special variances.

(F) The Safety/Service Director or his/her designated representative may issue guidelines approved by Council defining the procedures to be followed in applying for a special variance and the criteria to be considered in deciding whether to grant a special variance.

(G) A person filing an application for special variance pursuant to this section shall comply with this code until such time as the application is acted upon by the Safety/Service Director or his/her designated representative.

§ 634.08 ABATEMENT ORDERS.

In lieu of issuing a notice of violation as provided for in Section 634.07, any City law enforcement officer may issue an order requiring the immediate abatement of any source of sound alleged to be in violation of this chapter.

§ 634.09 NOTICE OF VIOLATION.

Except where a person is acting in good faith to comply with an abatement order issued pursuant to this chapter, violation of any provision of this chapter shall be cause for a notice of violation to be issued by an City law enforcement officer.

§ 634.10 OTHER REMEDIES.

No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law.

§ 634.11 EXCEPTIONS.

The provisions of this chapter shall not apply to the following:

(A) The emission of sound for the purpose of alerting persons to the existence of an emergency, or for the performance of emergency work.

(B) Organized school or church related programs, activities or events, or parades or other public programs, activities or events authorized by the Mayor or his/her designated representative.

§ 634.12 APPLICABILITY.

Nothing in this chapter shall be construed to permit conduct prohibited by any other statute, ordinance or resolution, or to prohibit the enforcement thereof.

§ 634.13 SEVERABILITY.

If any provision of this chapter is held to unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the chapter shall not be invalidated.

§ 634.99 PENALTY.

Whoever violates any section of 634 is guilty of using unreasonable sound amplifying devices, a minor misdemeanor, except that if the offender persists in this violation after reasonable warning or request to desist, using unreasonable sound amplifying devices is a misdemeanor of the fourth degree. (Ord. 1998-126, passed 12-28-1998; Ord. 2001-68, passed 5-14-2001)

CHAPTER 636: OFFENSES RELATING TO PERSONS

Section

636.01	Negligent homicide
636.02	Assault
636.03	Negligent assault
636.04	Aggravated menacing
636.05	Menacing
636.06	Unlawful restraint
636.07	Reserved
636.08	Coercion
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636.18	Abuse of corpse
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636.20	Temporary protection order
636.21	Illegal distribution of cigarettes or other tobacco products
636.22	Criminal child enticement
636.23	Contributing to unruliness or delinquency of a child
636.24	Hazing

§ 636.01 NEGLIGENT HOMICIDE.

(A) No person shall negligently cause the death of another by means of a deadly weapon or dangerous ordnance as defined in § 672.01.

(B) Whoever violates this section is guilty of negligent homicide, a misdemeanor of the first degree. (R.C. § 2903.05) ('70 Code, § 636.01) Penalty, see § 698.02

Cross-reference:

Vehicular homicide, see § 331.36

§ 636.02 ASSAULT.

(A) No person shall knowingly cause or attempt to cause physical harm to another.

(B) No person shall recklessly cause serious physical harm to another.

(C) Whoever violates any of the provisions of this section is guilty of assault. Except as otherwise provided below, assault is a misdemeanor of the first degree. If the offense is committed by a caretaker against a functionally impaired person under his/her care, assault is a felony of the fourth degree and shall be prosecuted under appropriate state law. If the offense is committed by a caretaker against a functionally impaired person under his/her care, if the offender previously has been convicted of or pleaded guilty to a violation of this section or R.C. §§ 2903.11 or

2903.16, and if in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, assault is a felony of the third degree and shall be prosecuted under appropriate state law. (R.C. § 2903.13) ('70 Code, § 636.02) Penalty, see § 698.02

Statutory reference:

Felony offenses occurring on or involving employee of correctional institution, see R.C. § 2903.13

Cross-reference:

Disorderly conduct, see § 648.04

§ 636.03 NEGLIGENT ASSAULT.

(A) No person shall negligently, by means of a deadly weapon or dangerous ordnance as defined in § 672.01, cause physical harm to another.

(B) Whoever violates this section is guilty of negligent assault, a misdemeanor of the third degree. (R.C. § 2903.14) ('70 Code, § 636.03) Penalty, see § 698.02

§ 636.04 AGGRAVATED MENACING.

(A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of such other person or member of his/her immediate family.

(B) Whoever violates this section is guilty of aggravated menacing, a misdemeanor of the first degree. (R.C. § 2903.21) ('70 Code, § 636.04) Penalty, see § 698.02

§ 636.05 MENACING.

(A) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of such other person or member of his/her immediate family.

(B) Whoever violates this section is guilty of menacing, a misdemeanor of the fourth degree. (R.C. § 2903.22) ('70 Code, § 636.05) Penalty, see § 698.02

§ 636.06 UNLAWFUL RESTRAINT.

(A) No person, without privilege to do so, shall knowingly restrain another of his/her liberty.

(B) Whoever violates this section is guilty of unlawful restraint, a misdemeanor of the third degree. (R.C. § 2905.03) ('70 Code, § 636.06) Penalty, see § 698.02

§ 636.07 RESERVED.

§ 636.08 COERCION.

(A) No person, with purpose to coerce another into taking or refraining from action concerning which he/she has a legal freedom of choice, shall do any of the following:

(1) Threaten to commit any offense;

(2) Utter or threaten any calumny against any person;

(3) Expose or threaten to expose any matter tending to subject any person to hatred, contempt or ridicule, or to damage his/her personal or business repute, or to impair his/her credit;

(4) Institute or threaten criminal proceedings against any person;

(5) Take or withhold, or threaten to take or withhold official action, or cause or threaten to cause official action to be taken or withheld.

(B) Divisions (A)(4) and (5) of this section shall not be construed to prohibit a prosecutor or court from doing any of the following in good faith and in the interests of justice:

(1) Offering or agreeing to grant, or granting, immunity from prosecution pursuant to R.C. § 2945.44;

(2) In return for a plea of guilty to one or more offenses charged or to one or more other or lesser offenses, or in return for the testimony of the accused in a case to which he/she is not a party, offering or agreeing to dismiss, or dismissing, one or more charges pending against an accused, or offering or agreeing to impose, or imposing, a certain sentence or modification of sentence;

(3) Imposing probation on certain conditions, including without limitation, requiring the offender to make restitution or redress to the victim of his/her offense.

(C) It is an affirmative defense to a charge under Divisions (A)(3), (4) or (5) of this section that the actor's conduct was a reasonable response to the circumstances which occasioned it, and that his/her purpose was limited to:

(1) Compelling another to refrain from misconduct or to desist from further misconduct;

(2) Preventing or redressing a wrong or injustice;

(3) Preventing another from taking action for which the actor reasonably believed such other person to be disqualified;

(4) Compelling another to take action which the actor reasonably believed such other person to be under a duty to take.

(D) As used in this section, *THREAT* includes a direct threat and a threat by innuendo.

(E) Whoever violates this section is guilty of coercion, a misdemeanor of the second degree. (R.C. § 2905.12) ('70 Code, § 636.08) Penalty, see § 698.02

§ 636.09 NONSUPPORT OF DEPENDENTS.

(A) No person shall abandon, or fail to provide adequate support to:

(1) His or her spouse, as required by law;

(2) His or her legitimate or illegitimate child who is under age 18, or mentally or physically disabled child who is under age 21;

(3) His or her aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately his/her or her own support;

(4) Any person whom, by law or by court order or decree, the offender is legally obliged to support.

(B) No person shall aid, abet, induce, cause, encourage or contribute to a child or a ward of the juvenile court becoming a dependent child, as defined in R.C. § 2151.04, or a neglected child, as defined in R.C. § 2151.03.

(C) It is an affirmative defense to a charge under division (A) of this section that the accused was unable to provide adequate support, but did provide such support as was within his/her ability and means.

(D) It is an affirmative defense to a charge under division (A)(3) of this section that the parent abandoned the accused or failed to support the accused as required by law, while the accused was under age 18, or was mentally or physically disabled and under age 21.

(E) Whoever violates division (A) hereof is guilty of nonsupport of dependents, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of division (A)(2) of this section or the court finds that the offender has failed to provide support under division (A)(2) of this section for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of division (A)(2) of this section is a felony of the fifth degree, punishable under appropriate state law. If the offender is guilty of nonsupport of dependents by reason of failing to provide support to his/her or her child as required by a child support order issued on or after April 15, 1985, pursuant to R.C. §§ 2151.23, 3105.21, 3109.05, 3111.13, 3113.04, 3113.31 or 3115.22, the court, in addition to any other sentence imposed, shall assess all court costs arising out of the charge against the person and require the person to pay any reasonable attorney's fees of any adverse party other than the state, as determined by the court, that arose in relation to the charge. Whoever violates division (B) of this section is guilty of contributing to the nonsupport of dependents, a misdemeanor of the first degree. Each day of violation of division (B) of this section is a separate offense. (R.C. § 2919.21) ('70 Code, § 636.09) Penalty, see § 698.02

§ 636.10 SUSPENSION OF SENTENCE ON POSTING BOND.

Sentence may be suspended if a person, after conviction under § 636.09 and before sentence thereunder, appears before the court in which such conviction took place and enters into bond to the municipality in a sum fixed by the court at not less than \$500 nor more than \$1,000 with sureties approved by such court, conditioned that such person will furnish such child or other dependent with necessary or proper home, care, food and clothing, or will pay promptly each week for such purpose to a trustee named by such court, a sum to be fixed by it. (R.C. § 3113.04) ('70 Code, § 636.10)

§ 636.11 ENDANGERING CHILDREN.

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically disabled child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection or support. It is not a violation of a duty of care, protection or support under this subsection when the parent, guardian, custodian or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall abuse a child under 18 years of age or a mentally or physically disabled child under 21 years of age.

(C) No person shall operate a motor vehicle within the municipality and in violation of R.C. § 4511.19(A) when one or more children under 18 years of age are in the vehicle. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of § 333.01(A) or R.C. § 4511.19(A) that constitutes the basis of the charge of the violation of this division. For purposes of R.C. § 4511.191 and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse or for operating a vehicle with a prohibited concentration of alcohol in the blood, breath, or urine.

(D) Whoever violates this section is guilty of endangering children, a misdemeanor of the first degree. If the violation results in serious physical harm to the child involved, or if the offender has previously been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or

physical abuse of a child, endangering children is a felony and shall be prosecuted under appropriate state law. (R.C. § 2919.22) ('70 Code, § 636.11) Penalty, see § 698.02

Statutory reference:

Felony offenses involving children, see R.C. § 2919.22(B) and (C)

§ 636.12 INTERFERENCE WITH CUSTODY.

(A) No person, knowing he/she is without privilege to do so or being reckless in that regard, shall entice, take, keep or harbor a person identified in division (A)(1),(2), or (3) from his/her parent, guardian or custodian:

- (1) A child under the age of 18, or a mentally or physically disabled child under the age of 21;
- (2) A person committed by law to an institution for delinquent, unruly, neglected, abused or dependent children;
- (3) A person committed by law to an institution for the mentally ill or mentally retarded.

(B) No person shall aid, abet, induce, cause or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.

(C) It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section that the actor reasonably believed that his/her conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under this shelter, protection or influence.

(D) Whoever violates this section is guilty of interference with custody.

(1) Except as otherwise provided in this division, a violation of division (A)(1) above is a misdemeanor of the first degree. If the child who is the subject of a violation of division (A)(1) is removed from the state or if the offender previously has been convicted of an offense under this section, a violation of division (A)(1) above is a felony of the fifth degree. If the child who is subject of a violation of division (A)(1) suffers physical harm as a result of the violation, a violation of division (A)(1) is a felony of the fourth degree.

(2) A violation of division (A)(2) or (3) above is a misdemeanor of the third degree.

(3) A violation of division (B) above is a misdemeanor of the first degree.

(4) Each day of violation of division (B) above is a separate offense. (R.C. § 2919.23) ('70 Code, § 636.12) Penalty, see § 698.02

§ 636.13 ABORTION OFFENSES.

(A) *Abortion Defined.* As used in this section **ABORTION** means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo. Abortion is the practice of medicine or surgery for the purpose of R.C. § 4731.41. (R.C. § 2919.11)

(B) *Abortion Without Informed Consent Prohibited.*

- (1) No person shall perform or induce an abortion without the informed consent of the pregnant woman.

(2) No person shall knowingly perform or induce an abortion upon a woman who is pregnant, unmarried, under eighteen years of age and unemancipated except as authorized under R.C. § 2919.12(B).

(3) Whoever violates this subsection is guilty of unlawful abortion, a misdemeanor of the first degree on a first offense. If the offender previously has been convicted of or pleaded guilty to a violation of this section or R.C. § 2919.12, unlawful abortion is a felony of the fifth degree, punishable under appropriate state law. (R.C. § 2919.12)

(C) *Abortion Trafficking.*

(1) No person shall experiment upon or sell the product of human conception which is aborted. Experiment does not include autopsies pursuant to R.C. §§ 313.13 and 2108.50.

(2) Whoever violates this subsection is guilty of abortion trafficking, a misdemeanor of the first degree. (R.C. § 2919.14) ('70 Code, § 636.13) Penalty, see § 698.02

§ 636.14 PARTY LINES TO BE YIELDED IN EMERGENCIES.

(A) (1) No person shall willfully refuse immediately to yield or relinquish the use of a party line to another person for the purpose of permitting such other person to report a fire or summon law enforcement agencies, ambulance service, medical or other aid in case of emergency.

(2) No person shall ask for or request the use of a party line on the pretext that an emergency exists, knowing that no emergency exists.

(3) As used in this section:

(a) **EMERGENCY.** A situation in which property or human life is in jeopardy and in which prompt summoning of aid is essential.

(b) **PARTY LINE.** A subscriber's line telephone circuit to which two or more main telephone stations are connected, each station having a distinctive ring or telephone number. (R.C. § 4931.30)

(B) Whoever violates this section is guilty of a misdemeanor of the third degree. ('70 Code, § 636.14) Penalty, see § 698.02

§ 636.15 THREATENING OR HARASSING TELEPHONE CALLS.

(A) No person shall knowingly make or cause to be made a telephone call, or knowingly permit a telephone call to be made from a telephone under his/her control, to another if the caller does any of the following:

(1) Fails to identify himself/herself to the recipient of the telephone call and makes the telephone call with purpose to harass, abuse or annoy any person at the premises to which the telephone call is made, whether or not conversation takes place during the telephone call;

(2) Describes, suggests, requests or proposes that the caller, recipient of the telephone call or any other person engage in any sexual activity as defined in § 666.01, and the recipient of the telephone call, or another person at the premises to which the telephone call is made, has requested, in a previous telephone call or in the immediate telephone call, the caller not to make a telephone call to the recipient of the telephone call or to the premises to which the telephone call is made;

(3) During the telephone call, violates § 636.04;

(4) Knowingly states to the recipient of the telephone call that he/she intends to cause damage to or destroy

public or private property, and the recipient of the telephone call, any member of the family of the recipient of the telephone call or any other person who resides at the premises to which the telephone call is made owns, leases, resides or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting or insures the property that will be destroyed or damaged;

(5) Knowingly makes the telephone call to the recipient of the telephone call, to another person at the premises to which the telephone call is made or to the premises to which the telephone call is made, and the recipient of the telephone call, or another person at the premises to which the telephone call is made, has previously told the caller not to call the premises to which the telephone call is made or not to call any persons at the premises to which the telephone call is made.

(B) No person shall make or cause to be made a telephone call or permit a telephone call to be made from a telephone under his/her control, with purpose to abuse, threaten, annoy or harass another person.

(C) Whoever violates this section is guilty of telephone harassment, a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense involving the same person, recipient, or premises, and shall be prosecuted under appropriate state law. (R.C. § 2917.21) ('70 Code, § 636.15) Penalty, see § 698.02

§ 636.155 TRICK OR TREAT NIGHT.

The municipality shall observe the historic tradition of "Trick or Treat Night," on the eve of Halloween, between the hours of 5:30 p.m. and 7:30 p.m., unless that day falls on a Sunday in which event, the tradition shall be observed on the previous Saturday. ('70 Code, § 636.155) (Res. 1979-25, passed 10-22-79; Am. Ord. 1999-46, passed 4-12-1999)

§ 636.16 PLACING HARMFUL SUBSTANCE OR OBJECTS IN FOOD OR CONFECTION.

(A) No person shall do either of the following, knowing or having reasonable cause to believe that any person may suffer physical harm or be seriously inconvenienced or annoyed hereby:

(1) Place a pin, needle, razor blade, glass, laxative, drug of abuse or other harmful or hazardous object or substance in any food or confection;

(2) Furnish to any person any food or confection which has been adulterated in violation of subsection (1) of this section. (R.C. § 3716.11)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree. (R.C. § 3716.99(C)) ('70 Code, § 636.16) Penalty, see § 698.02

§ 636.17 BIGAMY.

(A) No married person shall marry another or continue to cohabit with such other person in this municipality.

(B) It is an affirmative defense to a charge under this section that the actor's spouse was continuously absent for five years immediately preceding the purported subsequent marriage, and was not known by the actor to be alive within that time.

(C) Whoever violates this section is guilty of bigamy, a misdemeanor of the first degree. (R.C. § 2919.01) ('70 Code, § 636.17) Penalty, see § 698.02

§ 636.18 ABUSE OF CORPSE.

(A) No person, except as authorized by law, shall treat a human corpse in a way that he/she knows would

outrage reasonable family sensibilities.

(B) Whoever violates this section is guilty of abuse of a corpse, a misdemeanor of the second degree. (R.C. § 2927.01) ('70 Code, § 636.18) Penalty, see § 698.02

§ 636.19 DOMESTIC VIOLENCE.

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D) As used in this section:

(1) **FAMILY** or **HOUSEHOLD MEMBER**. Any of the following:

(a) Any of the following, who is residing or has resided with the offender:

1. A spouse, a person living as a spouse, or a former spouse of the offender;
2. A parent, or a child of the offender, or another person related by consanguinity or affinity to the offender;
3. A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(b) The natural parent of any child of whom the offender is the other natural parent.

(2) **PERSON LIVING AS A SPOUSE**. A person who is living or has lived with the offender in a common law marital relationship, who is otherwise cohabiting with the offender, or who otherwise has cohabited with the offender within one year prior to the date of the alleged commission of the act in question.

(E) Whoever violates this section is guilty of domestic violence. A violation of division (C) of this section is a misdemeanor of the fourth degree. A violation of division (A) or (B) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of domestic violence or a violation of R.C. §§ 2903.11, 2903.12, 2903.13 or § 636.02 of this code involving a person who was a family or household member at the time of such violation, a violation of division (A) or (B) of this section is a felony of the fifth degree, punishable under appropriate state law, and a violation of division (C) of this section is a misdemeanor of the third degree. (R.C. § 2919.25)

(F) The same relief available under the Ohio Revised Code for filing a complaint for violation of R.C. § 2919.25 shall be available for filing a complaint for violation of this section. ('70 Code, § 636.19) (Am. Ord. 1989-111, passed 11-13-89) Penalty, see § 698.02

§ 636.20 TEMPORARY PROTECTION ORDER.

(A) (1) No person shall recklessly violate any terms of a protection order issued or consent agreement approved pursuant to R.C. §§ 2919.26 or 3113.31 or division (B) of this section or the terms of an anti-stalking protection order issued pursuant to R.C. § 2903.213.

(2) Whoever violates division (A) of this section is guilty of violating a protection order or consent agreement or anti-stalking protection order.

(a) If the offense involves a violation of a protection order or consent agreement, one of the following applies:

1. Except as otherwise provided in division (A)(2)(a)2. of this section, violating a protection order or consent agreement or anti-stalking protection order is a misdemeanor of the first degree.

2. If the offender previously has been convicted of or pleaded guilty to two or more violations of R.C. § 2903.211 or 2911.211 that involve the same person who is subject to the protection order or consent agreement and previously has been convicted of or pleaded guilty to one or more violations of this section, violating a protection order or consent agreement or anti-stalking protection order is a felony of the fifth degree, punishable under appropriate state law.

(b) If the offense involves a violation of an anti-stalking protection order, one of the following applies:

1. Except as otherwise provided in division (A)(2)(b)2. of this section, violating a protection order or consent agreement or anti-stalking protection order is a misdemeanor of the first degree.

2. If the offender previously has been convicted of or pleaded guilty to two or more violations of R.C. § 2903.21, 2903.211, 2903.22, or 2911.211 that involve the same person who is the subject of the anti-stalking protection order, or two or more violations of R.C. § 2903.214 as it existed prior to 7-1-96, violating a protection order or consent agreement or anti-stalking protection order is a felony to be prosecuted under state law. (R.C. § 2919.27)

(B) (1) Upon the filing of a complaint that alleges a violation of § 636.19, R.C. § 2919.15 or a municipal ordinance substantially similar to that section, or a violation of § 636.02, R.C. §§ 2903.11, 2903.12, 2903.13, 2903.211 or 2911.211 that involves a person who was a family or household member at the time of the violation, or a municipal ordinance substantially similar to R.C. § 2903.13, 2903.211, or 2911.211 that involves a person who was a family or household member at the time of the violation, the complainant may file, or, if in an emergency the complainant is unable to file, a person who made an arrest for the alleged violation under R.C. § 2935.03 may file on behalf of the complainant, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of court having jurisdiction of the case at any time after the filing of the complaint

(2) For purposes of R.C. § 2930.09, all stages of a proceeding arising out of a violation specified in (A)(1) of this section, including all proceedings on a motion for a temporary protection order, are critical stages of the case, and a complainant may be accompanied by a victim advocate or another person to provide support to the victim as provided in that section.

(3) The motion shall be prepared on a form provided by the clerk of court, which form shall be substantially as follows:

“MOTION FOR TEMPORARY PROTECTION
ORDER

_____ COURT
Name and address of court

MUNICIPALITY OF MARION

V. No.

Name of defendant

_____, (Name of person), the complainant in the above-captioned case, moves the court to issue a temporary protection order containing terms designed to ensure the safety and protection of the complainant and other family or household members, in relation to the named defendant, pursuant to its authority to issue such an order under this division of R.C. § 2919.26.

