

ADOPTING ORDINANCE  
GENERAL OFFENSES

City of Gahanna

State of Ohio

ORDINANCE No. \_\_\_\_\_

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF GAHANNA, OHIO TO PROVIDE AMENDMENTS TO GENERAL OFFENSES GAHANNA CITY CODE SECTIONS 501.01, 501.06, 509.04, 509.06, 513.01, 513.04, 513.12, 513.121, 517.08, 525.05, 525.16, 533.01, 533.06, 537.02, 537.021, 537.03, 537.06, 537.07, 537.101, 537.15, 537.16, 541.08, 545.05, 594.04; TO PROVIDE FOR PENALTIES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the duly elected governing authority of the City of Gahanna, Ohio is authorized by ORC § 715.01 to adopt ordinances relating to its property, affairs and local government; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE MUNICIPALITY OF GAHANNA, STATE OF OHIO:

Section 1. That the Code of Ordinances of the City of Gahanna, Ohio (meaning City Municipal Code) is hereby amended by adding the provisions as provided below.

Section 2. The addition, amendment, or removal of Gahanna City Code Sections when passed in such form as to indicate the intention of the governing authority of the City of Gahanna, Ohio to make the same a part of the Municipal Code shall be deemed to be incorporated in the Municipal Code, so that reference to the Municipal Code includes the additions, amendments, and removals.

Section 3. The codifier (meaning the person, agency or organization authorized to prepare the supplement to the Code of Ordinances of the City of Gahanna, Ohio) is authorized to exclude and omit any provisions of this ordinance that are inapplicable to the City's Municipal Code.

Section 4. Supplementation of Code.

(a) In preparing a supplement to the City's Municipal Code, all portions of this ordinance which have been repealed shall be excluded from the City's Municipal Code by the omission thereof from reprinted pages.

(b) When preparing a supplement to the City's Municipal Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in this ordinance and parts of this ordinance included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier

may:

- (1) Organize the ordinance material into appropriate subdivisions;
  - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the City's Municipal Code printed in the supplement, and make changes in such catchlines, headings, and titles;
  - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the City's Municipal Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
  - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the City's Municipal Code which embody the substantive sections, or the ordinance incorporated into the Code); and
  - (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the City's Municipal Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the City's Municipal Code.
- (c) In preparing a supplement to the City's Municipal Code, the pages of a supplement shall be so numbered that they will fit properly into the City's Municipal Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the City's Municipal Code will be current through the date of the adoption of the latest ordinance included in the supplement.

Section 5. Provisions of Section 6 that duplicate or track State statutes which do not become effective until after the effective date of this ordinance, shall not take effect until such statutes take effect.

Section 6. The following sections and of the Municipal Code are new or have been amended with new matter in the Municipal Code, and are hereby approved, adopted, and enacted:

### **501.01 DEFINITIONS.**

As used in the Codified Ordinances and Ohio R.C. Title XXIX:

- (a) *Force* means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.
- (b) *Deadly force* means any force that carries a substantial risk that it will proximately result in the death of any person.
- (c) *Physical harm to persons* means any injury, illness or other physiological impairment, regardless of its gravity or duration.
- (d) *Physical harm to property* means any tangible or intangible damage to property that, 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* means any of the following:

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

(f) *Serious physical harm to property* means any physical harm to property that does either of the following:

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

(g) *Risk* means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(h) *Substantial risk* means 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* means any of the following:

- (1) A violation of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.18, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2917.321, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2903.34(A)(1), 2911.12(A)(1) to (3) or 2919.22(B)(1) to (4), or felonious sexual penetration in violation of former Ohio R.C. 2907.12;
- (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 (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 subsection (i)(1), (2) or (3) of this section;

(5) A violation of Section 505.071(c), Ohio R.C. 959.131(C), or any other substantially equivalent state law or municipal ordinance.

(j) (1) *Property* means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(2) As used in this section, "trade secret" has the same meaning as in Ohio R.C. 1333.61, and "telecommunications service" and "information service" have the same meanings as in Ohio R.C. 2913.01.

(3) As used in this section, "cable television service", "computer", "computer software", "computer system", "computer network", "data", and "telecommunications device" have the same meanings as in Ohio R.C. 2913.01.

(k) *Law enforcement officer* means any of the following:

(1) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under Ohio 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, Charter or ordinance, 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 that statutory duty and authority;

(3) A mayor in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(4) A member of an auxiliary police force organized by county, township or municipal

law enforcement authorities, within the scope of the member's appointment or commission;

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

(6) A person appointed by a mayor pursuant to Ohio R.C. 737.10 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

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

(8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or municipal prosecutor;

(9) A veterans' home police officer appointed under Ohio R.C. 5907.02;

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

(11) A special police officer employed by a port authority under Ohio R.C. 4582.04 or 4582.28;

(12) The house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to Ohio R.C. 101.311(E)(1) and an assistant house of representatives sergeant at arms;

(13) The Senate Sergeant of Arms and an Assistant Senate Sergeant at Arms;

(14) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in Section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States Department of Transportation as provided in Parts 1542 and 1544 of Title 49 of the Code of Federal Regulations, as amended.

(l) *Privilege* means 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) *Contraband* means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

- (1) Any controlled substance, as defined in Ohio R.C. 3719.01, or any device, or paraphernalia;
  - (2) Any unlawful gambling device, or paraphernalia;
  - (3) Any dangerous ordnance or obscene material.
- (n) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in Ohio R.C. 2901.05, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.
- (o) (1) Subject to subsection (o)(2) of this section, as used in any section contained in Part Five General Offenses Code of this Code and Ohio R.C. Title XXIX that sets forth a criminal offense, "person" includes all of the following:
- A. An individual, corporation, business trust, estate, trust, partnership, and association;
  - B. An unborn human who is viable.
- (2) As used in any section contained in Part Five General Offenses Code of this Code and Ohio R.C. Title XXIX that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership and association.
- (3) As used in subsection (o)(1)B of this section:
- A. Unborn human means an individual organism of the species *Homo sapiens* from fertilization until live birth.
  - B. Viable means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.
- (4) Notwithstanding subsection (o)(1)A hereof, in no case shall the portion of the definition of the term "person" that is set forth in subsection (o)(1)A of this section be applied or construed in any section contained in Part Five General Offenses Code of this Code and Ohio R.C. Title XXIX that sets forth a criminal offense in any of the following manners:
- A. Except as otherwise provided in subsection (o)(1)B hereof, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions

described in the immediately preceding sentence may be punished as a violation of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate Ohio R.C. 2919.12, division (B) of Ohio R.C. 2919.13, or Ohio R.C. 2919.15, 2919.151, 2919.17 or 2919.18, may be punished as a violation of Ohio R.C. 2919.12, division (B) of Ohio R.C. 2919.13, or Ohio R.C. 2919.15, 2919.151, 2919.17 or 2919.18, as applicable. Consent is sufficient under this subsection if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with Ohio R.C. 2919.12.

(p) As used in Part Five General Offenses Code of the Codified Ordinances and Ohio R.C. Title XXIX:

(1) School safety zone consists of a school, school building, school premises, school activity, and school bus.

(2) School, school building and school premises have the same meaning as in Ohio R.C. 2925.01.

(3) School activity means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Ohio R.C. Chapter 3314; a governing body of an educational service center; or the governing body of a school for which the Director of Education and Workforce prescribes minimum standards under Ohio R.C. 3301.07.

(4) School bus has the same meaning as in Ohio R.C. 4511.01.  
(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference—**(ORC 2901.01)

## **501.06 LIMITATION OF CRIMINAL PROSECUTION.**

(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 misdemeanor other than a minor misdemeanor, two years;

(2) For a minor misdemeanor, six months.

(b) If the period of limitation provided in subsection (a) hereof 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 the aggrieved person's legal representative who is not a party to the offense.

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

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

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

(2) As used in this subsection:

A. An "offense is directly related to the misconduct in office of a public servant" includes, but is not limited to, a violation of Ohio R.C. 101.71, 101.91, 121.61 or 2921.13, division (F) or (H) of Ohio R.C. 102.03, division (A) of Ohio R.C. 2921.02, division (A) or (B) of Ohio R.C. 2921.43, or division (F) or (G) of Ohio R.C. 3517.13, or any substantially equivalent municipal ordinance, that is directly related to an offense involving misconduct in office of a public servant.

B. "Public servant" has the same meaning as in Section 525.01.

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

(e) A prosecution is commenced on the date 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 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 from this Municipality or concealed his identity or whereabouts is prima-facie evidence of his purpose to avoid prosecution.

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



(i) The period of limitation for a violation of any provision of this General Offenses Code that involves a physical or mental wound, injury, disability or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a child with a developmental disability or physical impairment under 21 years of age shall not begin to run until either of the following occurs:

(1) The victim of the offense reaches the age of majority.

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

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2901.13)

#### **509.04 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. Except as otherwise provided in this division, disturbing a lawful meeting is a misdemeanor of the fourth degree. Disturbing a lawful meeting is a misdemeanor of the first degree if either of the following applies:

(1) The violation is committed with the intent to disturb or disquiet any assemblage of people met for religious worship at a tax-exempt place of worship, regardless of whether the conduct is within the place at which the assemblage is held or is on the property on which that place is located and disturbs the order and solemnity of the assemblage.

(2) The violation is committed with the intent to prevent, disrupt, or interfere with a virtual meeting or gathering of people for religious worship, through use of a computer, computer system, telecommunications device, or other electronic device or system, or in any other manner.

(c) As used in this section:

(1) “Computer,” “computer system,” and “telecommunications device” have the same meanings as in Section 545.01.

(2) “Virtual meeting or gathering” means a meeting or gathering by interactive video conference or teleconference, or by a combination thereof.

**State law reference**—(ORC 2917.12)

## **509.06 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) Division (a) hereof 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. If inducing panic results in physical harm to any person, economic harm of \$1,000.00 or more, if the public place involved in a violation of this section is a school or an institution of higher education, or if the violation pertains to a purported, threatened or actual use of a weapon of mass destruction, inducing panic is a felony and shall be prosecuted under appropriate State law.

(d) Any act that is a violation of this section and any other section of the Codified Ordinances may be prosecuted under this section, the other section, or both sections.

(e) As used in this section:

(1) *Economic harm* means any of the following:

A. All direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" as described in this division includes, but is not limited to, all of the following:

1. All wages, salaries, or other compensation lost as a result of the criminal conduct;
2. The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the

criminal conduct;

3. The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;

4. The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

B. All costs incurred by the Municipality as a result of, or in making any response to, the criminal conduct that constituted the violation of this section or Section 509.07, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the state or the political subdivision.

(2) *School* means any school operated by a board of education or any school for which the director of education and workforce prescribes minimum standards under Ohio R.C. 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a violation of this section is committed.

(3) *Weapon of mass destruction* means any of the following:

A. Any weapon that is designed or intended to cause death or serious physical harm through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

B. Any weapon involving a disease organism or biological agent;

C. Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life;

D. Any of the following, except to the extent that the item or device in question is expressly excepted from the definition of "destructive device" pursuant to 18 U.S.C. 921(a)(4) and regulations issued under that section:

1. Any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device;

2. Any combination of parts either designed or intended for use in converting any item or device into any item or device described in division (e)(3)D.1. of this section and from which an item or device described in that division may be readily assembled.

(4) *Biological agent* has the same meaning as in Ohio R.C. 2917.33.

(5) *Emergency medical services personnel* has the same meaning as in Ohio R.C.

2133.21.

(6) *Institution of higher education* means any of the following:

- A. A state university or college as defined in Ohio R.C. 3345.12(A)(1), community college, state community college, university branch, or technical college;
- B. A private, nonprofit college, university or other post-secondary institution located in this State that possesses a certificate of authorization issued by chancellor of higher education pursuant to Ohio R.C. Chapter 1713.
- C. A post-secondary institution with a certificate of registration issued by the State Board of Career Colleges and Schools under Ohio R.C. Chapter 3332.