A complaint, a copy of which has been attached to this motion, has been filed in this court charging the named defendant with at least one of the following violations of § 636.19 or R.C. § 2919.25 that constitutes domestic violence or a municipal ordinance substantially similar to that section, knowingly causing or attempting to cause physical harm to a family or household member, or recklessly causing serious physical harm to a family or household member, or, by threat of force, knowingly causing a family or household member to believe that he/she would cause imminent physical harm to that family or household member; or charging the named defendant with felonious assault, aggravated assault, or assault that involved a family or household member in violation of R.C. §§ 2903.11 2903.12, or 2903.13 and § 636.02 of the General Offenses Code charging the named defendant with menacing by stalking or aggravated trespass that involves a family household member in violation of R.C. §§ 2903.211 of 2911.211, or charging the named defendant with a violation of a municipal ordinance substantially similar to R.C. §§ 2903.13, 2903.211 or 2911.211 that involves a family or household member.

I understand that I must appear before the court, at a time set by the court within 24 hours of the filing of this motion, for a hearing on the motion, or that, if I am unable to appear because of hospitalization or a medical condition resulting from the offense alleged in the complaint, a person who can provide information about my need for a temporary protection order must appear before the court in lieu of my appearing in court. I understand that any temporary protection order granted pursuant to this motion is a pretrial condition of release and is effective only until the disposition of the criminal proceeding arising out of the attached complaint, or the issuance of a civil protection order, or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint, under R.C. § 3113.31.

Signature of complainant
(or signature of the arresting officer who filed the motion on behalf of the complainant)

Address of complainant (or office address of the arresting officer who filed the motion on behalf of the complainant)”

(3) As soon as possible after the filing of a motion requesting the issuance of a temporary protection order, but not later than 24 hours after the filing of the motion, the court shall conduct a hearing to determine whether to issue the order. The person who requested the order shall appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the person who requested the order is unable to appear and if the court finds that the failure to appear is because of the person's hospitalization or medical condition resulting from the offense alleged in the complaint, another person who is able to provide the court with the information it requests may appear in lieu of the person who requested the order. If the court finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender, the court may issue a temporary protection order, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant or family or household member, including a requirement that the alleged offender refrain from entering the residence, school, business or place of employment of the complainant or family or household member.

(4) (a) Upon the filing of a complaint that alleges a violation of § 636.19, R.C. § 2919.25 or a municipal ordinance that is substantially similar to that section, or a violation of § 636.02 or R.C. §§ 2903.11, 2903.12, 2911.211 that involves a person who was a family or household member at the time of the violation, or a violation of a municipal ordinance that is substantially similar to those sections that involves a person who was a family or household member at the time of the violation, the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender.

(b) If the court issues a temporary protection order under this section as an ex parte order, it shall conduct, as soon as possible after the issuance of the order, a hearing in the presence of the alleged offender not later than the next day on which the court is scheduled to conduct business after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons to determine whether the order should remain in effect, be modified or be revoked. The hearing shall be conducted under the standards set forth in subsection (B)(3) of this section.

(c) An order issued under this division shall contain only those terms authorized in orders issued under subsection (B)(3) of this section.

(5) A temporary protection order that is issued as a pretrial condition of release under this section:

(a) Is in addition to, but shall not be construed as a part of, any bail set under Criminal Rule 46;

(b) Is effective only until the disposition of the criminal proceeding arising out of the complaint upon which it is based, or the issuance of a protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint, under § R.C. § 3113.31;

(c) Shall not be construed as a finding that the alleged offender committed the alleged offense, and shall not be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

(6) A person who meets the criteria for bail under Criminal Rule 46 and who, if required to do so pursuant to that Rule, executes or posts bond or deposits cash or securities as bail, shall not be held in custody pending a hearing before the court on a motion requesting a temporary protection order.

(7) (a) A copy of any temporary protection order that is issued under this section shall be issued by the court to the complainant, to the defendant and to all law enforcement agencies that have jurisdiction to enforce the order. The court shall direct that a copy of the order be delivered to the defendant on the same day that the order is entered.

(b) All law enforcement agencies shall establish and maintain an index for the temporary protection orders delivered to the agencies pursuant to subsection (7)(a) of this division. With respect to each order delivered, each agency shall note on the index, the date and time of the receipt of the order by the agency.

(c) A complainant who obtains a temporary protection order under this section may provide notice of the issuance of the temporary protection order to the judicial and law enforcement officials in any court other than the county in which the order is issued by registering that order in the other county in accordance with R.C. § 3113.31(N) and filing a copy of the registered protection order with a law enforcement agency in the other county in accordance with that division.

(d) Any officer of a law enforcement agency shall enforce a temporary protection order issued by any court in this state in accordance with the provisions of the order, including removing the defendant from the premises regardless of whether the order is registered in the county in which the officer's agency has jurisdiction as authorized by division (B)(7)(c) of this section.

(8) Upon a violation of a temporary protection order, the court may issue another temporary protection order as a pretrial condition of release, that modifies the terms of the order that was violated.

(9) (a) As used in this division (9), *DEFENDANT* means a person who is alleged in a complaint to have committed a violation of the type described in division (A) of this section.

(b) If a complaint is filed that alleges that a person committed a violation of the type described in division (A) of this section, the order under this section that requires the member or the defendant to do or refrain from doing an act that the court may require the temporary protection order unless both of the following apply:

1. The defendant has filed a separate complaint that alleges that the complainant or other family or household member in question who would be required under the order to do or refrain from doing the act committed a violation of the type described in division (A) of this section.

2. The court determines that both the complainant or other family or household member in question who would be required under the order to do or refrain from doing the act and the defendant acted primarily as aggressors, that neither that complainant or other family or household member in question who would be required under the order to do or refrain from doing the act nor the defendant acted primarily in self-defense, and, in accordance with the standards and criteria of this section as applied in relation to the separate complaint filed by the defendant, that it should issue the order to require the complainant or other family or household member in question to do or refrain from doing the act.

(10) Notwithstanding any provision of law to the contrary, no court shall charge a fee for the filing of a motion pursuant to this section.

(11) As used in this section *VICTIM ADVOCATE* means a person who provides support and assistance for a victim of an offense during court proceedings. (R.C. § 2919.26) ('70 Code, § 636.20) Penalty, see § 698.02

§ 636.21 ILLEGAL DISTRIBUTION OF CIGARETTES OR OTHER TOBACCO PRODUCTS.

(A) No manufacturer, producer, distributor, wholesaler or retailer of cigarettes, or other tobacco products, or any agent, employee or representative of a manufacturer, producer, distributor, wholesaler or retailer of cigarettes or other tobacco products shall do any of the following:

(1) Give, sell or otherwise distribute cigarettes or other tobacco products to any person under 18 years of age;

(2) Give away, sell or distribute cigarettes or other tobacco products in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing cigarettes or other tobacco products to a person under 18 years of age is prohibited by law.

(B) No person shall sell or offer to sell cigarettes or other tobacco products by or from a vending machine except in the following locations:

(1) An area either within a factory, business, office, or other place not open to the general public or to which persons under the age of 18 years are not generally permitted access;

(2) In any other place not identified in division (B)(1) of this section, upon all of the following conditions:

(a) The vending machine is located within the immediate vicinity, plain view, and control of such person, so that all cigarettes and other tobacco product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of such person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person.

(b) The vending machine is inaccessible to the public when the place is closed.

(C) As used in this section **VENDING MACHINE** has the same meaning as **COIN MACHINE** as defined in § 642.01.

(D) Whoever violates this section is guilty of illegal distribution of cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender has previously been convicted of a violation of this section then illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree.

(R.C. § 2927.02) ('70 Code, § 636.21) Penalty, see § 698.02

Cross-reference:

Sales of alcoholic beverages to minors, see § 612.02

Drug offenses, see Ch. 624

§ 636.22 CRIMINAL CHILD ENTICEMENT.

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice or lure any child under 14 years of age to enter into any vehicle, as defined in R.C. § 4501.01, whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied permission of the parent, guardian or other legal custodian of the child in undertaking the activity;

(2) The actor is not a law enforcement officer, medic, firefighter or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of any Board of Education, or the actor is any of such persons, but, at the time the actor undertakes the activity, he/she is not acting within the scope of his/her lawful duties in that capacity.

(B) It is an affirmative defense to a charge under division (A) of this section that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety or welfare of the child.

(C) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender has previously been convicted of a violation of this section, R.C. § 2907.02, 2907.03, or 2907.12, or of R.C. § 2905.01 or 2907.05 when the victim of that prior offense was under 17 years of age at the time of the offense,

criminal child enticement is a felony of the fifth degree, punishable under appropriate state law. (R.C. § 2905.05) ('70 Code, § 636.22) Penalty, see § 698.02

Cross-reference:

Sex-related offenses involving minors, see Ch. 666

§ 636.23 CONTRIBUTING TO UNRULINESS OR DELINQUENCY OF A CHILD.

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

(1) Aid, abet, induce, cause, encourage or contribute to a child or a ward of the juvenile court becoming an unruly child as defined in R.C. § 2151.022, or a delinquent child as defined in R.C. § 2151.02.

(2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child as defined in R.C. § 2151.022, or a delinquent child as defined in R.C. § 2151.02.

(B) Whoever violates this section is guilty of contributing to the unruliness or delinquency of a child, a misdemeanor of the first degree. Each day of violation of this section is a separate offense. (R.C. § 2919.24) ('70 Code, § 636.23) Penalty, see § 698.02

Cross-reference:

Improperly furnishing firearms to a minor, § 672.10

Statutory reference:

Parents' responsibility for destructive acts of their children, see R.C. § 3109.09

§ 636.24 HAZING.

(A) As used in this section, **HAZING** means doing any act, or coercing another, including the victim, to do any act, of initiation into any student or other organization, that causes or creates a substantial risk of causing mental or physical harm to any person.

(B) No person shall recklessly participate in the hazing of another.

(C) No administrator, employee or faculty member of any primary, secondary or post-secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person. (R.C. § 2903.31)

(D) (1) Any person who is subjected to hazing, as defined in division (A) of this section, may commence a civil action for injury or damages, including mental and physical pain and suffering, that result from the hazing. The action may be brought against any participants in the hazing, any organization whose local or national directors, trustees or officers authorized, requested, commanded or tolerated the hazing, and any local or national director, trustee or officer of the organization, who authorized, requested, commanded or tolerated the hazing. If the hazing involves students in a primary, secondary or post-secondary school, university, college or any other educational institution, an action may also be brought against any administrator, employee or faculty member of the school, university, college or other educational institution who knew or reasonably should have known of the hazing and who did not make reasonable attempts to prevent it and against the school, university, college or other educational institution. If an administrator, employee or faculty member is found liable in a civil action for hazing, then notwithstanding R.C. Chapter 2743, the school, university, college or other educational institution that employed the administrator, employee or faculty member may also be held liable.

(2) The negligence or consent of the plaintiff or any assumption of the risk by the plaintiff is not a defense to an action brought pursuant to this section. In an action against a school, university, college or other educational institution, it is an affirmative defense that the school, university, college or other institution was actively enforcing a policy against hazing at the time the cause of action arose. (R.C. § 2307.44)

(E) Whoever violates any of the provisions of this section is guilty of hazing, a misdemeanor of the fourth degree. (R.C. § 2903.31)

(F) The penalty provided for in division (E) of this section shall be in addition to the civil remedy provided for in division (D) of this section. (70 Code, § 636.24) Penalty, see § 698.02

CHAPTER 642: OFFENSES RELATING TO PROPERTY

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§ 642.01 DEFINITIONS.

As used in this chapter:

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

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

DEPRIVE.

- (1) Withhold property of another permanently, or for such period as to appropriate a substantial portion of its value or use, or with purpose to restore it only upon payments of a reward or other consideration;
- (2) Dispose of property so as to make it unlikely that the owner will recover it;
- (3) Accept, use or appropriate money, property or services, with purpose not to give proper consideration in return for the money, property or services, and without reasonable justification or excuse for not giving proper consideration.

OWNER. Any person, other than the actor, who is the owner of, or who has possession or control of, or any license or interest in property or services, even though the ownership, possession, control, license or interest is unlawful.

SERVICES. Labor, personal services, professional services, public utility services, common carrier services, and food, drink, transportation, entertainment and cable television services.

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

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

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

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

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

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

THEFT OFFENSE.

(1) A violation of R.C. §§ 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, former 2913.47 or 2913.48, or 2913.51, 2915.05, or 2921.41 or §§ 630.05, 642.02, 642.04, 642.05, 642.13, 642.14, 642.15, 642.16, 642.17, 642.18, 642.19, 642.20, 642.21 or 642.22 of this General Offenses Code;

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States substantially equivalent to any section listed in subsection (1) of this section or a violation of R.C. 2913.41, 2913.81 or 2915.06 as they existed prior to the 7-1-96;

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

(4) A conspiracy or attempt to commit, or complicity in committing any offense of this section.

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

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

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

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

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

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

DATA. A representation of information, knowledge, facts, concepts or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer system or computer network. For purposes of R.C. § 2913.47, **DATA** has the additional meaning set forth in division (A) of that section.

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

GAIN ACCESS. To approach, instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

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

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

RENTED PROPERTY. Personal property in which the right of possession and use of the property is for a short and possibly indeterminate term in return for consideration; the renter generally controls the duration of possession of the property within any applicable minimum or maximum term; and the amount of consideration is generally determined by the duration of possession of the property. (R.C. § 2913.01) ('70 Code, § 642.01)

§ 642.02 THEFT.

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

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

(B) Whoever violates this section is guilty of theft. Except as otherwise provided in this division, a violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is \$500 or

more and is less than \$5,000, or if the property stolen is any of the property listed in § 642.03, a violation of this section is theft, a felony of the fifth degree and shall be prosecuted under appropriate state law. If the value of the property or services stolen is \$5,000 or more and is less than \$100,000, if the property stolen is a firearm or dangerous ordnance, as defined in R.C. 2923.11, a violation of this section is grand theft, a felony of the fourth degree, and shall be prosecuted under appropriate state law. If the property stolen is a motor vehicle as defined in R.C. §4501.01, violation of this section is grand theft of a motor vehicle, a felony of the fourth degree and shall be prosecuted under appropriate state law. If the value of the property or services stolen is \$100,000 or more, a violation of this section is aggravated theft, a felony of the third degree, and shall be prosecuted under appropriate state law. If the property stolen is any dangerous drug, as defined in R.C. § 4729.02, a violation of this section is theft of drugs, a felony of the fourth degree and shall be prosecuted under appropriate state law, or, if the offender previously has been convicted of a felony drug abuse offense, as defined in R.C. § 2925.01, a felony of the third degree and shall be prosecuted under appropriate state law. (R.C. § 2913.02) ('70 Code § 642.02) Penalty, see § 698.02

§ 642.03 DEGREE OF OFFENSE WHEN CERTAIN PROPERTY INVOLVED.

Regardless of the value of the property involved, and regardless of whether the offender has previously been convicted of a theft offense, a violation of §§ 642.02 or 642.22 is a felony of the fifth degree if the property involved is any of the following:

(A) A credit card;

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

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

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

(E) A blank form for any license listed in R.C. § 4507.01. (R.C. § 2913.71) ('70 Code § 642.03)

§ 642.04 UNAUTHORIZED USE OF A VEHICLE.

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

(B) The following are affirmative defenses to a charge under this section:

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

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

(C) Whoever violates this section is guilty of unauthorized use of a vehicle. Violation of division (A) of this section is a misdemeanor of the first degree. (R.C. § 2913.03) ('70 Code § 642.04) Penalty, see § 698.02

Cross-reference:

Owner or operator allowing another to drive, see § 335.05

§ 642.05 UNAUTHORIZED USE OF PROPERTY.

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

(B) The affirmative defenses contained in § 642.04(b) are affirmative defenses to a charge under this section.

(C) Whoever violates this section is guilty of unauthorized use of property. Except as otherwise provided, unauthorized use of property is a misdemeanor of the fourth degree. If unauthorized use of property is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, unauthorized use of property is a misdemeanor of the first degree, unless the value of the property or services or the loss to the victim is \$500 or more, in which case it is a felony to be prosecuted under appropriate state law.

(R.C. § 2913.04) ('70 Code § 642.05) Penalty, see § 698.02

§ 642.06 INJURING VINES, BUSHES, TREES OR CROPS.

(A) (1) No person, without privilege to do so, shall recklessly cut down, destroy, girdle or otherwise injure a vine, bush, shrub, sapling, tree or crop standing or growing on the land of another or upon public land.

(2) In addition to the penalty provided in division (B) of this section, whoever violates this section is liable in treble damages for the injury caused. (R.C. § 901.51)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (R.C. § 901.99) ('70 Code § 642.06) Penalty, see § 698.02

§ 642.07 DESECRATION.

(A) No person, without privilege to do so, shall purposely deface, damage, pollute or otherwise physically mistreat any of the following:

(1) The flag of the United States or of this state:

(2) Any public monument;

(3) Any historical or commemorative marker, or any structure, Indian mound or earthwork, thing or site of great historical or archeological interest;

(4) A place of worship or its furnishings, or religious artifacts or sacred texts within the place of worship;

(5) A work of art or museum piece;

(6) Any other object of reverence or sacred devotion.

(B) Whoever violates this section is guilty of desecration. Violation of division (A)(1), (2), (3), (5) or (6) of this section is a misdemeanor of the second degree. Violation of division (A)(4) of this section is a misdemeanor of the first degree punishable by a fine of up to \$4000 in addition to the penalties specified for a misdemeanor of the first degree in R.C. § 2929.21. (R.C. § 2927.11) ('70 Code § 642.07) Penalty, see § 698.02

§ 642.08 REMOVAL OF IMPROVEMENTS FROM REAL PROPERTY.

(A) No person having an interest in real property, buyer, lessee, tenant or occupant of real property, knowing that such real property is mortgaged or the subject of a land contract, shall remove, or cause or permit the removal of any improvement or fixture from such real property without the consent of the mortgagee, vendor under the land contract or other person authorized to give such consent. (R.C. § 5301.61)

(B) Whoever violates this section is guilty of a misdemeanor of the first degree. (R.C. § 5301.99) ('70 Code § 642.08) Penalty, see § 698.02

§ 642.09 ARSON.

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

(B) This section does not apply if the violation is done with purpose to defraud or the property involved is a statehouse or a courthouse, school building or other structure owned or controlled by the state or any of its political subdivisions, or any department, agency or instrumentality of either, and used for public purposes.

(C) Whoever violates this section is guilty of arson, a misdemeanor of the first degree, if the value of the property or the amount of physical harm involved is less than \$500. (R.C. § 2909.03) ('70 Code § 642.09) Penalty, see § 698.02

Statutory reference:

Determining property value or amount of physical harm in arson, see R.C. § 2909.11

§ 642.10 CRIMINAL DAMAGING OR ENDANGERING.

(A) No person shall cause, or create a substantial risk of physical harm to any property of another without his/her consent:

(1) Knowingly, by any means;

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

(B) Whoever violates this section is guilty of criminal damaging or endangering, a misdemeanor of the second degree. If violation of this section creates a risk of physical harm to any person, criminal damaging or endangering is a misdemeanor of the first degree. If the property involved in a violation of this section is an aircraft, aircraft engine, propeller, spare part, appliance, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a risk of physical harm to any person, criminal damaging or endangering is a felony of the fifth degree and shall be prosecuted under appropriate state law. If the property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal damaging or endangering is a felony of the fourth degree and shall be prosecuted under appropriate state law. (R.C. § 2909.06) ('70 Code § 642.10) Penalty, see § 698.02

§ 642.11 CRIMINAL MISCHIEF.

(A) No person shall:

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

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

(3) Without privilege to do so, knowingly move, deface, damage, destroy or otherwise improperly tamper

with a bench mark, triangulation station, boundary marker or other survey station, monument or marker;

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

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

(C) Whoever violates this section is guilty of criminal mischief, a misdemeanor of the third degree. If violation of this section creates risk of physical harm to any person, criminal mischief is a misdemeanor of the first degree. If the property involved in violation of this section is an aircraft, aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates a risk of physical harm to any person, criminal mischief is a felony of the fifth degree and shall be prosecuted under appropriate state law. If the property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal mischief is a felony of the fourth degree and shall be prosecuted under appropriate state law.

(R.C. § 2909.07) ('70 Code § 642.11) Penalty, see § 698.02

§ 642.12 CRIMINAL TRESPASS; VEHICLE TRESPASS.

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

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

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

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

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

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

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

(D) As used in this section, **LAND** or **PREMISES** includes any land, building, structure or place belonging to, controlled by, or in custody of, another, and any separate enclosure or room, or portion thereof.

(E) Whoever violates any provision of this section except division (F) is guilty of criminal trespass, a misdemeanor of the fourth degree. (R.C. § 2911.21)

(F) *Vehicle trespass.*

(1) No person shall knowingly enter in or upon a motor vehicle, motorcycle or other motor-propelled vehicle without the consent of the owner or operator thereof or of a person authorized to give consent.

(2) Whoever violates any provision of this division (F) is guilty of criminal trespass, a misdemeanor of the second degree. (*70 Code § 642.12) Penalty, see § 698.02

§ 642.13 TAMPERING WITH COIN MACHINES.

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

(B) Whoever violates this section is guilty of tampering with coin machines, a misdemeanor of the first degree. If the offender has previously been convicted of a violation of this section or of any theft offense as defined in § 642.01, tampering with coin machines is a felony of the fifth degree and shall be prosecuted under appropriate state law. (R.C. § 2911.32) (*70 Code § 642.13) Penalty, see § 698.02

§ 642.14 PASSING BAD CHECKS.

(A) No person, with purpose to defraud, shall issue or transfer or cause to be issued or transferred a check or other negotiable instrument, knowing that it will be dishonored.