**State law reference—**(ORC 2917.31)

### **513.01 DEFINITIONS.**

As used in this chapter, certain terms are defined as follows:

- (a) *Administer* means the direct application of a drug, whether by injection, inhalation, ingestion or any other means to a person or an animal.
- (b) *Controlled substance* means a drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV, or V.
- (c) *Dispense* means sell, leave with, give away, dispose of or deliver.
- (d) *Distribute* means to deal in, ship, transport or deliver but does not include administering or dispensing a drug.
- (e) *Hypodermic* means a hypodermic syringe or needle, or other instrument or device for the injection of medication.
- (f) *Manufacturer* means a person who manufactures a controlled substance as "manufacture" is defined in Ohio R.C. 3715.01.
- (g) *Manufacturer* means a person who manufactures a controlled substance as "manufacture" is defined in Ohio R.C. 3715.01 and includes a "manufacturer of dangerous drugs" as defined in Ohio R.C. 4729.01.
- (h) *Marihuana* means all parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture or preparation of a plant of that type or of its seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature

stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. "Marihuana" does not include "hemp" or a "hemp product" as those terms are defined in Ohio R.C. 928.01 (ORC 3719.01)

Marihuana does not include hashish. (ORC 2925.01)

- (i) *Controlled substance analog* has the same meaning as provided in Ohio R.C. 3719.01.
- (j) *Official written order* means an order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by Federal law.
- (k) *Pharmacist* means a person licensed under Ohio R.C. Chapter 4729 to engage in the practice of pharmacy.
- (l) *Pharmacy* has the same meaning as in Ohio R.C. 4729.01.
- (m) *Poison* means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.
- (n) *Licensed health professional authorized to prescribe drugs, prescriber* and *prescription* have the same meanings as in Ohio R.C. 4729.01.
- (o) *Sale* includes delivery, barter, exchange, transfer or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant or employee.
- (p) *Schedule I, Schedule II, Schedule III, Schedule IV* and *Schedule V* mean controlled substance Schedules I, II, III, IV, and V respectively, established pursuant to Ohio R.C. 3719.41, as amended pursuant to Ohio R.C. 3719.43 or 3719.44.
- (q) *Wholesaler* means a person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced or prepared personally and includes a "wholesale distributor of dangerous drugs" as defined in Ohio R.C. 4729.01. (ORC 3719.01)
- (r) *Drug of abuse* means any controlled substance as defined in subsection (b) hereof, any harmful intoxicant as defined in subsection (x) hereof and any dangerous drug as defined in subsection (r) hereof. (ORC 3719.011)
- (s) *Dangerous drug* means any of the following:
  - (1) Any drug to which either of the following applies:
    - A. Under the "Federal Food, Drug, and Cosmetic Act", 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend

"Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription;

B. Under Ohio R.C. Chapter 3715 or 3719, the drug may be dispensed only upon a prescription.

(2) Any drug that contains a Schedule V narcotic drug and that is exempt from Ohio R.C. Chapter 3719 or to which that chapter does not apply;

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

(4) Any drug that is a biological product, as defined in Ohio R.C. 3715.01. (ORC 4729.01(F))

(t) *Bulk amount* of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II or Schedule III, with the exception of controlled substance analog, marihuana, cocaine, L.S.D., heroin, any fentanyl-related compound and hashish, and except as provided in subsection (s)(2), (5) or (6) of this section, whichever of the following is applicable:

A. An amount equal to or exceeding ten grams or 25 unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I opiate or opium derivative;

B. An amount equal to or exceeding ten grams of a compound, mixture, preparation or substance that is or contains any amount of raw or gum opium;

C. An amount equal to or exceeding 30 grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol, or lysergic acid amide, or a Schedule I stimulant or depressant;

D. An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II opiate or opium derivative;

E. An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of phencyclidine;

F. An amount equal to or exceeding 120 grams or 30 times the maximum daily

dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the Federal Drug Abuse Control laws as defined in Ohio R.C. 3719.01, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

G. An amount equal to or exceeding three grams of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the Federal Drug Abuse Control laws;

(2) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

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

(4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation or substance that is or contains any amount of a Schedule V substance.

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

(6) For any compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and any other compound, mixture, preparation, or substance included in schedule III, schedule IV, or schedule V, if the defendant is charged with a violation of Ohio R.C. 2925.11 and the sentencing provisions set forth in divisions (c)(10)B and (c)(11) of that section will not apply regarding the defendant and the violation, the bulk amount of the controlled substance for purposes of the violation is the amount specified in division (d)(1), (2), (3), (4), or (5) of this section for the other schedule III, IV, or V controlled substance that is combined with the fentanyl-related compound.

(u) *Unit dose* means an amount or unit of a compound, mixture or preparation containing a controlled substance, that is separately identifiable and in a form that indicates that it is the amount

or unit by which the controlled substance is separately administered to or taken by an individual.

(v) *Cultivate* includes planting, watering, fertilizing or tilling.

(w) *Drug abuse offense* means any of the following:

(1) A violation of Ohio R.C. 2925.02, 2925.03, 2925.04 to 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36 or 2925.37; or a violation of Ohio R.C. 2913.02(A) that constitutes theft of drugs;

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

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

(4) A conspiracy or attempt to commit, or complicity in committing or attempting to commit any offense under subsection (v)(1), (2) or (3) hereof.

(x) *Felony drug abuse offense* means any drug abuse offense that would constitute a felony under the laws of this State, any other state or the United States.

(y) *Fentanyl-related compound* means any of the following:

(1) Fentanyl;

(2) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(Npropanilido) piperidine);

(3) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-Nphenylpropanamide);

(4) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl-4-piperidinyl) - Nphenylpropanamide);

(5) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-Nphenylpropanamide);

(6) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]N-phenylpropanamide);

(7) 3-methylthiofentanyl (N-[3-methyl-1-[2-(thienyl)ethyl]-4-piperidinyl]-Nphenylpropanamide);

(8) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-



piperidinyl]propanamide;

(9) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]propanamide;

(10) Alfentanil;

(11) Carfentanil;

(12) Remifentanil;

(13) Sufentanil;

(14) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-Nphenylacetamide); and

(15) Any compound that meets all of the following fentanyl pharmacophore requirements to bind at the mu receptor, as identified by a report from an established forensic laboratory, including acetylfentanyl, furanylfentanyl, valerylfentanyl, butyrylfentanyl, isobutyrylfentanyl, 4-methoxybutyrylfentanyl, para-fluorobutyrylfentanyl, acrylfentanyl, and orthofluorofentanyl:

A. A chemical scaffold consisting of both of the following:

1. A five-, six-, or seven-member ring structure containing a nitrogen, whether or not further substituted;
2. An attached nitrogen to the ring, whether or not that nitrogen is enclosed in a ring structure, including an attached aromatic ring or other lipophilic group to that nitrogen.

B. A polar functional group attached to the chemical scaffold, including but not limited to a hydroxyl, ketone, amide, or ester;

C. An alkyl or aryl substitution off the ring nitrogen of the chemical scaffold; and

D. The compound has not been approved for medical use by the United States food and drug administration.

(z) *Harmful intoxicant* does not include beer or intoxicating liquor, but means any of the following:

(1) Any compound, mixture, preparation or substance the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, and includes, but is not limited to, any of the following:

- A. Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;
- B. Any aerosol propellant;
- C. Any fluorocarbon refrigerant;
- D. Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol.

(aa) *Manufacture* means to plant, cultivate, harvest, process, make, prepare or otherwise engage in any part of the production of a drug by propagation, extraction, chemical synthesis or compounding, or any combination of the same, and includes packaging, repackaging, labeling and other activities incident to production.

(bb) *Possess* or *possession* means 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.

(cc) *Sample drug* means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(dd) *Standard pharmaceutical reference manual* means the current edition, with cumulative changes if any, of references that are approved by the State Board of Pharmacy.

(ee) *Juvenile* means a person under 18 years of age.

(ff) *School* means any school operated by a board of education, any community school established under Ohio R.C. Chapter 3314, or any nonpublic school for which the Director of Education and Workforce prescribes minimum standards under Ohio R.C. 3301.07, whether or not any instruction, extracurricular activities or training provided by the school is being conducted at the time a criminal offense is committed.

(gg) *School premises* means either of the following:

- (1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities or training provided by the school is being conducted on the premises at the time a criminal offense is committed;
- (2) Any other parcel of real property that is owned or leased by a board of education of

a school, any community school established under Ohio R.C. Chapter 3314, or the governing body of a nonpublic school for which the director of education and workforce prescribes minimum standards under Ohio R.C. 3301.07 and on which some of the instruction, extracurricular activities or training of the school is conducted, whether or not any instruction, extracurricular activities or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

(hh) *School building* means any building in which any of the instruction, extracurricular activities or training provided by a school is conducted, whether or not any instruction, extracurricular activities or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

(ii) *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.

(jj) An offense is *committed in the vicinity of a school* if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

(kk) 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.

(ll) *Hashish* means 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.

(mm) *Public premises* means any hotel, restaurant, tavern, store, arena, hall, or other place of

public accommodation, business, amusement, or resort.

(nn) *Methamphetamine* means methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer or salt of an isomer of methamphetamine.

(oo) *Deception* and *theft offense* have the same meanings as in Section 545.01. (Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference—**(ORC 2925.01)

## **513.02 - ADULT USE CANNABIS LIMITATIONS**

(A) Except as otherwise provided in this chapter and notwithstanding any conflicting provision of the Gahanna Codified Ordinances or Ohio Revised Code, an adult use consumer, may do the following:

- (1) Use adult use cannabis;
- (2) Possess, transfer without remuneration to another adult consumer, or transport adult use cannabis, subject to division (B) of this section; and
- (3) Purchase adult use cannabis from an adult use dispensary per day in amounts that do not exceed the possession limits set forth in division (B)(1) of this section.

(B) Except as otherwise provided in chapter 3796 of the Revised Code:

(1) The amount of cannabis that may be possessed by an adult use consumer shall not exceed:

- (a) Two and one-half ounces of adult use cannabis in any form except adult use extract; and
- (b) Fifteen grams of adult use cannabis in the form of adult use extract.

(2) The amount of cannabis that may be transferred by an adult use consumer without remuneration and not advertised or promoted to the public shall not exceed:

- (a) Two and one-half ounces of adult use cannabis in any form except adult use extract; and
- (b) Fifteen grams of adult use cannabis in the form of adult use extract.

(3) The amount of cannabis that may be transported by an adult use consumer shall not exceed:

- (a) Two and one-half ounces of adult use cannabis in any form except adult use extract; and

(b) Fifteen grams of adult use cannabis in the form of adult use extract.

(C) Except as otherwise provided in this chapter, an adult use consumer shall not be subject to arrest, criminal prosecution, or civil penalty for engaging in any of the activities authorized under this section, including:

- (1) Obtaining, using, possessing, or transporting adult use cannabis;
- (2) Performing conduct authorized under section 3780.29 of the Ohio Revised Code;
- (3) Acquiring, possessing, using, purchasing, manufacturing, selling, or transporting paraphernalia; and
- (4) Assisting another adult use consumer, or allowing property to be used, in any of the acts authorized by this chapter.

(D)(1) An individual is prohibited from operating a vehicle, motor vehicle, streetcar, trackless trolley, bike, watercraft, or aircraft while using adult use cannabis or while under the influence of adult use cannabis and is subject to section 4511.19 of the Ohio Revised Code or Section 333.01 for any violation of this division.

(2) An individual is prohibited from smoking, vaporizing, or using any other combustible adult use cannabis product while in a vehicle, motor vehicle, streetcar, trackless trolley, bike, watercraft, or aircraft and is subject to section 4511.19 of the Ohio Revised Code or Section 333.01 for any violation of this division.

(E) Except as otherwise provided in this chapter, no individual under twenty-one years of age shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of purchasing adult use cannabis from an adult use dispensary licensed under Ohio Revised Code Chapter 3780.

(F) Nothing in this Section is intended to permit the transfer or sale of adult use cannabis, with or without remuneration, to an individual under twenty-one years of age, or to allow an individual under twenty-one years of age to purchase, possess, use, process, transport, or cultivate cannabis except where authorized by Chapter 3796 of the Ohio Revised Code.

(G) It is unlawful for any parent or guardian to knowingly permit their residence, any other private property under their control, or any vehicle, conveyance, or watercraft under their control to be used by an invitee of the parent's child or the guardian's ward, if the invitee is under twenty-one years of age, in a manner that constitutes a violation of this section.

(1) A parent or guardian is deemed to have knowingly permitted their residence, any other private property under their control, or any vehicle, conveyance, or watercraft under their control to be used in violation of this section if they knowingly authorize or permit consumption of cannabis by underage invitees.

(2) Where the residence or other property has an owner and a tenant or lessee, the trier of fact may infer that the residence or other property is occupied only by the tenant or

lessee.

#### (H) Penalties

(1) Except as otherwise provided in Chapter 3796 of the Ohio Revised Code, Section 513.03 shall apply when an adult use consumer possesses an amount of cannabis greater than the limits set forth in division (B)(1) of this section.

(2) Except as otherwise provided in this chapter, an adult use consumer who uses adult use cannabis in public areas, or who violates division (D)(2) of this section as a passenger, is guilty of a minor misdemeanor.

(3)(a) An individual under twenty-one years of age who knowingly shows or gives false information concerning the individual's name, age, or other identification for the purpose of purchasing or otherwise obtaining adult use cannabis from an adult use dispensary licensed under this chapter is guilty of a misdemeanor of the first degree. If, in committing a first violation, the offender presented to an adult use dispensary licensed under this chapter a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than two hundred fifty and not more than one thousand dollars, and may be sentenced to a term of imprisonment of not more than six months.

(b) On a second violation in which, for the second time, the offender presented to an adult use dispensary licensed under this chapter a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than five hundred nor more than one thousand dollars, and may be sentenced to a term of imprisonment of not more than six months. The court also may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code. The court, in lieu of suspending the offender's temporary instruction permit, probationary driver's license, or driver's license, instead may order the offender to perform a determinate number of hours of community service, with the court determining the actual number of hours and the nature of the community service the offender shall perform.

(c) On a third or subsequent violation in which, for the third or subsequent time, the offender presented to an adult use dispensary licensed under this Chapter a false, fictitious, or altered identification card, a false or fictitious driver's license purportedly issued by any state, or a driver's license issued by any state that has been altered, the offender is guilty of a misdemeanor of the first degree and shall be fined not less than five hundred nor more than one thousand dollars, and may be sentenced to a term of imprisonment of not more than six months. Except as provided in this division, the court also may impose a class six suspension of the offender's driver's or commercial driver's license or permit or nonresident

operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code, and the court may order that the suspension or denial remain in effect until the offender attains the age of twenty-one years. The court, in lieu of suspending the offender's temporary instruction permit, probationary driver's license, or driver's license, instead may order the offender to perform a determinate number of hours of community service, with the court determining the actual number of hours and the nature of the community service the offender shall perform.

(4) An individual who is under twenty-one years of age and who solicits another individual to purchase adult use cannabis from an adult use dispensary licensed under this chapter is guilty of:

(a) For a first violation, a misdemeanor of the fourth degree; and

(b) For a second or subsequent violation, a misdemeanor of the second degree.

(5) An employee or agent of an adult use dispensary licensed under this chapter who knowingly sells cannabis to an individual under twenty-one years of age is guilty of a misdemeanor of the first degree.

(6) Any individual who violates divisions (B)(2) or (B)(3) of this section of the Revised Code is guilty of the illegal trafficking in drugs under section 2925.03 of the Revised Code and shall be prosecuted under state law.

(7)(a) An individual who violates division (G) of this section is guilty of:

(i) For a first violation, a misdemeanor of the third degree; and

(ii) For a second or subsequent violation, a misdemeanor of the first degree.

(b) If a violation of division (G) of this section directly or indirectly results in great bodily harm or death to any individual, the individual violating this division is guilty of a felony of the fourth degree and shall be prosecuted under state law.

## I. Definitions

As used in this section:

(1) *Adult use cannabis* or *cannabis* or *marijuana* means marihuana as defined in section 513.01(h).

(2) *Adult use extract* or *extract* means a substance obtained by separating or concentrating cannabinoids and other compounds from any part of the adult use cannabis plant by physical or chemical means, intended to be refined for use as an ingredient in an adult use cannabis product or as a standalone adult use cannabis product.

(3) *Cultivate* means to grow, harvest, package, and transport adult use cannabis pursuant to Revised Code Chapter 3780

**State Law reference**—(ORC 3780.01; 3780.36; 3780.99)

#### **513.04 POSSESSING DRUG ABUSE INSTRUMENTS.**

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

(b)(1) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with Ohio R.C. Chapters 3719, 4715, 4723, 4729, 4730, 4731 and 4741.

(2) Ohio R.C. 2925.11(B)(2) applies with respect to a violation of this section when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.

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

(d) (1) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not more than five years the offender's driver's or commercial driver's license or permit. However, if the offender pleaded guilty to or was convicted of a violation of Ohio R.C. 4511.19 or a substantially similar municipal ordinance or the law of another state or the United States arising out of the same set of circumstances as the violation, the court shall suspend the offender's driver's or commercial driver's license or permit for not more than five years. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with Ohio R.C. 2925.38.

(2) Any offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit under this section prior to September 13, 2016, may file a motion with the sentencing court requesting the termination of the suspension. However, an offender who pleaded guilty to or was convicted of a violation of Ohio R.C. 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which



the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under subsection (d)(2) of this section, the sentencing court, in its discretion, may terminate the suspension.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2925.12)

### **513.12 DRUG PARAPHERNALIA.**

(a) As used in this section, "drug paraphernalia" means any equipment, product or material of any kind that is used by the offender, intended by the offender for use or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance in violation of this chapter or Ohio R.C. Chapter 2925. "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 designated by the offender for use, in any of the following manners:

- (1) A kit for propagating, cultivating, growing or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;
- (2) A kit for manufacturing, compounding, converting, producing, processing or preparing a controlled substance;
- (3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine;
- (4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;
- (5) Testing equipment for identifying, or analyzing the strength, effectiveness or purity of, a controlled substance, except for those exempted in division (d)(4) of this section;
- (6) A scale or balance for weighing or measuring a controlled substance;
- (7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose or lactose, for cutting a controlled substance;
- (8) A 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, cocaine such as a miniature cocaine spoon, or cocaine vial.
- (b) In determining if any equipment, product or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:
- (1) Any statement by the owner, or by anyone in control, of the equipment, product or material, concerning its use;
  - (2) The proximity in time or space of the equipment, product or material, or of the act relating to the equipment, product or material, to a violation of any provision of this chapter or Ohio R.C. Chapter 2925;
  - (3) The proximity of the equipment, product or material to any controlled substance;
  - (4) The existence of any residue of a controlled substance on the equipment, product or material;
  - (5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the equipment, product or material, to deliver it to any person whom the owner or person in control of the equipment, product or material knows intends to use the object to facilitate a violation of any provision of this chapter or Ohio R.C. Chapter 2925. A finding that the owner, or anyone in control, of the equipment, product or material, is not guilty of a violation of any other provision of this chapter or Ohio R.C. Chapter 2925, does not prevent a finding that the equipment, product or material was intended or designed by the offender for use as drug paraphernalia;
  - (6) Any oral or written instruction provided with the equipment, product or material concerning its use;
  - (7) Any descriptive material accompanying the equipment, product or material and explaining or depicting its use;
  - (8) National or local advertising concerning the use of the equipment, product or material;
  - (9) The manner and circumstances in which the equipment, product or material is displayed for sale;

- (10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product or material to the total sales of the business enterprise;
  - (11) The existence and scope of legitimate uses of the equipment, product or material in the community;
  - (12) Expert testimony concerning the use of the equipment, product or material.
- (c) (1) Subject to subsections (d)(2), (3), and (4) of this section, no person shall knowingly use, or possess with purpose to use, drug paraphernalia.
- (2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if the person 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 the person knows that the purpose of the advertisement is to promote the illegal sale in the State of the equipment, product or material that the offender intended or designed for use as drug paraphernalia.
- (d) (1) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4730, 4731, and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by Section 513.10.
- (2) Subsection (c)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body marijuana.
  - (3) Ohio R.C. 2925.11(B)(2) applies with respect to a violation of division (C)(1) of this section when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person experiences a drug overdose and seeks medical assistance for that overdose, or a person is the subject of another person seeking or obtaining medical assistance for that overdose.
  - (4) Division (C)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound.
- (e) Notwithstanding Ohio R.C. Chapter 2981, any drug paraphernalia that was used, possessed, sold or manufactured in violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to Ohio R.C.

2981.12.

(f) (1) Whoever violates subsection (c)(1) hereof is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in subsection (f)(3) hereof, whoever violates subsection (c)(2) hereof is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates subsection (c)(2) hereof by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree.

(4) Whoever violates subsection (c)(3) hereof is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(g) In addition to any other sanction imposed upon an offender for a violation of this section, the court may suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.

(Ord. 0230-2012. Passed 11-19-12.)

#### **517.08 RAFFLES.**

(a) (1) Subject to division (a)(2) of this section, a person or entity may conduct a raffle to raise money for the person or entity and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit if the person or entity is any of the following:

(a) Exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(b) A school district, community school established under Chapter 3314. of the Revised Code, STEM school established under Chapter 3326. of the Revised Code, college-preparatory boarding school established under Chapter 3328. of the Revised Code, or chartered nonpublic school;

(c) Exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code.

(2) If a charitable organization that is described in subsection (a)(1) of this section conducts a raffle, the charitable organization shall distribute at least 50 percent of the net profit from the raffle to a charitable purpose described in Section 517.01(z) or to a department or agency of the federal government, the state, or any political subdivision.

(b) Except as provided in subsection (a) of this section, no person shall conduct a raffle drawing that is for profit or a raffle drawing that is not for profit.

(c) Whoever violates subsection (b) of this section is guilty of illegal conduct

of a raffle. Except as otherwise provided in this subsection, illegal conduct of a raffle is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of subsection (b) of this section, illegal conduct of a raffle is a felony and shall be prosecuted under appropriate State law.

(ORC 2915.092)

**525.05 FAILURE TO REPORT A CRIME, INJURY OR KNOWLEDGE OF DEATH.**

(a) (1) Except as provided in subsection (a)(2) hereof, no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(2) No person, knowing that a violation of division (B) of Ohio R.C. 2913.04 has been, or is being committed or that the person has received information derived from such a violation, shall knowingly fail to report the violation to law enforcement authorities.

(b) Except for conditions that are within the scope of subsection (e) of this section, no 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 the person, or any serious physical harm to persons that the person 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 a person shall fail to report the death immediately to a physician or advanced practice registered nurse 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, an ambulance service, an 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.

For purposes of this section, "advanced practice registered nurse" does not include a certified registered nurse anesthetist.

(d) No person shall fail to provide upon request of the person to whom a report required by subsection (c) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within the person's knowledge that may have a bearing on the investigation of the death.

(e) (1) As used in this subsection, "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;
- D. Any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noisemakers, and wire sparklers, as each is defined by Ohio

R.C. 3743.01.

- (2) No physician, nurse, physician assistant, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury that is 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, or fire and explosion investigation, bureau, if there is a bureau of this type 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 that is 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, or fire and explosion investigation, bureau, if there is a bureau of this type 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 subsection (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 comply with the uniform standard developed by the State Fire Marshal pursuant to Ohio R.C. 3737.22(A)(15).
  - (5) Anyone participating in the making of reports under subsection (e) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding Ohio R.C. 4731.22, the physician-patient relationship or advanced practice registered nurse-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 under subsection (e) of this section.
- (f) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, nurse, psychologist, social worker, independent social worker, social work assistant, licensed professional clinical counselor, licensed professional counselor, independent marriage and family therapist or marriage and family therapist who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in Ohio R.C. 3113.31, shall

note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding Ohio R.C. 4731.22, the physician-patient privilege or advanced practice registered nurse-patient privilege shall not be a grounds for excluding any information regarding the report containing the knowledge or belief noted under subsection (f)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.

(g) Subsections (a) and (d) of this section do 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; physician and patient; advanced practice registered nurse and patient; licensed psychologist or licensed school psychologist and client; licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

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

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

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that member of the clergy.

(5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for persons with drug dependencies or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or community addiction services provider whose alcohol and drug addiction services are certified pursuant to Ohio R.C. 5119.36.

(6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of Ohio R.C. 2907.02 or 2907.05 or to

victims of felonious sexual penetration in violation of former Ohio R.C. 2907.12. As used in this subsection, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.

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

(i) Whoever violates subsection (a) or (b) of this section is guilty of failure to report a crime. Violation of subsection (a)(1) of this section is a misdemeanor of the fourth degree. Violation of subsection (a)(2) or (b) of this section is a misdemeanor of the second degree.

(j) Whoever violates subsection (c) or (d) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(k) (1) Whoever negligently violates subsection (e) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates subsection (e) of this section is guilty of a misdemeanor of the second degree.