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

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

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

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

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

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

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

(D) Whoever violates this section is guilty of passing bad checks. Except as otherwise provided in this division, passing bad checks is a misdemeanor of the first degree. If the check or other negotiable instrument is for payment of \$500 or more and is for the payment of less than \$5,000, passing bad checks is a felony of the fifth degree and shall be

prosecuted under appropriate state law. If the check or other negotiable instrument is for the payment of \$5,000 or more and is for the payment of less than \$100,000, passing bad checks is a felony of the fourth degree and shall be prosecuted under appropriate state law. If the check or other negotiable instrument is for the payment of \$100,000 or more, passing bad checks is a felony of the third degree and shall be prosecuted under appropriate state law. (R.C. § 2913.11) ('70 Code § 642.14) Penalty, see § 698.02

Statutory reference:

Value of written instrument or evidence of debt see R.C. § 1.07

§ 642.15 MISUSE OF CREDIT CARDS.

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

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

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

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

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

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

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

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

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

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

(1) Violation of division (A), (B)(1), or (C) of this section is a misdemeanor of the first degree.

(2) Except as otherwise provided in this division, a violation of division (B)(2), (3), or (4) of this section is a misdemeanor of the first degree.

(3) If the cumulative retail value of property and services involved in one or more violations of division (B)(2), (3), or (4) of this section, which violations involve one or more credit card accounts and occur within a period of 90 consecutive days commencing on the date of the first violation, is \$500 or more and is less than \$5,000, then misuse of credit cards in violation of those sections is a felony of the fifth degree and shall be prosecuted under appropriate state law.

(4) If the cumulative retail value of property and services involved in one or more violations of division (B)(2), (3), or (4) of this section, which violations involve one or more credit card accounts and occur within a period of 90 consecutive days commencing on the date of the first violation, is \$5,000 or more and is less than \$100,000, misuse of credit cards in violation of those sections is a felony of the fourth degree and shall be prosecuted under appropriate state law.

(5) If the cumulative retail value of property and services involved in one or more violations of division

(B)(2), (3), or (4) of this section, which violations involve one or more credit card accounts and occur within a period of 90 consecutive days commencing on the date of the first violation, is \$100,000 or more, misuse of credit cards in violation of any of those sections, is a felony of the third degree and shall be prosecuted under appropriate state law. (R.C. § 2913.21) ('70 Code § 642.15) Penalty, see § 698.02

§ 642.16 MAKING OR USING SLUGS.

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

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

(B) Whoever violates this section is guilty of making or using slugs, a misdemeanor of the second degree. (R.C. § 2913.33) ('70 Code § 642.16) Penalty, see § 698.02

§ 642.17 PRIMA FACIE EVIDENCE OF PURPOSE TO DEFRAUD.

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

- (1) Used deception to induce the rental agency to furnish the person with the aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper trailer, horse, or buggy, or used deception to induce the hostelry to furnish him/her with accommodations;
- (2) Hired the aircraft, motor vehicle, motorcycle, motorboat, sailboat, camper trailer, horse, or buggy, or engaged accommodations, knowing he/she is without sufficient means to pay the hire or rental;
- (3) Absconded without paying the hire or rental;
- (4) Knowingly failed to pay the hire or rental as required by the contract of hire or rental, without reasonable excuse for such failure;
- (5) Knowingly failed to return hired property as required by the contract of hire or rental, without reasonable excuse for such failure. (R.C. § 2913.41) ('70 Code § 642.17) Penalty, see § 698.02

Cross-reference:

Detention of shoplifters, see § 606.23

§ 642.18 TAMPERING WITH RECORDS.

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

- (1) Falsify, destroy, remove, conceal, alter, deface or mutilate any writing, computer software, data, computer data or record;
- (2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.

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

(1) If the offense does not involve data, tampering with records is whichever of the following is applicable:

(a) If division (B)(1)(b) does not apply, a misdemeanor of the first degree.

(b) If the writing or record is a will unrevoked at the time of the offense or not a record kept by or belonging to a governmental agency, a felony to be prosecuted under applicable state law.

(2) If the offense involves data, tampering with records is whichever of the following is applicable:

(a) Except as otherwise provided in division(B)(2)(b), a misdemeanor of the first degree.

(b) If the value of the data involved in the offense or the loss to the victim is \$500 or more, a felony to be prosecuted under applicable state law. (R.C. § 2913.42) ('70 Code § 642.18) Penalty, see § 698.02

§ 642.19 SECURING WRITINGS BY DECEPTION.

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

(B) Whoever violates this section is guilty of securing writings by deception. Except as otherwise provided in this division, securing writings by deception is a misdemeanor of the first degree. If the value of the property or the obligation involved is \$500 or more, and less than \$5,000, securing writings by deception is a felony of the fifth degree and shall be prosecuted under appropriate state law. If the value of the property or the obligation involved is \$5,000 or more and is less than \$100,000, securing writings by deception is a felony of the fourth degree and shall be prosecuted under appropriate state law. If the value of the property or the obligation involved is \$100,000 or more, securing writings by deception is a felony of the third degree and shall be prosecuted under appropriate state law. (R.C. § 2913.43) ('70 Code § 642.19) Penalty, see § 698.02

§ 642.20 PERSONATING AN OFFICER.

(A) No person, with purpose to defraud or knowing that he/she is facilitating a fraud, or with purpose to induce another to purchase property or services, shall personate a law enforcement officer, or an inspector, investigator or agent of any governmental agency.

(B) Whoever violates this section is guilty of personating an officer, a misdemeanor of the first degree. (R.C. § 2913.44) ('70 Code § 642.20) Penalty, see § 698.02

Cross-reference:

Impersonating an officer, see § 606.25

Display of law enforcement agency emblem, see § 606.26

§ 642.21 DEFRAUDING CREDITORS.

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

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

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

(B) Whoever violates this section is guilty of defrauding creditors. Except as otherwise provided in this

division, defrauding creditors is a misdemeanor of the first degree. If the value of the property involved is \$500 or more, defrauding creditors is a felony to be prosecuted under applicable state law. (R.C. § 2913.45) ('70 Code § 642.21) Penalty, see § 698.02

§ 642.22 RECEIVING STOLEN PROPERTY.

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

(B) Whoever violates this section is guilty of receiving stolen property. Except as otherwise provided in this division, receiving stolen property is a misdemeanor of the first degree. If the value of the property involved is \$500 or more and is less than \$5,000, if the property involved is any of the property listed in § 642.03, receiving stolen property is a felony of the fifth degree and shall be prosecuted under appropriate state law. If the property involved is a motor vehicle as defined in R.C. § 4501.01, if the value of the property involved is \$5,000 or more and is less than \$100,000, if the property involved is a firearm or dangerous ordnance as defined in R.C. § 2923.11 or a dangerous drug as defined in R.C. § 4729.02, receiving stolen property is a felony of the fourth degree and shall be prosecuted under appropriate state law. If the value of the property involved is \$100,000 or more, receiving stolen property is a felony of the third degree and shall be prosecuted under appropriate state law. (R.C. § 2913.51) ('70 Code § 642.22) Penalty, see § 698.02

§ 642.23 VALUATION OF PROPERTY.

(A) Where more than one item of property or services is involved in a theft offense, the value of the property or services involved for the purpose of determining the value is the aggregate value of all property or services involved in the offense.

(B) When a series of offenses under § 642.02 is committed by the offender in his/her same employment, capacity or relationship to another, all such offenses shall be tried as a single offense, and the value of the property or services involved for the purpose of determining the value is the aggregate value of all property and services involved in all offenses in the series. In prosecuting a single offense under this subsection, it is not necessary to separately allege and prove each offense in the series. It is sufficient to allege and prove that the offender, within a given span of time committed one or more theft offenses in his/her same employment, capacity or relationship to another.

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

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

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

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

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

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

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

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

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

(5) When the property involved is a warehouse receipt, bill of lading, pawn ticket, claim check or other instrument entitling the holder or bearer to receive property, the face value or, if there is no face value, the value of the property covered by the instrument less any payment necessary to receive the property, is prima-facie evidence of the value of the instrument.

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

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

(8) When the services involved are services for which the rate is not established by law, and the offender has been notified prior to the offense of the rate for such services, either in writing, or orally, or by posting in a manner reasonably calculated to come to the attention of potential offenders, the rate contained in such notice is prima-facie evidence of the value of such services. (R.C. § 2913.61) ('70 Code § 642.23)

Cross-reference:

Disposition of property held by Police Division, see § 606.24

§ 642.24 TAMPERING WITH AND THEFT OF UTILITIES.

(A) In a prosecution for a theft offense, as defined in R.C. § 2913.01, that involves alleged tampering with a gas, electric, steam, or water meter, conduit, or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit or attachment of a utility has been tampered with is prima-facie evidence that the person who is obligated to pay for the service rendered through the meter, conduit or attachment, and who is in possession or control of the meter, conduit or attachment at the time the tampering occurred, has caused the tampering with intent to commit a theft offense.

(B) In a prosecution for a theft offense, as defined in R.C. § 2913.01, that involves alleged tampering with a gas, electric, steam, or water meter, conduit, or attachment of a utility that has been disconnected by the utility, proof that a meter, conduit or attachment disconnected by a utility has been reconnected without the consent of the utility is prima-facie evidence that the person in possession or control of the meter, conduit or attachment at the time of the reconnection has reconnected the meter, conduit or attachment with intent to commit a theft offense.

(C) As used in this section:

UTILITY means any electric light company, gas company, natural gas company, pipe-line company, waterworks company or heating or cooling company, as defined in R.C. § 4905.03(A)(4), (5), (6), (7), (8) or (9), its lessees, trustees or receivers, or any similar utility owned or operated by a political subdivision.

TAMPER means to interfere with, damage or bypass a utility meter, conduit or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so as to reduce the amount of utility service that is registered on such meter. (R.C. § 4933.18)

(F) Each utility company defined in R.C. § 4905.03(A)(4) – (9) or its lessees, trustees, or receivers, and each similar utility operated by a political subdivision shall notify its customers, on an annual basis, that tampering with or bypassing a meter constitutes a theft offense that could result in the imposition of criminal sanctions. (R.C. § 4933.19) ('70 Code § 642.25) Penalty, see § 698.02

CHAPTER 646: OPEN HOUSING

Section

- 646.01 Definitions
- 646.02 Application of chapter
- 646.03 Unlawful discriminatory practices; exceptions
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- 646.06 Fair Housing Board
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§ 646.01 DEFINITIONS.

As used in this chapter:

COMMERCIAL HOUSING. Housing accommodations held or offered for sale or rent by a real estate broker, salesman or agent, or by any other person pursuant to the authorization of the owner, by the owner himself or herself, or by a legal representative.

DISCRIMINATE. Segregate and separate.

HOUSING ACCOMMODATIONS. Any building or structure or portion of this section which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home residence or sleeping place of one or more individuals, groups or families, whether or not living independently of each other, and any vacant land offered for sale or leased for commercial housing.

PERSON. One or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons. **PERSON** also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, lending institution and, to the extent possible, all governmental agencies, state and federal, the state and all political subdivisions, authorities, agencies, boards and commissions of this section.

PERSONAL RESIDENCE. A building or structure or portion of this section containing living quarters occupied or intended to be occupied by one or more individuals, groups or families, whether or not living independently of each other, and occupied by the owner of this section as a bona fide residence for himself or herself and any member of his or her family forming his or her household.

RESTRICTIVE COVENANT. Any specification limiting the transfer, rental, lease or other use of any housing because of race, color, creed, sex, religious belief, national origin or disability, or any limitation based upon affiliation with, or approval by, any person, directly or indirectly, employing race, color, creed, sex, religious belief, national origin or disability as a condition of affiliation or approval.

UNLAWFUL DISCRIMINATORY PRACTICE. Any act prohibited by § 646.03.
(’70 Code § 646.01) (Ord. 1978-91, passed 8-7-78)

§ 646.02 APPLICATION OF CHAPTER.

Wording in the definitions in § 646.01 to the contrary notwithstanding, the terms and provisions of this chapter shall not apply to the rental of housing accommodations for up to two roomers and unrelated individuals in a personal

signal-family residence by the owner or occupier thereof when occupied by him or her as a bona fide residence for himself or herself and any member of his or her family forming his or her household. ('70 Code § 646.02) (Ord. 1978-91, passed 8-7-78)

§ 646.03 UNLAWFUL DISCRIMINATORY PRACTICES; EXCEPTIONS.

(A) No person shall:

(1) Refuse to sell, transfer, assign, rent, lease, sublease, finance or otherwise deny or withhold commercial housing from any person because of the race, color, creed, sex, religious belief, national origin or disability of any prospective owner, occupant or user of such commercial housing;

(2) Represent to any person that commercial housing is not available for inspection when in fact it is so available;

(3) Refuse to lend money, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing or a personal residence or otherwise withhold financing of commercial housing or a personal residence from any person because of the race, color, creed, sex, religious belief, national origin or disability of any present or prospective owner, occupant or user of such commercial housing, provided that such person, whether an individual, corporation or association of any type, lends money as one of the principal aspects of his or her business or incidental to his or her principal business and not only as a part of the purchase price of an owner-occupied residence he/she or she is selling nor merely casually or occasionally to a relative or friend;

(4) Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing or subleasing any commercial housing or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any commercial housing because of the race, color, creed, sex, religious belief, national origin or disability of any present or prospective owner, occupant or user of such commercial housing;

(5) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing or a personal residence because of the race, color, creed, sex, religious belief, national origin or disability of any present or prospective owner, occupant or user of such commercial housing or personal residence;

(6) Print, publish or circulate any statement or advertisement relating to the sale, transfer, assignment, rental, lease, sublease or acquisition of any commercial housing or personal residence or the loan of money, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing or a personal residence, which statement or advertisement indicates any preference, limitation, specification or discrimination based upon race, color, creed, sex, religious belief, national origin or disability;

(7) Make any inquiry, elicit any information, make or keep any record or use any form of application containing questions or entries concerning race, color, creed, sex, religious belief, national origin or disability in connection with the sale or lease of any commercial housing or the loan of any money, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of commercial housing or a personal residence;

(8) Include in any transfer, rental or lease of commercial housing or a personal residence any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any such restrictive covenant, provided that the prior inclusion of a restrictive covenant in the chain of title shall not be deemed a violation of this subsection;

(9) Induce, solicit or represent, or attempt to induce, solicit or represent, a commercial housing or personal residence listing, sale or transaction by representing that a change has occurred or may occur with respect to the racial, religious or ethnic composition of the block, neighborhood or area in which the property is located, or induce or

solicit, or attempt to induce or solicit, such sale or listing by representing that the presence or anticipated presence of persons of any race, color, creed, sex, religious belief, national origin or disability in the area will or may have results such as the following:

- (a) The lowering of property value;
- (b) A change in the racial, religious or ethnic composition of the block, neighborhood or area in which the property is located;
- (c) Any increase in criminal or antisocial behavior in the area; or
- (d) A decline in the quality of the schools serving the area; or

(10) Discourage or attempt to discourage the purchase by a prospective purchaser of commercial housing or a personal residence by representing that any block, neighborhood or area has or might undergo a change with respect to the religious, racial or nationality composition of the block, neighborhood or area.

(B) Nothing in division (A) of this section shall bar any religious or denominational institution or organization, or any charitable or educational organization, which is operated, supervised or controlled by or in connection with a religious organization, or any bona fide private or fraternal organization, from giving preference to persons of the same religion or denomination, or to members of such private or fraternal organizations, or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained. ('70 Code § 646.03) (Ord. 1978-91, passed 8-7-78)

§ 646.04 FAIR HOUSING SIGN REQUIRED.

(A) Every real estate agent shall post in a conspicuous location in that portion of his or her place of business normally used by him or her for negotiating the terms of a sale or lease of housing, and each person who operates a multi-unit residential building containing more than two units shall post at all times when prospective tenants are being interviewed, in a conspicuous location in that portion of his or her housing business normally used by him or her for negotiating the rental of a housing unit therein, a notice prepared by the Fair Housing Board which contains the following language, printed in black on a light colored background, in not less than 14-point type:

IT IS A VIOLATION OF THE FAIR HOUSING LAW OF THE CITY OF MARION, STATE OF OHIO, FOR ANY REAL ESTATE AGENT, OR FOR ANY PERSON OWNING OR MANAGING A MULTI-UNIT APARTMENT DWELLING, TO:

- (1) DENY HOUSING TO ANY PERSON BECAUSE OF RACE, COLOR, CREED, SEX, RELIGIOUS BELIEF, NATIONAL ORIGIN OR HANDICAP.
- (2) DISCRIMINATE AGAINST ANY PERSON BECAUSE OF THAT PERSON'S RACE COLOR, CREED, SEX, RELIGIOUS BELIEF, NATIONAL ORIGIN OR HANDICAP WITH RESPECT TO THE TERMS, CONDITIONS, OR PRIVILEGES OF HOUSING ACCOMMODATIONS OR IN THE FURNISHING OF FACILITIES OR SERVICES IN CONNECTION THEREWITH.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, CONTACT THE CITY OF MARION FAIR HOUSING BOARD, THE OHIO CIVIL RIGHTS COMMISSION OR THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(B) Any realtor or real estate agency displaying the Equal Housing Opportunity poster as prepared by the National Association of Realtors or any lender displaying the most recent HUD Fair Housing Poster is exempt from this section, but shall affix to his or her or its sign the wording "City of Marion Fair Housing Board" under agencies to contact if discrimination occurs. ('70 Code § 646.04) (Ord. 1978-91, passed 8-7-78)

§ 646.05 RETALIATION PROHIBITED.

No person shall cause or coerce or attempt to cause or coerce retaliation against any other person because such other person has lawfully opposed any act or failure to act that is a violation of any of the provisions of this chapter or has, in good faith, filed a complaint, testified, participated or assisted in any way in any proceeding under this chapter. ('70 Code § 646.05) (Ord. 1978-91, passed 8-7-78)

§ 646.06 FAIR HOUSING BOARD.

(A) There is hereby created a Fair Housing Board to consist of seven members who are qualified electors of the municipality and who shall not hold any public office at the municipal, county, state or federal level at any time while a member of the Board, nor be an employee of any government institution. The Board membership shall consist of one member from each ward and one member at large and there shall be not more than one member from the real estate industry and not more than one member from the lending institution industry.

(B) The Board members shall be appointed by the Mayor and confirmed by Council. Of the members first appointed, two shall hold office for terms of one year, two for terms of two years and three for terms of three years and their successors shall be appointed for terms of three years. The Mayor shall fill all vacancies by appointment for any unexpired term. A Board member whose term has expired shall be eligible for reappointment to the Board.

(C) The Executive Secretary of the Board shall be appointed by the Mayor and shall be an employee of the municipality.

(D) The Mayor may recommend to Council the removal of any member of the Board for neglect of duty or malfeasance in office. Council may remove a member of the Board from office by the vote of two-thirds of Council only after having first given to such member a copy of the charges against him or her and an opportunity to be publicly heard in person or by counsel in his or her own defense. Any such removal shall be final.

(E) Five members of the Board shall constitute a quorum for the purpose of conducting the business thereof. A vacancy on the Board shall not impair the right of the other members to exercise all the powers of the Board.

(F) Each member of the Board shall serve without salary.

(G) The Board is charged with the following duties to implement the stated policy of this chapter:

(1) To investigate all complaints of unlawful housing practices which are filed with it;

(2) To endeavor, by conciliation, to resolve such complaints;

(3) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and, in connection therewith, to require the production for examination of any books or papers relating to a specific complaint before the Board;

(4) To render at least once a year to the Mayor and to Council a full written report of all its activities and recommendations;

(5) To recommend to the Mayor, when it deems necessary, educational and other programs designed to promote the purposes stated in this chapter;

(6) To adopt rules and procedures for the conduct of its business not inconsistent with this chapter; and

(7) To do such other acts that are necessary and proper in order to perform those duties with which it is charged under this chapter. ('70 Code § 646.06) (Ord. 1978-91, passed 8-7-78)

§ 646.07 HEARING PROCEDURES.

(A) Any person subjected to an unlawful housing practice may file, within sixty days of the alleged violation, with the Fair Housing Board, a complaint in writing, sworn to or affirmed, which shall state the name and address of the person alleged to have committed the violation complained of, the particulars thereof and such other information as may be required by the Board.

(B) Upon the filing of a complaint, the Executive Secretary of the Board shall make such investigation as he or she deems appropriate to ascertain facts and issues. If the Executive Secretary determines that there are reasonable grounds to believe a violation has occurred, he or she shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done during such initial conferences shall be made public by the Board or any member of the Board or its staff, unless the parties agree thereto in writing.

(C) The terms of conciliation agreed to by the parties shall be reduced to writing and incorporated into a consent agreement to be signed by the parties, which agreement is for conciliation purposes only and does not constitute an admission by any party that the law has been violated. Consent agreements shall be signed on behalf of the Board by its Chairman.

(D) The Board is authorized to seek the cooperation and aid of the Marion Board of Realtors, Inc., the Ohio Real Estate Commission and the Ohio Civil Rights Commission in any investigation under this chapter.

(E) If the Executive Secretary determines that the complaint lacks reasonable grounds upon which to base a violation of any of the provisions of this chapter, he or she shall so inform the Board and the Board may, at its discretion, dismiss such complaint or order such further investigation as may be necessary, provided that the Board shall not dismiss such complaint without first affording the complainant an opportunity to appear before the Board.

(F) If the Executive Secretary, with respect to a matter which involves a violation of any of the provisions of this chapter, fails to conciliate a complaint after the parties have in good faith attempted such conciliation, fails to effect an informal conciliation agreement or a formal consent agreement or determines that a complaint is not susceptible of conciliation, he or she shall notify the Board immediately and the Board shall thereafter schedule a public hearing to determine whether or not a violation of any of the provisions of this chapter has been committed. The Board shall serve upon the respondent a statement of charges and a summons and shall serve upon all interested parties a notice of the time and place of hearing. The respondent or his or her authorized counsel may file such statements with the Board prior to the hearing date as he or she deems necessary in support of his or her position. The hearing shall be open to the public. The hearing shall be held not less than 15 days after service of the statement of charges and the summons. The summons so issued must be signed by a majority of the members of the Board and the issuance of such summons shall require the attendance of named persons and the production of relevant documents and records. The failure to comply with a summons shall constitute a violation of this chapter. The interested parties may, at their option, appear before the Board in person or by a duly authorized representative and may have the assistance of an attorney. The parties may present testimony and evidence and the right to cross examine witnesses shall be preserved. All testimony and evidence shall be given under oath or by affirmation. The Executive Secretary shall keep a full record of the hearing, which record shall be public and open to inspection by any person. Upon the request of any principal party to the proceeding, the Board shall furnish such party a copy of the hearing record, if any, at such cost as the Board deems appropriate.

(G) If, at the conclusion of the hearing, the Board determines, upon a preponderance of the evidence, of the record, that the person complained against has violated any of the provisions of this chapter, the Board shall, after consultation with the Law Director in executive session, state its findings and cause the Law Director to prepare and issue an order under Board directive requiring the person complained against to cease and desist from such unlawful conduct and to take such affirmative action as will effectuate the purposes of this chapter, with notice that if the Board

determines that the person complained against has not, after 15 calendar days following service of the Board's order, complied with the order, the Board shall recertify the matter to the Law Director for enforcement. Nothing herein shall prohibit the respondent from appealing to the Common Pleas Court under R.C. § 2506.01 after a final determination by the Board.

(H) Upon recertification to the Law Director for enforcement, he or she shall seek compliance by appropriate civil action brought in the name of the Board before a court of competent jurisdiction. In any such proceeding, where the court determines that there has been a violation of any of the provisions of this chapter, the court shall award compensatory damages and, where appropriate, punitive damages, along with attorney fees. The court may also order such other relief as it deems necessary or appropriate.

(I) If, at the conclusion of the hearing, the Board determines upon a preponderance of the evidence of the record, that the person complained against has not violated any of the provisions of this chapter, the Board shall state and publish its findings and issue its order dismissing the complaint. ('70 Code § 646.07) (Ord. 1978-91, passed 8-7-78)

§ 646.08 CONFLICT OF LAWS.

This chapter shall be complied with except where existing and future state or federal law supersedes. ('70 Code § 646.08) (Ord. 1978-91, passed 8-7-78)

Cross-reference:

Affirmative action officer, see § 149.02

Interfering with civil rights, see § 606.20

Statutory reference:

Ohio Civil Rights Commission, see R.C. Ch. 4112

CHAPTER 648: PEACE DISTURBANCES

Section

- 648.01 Riot
- 648.02 Failure to disperse
- 648.03 Justifiable use of force to suppress riot
- 648.04 Disorderly conduct
- 648.05 Disturbing a lawful meeting
- 648.06 Misconduct at an emergency
- 648.07 Inducing panic
- 648.08 Making false alarms
- 648.09 Mayor's authority during emergency
- 648.10 Mayor may proclaim state of emergency
- 648.11 Disorderly conduct on buses
- 648.12 Curfew

§ 648.01 RIOT.

(A) No person shall participate with four or more others in a course of disorderly conduct in violation of § 648.04:

- (1) With purpose to commit or facilitate the commission of a misdemeanor, other than disorderly conduct;
- (2) With purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede or obstruct a function of government;
- (3) With purpose to hinder, impede or obstruct the orderly process of administration or instruction at an education institution, or to interfere with or disrupt lawful activities carried on at such institution.

(B) No person shall participate with four or more others with purpose to do an act with unlawful force or violence, even though such act might otherwise be lawful.

(C) Whoever violates any of the provisions of this section is guilty of riot, a misdemeanor of the first degree. (R.C. § 2917.03) ('70 Code § 648.01) Penalty, see § 698.02

§ 648.02 FAILURE TO DISPERSE.

(A) Where five or more persons are participating in a course of disorderly conduct in violation of § 648.04, and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance or alarm, a law enforcement officer or other public official may order the participants and such other persons to disperse. No person shall knowingly fail to obey such order.

(B) Nothing in this section requires persons to disperse who are peaceably assembled for a lawful purpose.

(C) Whoever violates this section is guilty of failure to disperse, a minor misdemeanor. (R.C. § 2917.04) ('70 Code § 648.02) Penalty, see § 698.02

§ 648.03 JUSTIFIABLE USE OF FORCE TO SUPPRESS RIOT.

A law enforcement officer or fireman engaged in suppressing riot or in protecting persons or property during riot:

(A) Is justified in using force, other than deadly force, when and to the extent he/she has probable cause to believe such force is necessary to disperse or apprehend rioters;

(B) Is justified in using force, including deadly force, when and to the extent he/she has probable cause to believe such force is necessary to disperse or apprehend rioters whose conduct is creating a substantial risk of serious physical harm to persons. (R.C. § 2917.05) ('70 Code § 648.03)

§ 648.04 DISORDERLY CONDUCT.

(A) No person shall recklessly cause inconvenience, annoyance or alarm to another, by doing any of the following:

- (1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;
- (2) Making unreasonable noise or an offensively coarse utterance, gesture or display, or communicating unwarranted and grossly abusive language to any person;
- (3) Insulting, taunting or challenging another under circumstances in which such conduct is likely to provoke a violent response;
- (4) Hindering or preventing the movement of persons on a public street, road, highway or right of way, or to, from, within or upon public or private property, so as to interfere with the rights of others and by any act which serves no lawful and reasonable purpose of the offender;
- (5) Creating a condition which is physically offensive to persons or which presents a risk of physical harm to persons or property by act which serves no lawful and reasonable purpose of the offender.

(B) No person, while voluntarily intoxicated, shall do either of the following:

- (1) In a public place or in the presence of two or more persons engage in conduct likely to be offensive or to cause inconvenience, annoyance or alarm to persons of ordinary sensibilities, which conduct the offender, if he/she were not intoxicated, should know is likely to have such effect on others.
- (2) Engage in conduct or create a condition which presents a risk of physical harm to himself/herself or another, or to the property of another.

(C) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of division (B) of this section.

(D) When to an ordinary observer a person appears to be intoxicated, it is probable cause to believe such person is voluntarily intoxicated for purposes of division (B) of this section.

(E) Whoever violates this section is guilty of disorderly conduct. Except as otherwise provided in this division, disorderly conduct is a minor misdemeanor. If the offender persists in disorderly conduct after reasonable warning or request to desist, or if the offense is committed in the vicinity of a school, disorderly conduct is a misdemeanor of the fourth degree.

(F) As used in this section, **COMMITTED IN THE VICINITY OF A SCHOOL** has the same meaning as in R.C. § 2925.01. (R.C. § 2917.11) ('70 Code § 648.04) Penalty, see § 698.02

§ 648.05 DISTURBING A LAWFUL MEETING.

(A) No person, with purpose to prevent or disrupt a lawful meeting, procession or gathering, shall do either of the following:

- (1) Do any act which obstructs or interferes with the due conduct of such meeting, procession or gathering;
- (2) Make any utterance, gesture or display which outrages the sensibilities of the group.

(B) Whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree. (R.C. § 2917.12) ('70 Code § 648.05) Penalty, see § 698.02

§ 648.06 MISCONDUCT AT AN EMERGENCY.

(A) No person shall knowingly:

(1) Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person or other authorized person, engaged in his/her duties at the scene of a fire, accident, disaster, riot or emergency of any kind;

(2) Fail to obey the lawful order of any law enforcement officer engaged in his/her duties at the scene of or in connection with a fire, accident, disaster, riot or emergency of any kind.

(B) Nothing in this section shall be construed to limit access or deny information to any news media representative in the lawful exercise of his/her duties.

(C) Whoever violates this section is guilty of misconduct at an emergency, a minor misdemeanor. If violation of this section creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the fourth degree. (R.C. § 2917.13) ('70 Code § 648.06) Penalty, see § 698.02

§ 648.07 INDUCING PANIC.

(A) No person shall cause the evacuation of any public place or otherwise cause serious public inconvenience or alarm by doing any of the following:

(1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that such report or warning is false;

(2) Threatening to commit any offense of violence;

(3) Committing any offense with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

(B) Subsection (A)(1) of this section does not apply to any person conducting an authorized fire or emergency drill.

(C) Whoever violates this section is guilty of inducing panic, a misdemeanor of the first degree, provided that when violation of this section results in physical harm to any person, inducing a panic is a felony of the fourth degree and shall be prosecuted under appropriate state law. (R.C. § 2917.31) ('70 Code § 648.07) Penalty, see § 698.02

§ 648.08 MAKING FALSE ALARMS.

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

(1) Initiate or circulate a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm;

(2) Knowingly cause a false alarm of fire or other emergency to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of physical harm to persons or property;

(3) Report to any law enforcement agency an alleged offense or other incident within its concern, knowing that such offense did not occur.

(B) This section does not apply to any person conducting an authorized fire or emergency drill.

(C) Whoever violates this section is guilty of making false alarms, a misdemeanor of the first degree. (R.C. § 2917.32) ('70 Code § 648.08) Penalty, see § 698.02

§ 648.09 MAYOR'S AUTHORITY DURING EMERGENCY.

(A) In case of civil disorder or other emergency, the Mayor may appoint additional patrolmen and officers for temporary service in the Police Division, or additional firefighters and officers for temporary service in the Fire Division, who need not be in the classified list of such Division. Such additional persons shall be employed only for the time during which the emergency exists.

(B) The Mayor may call upon the Sheriff of Marion County or the Sheriff of any adjoining county, the Mayor or other Chief Executive of any municipal corporation in the same or any adjoining county, and the Chairman of the Board of Township Trustees of any township in the same or any adjoining county, to furnish such law enforcement or fire protection personnel, or both, together with appropriate equipment and apparatus, as may be necessary to preserve the public peace and protect persons and property of the City of Marion in the event of civil disorder. The municipality, receiving such aid, shall reimburse the political subdivision furnishing it the cost of furnishing such aid, including compensation of personnel, expenses incurred by reason of the injury or death of any such personnel while rendering such aid, expenses of furnishing equipment and apparatus, compensation for damage to or loss of equipment or apparatus while in service outside the territory of its regular use, and such other reasonable expenses as may be incurred by any such political subdivision in furnishing such aid. Nothing in this section shall be construed as superseding or modifying in any way any provision of a contract entered into pursuant to R.C. § 737.04. Law enforcement officers acting pursuant to this section outside the territory of their regular employment have the same authority to enforce the law as when acting within the territory of their regular employment. ('70 Code § 648.09) (Ord. 68-75, passed 6-24-68)

§ 648.10 MAYOR MAY PROCLAIM STATE OF EMERGENCY.

(A) In the event of a fire, flood, storm or other disaster endangering life and property and substantially impairing the functioning of government and its ability to protect persons and property, or in case of a civil disorder, insurrection or invasion, the Mayor may, in writing, proclaim a state of emergency.

(B) As part of such proclamation or by subsequent written order after such proclamation is issued, the Mayor may, in his/her discretion as he/she deems necessary to the public safety, after delineating the boundaries of any area threatened by civil disorder, insurrection, invasion or disaster:

(1) Regulate or prohibit the movement of persons into, from or within such area except when carrying on lawful pursuits. Any elected official and any elected state official may enter and shall be permitted to move about in the civil disorder or emergency area without molestation if he/she identifies himself/herself to the officer in charge of the area. No officer shall prevent such official from entering or moving about in the civil disorder or emergency area.

(2) Establish a curfew within such area during part or all of the hours of darkness, and prohibit persons from being out-of-doors during such curfew, except when carrying on lawful pursuits; and

(3) Regulate or prohibit the sale, offering for sale, dispensing and transportation of firearms and other deadly weapons, ammunition, dynamite and other dangerous explosives, incendiary devices and any necessary ingredient thereof, and beer and intoxicating liquor, into, from and within such area.

(C) Notice of any proclamation, order or regulation issued pursuant to this section shall be publicly disseminated by methods feasible under the circumstances, such as the posting of written notice in prominent places, voice announcement and announcement by loudspeaker in public places, or the use of radio, television, newspapers and other mass media.

(D) When the danger from civil disorder, insurrection, invasion or disaster has passed, any proclamation, order or regulation issued pursuant to this section shall be void, and the authority proclaiming a state of emergency shall forthwith make proclamation that the emergency has ended.

(E) The powers conferred by this section are in addition to any other power which may be conferred by law, and nothing in this section shall be construed to modify or limit such authority, powers, duties and responsibilities of any officer or public official as may be provided by law. Nothing in this section shall be construed to permit suspension of the privilege of a writ of habeas corpus. (Ord. 68-75, passed 6-24-68)

(F) Whoever knowingly violates any prohibition contained in, or knowingly fails to perform any duty required by, a proclamation, order or regulation issued and in effect pursuant to §§ 648.09 or 648.10 is guilty of a minor misdemeanor. ('70 Code § 648.10) Penalty, see § 698.02

§ 648.11 DISORDERLY CONDUCT ON BUSES.

(A) No person shall fail, if requested by an employee of a public transit company or by an employee of a person operating a bus or other public conveyance, to desist from smoking in a bus or public conveyance. No person shall use obscene or indecent language or engage in a quarrel or take a dog without permission on such bus or other public conveyance. Every person shall, on demand, pay the proper fare.

(B) Whoever violates this section is guilty of a minor misdemeanor. ('70 Code § 648.11) Penalty, see § 698.02

§ 648.12 CURFEW.

(A) No minor under the age of eighteen years shall loiter, idle, wander, stroll or play in or upon the public streets, sidewalks or other places, or be found upon a bicycle or in a vehicle or in public places of amusement or entertainment, vacant lots or other unsupervised places, between the hours of 11:00 p.m. and 4:30 a.m. on weekdays or between the hours of 12:00 midnight on Friday to 4:30 a.m. on Saturday, 12:00 midnight on Saturday to 4:30 a.m. on Sunday or from 11:00 p.m. Sunday until 4:30 a.m. Monday, provided, however, that the provisions of this section do not apply to a minor person accompanied by his or her parent, guardian or other adult person having the care and custody of such minor person or where such minor person is engaged upon an emergency errand or legitimate business at the direction of his or her parent, guardian or other adult person having the care and custody of such minor person or where such minor person is attending a legitimate school, church or youth organization function or activity supervised by adults or returning to his or her home from such supervised school, church or youth activity or function and provided that such minor person has and retains on his or her person specific written permission to attend such function or activity from such minor person's parent, guardian or other adult person having his or her custody or care. Such minor person shall be allowed a period of one hour from the time such legitimate youth activity or function has ended to return to his or her home.

(B) No parent, guardian or other adult person having the legal custody and control of any minor shall allow such minor to violate the provisions of this section. (Ord. 68-76, passed 5-27-68)

(C) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor. Minor violating

this section shall be dealt with in accordance with Juvenile Court law and procedure. (70 Code § 648.12) Penalty, see § 698.02

Cross-reference:

Motor vehicle noises, see §§ 331.37 and 337.19

Resisting arrest, see § 606.16

Liquor sales to intoxicated persons, see § 612.03

Barking or howling dogs, see § 618.07

Assault; menacing, see §§ 636.02 – 636.05

Desecration; arson, see §§ 642.07 and 642.09

Pointing and discharging firearms and other weapons, see § 672.12

Statutory reference:

Power to regulate peace disturbances, see R.C. §§ 715.49 and 715.55

Cordoning off riot areas; prohibiting sales of firearms and explosives, see R.C. § 3761.16

Suspension of beer and liquor sales by Ohio Director of Liquor Control during emergency, see R.C. § 4301.251

Riot and civil disorder assistance by State Highway Patrol, see R.C. § 5503.02(B)

CHAPTER 654: RAILROADS

Section

- 654.01 Obstructing streets by railroad companies
- 654.02 Climbing upon railroad cars
- 654.03 Duties of locomotive engineer

§ 654.01 OBSTRUCTING STREETS BY RAILROAD COMPANIES.

(A) No railroad company shall obstruct or permit or cause to be obstructed a public street, road or highway by permitting a railroad car, locomotive or other obstruction to remain upon or across it for longer than five minutes to the hindrance or inconvenience of travelers or a person passing along or upon such street, road or highway. No railroad company shall fail, at the end of each five minutes period of obstruction of a public street, road or highway, to cause such railroad car, locomotive or other obstruction to be removed for sufficient time, not less than three minutes, to allow the passage of persons and vehicles waiting to cross.

This section does not apply to obstruction of a public street, road or highway by a continuously moving through train or caused by circumstances wholly beyond the control of the railroad company, but does apply to other obstructions, including without limitation those caused by stopped trains and trains engaged in switching, loading or unloading operations.

Upon the filing of an affidavit or complaint for violation of this section, summons shall be issued to the railroad company pursuant to R.C. § 2935.10(B), which summons shall be served on the regular ticket or freight agent of the company in the county where the offense occurred. (R.C. § 5589.21)

(B) No railroad company shall obstruct, or permit or Cause to be obstructed, a public street, road, or highway, by permitting any part of a train whose crew has abandoned the locomotive to remain across it for longer than five minutes to the hindrance or inconvenience of travelers or a person passing along or upon the street, road, or highway, unless the safety of the train crew requires them to abandon the locomotive. (R.C. § 5589.211)

Upon the filing of an affidavit or complaint for violation of this section, summons shall be issued to the railroad company pursuant to R.C. sec 2935.10(b), which summons shall be served on the regular ticket or freight agent of the company in the county where the offense occurred.

(C) Whoever violates division (a) is guilty of a misdemeanor of the first degree and shall be fined one thousand dollars. Whoever violates division (b) is guilty of a misdemeanor of the first degree and shall be fined five thousand dollars. (R.C. § 5589.99) (Ord. 2006-19, passed 2-13-2006)

§ 654.02 CLIMBING UPON RAILROAD CARS.

(A) No person shall climb, jump, step or stand upon or cling or attach himself/herself to a locomotive, engine or car upon the track of a railroad, unless in compliance with law or by permission under the rules and regulations of the corporation managing such railroad.

(B) Whoever violates this section shall not be fined more than \$25. (R.C. § 4999.02) ('70 Code § 654.02)

§ 654.03 DUTIES OF LOCOMOTIVE ENGINEER.

(A) No person in charge of a locomotive shall:

(1) Fail to bring the locomotive to a full stop at least 200 feet before arriving at a crossing with another track, or proceed through the crossing before signaled to do so or before the way is clear; or

(2) When approaching a grade crossing, fail to sound the locomotive whistle at frequent intervals, beginning not less than 1,320 feet from such crossing and continuing until the locomotive has passed the crossing.

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. If violation of this section causes physical harm to any person, whoever violates this section is guilty of a misdemeanor of the third degree.

(R.C. § 4999.04) ('70 Code § 654.03) Penalty, see § 698.02

Cross-reference:

Grade crossings, see §§ 331.25, 331.26, 331.34 and 331.35

Liability as organization, see §§ 606.08 and 606.09

Statutory reference:

Lighting railroads, see § 723.33

Duties of engineers, see § 4999.04

CHAPTER 660: SAFETY, SANITATION AND HEALTH

Section

- 660.01 Venting of heaters and burners
- 660.02 Spreading contagion
- 660.03 Littering and deposit of garbage and waste material
- 660.04 Noxious odors; filthy accumulations; polluting and diverting watercourses
- 660.05 Duty to keep sidewalks in repair and clean
- 660.06 Abandoned refrigerators and airtight containers
- 660.07 Storage of junk vehicles
- 660.08 Open burning
- 660.09 Barricades and warning lights
- 660.10 Sidewalk obstructions; damage or injury
- 660.11 Notice to construct or repair sidewalks, fill lots and remove putrid substances
- 660.12 Fences
- 660.13 Oil and gas wells

§ 660.01 VENTING OF HEATERS AND BURNERS.

(A) A brazier, salamander, space heater, room heater, furnace, water heater or other burner or heater using wood, coal, coke, fuel oil, kerosene, gasoline, natural gas, liquid petroleum gas or similar fuel, and tending to give off carbon monoxide or other harmful gases:

(1) When used in living quarters, or if any enclosed building or space in which persons are usually present, shall be used with a flue or vent so designed, installed and maintained as to vent the products of combustion outdoors; except in storage, factory or industrial buildings which are provided with sufficient ventilation to avoid the danger of carbon monoxide poisoning;

(2) When used as a portable or temporary burner or heater at a construction site, or in a warehouse, shed or structure in which persons are temporarily present, shall be vented as provided in division (A) of this section, or used with sufficient ventilation to avoid the danger of carbon monoxide poisoning.

(B) This section does not apply to domestic ranges, laundry stoves, gas logs installed in a fireplace with an adequate flue, or hot plates, unless the same are used as space or room heaters.

(C) No person shall negligently use, or, being the owner, person in charge, or occupant of premises, negligently permit the use of a burner or heater in violation of the standards for venting and ventilation provided in this section.

(D) Division (A) of this section does not apply to any kerosene-fired space or room heater that is equipped with an automatic extinguishing tip-over device, or to any natural gas-fired or liquid petroleum gas-fired space or room heater that is equipped with an oxygen depletion safety shutoff system, and that has its fuel piped from a source outside of the building in which it is located, that are approved by an authoritative source recognized by the State Fire Marshal in the State Fire Code adopted by him/her under R.C. § 3737.82.

(E) The State Fire Marshal may make rules to ensure the safe use of unvented kerosene, natural gas or liquid petroleum gas heaters exempted from division (A) of this section when used in assembly buildings, business buildings, high hazard buildings, institutional buildings, mercantile buildings and type R-1 and R-2 residential buildings, as these groups of buildings are defined in rules adopted by the Board of Building Standards under R.C. § 3781.10. No person shall negligently use, or, being the owner, person in charge or occupant of premises, negligently permit the use of a heater in violation of any rules adopted under this division.