(l) As used in this section, "nurse" includes an advanced practice registered nurse, registered nurse, and licensed practical nurse.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2921.22)

## **525.16 ASSAULTING POLICE DOG OR HORSE OR AN 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 recklessly do any of the following:

(1) Taunt, torment, or strike a police dog or horse;



- (2) Throw an object or substance at a police dog or horse;
  - (3) Interfere with or obstruct a police dog or horse, or interfere with or obstruct a law enforcement officer who is being assisted by a police dog or horse, in a manner that does any of the following:
    - A. Inhibits or restricts the law enforcement officer's control of the police dog or horse;
    - B. Deprives the law enforcement officer of control of the police dog or horse;
    - C. Releases the police dog or horse from its area of control;
    - D. Enters the area of control of the police dog or horse without the consent of the law enforcement officer, including placing food or any other object or substance into that area;
    - E. Inhibits or restricts the ability of the police dog or horse to assist a law enforcement officer.
  - (4) Engage in any conduct that is likely to cause serious physical injury or death to a police dog or horse.
  - (5) If the person is the owner, keeper, or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger a police dog or horse that at the time of the conduct, the police dog or horse is assisting a law enforcement officer in the performance of the officer's duties or that the person knows is a police dog or horse.
- (c) No person shall knowingly cause, or attempt to cause, physical harm to an assistance dog in either of the following circumstances:
- (1) The dog, at the time the physical harm is caused or attempted, is assisting or serving a person who is blind, deaf, or hearing impaired or a person with a mobility impairment.
  - (2) The dog, at the time the physical harm is caused or attempted, is not assisting or serving a person who is blind, deaf, or hearing impaired or a person with a mobility impairment, but the offender has actual knowledge that the dog is an assistance dog.
- (d) No person shall recklessly do any of the following:
- (1) Taunt, torment, or strike an assistance dog;
  - (2) Throw an object or substance at an assistance dog;
  - (3) Interfere with or obstruct an assistance dog, or interfere with or obstruct a person who is blind, deaf, or hearing impaired or a person with a mobility impairment who is being assisted or served by an assistance dog, in a manner that does any of the following:

- A. Inhibits or restricts the assisted or served person's control of the dog;
- B. Deprives the assisted or served person of control of the dog;
- C. Releases the dog from its area of control;
- D. Enters the area of control of the dog without the consent of the assisted or served person, including placing food or any other object or substance into that area;
- E. Inhibits or restricts the ability of the dog to assist the assisted or served person.

(4) Engage in any conduct that is likely to cause serious physical injury or death to an assistance dog;

(5) If the person is the owner, keeper or harbinger of a dog, fail to reasonably restrain the dog from taunting, tormenting, chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger an assistance dog that at the time of the conduct is assisting or serving a person who is blind, deaf, or hearing impaired, or a person with a mobility impairment or that the person knows is an assistance dog.

(e) (1) Whoever violates subsection (a) hereof is guilty of assaulting a police dog or horse and shall be punished as provided in subsections (e)(1)(a) and (b) of this section.

A. Except as otherwise provided in this subsection, assaulting a police dog or horse is a misdemeanor of the second degree. If the violation results in the death of the police dog or horse, assaulting a police dog or horse is felony and shall be prosecuted under appropriate State law. If the violation results in serious physical harm to the police dog or horse other than its death, assaulting a police dog or horse is felony and shall be prosecuted under appropriate State law. 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.

B. In addition to any other sanction imposed for assaulting a police dog or horse, if the violation of subsection (a) of this section results in the death of the police dog or horse, the sentencing court shall impose as a financial sanction a mandatory fine under division (B)(10) of Ohio R.C. 2929.18. The fine shall be paid to the law enforcement agency that was served by the police dog or horse that was killed, and shall be used by that agency only for one or more of the following purposes:

1. If the dog or horse was not owned by the agency, the payment to the owner of the dog or horse of the cost of the dog or horse and the cost of the training of the dog or horse to qualify it as a police dog or horse, if that cost has not previously been paid by the agency;

2. After payment of the costs described in division (e)(1)B.1 of this section, if applicable, payment of the cost of replacing the dog or horse that was killed;
3. After payment of the costs described in division (e)(1)B.1 of this section, if applicable, payment of the cost of training the replacement dog or horse to qualify it as a police dog or horse;
4. After payment of the costs described in division (e)(1)B.1 of this section, if applicable, payment of the cost of further training of the replacement dog or horse that is needed to train it to the level of training that had been achieved by the dog or horse that was killed.

(2) Whoever violates subsection (b) hereof is guilty of harassing a police dog or horse. Except as otherwise provided in this subsection, harassing a police dog or horse is a misdemeanor of the second degree. If the violation results in the death of the police dog or horse or if the violation results in serious physical harm to the police dog or horse, but does not result in its death, harassing a police dog or horse is a felony and shall be prosecuted under appropriate State law. If the violation results in physical harm to the police dog or horse but does not result in its death or in serious physical harm to it, harassing a police dog or horse is a misdemeanor of the first degree.

(3) Whoever violates subsection (c) hereof is guilty of assaulting an assistance dog. Except as otherwise provided in this subsection, assaulting an 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 an assistance dog is a misdemeanor of the first degree. If the violation results in death or serious physical harm to the dog, such violation is a felony and shall be prosecuted under appropriate State law.

(4) Whoever violates subsection (d) of this section is guilty of harassing an assistance dog. Except as otherwise provided in this subsection, harassing an assistance dog is a misdemeanor of the second degree. If the violation results in the death of or serious physical harm to the assistance dog, harassing an assistance dog is a felony and shall be prosecuted under appropriate State law. If the violation results in physical harm to the assistance dog but does not result in its death or in serious physical harm to it, harassing an assistance dog is a misdemeanor of the first degree.

(5) In addition to any other sanction or penalty imposed for the offense under this section, whoever violates subsection (a), (b), (c) or (d) of this section is responsible for the payment of all of the following:

- A. Any veterinary bill or bill for medication incurred as a result of the violation by the Police Department regarding a violation of subsection (a) or (b) of this section or by the person who is blind, deaf, or hearing impaired or the person with a mobility

impairment assisted or served by the assistance dog regarding a violation of subsection (c) or (d) of this section;

B. The cost of any damaged equipment that results from the violation;

C. If the violation did not result in the death of the police dog or horse or the assistance dog that was the subject of the violation and if, as a result of that dog or horse being the subject of the violation, the dog or horse needs further training or retraining to be able to continue in the capacity of a police dog or horse or an assistance dog, the cost of any further training or retraining of that dog or horse by a law enforcement officer or by the person who is blind, deaf or hearing impaired or the person with a mobility impairment assisted or served by the assistance dog;

D. If the violation resulted in the death of the police dog or horse or the assistance dog that was the subject of the violation or resulted in serious physical harm to that dog or horse to the extent that the dog or horse needs to be replaced on either a temporary or a permanent basis, the cost of replacing that dog or horse and of any further training of a new police dog or horse or a new assistance dog by a law enforcement officer or by the person who is blind, deaf or hearing impaired or the person with a mobility impairment assisted or served by the assistance dog, which replacement or training is required because of the death of or the serious physical harm to the dog or horse that was the subject of the violation.

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

(g) This section only applies to an offender who knows or should know at the time of the violation that the police dog or horse or assistance dog that is the subject of a violation under this section is a police dog or horse or assistance dog.

(h) As used in this section:

(1) *Physical harm* means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

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

(3) *Serious physical harm* means any of the following:

A. Any physical harm that carries a substantial risk of death;

B. Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming;

C. Any physical harm that causes acute pain of a duration that results in

substantial suffering.

(4) *Assistance dog, blind, and person with a mobility impairment* have the same meanings as in Ohio R.C. 955.011.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2921.321)

### **533.01 DEFINITIONS.**

As used in this chapter:

(a) *Sexual conduct* means vaginal intercourse between a male and female; anal intercourse, fellatio and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(b) *Sexual contact* means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if such person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(c) *Sexual activity* means sexual conduct or sexual contact, or both.

(d) *Prostitute* means 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* means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political and scientific value for juveniles.

(f) 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 such group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

- (2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement or nudity in a way which 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 which 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 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* means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (h) *Nudity* means 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* means an unmarried person under the age of eighteen.
- (j) *Material* means 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 and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape or similar data storage device.
- (k) *Performance* means any motion picture, preview, trailer, play, show, skit, dance or other exhibition performed before an audience.
- (l) *Spouse* means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:
- (1) When the parties have entered into a written separation agreement authorized by Ohio R.C. 3103.06;

- (2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage or legal separation;
- (3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

- (m) *Minor* means a person under the age of 18 years.
- (n) *Mental health client or patient* has the same meaning as in Ohio R.C. 2305.51.
- (o) *Mental health professional* has the same meaning as in Ohio R.C. 2305.115.
- (p) *Sado-masochistic abuse* means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

(q) *Place where a person has a reasonable expectation of privacy* means a place where a reasonable person would believe that the person could fully disrobe in private.

(r) *Private area* means the genitals, pubic area, buttocks, or female breast below the top of the areola, where nude or covered by an undergarment.

(ORC 2907.01)

### **533.06 VOYEURISM.**

(a) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(b) No person shall knowingly commit trespass or otherwise secretly or surreptitiously videotape, film, photograph, broadcast, stream, or otherwise record another person, in a place where a person has a reasonable expectation of privacy, for the purpose of viewing the private areas of that person.

(c) No person shall secretly or surreptitiously videotape, film, photograph, or otherwise record another person above, under, or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person.

(d) (1) Whoever violates this section is guilty of voyeurism.

(2) A violation of subsection (a) hereof is a misdemeanor of the third degree.

(3) A violation of subsection (b) hereof is a misdemeanor of the second degree.

(4) A violation of subsection (c) hereof is a misdemeanor of the first degree.

**State law reference—**(ORC 2907.08)

### **537.02 VEHICULAR HOMICIDE AND MANSLAUGHTER.**

(a) No person, while operating or participating in the operation of a motor vehicle, motorcycle,

snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy in any of the following ways:

- (1) A. As the proximate result of committing a violation of division (A) of Ohio R.C. 4511.19 or of a substantially equivalent municipal ordinance;
    - B. As the proximate result of committing a violation of division (A) of Ohio R.C. 1547.11 or of a substantially equivalent municipal ordinance;
    - C. As the proximate result of committing a violation of division (A)(3) of Ohio R.C. 4561.15 or of a substantially equivalent municipal ordinance.
  - (2) In one of the following ways:
    - A. Recklessly;
    - B. As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this subsection applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in subsection (f) of this section.
  - (3) In one of the following ways:
    - A. Negligently;
    - B. As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in subsection (f) of this section.
  - (4) As the proximate result of committing a violation of any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor or of a municipal ordinance that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any provision of any section contained in Title XLV of the Revised Code that is a minor misdemeanor.
- (b) (1) Whoever violates subsection (a)(1) or (2) of this section is guilty of aggravated vehicular homicide and shall be punished as provided in subsection (b)(2) and (3) of this section.
- (2) A. Except as otherwise provided in subsection (b)(2)B or C of this section, aggravated vehicular homicide committed in violation of subsection (a)(1) of this section



is a felony and shall be prosecuted under appropriate State law and the court shall impose a mandatory prison term on the offender as described in subsection (e) of this section.

B. Except as otherwise provided in subsection (b)(2)C of this section, aggravated vehicular homicide committed in violation of subsection (a)(1) of this section is a felony and shall be prosecuted under appropriate State law, and the court shall impose a mandatory prison term on the offender as described in subsection (e) of this section, if any of the following apply:

1. At the time of the offense, the offender was driving under a suspension or cancellation imposed under Ohio R.C. Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10.
2. The offender previously has been convicted of or pleaded guilty to a violation of this section.
3. The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

C. Aggravated vehicular homicide committed in violation of subsection (a)(1) of this section is a felony and shall be prosecuted under appropriate State law, and the court shall sentence the offender to a mandatory prison term as provided in Ohio R.C. 2929.142 and described in subsection (e) of this section if any of the following apply:

1. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) Ohio R.C. 4511.19 or of a substantially equivalent municipal ordinance within the previous ten years.
2. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of Ohio R.C. 1547.11 or of a substantially equivalent municipal ordinance within the previous ten years.
3. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of Ohio R.C. 4561.15 or of a substantially equivalent municipal ordinance within the previous ten years.
4. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (a)(1) of this section within the previous ten years.

5. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(1) of Ohio R.C. 2903.08 within the previous ten years.

6. The offender previously has been convicted of or pleaded guilty to three or more prior violations of Ohio R.C. 2903.04 within the previous ten years in circumstances in which division (D) of that section applied regarding the violations.

7. The offender previously has been convicted of or pleaded guilty to three or more violations of any combination of the offenses listed in subsection (b)(2)C.1, 2, 3, 4, 5, or 6 of this section within the previous ten years.

8. The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of Ohio R.C. 4511.19.

D. In addition to any other sanctions imposed pursuant to subsection (b)(2)A, B, or C of this section for aggravated vehicular homicide committed in violation of subsection (a)(1) of this section, the court shall impose upon the offender a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of Ohio R.C. 4510.02.

Divisions (A)(1) to (3) of Ohio R.C. 4510.54 apply to a suspension imposed under subsection (b)(2)B of this section.

(3) Except as otherwise provided in this division, aggravated vehicular homicide committed in violation of subsection (a)(2) of this section is a felony and shall be prosecuted under appropriate state law. Aggravated vehicular homicide committed in violation of subsection (a)(2) of this section is a felony and shall be prosecuted under appropriate state law if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Ohio R.C. Chapter 4510. or any other provision of the Ohio Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory prison term on the offender when required by subsection (e) of this section.