(F) The State Fire Marshal may make rules prescribing standards for written instructions containing ventilation

requirements and warning of any potential fire hazards that may occur in using a kerosene, natural gas or liquid petroleum gas heater. No person shall sell or offer for sale any kerosene, natural gas or liquid petroleum gas heater unless the manufacturer provides with the heater written instructions that comply with any rules adopted under this division.

(G) No product labeled as a fuel additive for kerosene heaters and having a flash point below 100 degrees Fahrenheit or 37.8° C. shall be sold, offered for sale or used in any kerosene space heater.

(H) No device that prohibits any safety feature on a kerosene, natural gas or liquid petroleum gas space heater from operating shall be sold, offered for sale or used in connection with any kerosene, natural gas or liquid petroleum gas space heater.

(I) No person shall sell or offer for sale any kerosene-fired, natural gas or liquid petroleum gas-fired heater that is not exempt from division (A) of this section unless it is marked conspicuously by the manufacturer on the container with the phrase "Not Approved For Home Use".

(J) No person shall use a cabinet-type, liquid petroleum gas-fired heater having a fuel source within the heater, inside any building, except as permitted by the State Fire Marshal in the State Fire Code adopted by him/her under R.C. § 3737.82. (R.C. § 3701.82)

(K) Whoever violates this section is guilty of a misdemeanor of the first degree. (R.C. § 3701.99(C)) ('70 Code § 660.01) Penalty, see § 698.02

§ 660.02 SPREADING CONTAGION.

(A) No person, knowing or having reasonable cause to believe that he/she is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself/herself to other persons, except when seeking medical aid.

(B) No person, having charge or care of a person whom he/she knows or has reasonable cause to believe is suffering from a dangerous, contagious disease, shall recklessly fail to take reasonable measures to protect others from exposure to the contagion, and to inform health authorities of the existence of the contagion.

(C) No person, having charge of a public conveyance or place of public accommodation, amusement, resort or trade, and knowing or having reasonable cause to believe that persons using such conveyance or place have been or are being exposed to a dangerous, contagious disease, shall negligently fail to take reasonable measures to protect the public from exposure to the contagion, and to inform health authorities of the existence of the contagion. (R.C. § 3701.81)

(D) Whoever violates any of the provisions of this section is guilty of a misdemeanor of the second degree. (R.C. § 3701.99(D)) ('70 Code § 660.02) Penalty, see § 698.02

Cross-reference:

Rabies quarantine, see § 618.11

§ 660.03 LITTERING AND DEPOSIT OF GARBAGE AND WASTE MATERIAL.

(A) As used in this section, **LITTER** means garbage, trash, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass or anything else of an unsightly or unsanitary nature, thrown, dropped, discarded or placed as mentioned herein.

(B) No person, being the owner, person in charge, tenant, or occupant of the premises or any invited guest of the above, shall place or allow to be placed, accumulated or deposited upon any premises or property under their control, any litter, waste, refuse or any substance which is or may be noxious, offensive, injurious or dangerous to the public

health, comfort or safety, except as provided for in § 943.06.

(C) No person shall place or allow to be placed or deposited upon any lots or land in the municipality any waste, debris or material resulting from the demolition, repair or alteration of any building, or trees or limbs resulting from the removal of trees, or any other waste material including but not limited to old or scrap copper, brass, rope, rags, trash, waste, batteries, paper, rubber junked, dismantled or wrecked automobiles or parts thereof, iron, steel, or other old or scrapped ferrous or nonferrous material without written permission of the City Safety/Service Director or designated representative.

(D) No person shall regardless of intent throw, discard, place or deposit litter or cause litter to be thrown, dropped, discarded, placed or deposited on any public property or private property not owned by them or in the waters of the state, unless the person has:

(1) Been directed to do so by a public official as part of a litter collection drive;

(2) Thrown, dropped, discarded, placed or deposited the litter in a litter receptacle in a manner that prevents its being carried away by the elements; or

(3) Been issued a permit or license concerning the litter pursuant to R.C. Chapters 3734 or 6111.

(E) (1) Upon determination that such an accumulation or deposit of material specified in divisions (A) or (B) hereof exists, the City Safety/Service Director or designated representative shall cause a written notice of such violation to be posted at the site of the violation giving the owner, person in charge, tenant or occupant 72 hours to remove such deposit or accumulation. In addition to physically posting the site of the violation, the City Safety/Service Director or designated representative shall seek to personally notify the owner, person in charge, tenant or occupant of such violation during such 72-hour period. Posting the property shall be deemed sufficient notice of violation whether or not person notice is given.

(2) In addition, any owner of real estate located in the municipality shall have on file in the City Sanitation Department, a current address and forwarding mailing address for purposes of providing notice under this section. Service by certified mail is deemed sufficient if mailed to the occupant or other person in charge thereof at the address where the violation exists, and if mailed to the owner at the tax mailing address shown on the books of the County Auditor for the parcel of real estate where said violation exists.

(F) In the event that the owner, person in charge, tenant or occupant of any premises, having been notified under division (E) hereof, does not remove the deposit or accumulation specified in the notice of violation and removal order within the 14 days following notice as mentioned above, the City Safety/Service Director or designated representative shall cause such deposit or accumulation to be removed. The cost of such removal, together with the administrative costs incurred with regard to such removal shall be certified by the proper city official to the County Auditor and placed upon the tax duplicate for collection as a special assessment against such premises. (Ord. 1998-150, passed 11-9-1998)

(G) This section may be enforced by any law enforcement officer, Health Department office or City Zoning Inspector.

(H) Whoever violates divisions (B),(C) or (D) is guilty of a minor misdemeanor for the first offense. Any person convicted of a similar offense within one year is guilty of a misdemeanor of the fourth degree. ('70 Code § 660.03) (Ord. 1984-81, passed 9-24-84; Am. Ord. 1992-74, passed 8-10-92; Am. Ord. 1992-111, passed 10-26-92) Penalty, see § 698.02

Cross-reference:

Domestic refuse and rubbish collection, see Ch. 943

§ 660.04 NOXIOUS ODORS; FILTHY ACCUMULATIONS; POLLUTING AND DIVERTING WATERCOURSES.

(A) No person shall erect, continue use, or maintain a building, structure, or place for the exercise of a trade, employment, or business or for keeping or feeding an animal which, by occasioning noxious exhalations or noisome or offensive smells, becomes injurious to the health, comfort, or property of individuals, or of the public.

(B) No person shall cause or allow offal, filth, or noisome substances to be collected or remain in any place to the damage or prejudice of others, or of the public.

(C) No person shall unlawfully obstruct or impede the passage of a navigable river, harbor, or collection of water, or corrupt or render unwholesome or impure, a watercourse, stream of water, or unlawfully divert such watercourse from its natural course or state to the injury or prejudice of others.

(D) Persons who are engaged in agriculture-related activities, as agriculture is defined in R.C. §519.01, and who are conducting those activities outside a municipal corporation, in accordance with generally accepted agricultural practices, and in such a manner so as not to have a substantial, adverse effect on the public health, safety, or welfare, are exempt from divisions (A) and (B) above; from any similar ordinances, resolutions, rules, or other enactments of a state agency or political subdivision; and from any ordinances, resolutions, rules, or other enactments of a state agency or political subdivision that prohibit excessive noise.

(R.C. § 3767.13)

(E) Whoever violates this section shall be guilty of a misdemeanor of the third degree. (R.C. § 3767.99(C)) ('70 Code § 660.04) Penalty, see § 698.02

Cross-reference:

Animal nuisances, see § 618.12

§ 660.05 DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN.

(A) No owner or occupant of abutting lands shall fail to keep the sidewalks, curbs or gutters in repair and free from snow, ice or any nuisance. (R.C. § 723.011)

(B) Whoever violates this section is guilty of a minor misdemeanor. ('70 Code § 660.05) Penalty, see § 698.02.

§ 660.06 ABANDONED REFRIGERATORS AND AIRTIGHT CONTAINERS.

(A) No person shall abandon, discard, or knowingly permit to remain on premises under his/her control, in a place accessible to children, any abandoned or discarded icebox, refrigerator or other airtight or semi-airtight container which has a capacity of one and one-half cubic feet or more and an opening of 50 square inches or more and which has a door or lid equipped with a hinge, latch or other fastening device capable of securing such door or lid, without rendering such equipment harmless to human life by removing such hinges, latches or other hardware which may cause a person to be confined therein. This section shall not apply to an icebox, refrigerator or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouseman or repairman. (R.C. § 3767.29)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. (R.C. § 3767.99(B)) ('70 Code § 660.06) (Ord. 7085, passed 10-8-62) Penalty, see § 698.02

Statutory reference:

Nuisances, see R.C. Ch. 3767

§ 660.07 STORAGE OF JUNK VEHICLES.

(A) 1. As used in this section *JUNK MOTOR VEHICLES* means any motor vehicle meeting any three of the following criteria:

- (1) Five years old or older,
- (2) Partially dismantled,
- (3) Inoperable,
- (4) Fair market value of less than fifteen hundred dollars (\$1,500.00),
- (5) Unlicensed, improperly licensed or not displaying a valid license plate.

(A) 2. “Partially dismantled” means, but is not limited to, the following:

- (1) Missing engine,
- (2) Missing Battery,
- (3) Missing transmission,
- (4) Missing door, fenders or hood,
- (5) Missing wheels or on blocks,
- (6) Missing tires or deflated tires,
- (7) Missing or broken windshield or windows.

(A) 3. “Inoperable” means any motor vehicle incapable of being propelled under its own power. Any motor vehicle that has not been moved for fourteen consecutive days shall be presumed to be inoperable.

(A) 4. “Collector’s vehicle” means any motor vehicle of special interest having a fair market value of five hundred dollars (\$500.00) or more, whether operable or not that is owned, operated, collected, preserved, restored, maintained, or used by essentially as a collector’s item, leisure pursuit or investment, but not the owner’s principal means of transportation.

(B)(1) No person in charge or control of any private or commercial property within the City, whether as an owner or tenant, occupant, lessee or otherwise, or the registered owner of the motor vehicle, shall allow a junk motor vehicle to remain on such property longer than ten (10) days after receipt of written notice to remove the junk motor vehicle from such premises. The fact that a junk motor vehicle is so left is a prima-facie evidence of willful failure to comply with the notice, and each subsequent period of thirty days that a junk motor vehicle continues to be so left constitutes a separate offense. (ORC § 4513.65) The written notice shall be issued to the property owner and the owner of such vehicle by an officer of the Police Department or a designee of the Safety/Service Director by either personal, certified mail return receipt requested, publication or posting consistent herewith. In the event no return is received within twenty days (20) of certified mailing or is received back and indicates unclaimed, moved or undeliverable and personal service has not been made after diligent attempts, notice may be provided by either of the following methods: By publication once in a daily newspaper for general circulation within the City; By posting the notice upon the real property upon which the vehicle is located and upon the vehicle itself, either of which methods of service shall be sufficient. Such junk motor vehicle shall be removed within ten (10) days after service or the last date of publication which ever is applicable. Such notice shall contain:

- (1) The name of the property owner and the address at which the junk motor vehicle is located,
- (2) The make and model of the vehicle,
- (3) The license plate number, if any,
- (4) A description of the condition of said vehicle,
- (5) A statement to the effect that the person in charge or in control of the private property upon which such vehicle is located and the titled owner of such vehicle are jointly and severally responsible for the removal of the subject junk motor vehicle,

Except as follows in subsections (B)(2) herein, parking, storage, maintenance or collection of junk motor

vehicles on private property is hereby declared to be a public nuisance and offensive to the public health, welfare and safety of the residents of the City.

(B) (2) No person shall be prevented from storing or keeping any collector's vehicle on private property with the permission of the person having the right to the possession of the property, except that a person shall be required to conceal, by means of buildings, fences, vegetation, terrain so that same is completely concealed from public view. Nor shall a person having a right to operate a junk yard or scrap metal processing facility licensed under authority of R.C. § 4737.05 through 4737.12 shall be subject to section (B) (1) above so long as his/her use is part of a bona fide commercial operation. Nor shall a person be prevented from storing a junk motor vehicle in a fully enclosed building where same is permitted under the Zoning Code.

(B) (3) The movement of a vehicle in violation of this section to any other location within the City limits that does not abate the violation under this section shall not, constitute compliance with this section. Nothing in this section shall impede the City's right to remove inoperable motor vehicles from private or commercial property in accordance with any other section of Law.

(B) (4) Any person who has received notice to remove a junk vehicle may appeal to the Safety/Service Director. An appeal must be filed in writing at the Office of the Safety/Service Director within five days after receipt of notice or date of publication, excluding Saturdays, Sundays and holidays. The scope of the appeal shall be limited to determining whether the person requesting such appeal is in charge or control of the private property involved, or is the titled owner of said vehicle, and whether such vehicle is a junk motor vehicle as charged or in violation of any other section herein. At such appeal before the Safety/Service Director, the City and the person(s) requesting such appeal may introduce such witnesses and evidence as each party deems necessary. (Ord. 1998-15, passed 2-9-1998)

(C) (1) As used in this subsection:

“Junk” means old or scrap copper, brass, rope, rags, trash, waste, inoperable cars, car parts, batteries, paper, rubber, iron, steel, and other old or scrap ferrous or nonferrous materials, but does not include scrap tires as defined in section 3734.01 of the Revised Code.

“Junk Yard” means an establishment or place of business that is maintained or operated for the purpose of storing, keeping, buying, or selling junk.

“Fence” means a barrier at least six feet in height, constructed of non-transparent material, and maintained so as to obscure the junk from the ordinary view of persons passing upon state, county, municipal, and township highways, roads, and streets.

“Scrap Metal Processing Facility” means an establishment having facilities for processing iron, steel, or nonferrous scrap and whose principal product is scrap iron and steel or nonferrous scrap for sale and remelting purposes or any by-product or waste related thereto.

“Vehicle Storage Lot” means an establishment or place of business that is maintained or operated or associated with the operation of a motor vehicle salvage, towing or recovery services, any motor vehicle storage, even temporary, of motor vehicles removed from public or private property, including those operations which may be commonly referred to as impound lots.

(C) (2) Any person operating or maintaining a junk yard within one thousand feet of the nearest edge of the right of way of a state, municipal, county or township road, prior to the effective date of the passage of this Ordinance, shall within one year thereafter erect a fence in order to obscure the operation. If after passage of this Ordinance a junk yard is established within one thousand feet of the nearest edge of the right of way of a state, municipal, county or township road it shall erect a fence in order to obscure the operation.

If it is not practical or economically feasible by reason of topography, as determined by the Safety/Service

Director to obscure the view of a junk yard by use of a fence then the Safety/Service Director shall require suitable plantings, or a practical and appropriate barrier not less than six feet nor more than ten feet in height, to partially obscure the view of the operation.

Nothing contained in this section shall be construed to relieve any person of his/her duty to comply with the provisions of ordinances enacted by the municipal corporation regulating or prohibiting junk yards, including requirements to obtain license under municipal ordinances or compliance with the municipalities zoning regulations. The requirement to obtain a license, if any, from the municipality under this section shall be in addition to regulations imposed and licenses required under municipal ordinances.

(D) Persons operating vehicle storage lots shall, in addition to all regulation and obligations contained herein shall be prohibited from keeping, allowing or permitting that same motor vehicle from remaining at the vehicle storage lot in excess of one year. In addition thereto, the person shall prevent the storage lot from becoming a nuisance, including preventing the storage lot from contributing to vermon and rodent populations.

(E) No person shall store or keep outside of a building in any Residential District, any motor vehicle which does not display a current Ohio license plate registered to such vehicle, for a period, either consecutively or cumulatively, in excess of 15 days.

(F) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor on a first offense; on a second offense such person is guilty of a misdemeanor of the fourth degree; on each subsequent offense such person is guilty of a misdemeanor of the third degree. (R.C. § 4513.99(E)) ('70 Code § 660.07; Ord. 1998-15, passed 2-9-1998; Ord. 1998-87, passed 6-22-1998; Ord. 2001-83, passed 06-25-2001) Penalty, see § 698.02

Cross-reference:

Safety and equipment for motor vehicles, see Ch. 337

Abandoned junk motor vehicles, see § 351.18

Statutory reference:

Disposition of abandoned junk motor vehicle, see R.C. § 4513.63

§ 660.08 OPEN BURNING.

(A) As used in this section:

(1) **OPEN BURNING.** The burning of any materials wherein air contaminants resulting from combustion are emitted directly into the air, without passing through a stack or chimney from an enclosed chamber. For purposes of this definition, an enclosed chamber is one which has only those ducts, stacks or chimneys necessary to provide combustion air and to permit the escape of exhaust gas. The burning of any materials in metal cans, barrels, containers, wire baskets or any homemade device is open burning. The burning of materials in incinerators is governed by Ohio Environmental Protection Agency Regulations 3745-17-01 to 3745-17-13.

(2) **GARBAGE.** Any matter resulting from the handling, processing, preparation, cooking and consumption of food or food products.

(3) **LANDSCAPE WASTE.** Any vegetable or plant matter except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings and crop residues.

(B) No person shall cause or allow open burning within the municipality except as provided in divisions (C) through (E) of this section.

(C) Open burning shall be allowed for the following purposes:

(1) Cooking food for human consumption; and

(2) Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers, smudge pots and similar occupational needs.

Fires allowed by this section shall not be used to burn garbage, landscape waste or any other waste material and shall be of a minimum size sufficient for their intended purpose. The fuel used shall be a clean fuel, that is, a fuel chosen to minimize the generation and emission of air contaminants.

(D) Open burning shall be allowed for the following purposes with prior notification to both the Municipal Fire Department and the District Office of the Ohio Environmental Protection Agency, as provided by Ohio Environmental Protection Agency Regulation 3745-19-05:

(1) Prevention or control of disease or pests; and

(2) Ceremonial purposes. Ceremonial fires shall be less than five feet by five feet by five feet and shall burn no longer than three hours.

Fires allowed by this subsection shall not be used to burn garbage, landscape waste or any other waste material. The fuel used shall be a clean fuel, that is, a fuel chosen to minimize the generation and emission of air contaminants.

(E) Open burning shall be allowed for the following purposes upon receipt of written permission from the District Office of the Ohio Environmental Protection Agency, provided that any conditions specified in the permit are followed:

(1) Disposal of hazardous or toxic materials where the Ohio Environmental Protection Agency determines that there is no practical alternate method of disposal;

(2) Instruction in methods of fire fighting or for research in the control of fire; and

(3) In emergency or other extraordinary circumstances for any purpose determined to be necessary by the Ohio Environmental Protection Agency. Receipt of written permission shall be obtained as provided by Ohio Environmental Protection Agency Regulation 3745-19-05.

(F) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor. In addition, the offender shall be required to pay the cost of proper disposal of the material burned. The cost of proper disposal of the materials burned shall be the amount it would have cost to dispose of the materials in a manner that is consistent with the air, water and solid waste laws, ordinances and regulations of the municipality and the state. ('70 Code § 660.08) Penalty, see § 698.02

§ 660.09 BARRICADES AND WARNING LIGHTS.

(A) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(B) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb. (Ord. 7085, passed 10-8-62)

(C) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

(D) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. ('70 Code § 660.09) Penalty, see § 698.02

Statutory reference:

Excavation liability, see R.C. § 723.49

§ 660.10 SIDEWALK OBSTRUCTIONS; DAMAGE OR INJURY.

(A) No person shall place or knowingly drop upon any part of a sidewalk or playground any tacks, bottles, wire, glass, nails or other articles which may damage property of another or injure any person or animal traveling along or upon such sidewalk or playground.

(B) No person shall walk on, or allow any animal upon, or injure or deface in any way, any soft or newly laid sidewalk pavement.

(C) No person shall place, deposit or maintain any merchandise, goods, material or equipment upon any sidewalk so as to obstruct pedestrian traffic thereon except for such reasonable time as may be actually necessary for the delivery or pickup of such articles. In no case shall the obstruction remain on such sidewalk for more than one hour.

(D) No person shall unload upon, or transport any heavy merchandise, goods, material or equipment over or across any sidewalk or curb without first placing some sufficient protection over the pavement to protect against damage or injury.

(E) No person shall allow any cellar or trap door, coal chute or elevator or lift opening in any sidewalk to remain open without providing suitable safeguards to protect and warn pedestrian traffic of the dangerous conditions. (Ord. 7085, passed 10-8-62)

(F) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. ('70 Code § 660.10) Penalty, see § 698.02

Cross-reference:

Placing injurious material or obstruction in street, see § 311.01

§ 660.11 NOTICE TO CONSTRUCT OR REPAIR SIDEWALKS, FILL LOTS AND REMOVE PUTRID SUBSTANCES.

(A) No person shall fail to comply with the following requirements within the lawful time after service or publication of the notice or resolution is made as required by law:

(1) To construct or repair sidewalks, curbing or gutters as provided in R.C. § 729.02 et seq.;

(2) To fill or drain any lot or land or remove all putrid substances therefrom, or remove all obstructions from culverts, covered drains or natural watercourses as provided in § R.C. 715.47. (Ord. 65-10, passed 1-25-65)

(B) Whoever violates this section is guilty of a minor misdemeanor. ('70 Code § 660.11) Penalty, see § 698.02

§ 660.12 FENCES.

(A) No person shall erect or maintain any fence charged with electrical current.

(B) No person shall erect or maintain a barbed wire fence which abuts or is adjacent to any public street or sidewalk. Barbed wire partition fences may be erected and maintained as provided in R.C. § 971.03. This division (B)

does not prevent the placement and use of not more than three strands of barbed wire on top of a fence other than a barbed wire fence, provided such strands are not less than sixty inches from the ground.

(C) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. ('70 Code § 660.12) Penalty, see § 698.02

§ 660.13 OIL AND GAS WELLS.