In addition to any other sanctions imposed pursuant to this section for a violation of subsection (a)(2) of this section, the court shall impose upon the offender a class two

suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of Ohio R.C. 4510.02 or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class one suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(1) of Ohio R.C. 4510.02.

(c) Whoever violates subsection (a)(3) of this section is guilty of vehicular homicide. Except as otherwise provided in this section, vehicular homicide is a misdemeanor of the first degree. Vehicular homicide committed in violation of subsection (a)(3) of this section is a felony and shall be prosecuted under appropriate State law, if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Ohio R.C. Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense. The court shall impose a mandatory jail term or a mandatory prison term on the offender when required by subsection (e) of this section.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of Ohio R.C. 4510.02, or, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of that section, or, if the offender previously has been convicted of or pleaded guilty to a traffic-related murder, felonious assault, or attempted murder offense, a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of that section.

(d) Whoever violates subsection (a)(4) of this section is guilty of vehicular manslaughter. Except as otherwise provided in this division, vehicular manslaughter is a misdemeanor of the second degree. Vehicular manslaughter is a misdemeanor of the first degree if, at the time of the offense, the offender was driving under a suspension or cancellation imposed under Ohio R.C. Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible

for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10 or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

In addition to any other sanctions imposed pursuant to this division, the court shall impose upon the offender a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of Ohio R.C. 4510.02 or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or a traffic-related murder, felonious assault, or attempted murder offense, a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of that section.

(e) (1) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of subsection (a)(1) of this section. Except as otherwise provided in this division, the mandatory prison term shall be a definite term from the range of prison terms provided in division (A)(1)(b) of Ohio R.C. 2929.14 for a felony of the first degree or from division (A)(2)(b) of that section for a felony of the second degree, whichever is applicable, except that if the violation is committed on or after March 22, 2019, the court shall impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum terms prescribed for a felony of the first degree in division (A)(1)(a) of Ohio R.C. 2929.14 or one of the terms prescribed for a felony of the second degree in division (A)(2)(a) of that section, whichever is applicable. If subsection (b)(2)C.1, 2, 3, 4, 5, 6, 7, or 8 of this section applies to an offender who is convicted of or pleads guilty to the violation of subsection (a)(1) of this section, the court shall impose the mandatory prison term pursuant to division (B) of Ohio R.C. 2929.142. The court shall impose a mandatory jail term of at least 15 days on an offender who is convicted of or pleads guilty to a misdemeanor violation of subsection (A)(3)(b) of this section and may impose upon the offender a longer jail term as authorized pursuant to Ohio R.C. 2929.24.

(2) The court shall impose a mandatory prison term on an offender who is convicted of or pleads guilty to a violation of division (a)(2) or (3)A of this section or a felony violation of division (a)(3)B of this section if either division (e)(2)A or B of this section applies. The mandatory prison term shall be a definite term from the range of prison terms provided in division (A)(3)(a) of Ohio R.C. 2929.14 for a felony of the third degree or from division (A)(4) of that section for a felony and shall be prosecuted under appropriate State law, whichever is applicable. The court shall impose a mandatory prison term on an offender in a category described in this division if either of the following applies:

A. The offender previously has been convicted of or pleaded guilty to a violation of this section or Ohio R.C. 2903.08.

B. At the time of the offense, the offender was driving under suspension or cancellation under Ohio R.C. Chapter 4510. or any other provision of the Revised Code or was operating a motor vehicle or motorcycle, did not have a valid driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege, and was not eligible for renewal of the offender's driver's license or commercial driver's license without examination under Ohio R.C. 4507.10.

(f) Subsections (a)(2)B and (3)B of this section do not apply in a particular construction zone unless signs of the type described in Ohio R.C. 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the director of transportation under Ohio R.C. 5501.27. The failure to erect signs of the type described in Ohio R.C. 2903.081 in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of subsection (a)(1), (a)(2)A, (a)(3)A, or (a)(4) of this section in that construction zone or the prosecution of any person who violates any of those divisions in that construction zone.

(g) (1) As used in this section:

A. *Mandatory prison term* and mandatory jail term have the same meanings as in Ohio R.C. 2929.01.

B. *Traffic-related homicide, manslaughter, or assault offense* means a violation of Ohio R.C. 2903.04 in circumstances in which division (D) of that section applies, a violation of Ohio R.C. 2903.06 or Ohio R.C. 2903.08, or a violation of Ohio R.C. 2903.06, 2903.07, or 2903.08 as they existed prior to March 23, 2000.

C. *Construction zone* has the same meaning as in Ohio R.C. 5501.27.

D. *Reckless operation offense* means a violation of Ohio R.C. 4511.20 or a municipal ordinance substantially equivalent to Ohio R.C. 4511.20.

E. *Speeding offense* means a violation of Ohio R.C. 4511.21 or a municipal ordinance pertaining to speed.

F. *Traffic-related murder, felonious assault, or attempted murder offense* means a violation of Ohio R.C. 2903.01 or 2903.02 in circumstances in which the offender used a motor vehicle as the means to commit the violation, a violation of division (a)(2) of Ohio R.C. 2903.11 in circumstances in which the deadly weapon used in the commission of the violation is a motor vehicle, or an attempt to commit aggravated murder or murder in violation of Ohio R.C. 2923.02 in circumstances in which the offender used a motor vehicle as the means to attempt to commit the aggravated murder or murder.

G. *Motor vehicle* has the same meaning as in Ohio R.C. 4501.01.

(2) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of another state or the United States.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 4510.07)

### **537.021 VEHICULAR ASSAULT IN A CONSTRUCTION ZONE.**

(a) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn in any of the following ways:

(1) A. As the proximate result of committing a violation of division (A) of Ohio R.C. 4511.19 or of a substantially equivalent municipal ordinance;

B. As the proximate result of committing a violation of division (A) of Ohio R.C. 1547.11 or of a substantially equivalent municipal ordinance;

C. As the proximate result of committing a violation of division (A)(3) of Ohio R.C. 4561.15 or of a substantially equivalent municipal ordinance.

(2) In one of the following ways:

A. As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and does not apply as described in subsection (e) of this section;

B. Recklessly.

(3) As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, provided that this division applies only if the person to whom the serious physical harm is caused or to whose unborn the serious physical harm is caused is in the construction zone at the time of the offender's commission of the speeding offense in the construction zone and does not apply as described in subsection (e) of this section.

(b) (1) Whoever violates subsection (a)(1) of this section is guilty of aggravated vehicular assault. Except as otherwise provided in this division, aggravated vehicular assault is a felony and shall be prosecuted under appropriate state law. Aggravated vehicular assault is a felony and shall be prosecuted under appropriate state law if any of the following apply:

A. At the time of the offense, the offender was driving under a suspension imposed under Ohio R.C. Chapter 4510 or any other provision of the Ohio Revised Code.

B. The offender previously has been convicted of or pleaded guilty to a violation of this section.

C. The offender previously has been convicted of or pleaded guilty to any traffic-related homicide, manslaughter, or assault offense.

D. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) Ohio R.C. 4511.19 or a substantially equivalent municipal ordinance within the previous ten years.

E. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A) of Ohio R.C. 1547.11 or of a substantially equivalent municipal ordinance within the previous ten years. The offender previously has been convicted of or pleaded guilty to three or more prior violations of division (A)(3) of Ohio R.C. 4561.15 or of a substantially equivalent municipal ordinance within the previous ten years.

F. The offender previously has been convicted of or pleaded guilty to three or more prior violations of any combination of the offenses listed in subsection (b)(1)C, D, or E of this section.

G. The offender previously has been convicted of or pleaded guilty to a second or subsequent felony violation of division (A) of Ohio R.C. 4511.19.

(2) In addition to any other sanctions imposed pursuant to subsection (b)(1) of this section, except as otherwise provided in this division, the court shall impose upon the offender a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of Ohio R.C. 4510.02. If the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense, the court shall impose either a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of that section or a class one suspension as specified in

division (A)(1) of that section.

(c) (1) Whoever violates subsection (a)(2) or (3) of this section is guilty of vehicular assault and shall be punished as provided in subsections (c)(2) and (3) of this section.

(2) Except as otherwise provided in this section, vehicular assault committed in violation of subsection (A)(2) of this section is a felony and shall be prosecuted under appropriate State law. Vehicular assault committed in violation of subsection (A)(2) of this section is a felony and shall be prosecuted under appropriate State law, if, at the time of the offense, the offender was driving under a suspension imposed under Ohio R.C. Chapter 4510. or any other provision of the Revised Code, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, or if, in the same course of conduct that resulted in the violation of subsection (a)(2) of this section, the offender also violated Ohio R.C. 4549.02, 4549.021, or 4549.03.

In addition to any other sanctions imposed, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of Ohio R.C. 4510.02 or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of that section.

(3) Except as otherwise provided in this division, vehicular assault committed in violation of subsection (A)(3) of this section is a misdemeanor of the first degree. Vehicular assault committed in violation of subsection (a)(3) of this section is a felony and shall be prosecuted under appropriate State law if, at the time of the offense, the offender was driving under a suspension imposed under Ohio R.C. Chapter 4510. or any other provision of the Revised Code or if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense.

In addition to any other sanctions imposed, the court shall impose upon the offender a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of Ohio R.C. 4510.02 or, if the offender previously has been convicted of or pleaded guilty to a violation of this section, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder,



felonious assault, or attempted murder offense, a class three suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of Ohio R.C. 4510.02 of the Revised Code.

(d) (1) The court shall impose a mandatory prison term, as described in subsection (d)(4) of this section, on an offender who is convicted of or pleads guilty to a violation of subsection (a)(1) of this section.

(2) The court shall impose a mandatory prison term, as described in subsection (d)(4) of this section, on an offender who is convicted of or pleads guilty to a violation of subsection (a)(2) of this section or a felony violation of subsection (a)(3) of this section if either of the following applies:

A. The offender previously has been convicted of or pleaded guilty to a violation of this section or Ohio R.C. 2903.06.

B. At the time of the offense, the offender was driving under suspension under Ohio R.C. Chapter 4510. or any other provision of the Revised Code.

(3) The court shall impose a mandatory jail term of at least seven days on an offender who is convicted of or pleads guilty to a misdemeanor violation of division (a)(3) of this section and may impose upon the offender a longer jail term as authorized pursuant to Ohio R.C. 2929.24 of the Revised Code.

(4) A mandatory prison term required under subsection (d)(1) or (2) of this section shall be a definite term from the range of prison terms provided in division (A)(2)(b) of Ohio R.C. 2929.14 of the Revised Code for a felony of the second degree, from division (A)(3)(a) of that section for a felony of the third degree, or from division (A)(4) of that section for a felony of the fourth degree, whichever is applicable, and shall be prosecuted under appropriate State law except that if the violation is a felony of the second degree committed on or after March 22, 2019, the court shall impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum terms prescribed for a felony of the second degree in division (A)(2)(a) of Ohio R.C. 2929.14 of the Revised Code.

(e) Subsections (a)(2)A and (3) of this section do not apply in a particular construction zone unless signs of the type described in Ohio R.C. 2903.081 are erected in that construction zone in accordance with the guidelines and design specifications established by the director of transportation under Ohio R.C. 5501.27. The failure to erect signs of the type described in Ohio R.C. 2903.081 in a particular construction zone in accordance with those guidelines and design specifications does not limit or affect the application of subsection (a)(1) or (2)B of this section in that construction zone or the prosecution of any person who violates either of those subsections in

that construction zone.

(f) As used in this section:

(1) *Mandatory prison term* and *mandatory jail term* have the same meanings as in Ohio R.C. 2929.01 of the Revised Code.

(2) *Traffic-related homicide, manslaughter, or assault offense* and *traffic-related murder, felonious assault, or attempted murder offense* have the same meanings as in Ohio R.C. 2903.06 of the Revised Code.

(3) *Construction zone* has the same meaning as in Ohio R.C. 5501.27 of the Revised Code.

(4) *Reckless operation offense* and *speeding offense* have the same meanings as in Ohio R.C. 2903.06 of the Revised Code.

(g) For the purposes of this section, when a penalty or suspension is enhanced because of a prior or current violation of a specified law or a prior or current specified offense, the reference to the violation of the specified law or the specified offense includes any violation of any substantially equivalent municipal ordinance, former law of this state, or current or former law of another state or the United States.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2903.08)

### **537.03 ASSAULT.**

(a) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.

(b) No person shall recklessly cause serious physical harm to another or to another's unborn.

(c) (1) Whoever violates this subsection is guilty of assault, a misdemeanor of the first degree, and the court shall sentence the offender as provided in subsection (c) hereof. If the assault was committed under the circumstances provided in subsection (c)(2), (3), (4), (5), (6), (7), (8) or (9) hereof, assault is a felony and shall be prosecuted under appropriate State law.

(2) Except as otherwise provided in this subsection, if the offense is committed by a caretaker against a person with a functional impairment under the caretaker's care assault is a felony and shall be prosecuted under appropriate State law.

(3) If the offense occurs in or on the grounds of a State correctional institution or an institution of the Department of Youth Services, the victim of the offense is an employee

of the Department of Rehabilitation and Correction or the Department of Youth Services, and the offense is committed by a person incarcerated in the State correctional institution or by a person institutionalized in the Department of Youth Services Institution pursuant to a commitment to the Department of Youth Services, assault is a felony and shall be prosecuted under appropriate State law.

(4) If the offense is committed in any of the following circumstances assault is a felony of the fifth degree and shall be prosecuted under appropriate State law.

A. The offense occurs in or on the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department or is on the premises of the facility for business purposes or as a visitor, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person's being charged with or convicted of any crime, or subsequent to the person's being alleged to be or adjudicated a delinquent child.

B. The offense occurs off the grounds of a State correctional institution and off the grounds of an institution of the Department of Youth Services, the victim of the offense is an employee of the Department of Rehabilitation and Correction, the Department of Youth Services, or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person incarcerated in a State correctional institution or institutionalized in the Department of Youth Services who temporarily is outside of the institution for any purpose, by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

C. The offense occurs off the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person being charged with or convicted of any crime, or subsequent to the person being alleged to be or adjudicated a delinquent child and who temporarily is outside of the facility for any purpose or by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

D. The victim of the offense is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a school teacher or administrator or a school bus operator, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises.

(5) If the assault is committed in any of the following circumstances, assault is a felony of the fourth degree and shall be prosecuted under appropriate state law:

A. The victim of the offense is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation, a firefighter, or a person performing emergency medical service, while in the performance of the officer's, investigator's, firefighter's, or person's official duties.

B. The victim of the offense is an emergency service responder, the offender knows or reasonably should know that the victim is an emergency service responder, and it is the offender's specific purpose to commit the offense against an emergency service responder.

C. The victim of the offense is a family or household member or co-worker of a person who is an emergency service responder, the offender knows or reasonably should know that the victim is a family or household member or co-worker of an emergency service responder, and it is the offender's specific purpose to commit the offense against a family or household member or co-worker of an emergency service responder.

(6) If the offense is a felony of the fourth degree under division (c)(5)A of this section, if the victim of the offense is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation, and if the victim suffered serious physical harm as a result of the commission of the offense, the court, pursuant to division (F) of Ohio R.C. 2929.13, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration and shall be prosecuted under appropriate State law.

(7) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is either a felony of the fifth degree or, if the offender previously has been convicted

of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree and shall be prosecuted under appropriate State law.

(8) If the victim of the offense is a health care professional of a hospital, a health care worker of a hospital, or a security officer of a hospital whom the offender knows or has reasonable cause to know is a health care professional of a hospital; a health care worker of a hospital, or a security officer of a hospital, if the victim is engaged in the performance of the victim's duties, and if the hospital offers de-escalation or crisis intervention training for such professionals, workers or officers, assault is one of the following:

A. Except as otherwise provided in subsection (c)(8)~~B~~C of this section, assault committed in the specified circumstances is a misdemeanor of the first degree. Notwithstanding the fine specified in division (A)(2)(~~b~~a) of Ohio R.C. 2929.28 for a misdemeanor of the first degree, in sentencing the offender under this subsection and if the court decides to impose a fine, the court may impose upon the offender a fine of not more than \$5,000.00.

B. If the offender previously has been convicted of or pleaded guilty to one or more assault or homicide offenses committed against hospital personnel, assault committed in the specified circumstances is a felony and shall be prosecuted under appropriate State law.

(9) If the victim of the offense is a judge, magistrate, prosecutor or court official or employee whom the offender knows or has reasonable cause to know is a judge, magistrate, prosecutor or court official or employee, and if the victim is engaged in the performance of the victim's duties, assault is one of the following:

A. Except as otherwise provided in subsection (c)(8)~~9~~9B of this section, assault committed in the specified circumstances is a misdemeanor of the first degree. In sentencing the offender under this subsection, if the court decides to impose a fine, notwithstanding the fine specified in division (A)(2)(~~b~~a) of Ohio R.C. 2929.28 for a misdemeanor of the first degree, the court may impose upon the offender a fine of not more than \$5,000.00.

B. If the offender previously has been convicted of or pleaded guilty to one or more assault or homicide offenses committed against justice system personnel, assault committed in the specified circumstances is a felony and shall be prosecuted under appropriate State law.

(10) If an offender who is convicted of or pleads guilty to assault when it is a

misdemeanor also is convicted of or pleads guilty to a specification as described in Ohio R.C. 2941.1423 that was included in the indictment, count in the indictment or information charging the offense, the court shall sentence the offender to a mandatory jail term as provided in division (~~GF~~) of Ohio R.C. 2929.24.

(d) A prosecution for a violation of this section does not preclude a prosecution of a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section of the Revised Code, or both sections. However, if an offender is convicted of or pleads guilty to a violation of this section and also is convicted of or pleads guilty to a violation of Ohio R.C. section 2903.22 based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under Ohio R.C. section 2941.25.

(e) As used in this section:

- (1) *Peace officer* has the same meaning as in Ohio R.C. 2935.01.
- (2) *Firefighter* means any person who is a firefighter as defined in Ohio R.C. 3937.41 and, for purposes of division (e)(21) of this section, also includes a member of a fire department as defined in Ohio R.C. section 742.01.
- (3) *Emergency medical service* has the same meaning as in Ohio R.C. 4765.01.
- (4) *Local correctional facility* means a county, multicounty, municipal, municipal-county or multicounty-municipal jail or workhouse. A minimum security jail established under Ohio R.C. 341.23 or 753.21, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.
- (5) *Employee of a local correctional facility* means a person who is an employee of the political subdivision or of one or more of the affiliated political subdivisions that operates the local correctional facility and who operates or assists in the operation of the facility.
- (6) *School teacher or administrator* means either of the following:
  - A. A person who is employed in the public schools of the State under a contract described in Ohio R.C. 3311.77 or 3319.08 in a position in which the person is required to have a certificate issued pursuant to Ohio R.C. 3319.22 to 3319.311.
  - B. A person who is employed by a nonpublic school for which the Director of Education and Workforce prescribes minimum standards under Ohio R.C. 3301.07 and who is certified in accordance with Ohio R.C. 3301.071.

- (7) *Community control sanction* has the same meaning as in Ohio R.C. 2929.01.
- (8) *Escorted visit* means an escorted visit granted under Ohio R.C. 2967.27.
- (9) *Post-release control* and *transitional control* have the same meanings as in Ohio R.C. 2967.01.
- (10) *Investigator of the Bureau of Criminal Identification and Investigation* has the same meaning as in Ohio R.C. 2903.11.
- (11) *Health care professional* and *health care worker* have the same meanings as in Ohio R.C. 2305.234.
- (12) *Assault or homicide offense committed against hospital personnel* means a violation of this section or Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, or 2903.14 committed in circumstances in which all of the following apply:
  - A. The victim of the offense was a health care professional of a hospital, a health care worker of a hospital or a security officer of a hospital.
  - B. The offender knew or had reasonable cause to know that the victim was a health care professional of a hospital, a health care worker of a hospital, or a security officer of a hospital;
  - C. The victim was engaged in the performance of the victim's duties.
  - D. The hospital offered de-escalation or crisis intervention training for such professionals, workers or officers.
- (13) *De-escalation or crisis intervention training* means de-escalation or crisis intervention training for health care professionals of a hospital, health care workers of a hospital, and security officers of a hospital to facilitate interaction with patients, members of a patient's family, and visitors, including those with mental impairments.
- (14) *Assault or homicide offense committed against justice system personnel* means a violation of this section or of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.11, 2903.12, or 2903.14 committed in circumstances in which the victim of the offense was a judge, magistrate, prosecutor, or court official or employee whom the offender knew or had reasonable cause to know was a judge, magistrate, prosecutor, or court official or employee, and the victim was engaged in the performance of the victim's duties.
- (15) *Court official or employee* means any official or employee of a court created under the constitution or statutes of this State or of a United States court located in this State.

(16) *Judge* means a judge of a court created under the constitution or statutes of this State or of a United States court located in this State.

(17) *Magistrate* means an individual who is appointed by a court of record of this State and who has the powers and may perform the functions specified in Civil Rule 53, Criminal Rule 19, or Juvenile Rule 40, or an individual who is appointed by a United States court located in this State who has similar powers and functions.

(18) *Prosecutor* has the same meaning as in Ohio R.C. 2935.01.

(19) A. *Hospital* means, subject to subsection (e)(19)B. of this section, an institution classified as a hospital under Ohio R.C. 3701.01 in which are provided to patients diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care or a hospital operated by a health maintenance organization.

B. "Hospital" does not include any of the following:

1. A facility licensed under Ohio R.C. Chapter 3721, a health care facility operated by the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities, a health maintenance organization that does not operate a hospital, or the office of any private, licensed health care professional, whether organized for individual or group practice;

2. An institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation under Section 501 of the "Internal Revenue Code of 1986", 100 Stat. 2085, 26 U.S.C. 1, as amended, and providing 24-hour nursing care pursuant to the exemption in division (E) of Ohio R.C. 4723.32 from the licensing requirements of Ohio R.C. Chapter 4723.

(20) *Health maintenance organization* has the same meaning as in Ohio R.C. 3727.01.

(21) *Emergency service responder* means any law enforcement officer, first responder, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, firefighter, or volunteer firefighter.

(22) *Family or household member* means any of the following:

(a) Any of the following who is residing or has resided with a person who is employed as an emergency service responder:



- (i) A spouse, a person living as a spouse, or a former spouse of a person who is employed as an emergency service responder;
- (ii) A parent, a foster parent, or a child of a person who is employed as an emergency service responder, or another person related by consanguinity or affinity to a person who is employed as an emergency service responder;
- (iii) A parent or a child of a spouse, person living as a spouse, or former spouse of a person who is employed as an emergency service responder, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of a person who is employed as an emergency service responder.

(b) The natural parent of any child of whom a person who is employed as an emergency service responder is the other natural parent or is the putative other natural parent.

(23) *First responder, emergency medical technician-basic, emergency medical technician-intermediate, and emergency medical technician-paramedic* have the same meanings as in Ohio R.C. section 4765.01.

(24) *Volunteer firefighter* has the same meaning as in Ohio R.C. section 146.01.

(25) *Person living as a spouse* means a person who is living or has lived with a person who is employed as an emergency service responder in a common law marital relationship, who otherwise is cohabiting with a person who is employed as an emergency service responder, or who otherwise has cohabited with a person who is employed as an emergency service responder within five years prior to the date of the alleged commission of the act in question.

(26) *Co-worker* means a person who is employed by the organization or entity that is served by a person who is employed as an emergency service responder.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2903.13)

## **537.06 MENACING.**

(a)(1) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause physical harm to the person or property of the other person, the other person's

unborn, or a member of the other person's immediately family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association or other organization that employs the other person or to which the other person belongs.

(2) No person shall knowingly place or attempt to place another in reasonable fear of physical harm or death by displaying a deadly weapon, regardless of whether the deadly weapon displayed is operable or inoperable, if either of the following applies:

(a) The other person is an emergency service responder, the person knows or reasonably should know that the other person is an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against an emergency service responder.

(b) The other person is a family or household member or co-worker of an emergency service responder, the person knows or reasonably should know that the other person is a family or household member or co-worker of an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against a family or household member or co-worker of an emergency service responder.

(b) Whoever violates this section is guilty of menacing. Except as otherwise provided in this subsection (b), menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties or if the victim of the offense is an emergency service responder in the performance of the responder's official duties, menacing is one of the following:

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

(2) If the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency or an emergency service responder, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties or the responder's performance of the responder's official duties, menacing is a felony and shall be prosecuted under appropriate State law.

(c) A prosecution for a violation of this section does not preclude a prosecution of a violation of any other section of the Gahanna Codified Ordinances or Ohio Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Gahanna Codified Ordinances or Ohio Revised Code may be prosecuted under this section, the other section, or both sections. However, if an offender is convicted of or pleads guilty to a violation of this section and also is convicted of or pleads guilty to a violation of GCO 537.03 or O.R.C. 2903.13 based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar

import under O.R.C. 2941.25.

(d) As used in this section:

(1) *Emergency service responder, family or household member, and co-worker* have the same meanings as in Ohio R.C. 2903.13.