(A) No owner, occupant, person, firm or association, by himself/herself or itself, or by an agent or an employee, shall cause or allow any exploring, testing, prospecting, developing, drilling, producing, storing or operating for oil and/or gas on or in any land in the municipality. (Ord. 64-52, passed 5-25-64)

(B) Whoever violates this section is guilty of a misdemeanor of the fourth degree. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. ('70 Code § 660.15) Penalty, see § 698.02

CHAPTER 662: HYGIENE, SANITATION AND MAINTENANCE CODE

Section

- 662.01 Purpose
- 662.02 Scope, Authority to Enforce
- 662.03 Definitions
- 662.04 Inspection of Dwelling, Dwelling Units & Premises
- 662.05 Service of Notice or Orders
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§ 662.01 PURPOSE

The following chapter contains regulations establishing minimum standards of hygiene and sanitation governing the condition and maintenance of dwellings; establishing minimum standards governing supplies, utilities and facilities and other physical things and conditions essential to make dwellings safe, sanitary, and fit for occupants of dwellings; establishing minimum standards governing the condition of dwelling offered for rent, fixing certain responsibilities and duties of owners and occupants of dwellings, authorizing the inspection of dwellings and the condemnation of dwellings found to be unfit for human habitation.

§ 662.02 SCOPE; AUTHORITY TO ENFORCE

(A) Scope. These regulations are limited to residential dwellings only.

(B) Authority to enforce. *In order to ensure the public Health, this Code places all necessary authority with the Marion County General Health District, its Administrators and Employees all of whom shall enforce these regulations in accordance with Sections 3707.01, 3707.02 and 3709.20 of the Ohio Revised Code. In addition, authority continues to be vested in all public officer(s) or other designated authorities charged with the ensuring compliance with Marion City Codes or Regulations.*

§ 662.03 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Whenever the words DWELLING, DWELLING UNIT, ROOMING HOUSE, ROOMING UNIT, PREMISES, are used in these regulations, they shall be construed as though they were following by the words “or any part thereof.”

ABATE. To improve, purify, correct or to remove.

ACCESSORY BUILDING OR STRUCTURE. A detached building or structure in a secondary of subordinate capacity from the main or principal building or structure on the same premises. Examples would be a garage or shed.

APARTMENT. A suite of rooms with sanitation facilities and with cooking facilities, occupied as the home or residence of a single family.

APPROPRIATE AUTHORITY. The person within the government structure of the corporate unit who is charged with the administration of the appropriate code.

APPROVED. Approved by the local or state authority having administrative authority.

BASEMENT. The portion of a building which is partly underground and which as one half or more of its ceiling height above the average finished grade of the ground adjoining the building.

BOARD OF HEALTH. The Board of Health of *the Marion County General Health District*.

BUILDING. A fixed construction with walls, foundation and roof, such as a house, factory, garage, etc.

CELLAR. The portion of the building wholly below, or with less than half of its ceiling height above the average finished grade of the ground adjoining the building.

DILAPIDATED. A structure in such a poor state of repair that it has various potentially unsanitary or unsafe conditions, which when taken collectively, constitute an unsanitary and unsafe structure at the present time, no longer adequate for the purpose or use for which it was originally intended.

DWELLING. Any building or structure which is wholly or partly used or intended to be used for living or sleeping by human occupants, provided that temporary housing as herein after defined shall be exempted from the provisions of these regulations.

DWELLING UNIT. A room or group of rooms located within a dwelling forming a single habitable unit with facilities used or intended to be used by a single family for living, sleeping, cooking and eating purposes.

EGRESS. An arrangement of exit facilities to assure a safe means of exit from a building.

EXTERMINATION. The control and elimination of insects, rodents, or other pests by eliminating their harborage places, by removing or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods, approved by the local or state authority having such administration authority.

FACILITIES. Supplied conveniences, equipment or utilities. This shall include but is not limited to all types of heating and cooling systems, hot water tank, refrigerator, stove, bathroom and containers for garbage and rubbish.

FIXTURES. Include but is not limited to, ceiling lights, faucets, faucet handles, outlets, lavatory, tub, shower and kitchen sink.

FLUSH WATER CLOSET. A toilet bowl which is flushed with water which has been supplied under pressure and equipped with a water sealed trap above the floor.

GARBAGE. All putrescible waste from animal and vegetable resulting from the handling, preparation, cooking, serving and non-consumption of food.

HABITABLE. A dwelling, dwelling unit or building in which the condition of such is satisfactory for occupancy.

HABITABLE ROOM. A room or enclosed floor space arranged for living, eating, or sleeping purposes, but does not include a room used as a bathroom, water closet compartment, laundry, pantry, foyer, hallway, or other accessory floor space.

HEALTH COMMISSIONER. The Health Commissioner of the *Marion County General Health District* or HIS /HER authorized representative. Health Commissioner is the person occupying the office in the health district which is coded by Sections 3709.11 and 3709.14 of the Revised Code of Ohio. Authorized representative includes, but is not limited to, the Deputy Health Commissioner, the Superintendent, Assistant Superintendent, the

Supervising Personnel, the Sanitarians of the local health departments.

HEATED WATER. Water heated to a temperature of not less than 120° F at the outlet.

INFESTATION. The presence within or around a dwelling of any insects, rodents, or other pests.

LITTER. Garbage, trash, rubbish, ashes, cans, bottles, wire, paper, cartons, boxes, automobile parts, furniture, glass or anything else of an unsightly or unsanitary nature, thrown, dropped, discarded or placed.

MULTIPLE DWELLING. Any dwelling unit containing more than two (2) dwelling units.

OCCUPANT. Any individual over one year of age, living, sleeping, cooking, eating in, or having actual possession of a dwelling unit.

OPERATOR. Any person who has charge, care, control, or management of a building, or part thereof, in which dwelling units or rooming units are let.

ORDINARY SUMMER CONDITIONS. means a temperature 10° F below the highest recorded temperature in the locality for the prior ten (10) year period.

ORDINARY WINTER CONDITIONS. means a temperature 15° F above the lowest recorded temperature in the locality for the prior ten (10) year period.

OWNER. Any person who, alone, or jointly or severally with others:

- A. Shall have legal title to any premises, dwelling, or dwelling unit, with or without accompanying actual possession thereof, or;
- B. Shall have charge, care, or control of any premises, dwelling, or dwelling unit, as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of the regulation to the same extent as if he or she were the owner.

PERSON. An individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, department, bureau, agency or any entity recognized by law.

PLUMBING. The practice, materials and fixtures used in the installation, maintenance, extension, and alteration of all piping, fixtures, appliances and appurtenances in connection with any of the following: drainage systems, and the water supply systems, within or adjacent to any building, structure, or conveyance; also the practice and materials used in the installation, maintenance, extension, or alteration of the storm water, liquid waste, or drainage and water supply systems of any premises.

POTABLE WATER. Drinkable; safe from harmful bacteria and chemical impurities, from an approved source.

PREMISES. A lot, plot, or parcel of land including, the building or structures thereon.

REFUSE. All putrescible and non putrescible solids (except body wastes) including garbage, rubbish, ashes, dead animals, clothing, furniture, appliances, wire, automotive and waste material.

RUBBISH. A non liquid, nonputrescible solid wastes consisting of paper, cardboard, plastic, tree limbs, yard clippings, leaves, tin cans, glass, bottles, rags and crockery.

SOLID WASTE. Unwanted residual solids or semisolid material as results from industrial, commercial, agricultural and community operations excluding earth or material from construction, mining or demolition operations, or other waste materials of the type that would normally be included in demolition debris, nontoxic fly ash, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, tires, combustible and non-combustible material; street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste.

SUPPLIED. Paid for, furnished by, provided by, or under the control of the owner, operator or agent.

TEMPORARY HOUSING. Any tent, trailer, mobile home, or any other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utility system on the same premises for more than thirty (30) consecutive days.

WASTE MATERIAL. Recognizable industrial by-products, dead trees, tree limbs, trunks or stumps, or accumulation of bricks, concrete, stone, wood, metal, sand, gravel, earth, or other refuse from construction, remodeling or repair of buildings, appliances, worn furniture and other disposable items and materials.

§ 662.04 INSPECTION OF DWELLINGS, DWELLING UNITS AND PREMISES

The Health Commissioner is hereby authorized to make inspections to determine the condition of dwellings, dwelling units and premises located within Marion, in order that he/she may perform his/her duty of safe-guarding the health and safety of the occupants of dwellings and of the general public. The owner or occupant of every dwelling, dwelling unit, and premise, or the person in charge thereof, shall give the Health Commissioner or his/her designee free access to such dwelling unit and its premises, at all reasonable times for the purpose of such inspection, examination, and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of the dwelling or dwelling unit or its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to affect compliance with the provisions of this regulation or any lawful order issued pursuant to the provisions of these regulations.

§ 662.05 SERVICE OF NOTICE OR ORDERS

Whenever the Health Commissioner or his/her designee determines that there is a probable cause to believe that there has been a violation of any provision of this regulation, he/she shall give notice of such violation to the owner, occupant, or other person in charge thereof specifying the violation claimed and the provision of this regulation defining said violation. The owner, occupant, or other person in charge thereof, shall be allowed such time to correct the alleged violation as the Health Commissioner or his/her designee determines necessary giving due consideration to the immediacy of the threat to health existing by reason of the alleged violation. The time allowed for the correction of such violation shall be stated in the notice. The notice provided herein shall be served personally or by certified mail with return receipt requested. Service by certified mail is deemed sufficient if mailed to the occupant or other person in charge thereof at the address where the violation exists and if mailed to the owner at the tax mailing address shown on the books of the County Auditor for the parcel of real estate where said violation exists. In the event no return receipt is received when service is attempted and the certified mail is returned for any reason, it then can be served personally, sent certificate or proof of mailing, or the notice may be served by posting a copy of the notice of the violation upon the exterior of the dwelling in a conspicuous place where the addressee resides or violation exists. A return or other documentation stating the manner in which said service was made shall be attached to a copy of the complaint and retained in the records of the Board of Health.

§ 662.06 RIGHT TO APPEAL; HEARING

(A) Any person affected by any notice of alleged violation shall be notified of the right to appeal and may request and shall be granted a hearing before the Health Commissioner provided the request for such hearing is made within the time specified in the notice mentioned in Section 662.05.

(B) After such hearing the Health Commissioner shall sustain, modify or withdraw the notice of alleged violation depending upon his/her findings as to whether the provisions of this regulation have been complied with. Notice of the decision of the health commissioner shall be served upon the persons and in the manner as provided in Section 662.05.

(C) Any person affected by the decision of the Health Commissioner; shall be entitled to appeal the decision of the Health Commissioner to the Board of Health. Written notice of the appeal must be filed with the secretary of the Board of Health within five (5) days of the personal service. Signature by the addressee on the return receipt or date of posting and decision upon the premises. Said notice shall state the order appealed from and the address to which notice the hearing notice shall be mailed. The Board of Health shall hear the appeal at the next regular meeting of the Board of Health provided that no hearing shall be had sooner than five (5) days from the date of the filing of said notice of appeal. Notice of the meeting for the Board of Health at which said appeal is to be heard shall be given to the appellant by regular mail at the address shown in his notice or appeal. Said appellant shall be entitled to appear personally and with counsel, at said meeting of the Board of Health. The Board of Health may, in its discretion, continue the hearing of said appeal time to time until said hearing is completed.

(D) The Board of Health shall modify, withdraw, or sustain the order of the Health Commissioner. The copy of the decision of the Board of Health shall be mailed to the appellant at the address shown in the notice of appeal, and to his counsel record.

§ 662.07 MINIMUM SANITATION STANDARDS

No person shall occupy as owner-occupant, or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the following requirements.

- (A) It is the responsibility of the owner of a dwelling or dwelling unit that the dwelling or dwelling unit is properly connected to a sewer system and a potable water supply approved by the Health Commissioner.
- (B) It is the responsibility of the owner of a dwelling or dwelling unit that all plumbing and fixtures are properly installed in accordance with the Ohio Plumbing Code and maintained in good working condition, free from defects, leaks, obstructions and installed properly to prevent the escape of odors.
- (C) Every dwelling or dwelling unit shall contain a kitchen sink, flush water closet, lavatory and bathtub or shower, which is properly installed, maintained in good working condition, free from defects and is properly connected to an approved water supply and sewer system.
- (D) Every kitchen sink, lavatory, bathtub or shower shall be properly connected to hot and cold water lines which shall have an adequate water supply and pressure. The hot water lines shall be connected to a hot water heating facility of satisfactory size which will provide adequate amounts of hot water at a temperature of not less than 120 deg. F. Each installation of a hot water heating facility must conform with all regulations of the Ohio Plumbing Code.
- (E) Each dwelling or dwelling unit shall be supplied with sufficient amperage for safe and proper operation of all appliances, tools, equipment and facilities. The service panel box shall be properly installed, maintained, and safely connected to a source of electric power. Each circuit shall have the capacity required to supply current adequately and safely.
- (F) Every habitable room, except bathroom, shall contain at least two (2) separate wall or floor type electric duplex outlets. Each bathroom shall contain at least one (1) electric convenience outlet and a light fixture.
- (G) Every electric outlet, switch and light fixture, shall be properly installed, shall be maintained in a safe working condition, shall be properly connected to wiring of proper size, which will operate all appliances,

facilities, fixtures, and equipment in a safe and effective manner. All wiring shall be properly connected to the service panel box.

- (H) Electric wiring shall not be exposed in a manner as to create nuisance or possible danger to individuals.
- (I) Each porch, balcony, steps, stairway or hallway, shall be provided with proper lighting which are controlled by switches located for convenient use by the occupants.
- (J) The owner of a dwelling or dwelling unit shall, upon request by the Health Commissioner, have the electrical system inspected and present acceptable evidence that the wiring is safe and satisfactory.
- (K) Every owner of a dwelling or dwelling unit shall have heating facilities which are properly installed, vented, which are maintained in a safe and good working condition, and are capable of safely and adequately heating all rooms located therein to a temperature of a least 65 degrees. The owner shall, upon request by the Health Commissioner, have the heating system inspected and present acceptable evidence that the heating facility is safe and in good working condition.
- (L) Every owner is required that each supplied facility, fixture, piece of equipment and each utility is constructed, installed, vented, and operating safely and effectively.
- (M) Every occupant shall keep all supplied facilities, fixtures, and equipment in a clean and operable condition and shall be responsible for the exercise of reasonable care in the proper use and safe operation thereof
- (N) No owner, operator or occupant shall cause any service, facility, equipment or utility to be removed from, shut off, or discontinued for any occupied dwelling or dwelling unit let or occupied by him or her. The exception would be for such temporary interruption as may be necessary while actual repairs or alterations are in process or during temporary emergencies when discontinuance of service is approved by the Health Commissioner or his/her designee.
- (O) Every foundation, roof, floor, exterior and interior wall, ceiling, inside and outside steps or stairway, every porch, and every appurtenance thereto, shall be safe to use and capable of supporting the loads that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair. All interior framework shall be covered with a finished material. Interior walls shall be capable of affording privacy for the occupants.
- (P) Every foundation, roof and exterior wall, exterior door, skylight and window shall be reasonably weather-tight and damp-free, and shall be properly installed, kept in sound condition and good repair.
- (Q) Every water closet compartment, bathroom, and kitchen floor shall have a water resistant floor covering which is impervious to water and so as to permit the floor to be easily kept in a clean and sanitary condition. It shall be kept in sound condition and good repair.
- (R) Every chimney, flue, vent or smoke pipe shall be properly installed, kept in sound condition and good repair and conform with any other statutes, ordinances and regulations.
- (S) Every habitable room shall have at least one (1) window or skylight facing directly outdoors which can be opened easily or such other device as will ventilate the room adequately, provided that if connected to a room or area used seasonally then adequate ventilation must be possible through this interconnection. Every bathroom, water closet compartment, and room used for food preparation, shall comply with this section for ventilation, except that no window or skylight is required if they are equipped with a ventilation system in working condition. Each window or skylight shall have a screen installed during that portion of the year when there is a need to prevent the entrance of insects while ventilating the room.

- (T) (1) All bedrooms, flush water closet and bathroom shall have a door installed which affords privacy to a person. All doors shall be provided with a functioning door knob and any other hardware need to properly operate the door. Doors shall be kept in sound condition, free from defects and in good repair.
- (2) All exterior doors and windows of a dwelling or dwelling unit shall be equipped with a properly installed, functioning locking device.
- (U) Structurally sound handrails shall be provided on any steps or stairways that rise higher than three (3) feet. Porches, patios and balconies located more than three (3) feet higher than the adjacent areas shall have structurally sound protective guards or handrails. Both sides of free standing or open stairways more than three (3) feet in height shall have structurally sound protective barriers or handrails, with at least one handrail available.
- (V) Every dwelling and dwelling unit shall have at least two (2) means of safe and easy egress, or escape, to ground level or as required by the laws of The State of Ohio, City of Marion, or as determine by the Heath Commissioner.
- (W) (1) All vacant lots or parcels of land, every dwelling, multiple dwelling, dwelling unit, accessory structure and the premises on which it is located shall be kept free of garbage, rubbish, refuse, sewage, waste material, animal wastes, stagnant water, offensive or hazardous substances, noxious or harmful vegetation or other conditions which are harmful, create a nuisance and or potential source of breeding, harborage and infestation of insects, vermin, and rodents or as determine by the Health Commissioner.
- (2) No person shall be allowed, unless properly contained and or placed for immediate disposal, to throw, bury or litter on the exterior of any premises, parcel of land or vacant lot, any garbage, rubbish, refuse, waste material, unsafe or hazardous material or anything else of an unsanitary nature. Waste material such as brick, stone or concrete, shall be allowed for burial when used as a fill.
- (3) No owner, lessee, agent or other person responsible for the parcel of land, premises, or lot, shall allow weeds, grass or other vegetation, to grow to an extent as to allow to, mature and seed, to become excessive in height, to become noxious or harmful to individuals, to become a potential source of breeding and harborage of insects and rodents or create other conditions which become a nuisance as defined by the Health Commissioner or his/her designee.
- (4) The owner of a vacant dwelling, vacant dwelling unit and any accessory building located on the premises, shall be responsible for securing the doors, windows, hatchways or any other entrances, making the structure or structures inaccessible for easy entry, thereby decreasing the likelihood of injury or fire.
- (X) (1) Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of insects, and/or rodents on the premises; and every occupant of a dwelling unit in a dwelling containing more than one (1) dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested.
- (2) Notwithstanding, the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a rodent proof or reasonable insect proof condition, extermination shall be the responsibility of the owner.
- (3) Whenever infestation exists in two (2) or more of the dwelling units in any dwelling, or in the share or public parts of any dwelling containing two (2) or more dwelling units, extermination thereof shall be the responsibility of the owner.

- (4) If a rental dwelling or dwelling unit is infested with insects or rodents and becomes vacant for any reason, it shall be the property owner's responsibility to have the premises exterminated before it is re-occupied.
- (Y) Every occupant of a dwelling or dwelling unit shall maintain in a clean and sanitary condition that part or those parts of the dwelling, dwelling unit, and premises thereof that he or she occupies and controls. Every occupant shall properly store and dispose of all garbage, rubbish and refuse in a clean, sanitary and safe manner.
- (Z) Every owner of a premises containing four (4) or more dwelling units shall supply containers for the sanitary and safe storage and or disposal of garbage and rubbish.
- (AA) Every owner of a property containing two (2) or more dwelling units shall see that all common areas that are shared by the occupants, are kept in a clean condition free of garbage, rubbish and refuse. Examples of common areas are: the grounds, hallway, garage, and basement.
- (BB) (1) Every owner of a dwelling or dwelling unit shall maintain the dwelling or dwelling unit free of the hazards of lead based paint.
 - (2) No person shall apply a lead based paint to any surface in a dwelling or dwelling unit.

§ 662.08 VARIANCES

(A) The Board of Health may grant a hearing to a person and authorize in specific cases, such variance from the requirements of these regulations as will not be contrary to the public interest, where the person shows that because of practical difficulties or other special conditions their application will cause unusual and unnecessary hardship. However, no variance shall be granted that will defeat the spirit and general intent of these regulations, or otherwise not be in the public interest.

(B) The application for variance provided in Division (A) of this section shall be in writing filed with the secretary of the Board of Health. Said application shall be heard by the Board of Health at the next regular or special meeting of the Board provided that the Board shall not consider such application sooner than the fifth day after the filing of the same with the secretary. Notice to the persons and in the manner as provided in Section § 662.05 hereof shall be given stating the time and place of the hearing on said application.

§ 662.09 DESIGNATION OF UNFIT DWELLINGS AND LEGAL PROCEDURE OF CONDEMNATION

- A) Any dwelling or dwelling unit which shall be found to have any of the following defects shall be condemned as unfit for human habitation and shall be so designated and placarded by the Health Commissioner, or his/her designee.
 - (1) One which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates a serious hazard to the health or safety of the occupants or of the public.
 - (2) One which lacks illumination, ventilation or sanitation facilities adequate to protect the health or safety of the occupants or of the public.
 - (3) One which because of its general condition or location is insanitary, or otherwise dangerous to the health or safety of the occupants or of the public.
- (B) Any dwelling or dwelling unit condemned as unfit, for human habitation, and so designated and placarded by the Health Commissioner, or his/her designee, shall be vacated within a reasonable time as ordered by the Board of Health and shall remain vacant until written approval is secured from the Board of Health.

- (C) If the Board of Health determines that the structure cannot be improved so as to comply with provisions of these regulations and that the same is unsafe, the Board of Health may order and direct the owners to demolish said structure as a hazard. In the event that the owners fail to comply with said order the Board of Health may order the demolition of said structure and shall certify the cost and expense of demolition as set forth herein to the County Auditor and the same shall become a lien upon real estate.
- (D) Any person affected by any notice of an alleged violation under Section 662.09 may request and shall be granted a hearing before the Board of Health provided the request for such hearing is made within the number of days specified in the notice.
- (E) After such hearing, the Board of Health shall sustain, modify, or withdraw the notice, depending upon its findings as to whether the provisions of the regulations have been complied with.
- (F) The proceedings at such hearing, including the findings and decision of the Board of Health is to be summarized, reduced to writing, and entered as a matter of public record in the office of the Health Commissioner. Such record shall also include a copy of every notice or order issued in connection with the matter. Any person aggrieved by the decisions of the Board of Health may seek relief therefrom in any court of competent jurisdiction.