(2) *Organization* includes an entity that is a governmental employer.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference—**(ORC 2903.22)

### **537.07 ENDANGERING CHILDREN.**

(a) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under 18 years of age or a child with a mental or physical disability under 21 years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection or support. It is not a violation of a duty of care, protection or support under this subsection when the parent, guardian, custodian or person having custody or control of a child treats the physical or mental illness or disability of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(b) No person shall do any of the following to a child under 18 years of age or a child with a mental or physical disability under 21 years of age:

(1) Abuse the child;

(2) Torture or cruelly abuse the child;

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allow the child to be on the same parcel of real property and within 100 feet of, or,

in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, any act in violation of Ohio R.C. 2925.04 or 2925.041 when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of Ohio R.C. 2925.04 or 2925.041 that is the basis of the violation of this section.

(c) (1) No person shall operate a vehicle in violation of section 333.01(a) of the Traffic Code (ORC 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 subsection (c) hereof and a violation of section 333.01(a) of the Traffic Code (ORC 4511.19(A)) that constitutes the basis of the charge of the violation of this subsection (c). For purposes of Ohio R.C. 4511.191 to 4511.197 and all related provisions of law, a person arrested for a violation of this subsection (c) of shall be considered to be under arrest for operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in this subsection (c):

A. Controlled substance has the same meaning as in Ohio R.C. 3719.01.

B. Vehicle has the same meaning as in Ohio R.C. 4511.01.

(d) (1) subsection (b)(5) of this section does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under subsection (b)(5) of this section.

(3) In a prosecution under subsection (b)(5) of this section, the trier of fact may infer that an actor, model, or participant in the material or performance involved is a juvenile if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the actor, model, or participant as a juvenile.

(4) As used in this section and subsection (b)(5) of this section:

A. *Material, performance, obscene, and sexual activity* have the same meanings as in Ohio R.C. 2907.01.

B. *Nudity-oriented matter* means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.

C. *Sexually oriented matter* means any material or performance that shows a

minor participating or engaging in sexual activity, masturbation, or bestiality.

(e) (1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates subsection (a) or (b)(1) of this section, endangering children is one of the following, and, in the circumstances described in subsection (e)(2)E of this section, that subsection applies:

A. Except as otherwise provided in subsection (e)(2)B, C, or D of this section, a misdemeanor of the first degree;

B. If the offender previously has 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, except as otherwise provided in subsection (e)(2)C or D of this section, a felony of the fourth degree and shall be prosecuted under appropriate State law;

C. If the violation is a violation of subsection (a) of this section and results in serious physical harm to the child involved, a felony of the third degree and shall be prosecuted under appropriate State law;

D. If the violation is a violation of subsection (b)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree and shall be prosecuted under appropriate State law.

E. If the violation is a felony violation of subsection (b)(1) of this section and the offender also is convicted of or pleads guilty to a specification as described in Ohio R.C. 2941.1422 that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in Division (B)(7) of Ohio R.C. 2929.14 and shall order the offender to make restitution as provided in Division (B)(8) of Ohio R.C. 2929.18.

(3) If the offender violates subsection (b)(2), (3), (4), or (6) of this section, except as otherwise provided in this section, endangering children is a felony of the third degree and shall be prosecuted under appropriate State law. If the violation results in serious physical harm to the child involved, or if the offender previously has 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 of the second degree and shall be prosecuted under appropriate State law. If the offender violates subsection (b)(2), (3), or (4) of this section and the offender also is convicted of or pleads guilty to a specification as described in Ohio R.C. 2941.1422 that was included in the indictment, count in the indictment, or information charging the offense, the court shall

sentence the offender to a mandatory prison term as provided in division (B)(7) of Ohio R.C. 2929.14 and shall order the offender to make restitution as provided in division (B)(8) of Ohio R.C. 2929.18. If the offender violates subsection (b)(6) of this section and the drug involved is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

A. If the violation is a violation of subsection (b)(6) of this section that is a felony of the third degree under subsection (e)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the violation is a violation of division (b)(6) of this section that is a felony of the third degree under division (e)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of subsection (b)(6) of this section, a violation of division (A) of Ohio R.C. 2925.04, or a violation of division (A) of Ohio R.C. 2925.041, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years and shall be prosecuted under appropriate State law.

B. If the violation is a violation of division (b)(6) of this section that is a felony of the second degree under subsection (e)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the definite prison terms prescribed for a felony of the second degree in division (A)(2)(b) of Ohio R.C. 2929.14 that is not less than three years, except that if the violation is committed on or after the effective date of this amendment, the court shall impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum terms prescribed for a felony of the second degree in division (A)(2)(a) of that section that is not less than three years and shall be prosecuted under appropriate State law. If the violation is a violation of subsection (b)(6) of this section that is a felony of the second degree under subsection (e)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of subsection (b)(6) of this section, a violation of division (A) of Ohio R.C. 2925.04, or a violation of division (A) of Ohio R.C. 2925.041, the court shall impose as a mandatory prison term one of the definite prison terms prescribed for a felony of the second degree in division (A)(2)(b) of Ohio R.C. 2929.14 that is not less than five years, except that if the violation is committed on or after March 22, 2019, the court shall impose as the minimum prison term for the offense a mandatory prison term that is one of the terms prescribed for a felony of

the second degree subsection (A)(2)(a) of that section that is not less than five years and shall be prosecuted under appropriate State law.

(4) If the offender violates subsection (b)(5) of this section, endangering children is a felony of the second degree and shall be prosecuted under appropriate State law. If the offender also is convicted of or pleads guilty to a specification as described in Ohio R.C. 2941.1422 that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of Ohio R.C. 2929. and shall order the offender to make restitution as provided in division (B)(8) of Ohio R.C. 2929.18.

(5) If the offender violates subsection (c) of this section, the offender shall be punished as follows:

A. Except as otherwise provided in subsection (e)(5)(b) or (c) of this section, endangering children in violation of subsection (c) of this section is a misdemeanor of the first degree.

B. If the violation results in serious physical harm to the child involved or the offender previously has been convicted of an offense under this section or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in subsection (e)(5)(c) of this section, endangering children in violation of subsection (c) of this section is a felony of the fifth degree and shall be prosecuted under appropriate State law.

C. If the violation results in serious physical harm to the child involved and if the offender previously has been convicted of a violation of subsection (c) of this section, Ohio R.C. 2903.06 or 2903.08, Ohio R.C. 2903.07 as it existed prior to March 23, 2000, or Ohio R.C. 2903.04 in a case in which the offender was subject to the sanctions described in division (d) of that section, endangering children in violation of subsection (c) of this section is a felony of the fourth degree and shall be prosecuted under appropriate State law.

D. In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to subsection (e)(5)A, B, or C of this section or pursuant to any other provision of law and in addition to any suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege under Ohio R.C. Chapter 4506., 4509., 4510., or 4511. or under any other provision of law, the court also may impose upon the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of Ohio R.C. 4510.02.

E. In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction imposed upon the offender pursuant to subsection (e)(5)A, B, C, or D of this section or pursuant to any other provision of law for the violation of subsection (c) of this section, if as part of the same trial or proceeding the offender also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of Ohio R.C. 4511.19 that was the basis of the charge of the violation of subsection (c) of this section, the offender also shall be sentenced in accordance with Ohio R.C. 4511.19 for that violation of division (A) of Ohio R.C. 4511.19.

(f) (1) A. A court may require an offender to perform not more than 200 hours of supervised community service work under the authority of an agency, subdivision, or charitable organization. The requirement shall be part of the community control sanction or sentence of the offender, and the court shall impose the community service in accordance with and subject to subsections (f)(1)A and B of this section. The court may require an offender whom it requires to perform supervised community service work as part of the offender's community control sanction or sentence to pay the court a reasonable fee to cover the costs of the offender's participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work. If the court requires the offender to perform supervised community service work as part of the offender's community control sanction or sentence, the court shall do so in accordance with the following limitations and criteria:

1. The court shall require that the community service work be performed after completion of the term of imprisonment or jail term imposed upon the offender for the violation of subsection (c) of this section, if applicable.
2. The supervised community service work shall be subject to the limitations set forth in divisions (B)(1), (2), and (3) of Ohio R.C. 2951.02.
3. The community service work shall be supervised in the manner described in division (B)(4) of Ohio R.C. 2951.02 by an official or person with the qualifications described in that division. The official or person periodically shall report in writing to the court concerning the conduct of the offender in performing the work.
4. The court shall inform the offender in writing that if the offender does not adequately perform, as determined by the court, all of the required community service work, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of subsection (c) of this section, reduced by the total amount of time that the offender actually was imprisoned under the



sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in Ohio R.C. 2949.08 and 2967.191, and that, if the court orders that the offender be so committed, the court is authorized, but not required, to grant the offender credit upon the period of the commitment for the community service work that the offender adequately performed.

B. If a court, pursuant to subsection (f)(1)A of this section, orders an offender to perform community service work as part of the offender's community control sanction or sentence and if the offender does not adequately perform all of the required community service work, as determined by the court, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of subsection (c) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in Ohio R.C. 2949.08 and 2967.191. The court may order that a person committed pursuant to this division shall receive hour-for-hour credit upon the period of the commitment for the community service work that the offender adequately performed. No commitment pursuant to this division shall exceed the period of the term of imprisonment that the sentencing court could have imposed upon the offender for the violation of subsection (c) of this section, reduced by the total amount of time that the offender actually was imprisoned under that sentence or term and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in Ohio R.C. 2949.08 and 2967.191.

(2) Subsection (f)(1) of this section does not limit or affect the authority of the court to suspend the sentence imposed upon a misdemeanor offender and place the offender under a community control sanction pursuant to Ohio R.C. 2929.25, to require a misdemeanor or felony offender to perform supervised community service work in accordance with division (B) of Ohio R.C. 2951.02, or to place a felony offender under a community control sanction.

(g) (1) If a court suspends an offender's driver's or commercial driver's license or permit or nonresident operating privilege under subsection (e)(5)(d) of this section, the period of the suspension shall be consecutive to, and commence after, the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege that is imposed

under Ohio R.C. Chapter 4506, 4509, 4510, or 4511 or under any other provision of law in relation to the violation of subsection (c) of this section that is the basis of the suspension under division (e)(5)D of this section or in relation to the violation of division (A) of Ohio R.C. 4511.19 that is the basis for that violation of subsection (C) of this section.

(2) An offender is not entitled to request, and the court shall not grant to the offender, limited driving privileges if the offender's license, permit, or privilege has been suspended under subsection (e)(5)D of this section and the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or more of the following:

- A. Subsection (c) of this section;
- B. Any equivalent offense, as defined in Ohio R.C. 4511.18.

(h) (1) If a person violates subsection (c) of this section and if, at the time of the violation, there were two or more children under eighteen years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of subsection (c) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2) A. If a person is convicted of or pleads guilty to a violation of subsection (c) of this section but the person is not also convicted of and does not also plead guilty to a separate charge charging the violation of division (A) of Ohio R.C. 4511.19 that was the basis of the charge of the violation of subsection (c) of this section, both of the following apply:

1. For purposes of the provisions of Ohio R.C. 4511.19 that set forth the penalties and sanctions for a violation of division (A) of Ohio R.C. 4511.19, the conviction of or plea of guilty to the violation of subsection (c) of this section shall not constitute a violation of division (A) of Ohio R.C. 4511.19;

2. For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of Ohio R.C. 4511.19 and that is not described in subsection (H)(2)(a)(i) of this section, the conviction of or plea of guilty to the violation of subsection (c) of this section shall constitute a conviction of or plea of guilty to a violation of division (A) of Ohio R.C. 4511.19.

B. If a person is convicted of or pleads guilty to a violation of subsection (c) of this section and the person also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of Ohio R.C. 4511.19 that was the basis of the charge of the violation of subsection (c) of this section, the conviction of or plea of guilty to the violation of subsection (c) of this section shall not constitute, for purposes of any provision of law that refers to a conviction of or

plea of guilty to a violation of division (A) of Ohio R.C. 4511.19, a conviction of or plea of guilty to a violation of division (A) of Ohio R.C. 4511.19.