§ 662.10 PENALTY

Any person who continues in violation of any provision of these standards after the time allowed for him for correction of an alleged violation in the notice provided in Section § 662.05 shall be deemed in violation of Section 3709.99 of the Revised Code of Ohio.

Whoever violates any provision of this regulation shall be guilty of a minor misdemeanor on a first offense which is punishable by a fine of not more than \$150.00. On a second offense within one year after the first offense, such person is guilty of a misdemeanor of the fourth degree, which is punishable by not more than 30 days in jail and/or \$250.00. On each subsequent offense within one year after the first offense, such person is guilty of a misdemeanor of the first degree which is punishable by not more than 6 months in jail and/or \$1,000.00.

(Ord. 2009-66, passed 7-27-2009)

CHAPTER 666: SEX RELATED OFFENSES

Section

- 666.01 Definitions
- 666.02 Corruption of a minor
- 666.03 Sexual imposition
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- 666.17 Pandering material involving a minor
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§ 666.01 DEFINITIONS.

As used in this chapter:

(A) **SEXUAL CONDUCT.** Vaginal intercourse between a male and female, and anal intercourse, fellatio and cunnilingus between persons regardless of sex. Penetration, however, slight, is sufficient to complete vaginal or anal intercourse.

(B) **SEXUAL CONTACT.** Any touching of an erogenous zone of another, including, without limitation, the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) **SEXUAL ACTIVITY.** Sexual conduct or sexual contact, or both.

(D) **PROSTITUTE.** A male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) **HARMFUL TO JUVENILES.** Any material or performance if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following applies:

- (1) It tends to appeal to the prurient interest of juveniles;
- (2) It contains a display, description or representation of sexual activity, masturbation, sexual excitement or nudity;
- (3) It contains a display, description or representation of bestiality or extreme or bizarre violence, cruelty or brutality;

(4) It contains a display, description or representation of human bodily functions of elimination;

(5) It makes repeated use of foul language;

(6) It contains a display, description or representation in lurid detail of the violent physical torture, dismemberment, destruction or death of a human being;

(7) It contains a display, description or representation of criminal activity that tends to glorify or glamorize the activity, and that, with respect to juveniles, has a dominant tendency to corrupt.

(F) **OBSCENE.** When considered as a whole and judged with reference to ordinary adults, or if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is **OBSCENE** if any of the following applies:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral or artistic purpose.

(G) **SEXUAL EXCITEMENT.** The condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) **NUDITY.** The showing, representation or depiction of human male or female genitals, pubic area or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) **JUVENILE.** An unmarried person under the age of 18.

(J) **MATERIAL.** Any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record or tape, or other tangible thing capable of arousing interest through sight, sound or touch.

(K) **PERFORMANCE.** Any motion picture, preview, trailer, play, show, skit, dance or other exhibition performed before an audience.

(L) **SPOUSE.** A person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following applies:

(1) When the parties have entered into a written separation agreement authorized by R.C. § 3103.06;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage or legal separation; or

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

MINOR. A person under the age of 18. (R.C. § 2907.01) ('70 Code § 666.01)

§ 666.02 CORRUPTION OF A MINOR.

(A) No person who is 18 years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows such other person is 13 years of age or older but less than 16 years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of corruption of a minor, a misdemeanor of the first degree, provided the offender is less than four years older than the other person. (R.C. § 2907.04) ('70 Code § 666.02) Penalty, see § 698.02

§ 666.03 SEXUAL IMPOSITION.

(A) No person shall have sexual contact with another, not the spouse of the offender, cause another, not the spouse of the offender, to have sexual contact with the offender, or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is 13 years of age or older but not less than 16 years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of R.C. §§ 2907.02, 2907.04, 2907.05 or 2907.12, a violation of this section is a misdemeanor of the first degree. (R.C. § 2907.06) ('70 Code § 666.03) Penalty, see § 698.02

Statutory reference:

Registration of sex offenders in cities and counties, see R.C. Ch.2950

§ 666.04 IMPORTUNING.

(A) No person shall solicit a person under 13 years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.

(B) No person shall solicit a person of the same sex to engage in sexual activity with the offender, when the offender knows such solicitation is offensive to the other person, or is reckless in that regard.

(C) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is 18 years of age or older and four or more years older the other person, the other person is over 12 but not over 15 years of age, whether or not the offender knows the age of the other person.

(D) Whoever violates any of the provisions of this section is guilty of importuning. Violation of divisions (A) or (B) of this section is a misdemeanor of the first degree. Violation of division (C) of this section is a misdemeanor of the fourth degree. (R.C. § 2907.07) ('70 Code § 666.04) Penalty, see § 698.02

§ 666.05 VOYEURISM.

(A) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(B) Whoever violates this section is guilty of voyeurism, a misdemeanor of the third degree. (R.C. § 2907.08) ('70 Code § 666.05) Penalty, see § 698.02

§ 666.06 PUBLIC INDECENCY.

(A) No person shall recklessly do any of the following, under circumstances in which his/her or her conduct is likely to be viewed by and affront others, not members of his/her or her household:

- (1) Expose his/her or her private parts or engage in masturbation;
- (2) Engage in sexual conduct;
- (3) Engage in conduct which to an ordinary observer would appear to be sexual conduct or masturbation.

(B) Whoever violates this section is guilty of public indecency. Except as otherwise provided in this division, public indecency is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, public indecency is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, public indecency is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, public indecency is a misdemeanor of the first degree. (R.C. § 2907.09) ('70 Code § 666.06) Penalty, see § 698.02

§ 666.07 PROCURING.

(A) No person, knowingly and for gain, shall do either of the following:

- (1) Entice or solicit another to patronize a prostitute or brothel;
- (2) Procure a prostitute for another to patronize, or take or direct another at his/her or her request to any place for the purpose of patronizing a prostitute.

(B) No person, having authority or responsibility over the use of premises, shall knowingly permit such premises to be used for the purpose of engaging in sexual activity for hire.

(C) Whoever violates any of the provisions of this section is guilty of procuring, a misdemeanor of the first degree. (R.C. § 2907.23) ('70 Code § 666.07) Penalty, see § 698.02

§ 666.08 SOLICITING.

(A) No person shall solicit another to engage with such other person in sexual activity for hire.

(B) Whoever violates this section is guilty of soliciting, a misdemeanor of the third degree. (R.C. § 2907.24) ('70 Code § 666.08) Penalty, see § 698.02

§ 666.09 PROSTITUTION.

(A) No person shall engage in sexual activity for hire.

(B) Whoever violates this section is guilty of prostitution, a misdemeanor of the third degree. (R.C. § 2907.25) ('70 Code § 666.09) Penalty, see § 698.02

Cross-reference:

Spreading contagion, see § 660.02

Statutory reference:

Examination and treatment of venereal disease and AIDS, see R.C. § 2907.27

§ 666.10 RULES OF EVIDENCE.

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such place and as to the reputation of the persons who inhabit or frequent it, is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of §§ 666.07 through 666.09, proof of a prior conviction of the accused of any such offense or substantially equivalent offense if admissible in support of the charge.

(D) The prohibition contained in R.C. § 2917.02(C) against testimony by a husband or wife concerning communications between them does not apply, and the accused's spouse may testify concerning any such communication in any of the following cases:

(1) When the husband or wife is charged with a violation of § 666.07 and the spouse testifying was the prostitute involved in the offense or the person who used the offender's premises to engage in sexual activity for hire;

(2) When the husband or wife is charged with a violation of §§ 666.08 or 666.09. (R.C. § 2907.26) ('70 Code § 666.10)

Statutory reference:

Power to restrain houses of ill fame, see R.C. § 715.52

Psychiatric examination before sentence, see R.C. §§ 2945.37 and 5122.141

§ 666.11 DISSEMINATING MATTER HARMFUL TO JUVENILES.

(A) No person, with knowledge of its character or content, shall recklessly do any of following:

(1) Sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile any material or performance that is obscene or harmful to juveniles;

(2) Offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile any material or performance that is obscene or harmful to juveniles;

(3) Allow any juvenile to review or peruse any material or view any live performance that is harmful to

juveniles.

(B) The following are affirmative defenses to a charge under this section that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by his/her parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or his/her agent or employee a draft card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that the juvenile was 18 years of age or over or married, and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of 18 and unmarried.

(C) (1) It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person.

(2) Except as provided in division (B)(3) of this section, mistake of age is not a defense to a charge under this section.

(D) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles, except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, except as otherwise provided in this division, a violation of this section is a felony of the fifth degree and shall be prosecuted under appropriate state law. If the material or performance involved is obscene and the juvenile to whom it is sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, the juvenile to whom the offer is made or who is the subject of the agreement, or the juvenile who is allowed to review, peruse, or view it is under 13 years of age, violation of this section is a felony of the fourth degree and shall be prosecuted under appropriate state law. (R.C. § 2907.31) ('70 Code § 666.11) Penalty, see § 698.02

§ 666.111 DISPLAYING MATTER HARMFUL TO JUVENILES.

(A) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

(B) It is not a violation of division (A) of this section if the material in question is displayed by placing it behind "blinder racks" or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.

(C) Whoever violates this section is guilty of displaying matter harmful to juveniles, a misdemeanor of the first degree. Each day during which the offender is in violation of this section constitutes a separate offense. (R.C. § 2907.311) Penalty, see § 698.02

§ 666.12 PANDERING OBSCENITY.

Editor's Note: Pursuant to R.C. § 2907.32, as of 7-1-96, pandering obscenity is a felony, to be prosecuted under state law.

§ 666.13 DECEPTION TO OBTAIN MATTER HARMFUL TO JUVENILES.

(A) No person, for the purpose of enabling a juvenile to obtain any material or gain admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he/she is the parent, guardian or spouse of such juvenile;

(2) Furnish such juvenile with any identification or document purporting to show that such juvenile is 18 years of age or over or married.

(B) No juvenile, for the purpose of obtaining any material or gaining admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he/she is 18 years of age or over or married;

(2) Exhibit any identification or document purporting to show that he/she is 18 years of age or over or married.

(C) Whoever violates any of the provisions of this section is guilty of deception to obtain matter harmful to juveniles, a misdemeanor of the second degree. A juvenile who violates division (B) of this section shall be adjudged as unruly child, with such disposition of the case as may be appropriate under R.C. Chapter 2151. (R.C. § 2907.33) ('70 Code, § 666.13) Penalty, see § 698.02

§ 666.14 PRESUMPTIONS; NOTICE.

(A) An owner of manager, or his/her agent or employee, of a bookstore, newsstand, theater or other commercial establishment engaged in selling materials or exhibiting performances, who, in the course of business:

(1) Possesses five or more identical or substantially similar obscene articles, having knowledge of their character, is presumed to possess them in violation of § 666.12(A)(5).

(2) Does any of the acts prohibited by §§ 666.11 or 666.12, is presumed to have knowledge of the character of the material or performance involved if he/she has actual notice of the nature of such material or performance whether or not he/she has precise knowledge of its contents.

(B) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the municipality. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(C) Sections 666.11 and 666.12 do not apply to a motion picture operator or projectionist acting within the scope of his/her employment as an employee of the owner or manager of a theater or other place for the showing of motion pictures to the general public and having no managerial responsibility or financial interest in his/her place of employment, other than wages. (R.C. § 2907.35) ('70 Code, § 666.14)

§ 666.15 DECLARATORY JUDGMENT.

(A) Without limitation on the persons otherwise entitled to bring an action for a declaratory judgment pursuant to R.C. §§ 2721.01 through 2721.15, involving the same issue, the following persons have standing to bring such an action to determine whether particular materials or performances are obscene or harmful to juveniles:

(1) The chief legal officer of the municipality if and when there is reasonable cause to believe that

§§ 666.11 or 666.12 is being or is about to be violated;

(2) Any person who, pursuant to § 666.14(b) has received notice in writing from the chief legal officer stating that particular materials or performances are obscene or harmful to juveniles.

(B) Any party to an action for a declaratory judgment pursuant to division (A) of this section is entitled, upon his/her request, to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(C) An action for a declaratory judgment pursuant to division (A) of this section shall not be brought during the pendency of any civil action or criminal prosecution when the character of the particular materials or performances involved is at issue in the pending case, and either of the following applies:

(1) Either of the parties to the action for a declaratory judgment is a party to the pending case;

(2) A judgment in the pending case will necessarily constitute res judicata as to the character of the materials or performances involved.

(D) A civil action or criminal prosecution in which the character of particular materials or performances is at issue, brought during the pendency of an action for a declaratory judgment involving the same issue, shall be stayed during the pendency of the action for a declaratory judgment.

(E) The fact that a violation of §§ 666.11 or 666.12 occurs prior to a judicial determination of the character of the material or performance involved in the violation, does not relieve the offender of criminal liability for the violation, even though prosecution may be stayed pending the judicial determination. (R.C. § 2907.36) ('70 Code, § 666.15)

§ 666.16 INJUNCTION; ABATEMENT OF NUISANCE.

(A) Where it appears that §§ 666.11 or 666.12 is being or about to be violated, the chief legal officer of the municipality, when the violation is taking place or is about to take place, may bring an action to enjoin the violation. The defendant, upon his/her request, is entitled to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(B) Premises used or occupied for repeated violations of §§ 666.11 or 666.12 constitute a nuisance subject to abatement pursuant to R.C. §§ 3767.01 through 3767.99. (R.C. § 2907.37) ('70 Code, § 666.16)

§ 666.17 PANDERING MATERIAL INVOLVING A MINOR.

Editor's Note: Pursuant to R.C. § 2907.322, as of 7-1-96, pandering material involving a minor is a felony, to be prosecuted under state law.

§ 666.18 ILLEGAL USE OF MINOR.

Editor's Note: Pursuant to R.C. § 2907.323, as of 7-1-96, illegal use of a minor in nudity oriented material or a performance is a felony, to be prosecuted under state law.

§ 666.19 RESIDENTIAL OCCUPANCY OF SEX OFFENDERS

(A) No person who has been convicted of, is convicted of, or has pleaded guilty to, or pleads guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, shall establish a resident or occupy a residential premises within one thousand (1000) feet of any school premises, preschool, daycare center, public park, library, public pool, Boys & Girls Clubs, local YMCA or

YWCA; or any city operated recreational facilities located in the City of Marion.

(B) If a person to whom Section 1 of this ordinance applies violates Section 1 of this ordinance by establishing a residence within one thousand (1000) feet of any school premises, preschool, daycare center, public park, library, or public pool, Boys & Girls Clubs, local YMCA or YWCA; or any city operated ***recreational facilities*** that is located within the City of Marion, then the Director of Law has a cause of action for injunctive relief against the person. The City of Marion shall not be required to prove irreparable harm in order to obtain the relief.

(C) That the City of Marion adopts the provisions of the law of Ohio now or hereafter in effect concerning the definition, determination, registration, or classification of a person who has been convicted of, or pleads or has pleaded guilty to, or pleads guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense

(D) That the Council of the City of Marion adopts the determinations and intent of the Ohio General Assembly as articulated in Ohio Revised Code Section 2950.02.

(E) That the City of Marion adopts the definitions now and hereafter in effect for school premises, preschool, daycare center, public park, library or public pool, Boys & Girls Clubs, local YMCA or YWCA; or any city operated recreational facilities located in the City of Marion as defined by the law of Ohio.

(F) That is hereby declared to be the intention of the Council of the City of Marion that the sections, paragraphs, sentences, clauses, and words of this ordinance are severable and if any word, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining words, clauses, sentences, paragraphs, and sections of this ordinance, because the same would have been enacted by the Council of the City of Marion without the incorporation of this ordinance of any such unconstitutional or invalid word, clause, sentence, paragraph or section.

(Ord. 2013-48, passed 9-23-2013)

CHAPTER 672: WEAPONS AND EXPLOSIVES

Section

- 672.01 Definitions
- 672.02 Carrying concealed weapons
- 672.03 Using weapons while intoxicated
- 672.04 Improperly handling firearms in a motor vehicle
- 672.05 [Reserved]
- 672.06 [Reserved]
- 672.07 License or permit to possess dangerous ordnance
- 672.08 Failure to secure dangerous ordnance
- 672.09 Unlawful transactions in weapons
- 672.10 Underage purchase of firearms or handguns
- 672.11 Sale of explosives to minors
- 672.12 Pointing and discharging firearms and other weapons

§ 672.01 DEFINITIONS.

As used in this chapter:

(A) **DEADLY WEAPON.** Any instrument, device or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

(B) (1) **FIREARM.** Any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. **FIREARM** includes an unloaded firearm and any firearm which is inoperable but which can readily be rendered operable.

(2) When determining whether a **FIREARM** is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the **FIREARM**.

(C) **HANDGUN.** Any firearm designed to be fired while being held in one hand.

(D) **SEMI-AUTOMATIC FIREARM.** Any firearm designed or specially adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a single function of the trigger.

(E) **AUTOMATIC FIREARM.** Any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger. **AUTOMATIC FIREARM** also means any semi-automatic firearm designed or specially adapted to fire more than 31 cartridges without reloading, other than a firearm chambering only .22 caliber short, long or long-rifle cartridges.

(F) **SAWED-OFF FIREARM.** A shotgun with a barrel less than eighteen inches long, or a rifle with a barrel less than 16 inches long, or a shotgun or rifle less than twenty-six inches long overall.

(G) **ZIP-GUN.** Any of the following:

(1) Any firearm of crude and extemporized manufacture;

(2) Any device, including, without limitation, a starter's pistol, not designed as a firearm, but which is specially adapted for use as a firearm;

(3) Any industrial tool, signaling device or safety device, not designed as a firearm, but which as designed is capable of use as such, when possessed, carried or used as a firearm.

(H) **EXPLOSIVE DEVICE.** Any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, an consisting of an explosive substance or agency and a means to detonate it. **EXPLOSIVE DEVICE** includes, without limitation, any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel which has been knowingly tampered with or arranged so as to explode. **EXPLOSIVE** means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. **EXPLOSIVE** includes all materials that have been classified as Class A, Class B, or Class C explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. **EXPLOSIVES** does not include **FIREWORKS** as defined in R.C. § 3743.01, or any explosive that is not subject to regulation under the Rules of the Fire Marshal adopted pursuant to R.C. § 3737.82.

(I) **INCENDIARY DEVICE.** Any firebomb and any device designed or specially adapted to cause physical harm to persons or property by means of fire and consisting of an incendiary substance or agency and a means to ignite it.

(J) **DANGEROUS ORDNANCE.** Any of the following, except as provided in division (K) of this section:

(1) Any automatic or sawed-off firearm, or zip-gun;

(2) Any explosive device or incendiary device;

(3) Nitrolycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid and other high explosives, amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating or demolitions;

(4) Any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon;

(5) Any firearm muffler or silencer;

(6) Any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

(K) **DANGEROUS ORDNANCE.** Does not include any of the following:

(1) Any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, which employs a percussion cap or other obsolete ignition system, or which is designed and safe for use only with black powder;

(2) Any pistol, rifle or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm;

(3) Any cannon or other artillery piece which, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical hydraulic, pneumatic or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder;

(4) Black powder, priming quills and percussion caps possessed and lawfully used to fire a cannon of a

type defined in subsection (3) of this section during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition;

(5) Dangerous ordnance which is inoperable or inert and cannot readily be rendered operable or activated, and which is kept as a trophy, souvenir, curio or museum piece;

(6) Any device which is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921 (A)(4), as amended, and regulations issued under that act. (R.C. § 2923.11) ('70 Code, § 672.01)

§ 672.02 CARRYING CONCEALED WEAPONS.

(A) No person shall knowingly carry or have concealed on his/her person or concealed ready at hand, any deadly weapon.

(B) This section does not apply to officers, agents or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance, and acting within the scope of their duties.

(C) It is an affirmative defense to a charge under this section of carrying or having control of a weapon other than dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following applies:

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while he/she was engaged in or was going to or from his/her lawful business or occupation, which business or occupation was of such character or was necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent man in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while he/she was engaged in a lawful activity, and had reasonable cause to fear a criminal attack upon himself/herself or a member of his/her family, or upon his/her home, such as would justify a prudent man in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in his/her own home.

(4) The weapon was being transported in a motor vehicle for any lawful purpose, and was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements of § 672.04(c).

(D) Whoever violates this section is guilty of carrying concealed weapons, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section or of any offense of violence, if the weapon involved is a firearm which is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is a dangerous ordnance, then carrying concealed weapons is a felony of the fourth degree and shall be prosecuted under appropriate state law. If the weapon involved is a firearm and the violation of this section is committed at premises for which a D permit has been issued under R.C. Chapter 4303 or if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons is a felony of the third degree and shall be prosecuted under appropriate state law. (R.C. § 2923.12) ('70 Code, § 672.02) Penalty, see § 698.02

§ 672.03 USING WEAPONS WHILE INTOXICATED.

(A) No person while under the influence of alcohol, or any drug of abuse, shall carry or use any firearm or

dangerous ordnance.

(B) Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree. (R.C. § 2923.15) ('70 Code, § 672.03) Penalty, see § 698.02

§ 672.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.

(A) No person shall knowingly discharge a firearm while in or on a motor vehicle.

(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.

(C) No person shall knowingly transport or have a firearm in a motor vehicle unless it is unloaded and is carried in one of the following ways:

(1) In a closed package, box or case:

(2) In a compartment which can be reached only by leaving the vehicle;

(3) In plain sight and secured in a rack or holder made for the purpose;

(4) In plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

(D) This section does not apply to officers, agents or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry or have loaded or accessible firearms in motor vehicles, and acting within the scope of their duties.

(E) The affirmative defenses contained in § 672.02(c)(1) and (2) are affirmative defenses to a charge under divisions (B) or (C) of this section.

(F) Whoever violates any of the provisions of this section is guilty of improperly handling firearms in a motor vehicle. Violation of divisions (A) or (B) of this section is a misdemeanor of the first degree. Violation of division (C) of this section is a misdemeanor of the fourth degree.

(G) As used in this section, *UNLOADED* means, with respect to a firearm employing a percussion cap, flintlock or other obsolete ignition system, when the weapon is uncapped, or when the priming charge is removed from the pan. (R.C. § 2923.16) ('70 Code, § 672.04) Penalty, see § 698.02

§ 672.05 [RESERVED].

§ 672.06 [RESERVED].

§ 672.07 LICENSE OR PERMIT TO POSSESS DANGEROUS ORDNANCE.

(A) Upon application to the Safety/Service Director or Police Chief of the municipality, and upon payment of the fee specified in division (B) of this section, a license or temporary permit shall be issued to qualified applicants to acquire, possess, carry or use dangerous ordnance, for the following purposes:

(1) Contractors, wreckers, quarrymen, mine operators and other persons regularly employing explosives in the course of a legitimate business, with respect to explosives and explosive devices acquired, possessed, carried or used in the course of such business;

(2) Farmers, with respect to explosives and explosive devices acquired, possessed, carried or used for agricultural purposes on lands farmed by them;

(3) Scientists, engineers and instructors, with respect to dangerous ordnance acquired, possessed, carried or used in the course of bona fide research or instruction;

(4) Financial institution and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried or used by any such person while acting within the scope of his/her duties;

(5) In the discretion of the Safety/Service Director or Police Chief, any responsible person, with respect to dangerous ordnance lawfully acquired, possessed, carried or used for a legitimate research, scientific, educational, industrial or other proper purpose.

(B) Application for a license or temporary permit under this section shall be in writing under oath to the Safety/Service Director or Police Chief of the municipality. The application shall be accompanied by an application fee of \$50 when the application is for a license, and an application fee of \$5 when the application is for a temporary permit. The fees shall be paid into the general fund of the municipality. The application shall contain the following information:

(1) The name, age, address, occupation and business address of the applicant, if he/she is a natural person, or the name, address and principal place of business of the applicant, if the applicant is a corporation;

(2) A description of the dangerous ordnance for which a permit is requested;

(3) A description of the place or places where and the manner in which the dangerous ordnance is to be kept, carried and used;

(4) A statement of the purposes for which the dangerous ordnance is to be acquired, possessed, carried or used;

(5) Such other information as the Safety/Service Director or Police Chief may require in giving effect to this section.

(C) Upon investigation, the Safety/Service Director or Police Chief shall issue a license or temporary permit only if all of the following apply:

(1) The applicant is not otherwise prohibited by law from acquiring, having, carrying or using dangerous ordnance;

(2) The applicant is age 21 or over, if he/she is a natural person;

(3) It appears that the applicant has sufficient competence to safely acquire, possess, carry or use the dangerous ordnance, and that proper precautions will be taken to protect the security of the dangerous ordnance and ensure the safety of persons and property;

(4) It appears that the dangerous ordnance will be lawfully acquired, possessed, carried and used by the applicant for a legitimate purpose.

(D) The license or temporary permit shall identify the person to whom it is issued, identify the dangerous ordnance involved and state the purposes for which the license or temporary permit is issued, state the expiration date, if any, and list such restrictions on the acquisition, possession, carriage or use of the dangerous ordnance as the Safety/Service Director or Police Chief considers advisable to protect the security of the dangerous ordnance and ensure the safety of persons and property.

(E) A temporary permit shall be issued for the casual use of explosives and explosive devices and other consumable dangerous ordnance, and shall expire within 30 days of its issuance. A license shall be issued for the regular use of consumable dangerous ordnance or for any nonconsumable dangerous ordnance, which license need not specify an expiration date, but the Safety/Service Director or Police Chief may specify such expiration date, not earlier than one year from the date of issuance, as he/she considers advisable in view of the nature of the dangerous ordnance and the purposes for which the license is issued.

(F) The dangerous ordnance specified in a license or temporary permit may be obtained by the holder anywhere in the state. The holder of a license may use such dangerous ordnance anywhere in the state. The holder of a temporary permit may use such dangerous ordnance only within the territorial jurisdiction of the municipality.

(G) The Safety/Service Director or Police Chief shall forward to the State Fire Marshall a copy of each license or temporary permit issued pursuant to this section, and a copy of each record of a transaction in dangerous ordnance and of each report of lost or stolen dangerous ordnance, given to the Police Department as required by § 672.07(A)(2) and (3). (R.C. § 2923.18) ('70 Code, § 672.07)

§ 672.08 FAILURE TO SECURE DANGEROUS ORDNANCE.

(A) No person, in acquiring, possessing, carrying or using any dangerous ordnance, shall negligently fail to take proper precautions:

(1) To secure the dangerous ordnance against theft or against its acquisition or use by any unauthorized or incompetent person;

(2) To insure the safety of persons and property.

(B) Whoever violates this section is guilty of failure to secure dangerous ordnance, a misdemeanor of the second degree. (R.C. § 2923.19) ('70 Code, § 672.08) Penalty, see § 698.02

§ 672.09 UNLAWFUL TRANSACTIONS IN WEAPONS.

(A) No person shall:

(1) Manufacture, possess for sale, sell or furnish to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife or similar weapon;

(2) When transferring any dangerous ordnance to another, negligently fail to require the transferee to exhibit such identification, license or permit showing him/her to be authorized to acquire dangerous ordnance pursuant to R.C. § 2923.17, or negligently fail to take a complete record of the transaction and forthwith forward a copy of such record to the County Sheriff or Safety/Service Director or Police Chief of the municipality.

(3) Knowingly fail to report to the Police Division forthwith the loss or theft of any firearm or dangerous ordnance in such person's possession or under his/her control.

(B) Whoever violates this section is guilty of unlawful transaction in weapons. Violation of subsections (A)(1) or (2) of this section is a misdemeanor of the second degree. Violation of subsection (A)(3) of this section is a misdemeanor of the fourth degree. (R.C. § 2923.20) ('70 Code, § 672.09) Penalty, see § 698.02

§ 672.10 UNDERAGE PURCHASE OF FIREARMS OR HANDGUNS.

(A) No person under 18 years of age shall purchase or attempt to purchase a firearm.

(B) No person under 21 years of age shall purchase or attempt to purchase a handgun.

(C) Whoever violates division (A) of this section is guilty of underage purchase of a firearm, is a delinquent child, and is subject to an order of disposition as provided in R.C. § 2151.355. Whoever violates division (B) of this section is guilty of underage purchase of a handgun, a misdemeanor of the second degree. (R.C. § 2923.211) Penalty, see § 698.02

§ 672.11 SALE OF EXPLOSIVES TO MINOR.

(A) No person shall sell, give away or otherwise dispose of or deliver to any person under 18 years of age any explosives, as defined in R.C. § 3737.821, whether such person is acting for himself/herself or for any other person.

(B) Whoever violates this section is guilty of a misdemeanor of the third degree. ('70 Code, § 672.11) Penalty, see § 698.02

§ 672.12 POINTING AND DISCHARGING FIREARMS AND OTHER WEAPONS.

(A) Except as provided in divisions (C) and (D) of this section, no person shall discharge any air gun, rifle, shotgun, revolver, pistol or other firearm, or make use of any sling or arrow, within the corporate limits of the municipality.

(B) No person shall, intentionally or recklessly discharge a firearm.

(C) This section does not extend to cases in which air guns, rifles, shotguns, revolvers, pistols, firearms, slings or arrows are used in self-defense, in the discharge of official duty or in justifiable homicide.

(D) (1) This section does not extend to cases in which BB guns and other air guns, or slings or arrows, are used in the confines of dwellings, provided such use is under adult supervision and is approved by the Chief of Police.

(D) (2) This section does not extend to cases in which firearms are used at Governmental owned facilities designated as firing ranges or at private firing ranges approved by the Safety/Service Director.

(E) Whoever violates Section (B) of the provisions of this section is guilty of a misdemeanor of the first degree. Whoever violates Section (A) of this section is guilty of a misdemeanor of the fourth degree on a first offense; on a second offense of section (A) such person is guilty of a misdemeanor of the first degree. ('70 Code, § 672.14; Am. Ord. 1996-50, Ord. 1998-50, passed 4-27-1998) Penalty, see § 698.02

Cross-reference:

Vehicles transporting explosives, see § 339.06

Failure to report gunshot wounds, see § 606.12(B)

Hunting prohibited, see § 618.13

Arson, see § 642.09

Fire Prevention Code, see Ch. 1501

Fireworks, see Ch. 1519

Statutory reference:

Prohibiting sales of firearms and explosives in riot areas, see R.C. § 3761.16

CHAPTER 678: WEEDS

- 678.01 Cutting Required; Duty of Safety/Service Director or Health Department
- 678.02 Service of notice; fees
- 678.03 Noncompliance; remedy of city
- 678.04 Collection of costs
- 678.99 Penalty

§ 678.01 CUTTING REQUIRED; DUTY OF SAFETY/SERVICE DIRECTOR OR HEALTH DEPARTMENT.

No owner, occupant, or person in charge of any lot or land within the municipality shall allow grass, weeds, or other noxious or harmful vegetation to grow to an excessive height, create, or constitute a nuisance. Excessive height shall be deemed at twelve (12) inches.

Upon the receipt of written information or complaint, the Safety/Service Director or the health Department shall prepare and cause a written notice to be served upon the owners, lessee, agent, tenant or other person having charge of such land that such noxious weeds are growing upon such land, that such weeds, grass or other vegetation must be cut, destroyed and removed within five days after the date of service of such notice. ('70 Code, § 678.01) (Ord. 1986-40, passed 6-23-86; Ord. 1999-31, passed 2-22-1999)

§ 678.02 SERVICE OF NOTICE; FEES.

(A) The notice provided for in § 678.01 may be served by any police officer of the municipality or by the Clerk of Council or other City employee. The fees for such service shall be the same as are allowed for service and return of summons in civil cases before the Marion Municipal Court.

(B) If the owner or other person having charge of such lands is a nonresident whose address is known, such notice shall be sent to such owner or other person by registered or certified mail, return receipt requested; if such owner's or other person's address is unknown, publication of such notice shall be made one time in a newspaper of general circulation within the county and such publication of such notice shall be sufficient notice. A notice properly made upon an owner or other person having charge of such lands in any one calendar year shall be good service for any repeated violations of this Code in the same calendar year which may be found to occur subsequent to the notice being perfected. ('70 Code, § 678.02) (Ord. 66-110, passed 8-8-66)(Ord. 2008-55, passed 9-22-08)

§ 678.03 NONCOMPLIANCE; REMEDY OF CITY.

If the owner, lessee, agent, tenant or other person having charge of such land or lands mentioned in § 678.01 fails to comply with such notice within the time set forth in § 678.01, the Safety/Service Director or the Health Department shall cause the weeds, grass or other vegetation to be cut, destroyed and removed and shall employ such labor and equipment as is necessary to carry out the provisions of this chapter. Any accumulation of litter and/or refuse present prior to the cutting of the property shall be removed. All expenses involved shall be added to the cost of the cutting. ('70 Code, § 678.03) (Ord. 1979-28, passed 3-12-79; Ord. 1999-31, passed 2-22-1999)

§ 678.04 COLLECTION OF COSTS.

The Safety/Service Director or the Health Department shall, upon completion of the cutting, destruction and removal of such noxious weeds, grass or other vegetation, and removal of litter and/or refuse, make a written return of his/her or its proceedings hereunder and shall certify such return to the County Auditor, together with a statement of the costs and expenses incurred for such cutting, destruction and removal of such weeds, grass and other vegetation, and removal of litter and/or refuse, including costs of labor and equipment used for such purpose, the costs and fees for the service of notice and return of such service or the costs of publication of notice as herein provided and other costs and expenses, if any, together with the costs and expenses hereinbefore set forth, shall, upon receipt and

acceptance by the County Auditor, be entered upon the tax duplicate and become a lien upon such land or lands from and after the date of such entry upon the tax duplicate and be collected as are other taxes and returned to the municipality, as provided by law. ('70 Code, § 678.04) (Ord. 1979-28, passed 3-12-79; Ord. 1999-31, passed 2-22-1999)

§ 678.99 PENALTY.

Whoever fails to comply with such written notice within the time set forth in § 678.01 is guilty of a minor misdemeanor. This penalty is in addition to any other remedy of the municipality contained in this chapter. ('70 Code, § 678.99) (Ord. 1986-40, passed 6-23-86) Penalty, see § 698.02

CHAPTER 698: PENALTIES AND SENTENCING

Section

- 698.01 Definitions
- 698.02 Penalties for misdemeanor
- 698.03 Imposing sentence for misdemeanor
- 698.04 Organizational penalties
- 698.05 Multiple sentences
- 698.06 Modification of sentence

§ 698.01 DEFINITIONS.

As used in this chapter:

ALTERNATIVE RESIDENTIAL FACILITY. Any facility other than an offender's home or residence in which an offender is assigned to live and that provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation. It does not include a community-based correctional facility, jail, halfway house, or prison.

BAD TIME. The time by which the Parole Board administratively extends an offender's stated prison term or terms pursuant to R.C. § 2967.11 because the Parole Board finds by clear and convincing evidence that the offender, while serving the prison term or terms, committed an act that is a criminal offense under the law of this state or the United States, whether or not the offender is prosecuted for the commission of that act.

BASIC SUPERVISION. A requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the Parole Board pursuant to R.C. § 2967.28.

COCAINE, HASHISH, L.S.D. AND UNIT DOSE. Have the same meaning as in § 624.01 and R.C. § 2925.01.

COMMUNITY-BASED CORRECTIONAL FACILITY. A community-based correctional facility and program or district community-based correctional facility and program developed pursuant to R.C. §§ 2301.51 through 2301.56.

CRIMINALLY INJURIOUS CONDUCT. Any conduct of the type that is described in R.C. § 2743.51(C)(1) or (2) and that occurs on or after 7-1-96.

CONTROLLED SUBSTANCE, MARIHUANA, SCHEDULE I, AND SCHEDULE II. Have the same meaning as in R.C. § 3719.01.

CURFEW. A requirement that an offender during a specified period of time be at a designated place.

DAY REPORTING. A sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

DRUG AND ALCOHOL USE MONITORING. A program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath or urine to determine whether the offender has ingested any alcohol or other drugs.

DRUG TREATMENT PROGRAM. Any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or

alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

ECONOMIC LOSS. Any economic detriment suffered by a victim as a result of criminally injurious conduct and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the criminally injurious conduct.

ELECTRONICALLY MONITORED HOUSE ARREST. Has the same meaning as in R.C. § 2929.23.

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

HOUSE ARREST. A period of confinement of an eligible offender that is in the eligible offender's home or in other premises specified by the sentencing court or by the Parole Board pursuant to R.C. § 2967.28, that may be electronically monitored house arrest, and during which all of the following apply:

(1) The eligible offender is required to remain in his or her home or other specified premises for the specified period of confinement, except for periods of time during which the eligible offender is at his or her place of employment or at other premises as authorized by the sentencing court or by the Parole Board.

(2) The eligible offender is required to report periodically to a person designated by the court or Parole Board.

(3) The eligible offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the Parole Board.

DELINQUENT CHILD. Has the same meaning as in R.C. § 2151.02.

OFFENDER. A person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor. (R.C. § 2929.01)

§ 698.02 PENALTIES FOR MISDEMEANOR.

(A) Unless another penalty is otherwise expressly provided in the section of which the provision is a part, whoever violates any of the provisions of this Part Six - General Offenses Code, other than a minor misdemeanor, shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the court as provided in this section.

(B) Terms of imprisonment for misdemeanor shall be imposed as follows:

(1) For a misdemeanor of the first degree, not more than six months;

(2) For a misdemeanor of the second degree, not more than 90 days;

(3) For a misdemeanor of the third degree, not more than 60 days;

(4) For a misdemeanor of the fourth degree, not more than 30 days.

(C) Fines for misdemeanor shall be imposed as follows:

(1) For a misdemeanor of the first degree, not more than \$1,000;

(2) For a misdemeanor of the second degree, not more than \$750;

- (3) For a misdemeanor of the third degree, not more than \$500;
- (4) For a misdemeanor of the fourth degree, not more than \$250.

(D) Whoever is convicted of or pleads guilty to a minor misdemeanor shall be fined not more than **\$150.00**. (Ord. 2010-108, passed 11-22-2010)

(E) The court may require a person who is convicted of or pleads guilty to a misdemeanor to make restitution for all or part of the property damage that is caused by his/her offense and for all or part of the value of the property that is the subject of any theft offense, as defined in § 642.01(K), that the person committed. If the court determines that the victim of the offense was 65 years of age or older or permanently or totally disabled at the time of the commission of the offense, the court shall, regardless of whether or not the offender knew the age of the victim, consider this fact in favor of imposing restitution, but this fact shall not control the decision of the court. (R.C. § 2929.21) ('70 Code, § 698.02)

§ 698.03 IMPOSING SENTENCE FOR MISDEMEANOR.

(A) In determining whether to impose imprisonment or a fine, or both, for misdemeanor, and in determining the term of imprisonment and the amount and method of payment of a fine for a misdemeanor, the court shall consider the risk that the offender will commit another offense and the need for protecting the public from the risk, the nature and circumstances of the offense, the history, character and condition of the offender and his/her need for correctional or rehabilitative treatment, any statement made by the victim under R.C. §§ 2930.12 through 2930.17, if the offense is a misdemeanor specified in R.C. § 2930.01(A) and the ability and resources of the offender and the nature of the burden that payment of a fine will impose on him/her.

(B) The following do not control the court's discretion, but shall be considered in favor of imposing imprisonment for misdemeanor:

- (1) The offender is a repeat or dangerous offender;

(2) Regardless of whether or not the offender knew the age of the victim, the victim of the offense was 65 years of age or older, permanently and totally disabled, or less than 18 years of age at the time of the commission of the offense.

(C) The criteria listed in R.C. § 2929.12 that mitigate the seriousness of the offense and that indicate that the offender is unlikely to commit future crimes, do not control the court's discretion, but shall be considered against imposing imprisonment for a misdemeanor.

(D) The criteria listed in divisions (B) and referred to in division (C) of this section shall not be construed to limit the matters which may be considered in determining whether to impose imprisonment for a misdemeanor.

(E) The court shall not impose a fine in addition to imprisonment for a misdemeanor, unless a fine is specially adapted to deterrence of the offense or the correction of the offender, or the offense has proximately resulted in physical harm to the person or property of another, or the offense was committed for hire or for purpose of gain.

(F) The court shall not impose a fine or fines which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to himself/herself or his/her dependents, or will prevent him/her from making restitution or reparation to the victim of his/her offense.

(G) At the time of sentencing or as soon as possible after sentencing, the court shall notify the victim of the offense of his/her right to file an application for an award of reparations pursuant to R.C. §§ 2743.51 through 2743.72.

(H) As used in this section, **REPEAT OFFENDER** and **DANGEROUS OFFENDER** have the same meanings as in R.C. § 2935.36. (R.C. § 2929.22) ('70 Code, § 698.03)

§ 698.04 ORGANIZATIONAL PENALTIES.

(A) Regardless of the penalties provided in § 698.02, or in any other section of these Codified Ordinances, an organization convicted of an offense pursuant to § 606.08 shall be fined in accordance with this section. The court shall fix the fine as follow:

- (1) For a misdemeanor of the first degree, not more than \$5,000;
- (2) For a misdemeanor of the second degree, not more than \$4,000;
- (3) For a misdemeanor of the third degree, not more than \$3,000;
- (4) For a misdemeanor of the fourth degree, not more than \$2,000;
- (5) For a minor misdemeanor, not more than \$1,000;
- (6) For a misdemeanor not specifically classified, not more than \$2,000;
- (7) For a minor misdemeanor not specifically classified, not more than \$1,000.

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

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

(D) This section does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to § 606.08, either in addition to or in lieu of a fine imposed pursuant to this section. (R.C. § 2929.31) ('70 Code, § 698.04)

§ 698.05 MULTIPLE SENTENCES.

(A) Except as provided in division (B) of this section or R.C. §§ 2929.14 and 2929.41, a sentence of imprisonment shall be served concurrently with any other sentence of imprisonment imposed by this municipality, the state, another state, or a court of the United States. In any case, a sentence of imprisonment for misdemeanor shall be served concurrently with a sentence of imprisonment for felony served in a state or federal correctional institution.

(B) A sentence of imprisonment for a misdemeanor shall be served consecutively to any other sentence of imprisonment when the trial court specifies that it is to be served consecutively or when it is imposed for a misdemeanor violation of the Ohio Revised Code.

(C) When consecutive sentences of imprisonment are imposed for misdemeanor, the term to be served is the aggregate of the consecutive terms imposed except that the aggregate term to be served shall not exceed 18 months. (R.C. § 2929.41) ('70 Code, § 698.05)

§ 698.06 MODIFICATION OF SENTENCE.

(A) At the time of sentencing and thereafter when imprisonment is imposed for misdemeanor, the court may do

any of the following:

- (1) Suspend the sentence and place the offender on probation pursuant to R.C. § 2951.02;
- (2) Permit the offender to serve his/her sentence in intermittent confinement, overnight, or on weekends, or both, or at such other time or times as will allow him/her to continue at his/her occupation or care for his/her family;
- (3) Require the offender to serve a portion of his/her sentence, which may be served in intermittent confinement, and suspend the balance of the sentence pursuant to R.C. § 2951.02 upon any terms that the court considers appropriate, or suspend the balance of the sentence and place the offender on probation pursuant to that section.

(B) At the time of sentencing and thereafter when a fine is imposed for a misdemeanor, the court may:

- (1) Suspend all or any portion of the fine, upon such conditions as the court imposes in the interests of justice and the correction and rehabilitation of the offender;
- (2) Permit payment of all or any portion of the fine in installments, or by such other method and in such time and on such terms as the court considers just, except that the maximum time permitted for payment shall not exceed two years. (R.C. § 2929.51(A),(C)) ('70 Code, § 698.06)