(i) As used in this section:

- (1) *Community control sanction* has the same meaning as in Ohio R.C. 2929.01;
- (2) *Limited driving privileges* has the same meaning as in Ohio R.C. 4501.01;
- (3) *Methamphetamine* has the same meaning as in Ohio R.C. 2925.01. (Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference—(ORC 2919.22)**

### **537.101 DISSEMINATION OF IMAGE OF ANOTHER PERSON**

(A) As used in this section:

- (1) "Disseminate" means to post, distribute, or publish on a computer device, computer network, web site, or other electronic device or medium of communication.
- (2) "Image" means a photograph, film, videotape, digital recording, or other depiction or portrayal of a person.
- (3) "Interactive computer service" has the meaning defined in the "Telecommunications Act of 1996," 47 U.S.C. 230, as amended.
- (4) "Internet provider" means a provider of internet service, including all of the following:
  - (a) Broadband service, however defined or classified by the federal communications commission;
  - (b) Information service or telecommunications service, both as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended;
  - (c) Internet protocol-enabled services, as defined in section 4927.01 of the Revised Code.
- (5) "Mobile service" and "telecommunications carrier" have the meanings defined in 47 U.S.C. 153, as amended.
- (6) "Cable service provider" has the same meaning as in section 1332.01 of the Revised Code.
- (7) "Direct-to-home satellite service" has the meaning defined in 47 U.S.C. 303, as amended.
- (8) "Video service provider" has the same meaning as in section 1332.21 of the Revised Code.
- (9) "Sexual act" means any of the following:

- (a) Sexual activity;
- (b) Masturbation;
- (c) An act involving a bodily substance that is performed for the purpose of sexual arousal or gratification;
- (d) Sado-masochistic abuse.

(B) No person shall knowingly disseminate an image of another person if all of the following apply:

- (1) The person in the image is eighteen years of age or older.
- (2) The person in the image can be identified from the image itself or from information displayed in connection with the image and the offender supplied the identifying information.
- (3) The person in the image is in a state of nudity or is engaged in a sexual act.
- (4) The image is disseminated without consent from the person in the image.
- (5) The image is disseminated with intent to harm the person in the image.

(C) This section does not prohibit the dissemination of an image if any of the following apply:

- (1) The image is disseminated for the purpose of a criminal investigation that is otherwise lawful.
- (2) The image is disseminated for the purpose of, or in connection with, the reporting of unlawful conduct.
- (3) The image is part of a news report or commentary or an artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work.
- (4) The image is disseminated by a law enforcement officer, or a corrections officer or guard in a detention facility, acting within the scope of the person's official duties.
- (5) The image is disseminated for another lawful public purpose.
- (6) The person in the image is knowingly and willingly in a state of nudity or engaged in a sexual act and is knowingly and willingly in a location in which the person does not have a reasonable expectation of privacy.
- (7) The image is disseminated for the purpose of medical treatment or examination.

(D) The following entities are not liable for a violation of this section solely as a result of an image or other information provided by another person:

- (1) A provider of interactive computer service;
- (2) A mobile service;
- (3) A telecommunications carrier;

- (4) An internet provider;
- (5) A cable service provider;
- (6) A direct-to-home satellite service;
- (7) A video service provider.

(E) Any conduct that is a violation of this section and any other section of the Revised Code may be prosecuted under this section, the other section, or both sections.

(F)(1)(a) Except as otherwise provided in division (F)(1) (b), (c), or (d) of this section, whoever violates this section is guilty of nonconsensual dissemination of private sexual images, a misdemeanor of the third degree.

(b) If the offender previously has been convicted of or pleaded guilty to a violation of this section, nonconsensual dissemination of private sexual images is a misdemeanor of the second degree.

(c) If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, nonconsensual dissemination of private sexual images is a misdemeanor of the first degree.

(d) If the offender is under eighteen years of age and the person in the image is not more than five years older than the offender, the offender shall not be prosecuted under this section.

(2) In addition to any other penalty or disposition authorized or required by law, the court may order any person who is convicted of a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit all of the following property to the state under Chapter 2981. of the Revised Code:

(a) Any profits or proceeds and any property the person has acquired or maintained in violation of this section that the sentencing court determines to have been acquired or maintained as a result of the violation;

(b) Any interest in, securities of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that the person has established, operated, controlled, or conducted in violation of this section that the sentencing court determines to have been acquired or maintained as a result of the violation.

(G) A victim of a violation of this section may commence a civil cause of action against the offender, as described in section 2307.66 of the Revised Code.

### **537.15 TEMPORARY PROTECTION ORDER.**

(a) No person shall recklessly violate the terms of any of the following:

(1) A protection order issued or consent agreement approved pursuant to Ohio R.C. 2919.26 or 3113.31;

- (2) A protection order issued pursuant to Ohio R.C. 2151.34, 2903.213 or 2903.214;
  - (3) A protection order issued by a court of another state.
- (b)
  - (1) Whoever violates this section is guilty of violating a protection order.
  - (2) Except as otherwise provided in subsection (b)(3) or (4) of this section, violating a protection order is a misdemeanor of the first degree.
  - (3) If the offender previously has been convicted of, pleaded guilty to or been adjudicated a delinquent child for a violation of a protection order issued pursuant to Ohio R.C. 2151.34, 2903.213, 2903.214, 2919.26, or 3113.31; two or more violations of Ohio R.C. 2903.21, 2903.211, 2903.22, or 2911.211, or any combination of those offenses, that involved the same person who is the subject of the protection order or consent agreement, or one or more violations of this section, violating a protection order is a felony and shall be prosecuted under appropriate state law.
  - (4) If the offender violates a protection order or consent agreement while committing a felony offense, violating a protection order is a felony and shall be prosecuted under appropriate state law.
  - (5) If the protection order violated by the offender was an order issued pursuant to Ohio R.C. 2151.34 or 2903.214 that required electronic monitoring of the offender pursuant to that section, the court may require in addition to any other sentence imposed upon the offender that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court. If the court requires under this subsection that the offender be electronically monitored, unless the court determines that the offender is indigent, the court shall order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device.
- (c) It is an affirmative defense to a charge under subsection (a)(3) of this section that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. 2265(b) for a protection order that must be accorded full faith and credit by a court of this State or that it is not entitled to full faith and credit under 18 U.S.C. 2265(c).
- (d) In a prosecution for a violation of this section, it is not necessary for the prosecution to prove that the protection order or consent agreement was served on the defendant if the prosecution proves that the defendant was shown the protection order or consent agreement or a copy of either or a judge, magistrate, or law enforcement officer informed the defendant that a protection order or consent agreement had been issued, and proves that the defendant recklessly violated the terms of the order or agreement.
- (e) As used in this section, "protection order issued by a court of another state" means an injunction or another order issued by a criminal court of another state for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical

proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of another state, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. "Protection order issued by a court of another state" does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2919.27)

### **537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, OTHER TOBACCO PRODUCTS, OR ALTERNATE NICOTINE PRODUCTS.**

(a) As used in this section:

(1) *Age verification* means a service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is 21 years of age or older.

(2) A. *Alternative nicotine product* means, subject to subsection (a)(2)B. of this section, an electronic smoking device, vapor product, or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving or inhaling.

B. *Alternative nicotine product* does not include any of the following:

1. Any cigarette or other tobacco product;
2. Any product that is a "drug" as that term is defined in 21 U.S.C. 321(g)(1);
3. Any product that is a "device" as that term is defined in 21 U.S.C. 321(h);
4. Any product that is a "combination product" as described in 21 U.S.C. 353(g).

(3) *Cigarette* includes clove cigarettes and hand-rolled cigarettes.

(4) *Distribute* means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

(5) *Electronic smoking device* means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. "Electronic smoking device" includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. "Electronic smoking device" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(6) *Proof of age* means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under Ohio R.C. 4507.50 to 4507.52 that shows that a person is ~~18~~ 21 years of age or older.

(7) *Tobacco product* means any product that is made or derived from tobacco, or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, snuff or snus. "Tobacco product" also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(8) *Vapor product* means a product, other than a cigarette or other tobacco product as defined in Chapter 5743. of the Revised Code, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. "Vapor product" includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. "Vapor product" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g). "Vapor product" includes any product containing nicotine, regardless of concentration.

(9) *Vending machine* has the same meaning as "coin machine" in Ohio R.C. 2913.01.



(b) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes, and no other person shall do any of the following:

(1) Give, sell or otherwise distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes:

A. To any person under 21 years of age; or

B. without first verifying proof of age.

(2) Give away, sell or distribute cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes in any place that does not have posted in a conspicuous place a legibly printed sign in letters at least one-half inch high stating that giving, selling or otherwise distributing cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under 21 years of age is prohibited by law;

(3) Knowingly furnish any false information regarding the name, age or other identification of any person under 21 years of age with purpose to obtain cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes for that person;

(4) Manufacture, sell or distribute in this state any pack or other container of cigarettes containing fewer than 20 cigarettes or any package of roll-your-own tobacco containing less than six-tenths of one ounce of tobacco;

(5) Sell cigarettes or alternative nicotine products in a smaller quantity than that placed in the pack or other container by the manufacturer;

(6) Give, sell or otherwise distribute alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes over the internet or through another remote method without age verification-;

(7) Allow an employee under eighteen years of age to sell any tobacco product;

(8) Give away or otherwise distribute free samples of cigarettes, other tobacco products, alternative nicotine products, or coupons redeemable for cigarettes, other tobacco products, or alternative nicotine products.

(c) No person shall sell or offer to sell cigarettes, other tobacco products or alternative nicotine products by or from a vending machine, except in the following locations:

- (1) An area within a factory, business, office, or other place not open to the general public;
- (2) An area to which persons under 21 years of age are not generally permitted access;
- (3) Any other place not identified in subsection (c)(1) or (2) of this section, upon all of the following conditions:

A. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person, so that all cigarettes, other tobacco product and alternative nicotine product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway or outer-waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person.

B. The vending machine is inaccessible to the public when the place is closed.

C. A clearly visible notice is posted in the area where the vending machine is located that states the following in letters that are legibly printed and at least one-half inch high:

"It is illegal for any person under the age of 21 to purchase tobacco or alternative nicotine products."

(d) The following are affirmative defenses to a charge under subsection (b)(1) of this section:

- (1) The person under 21 years of age was accompanied by a parent, spouse who is 21 years of age or older, or legal guardian of the person under 21 years of age.
- (2) The person who gave, sold or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under 21 years of age under subsection (b)(1) of this section is a parent, spouse who is 21 years of age or older, or legal guardian of the person under 21 years of age.

(e)(1) It is not a violation of subsection (b)(1) or (2) of this section for a person to give or otherwise distribute to a person under 21 years of age cigarettes, other tobacco products, alternative nicotine products or papers used to roll cigarettes while the person under 21 years of age is participating in a research protocol if all of the following apply:

A. The parent, guardian or legal custodian of the person under 21 years of age has consented in writing to the person under 21 years of age participating in the research protocol;

B. An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol;

C. The person under 21 years of age is participating in the research protocol at the facility or location specified in the research protocol.

(2) It is not a violation of division (b)(1) or (2) of this section for an employer to permit an employee eighteen, nineteen, or twenty years of age to sell a tobacco product.

(F)(1) No delivery service shall accept from, transport or deliver to, or allow pick-up by, a person under twenty-one years of age with respect to any of the following:

- (a) Alternative nicotine products;
- (b) Papers used to roll cigarettes;
- (c) Tobacco products other than cigarettes.

(2) A delivery service shall require proof of age as a condition of accepting, transporting, delivering, or allowing pickup of the items described in divisions (f)(1)A to C of this section.

(g) Whoever violates subsection (b)(1), (2), (4), (5) (6), (7), or (8), (c), or (f) of this section is guilty of illegal distribution of cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(1), (2), (4), (5) or (6) or (c) of this section, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(h) Whoever violates subsection (b)(3) of this section is guilty of permitting a person under 21 years of age to use cigarettes, other tobacco products, or alternative nicotine products. Except as otherwise provided in this subsection, permitting a person under 21 years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of subsection (b)(3) of this section, permitting a person under 21 years of age to use cigarettes, other tobacco products, or alternative nicotine products is a misdemeanor of the third degree.

(i) Any cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes that are given, sold or otherwise distributed to a person under 21 years of age in violation of this section and that are used, possessed, purchased or received by a person under 21 years of age in violation of Ohio R.C. 2151.87 are subject to seizure and forfeiture as contraband under

Ohio R.C. Chapter 2981.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2927.02)

### **541.08 Discriminatory Intimidation**

- (a) No person shall violate Ohio R.C. 2903.13, 2903.21, 2903.22, 2907.06, 2909.06, 2909.07, 2911.21, 2913.02, 2917.02, 2917.11, 2917.21(A)(3) to (5), 2923.162, or 3767.32 or Sections 509.01, 509.03, 521.08, 533.04, 537.03, 537.05, 537.06, 537.10(a)(3) to (5), 541.03, 541.04, 541.05, 545.05, or 549.08 of the General Offenses Code by reason of or where one of the motives, reasons or purpose for the commission of the offense is the victim's race, color, religion, sex, sexual orientation, gender identity or expression, ancestry, age, disability, familial status, military status, or national origin.
- (b) In a prosecution under this section the offender's motive, reason or purpose for the commission of the offense may be shown by the offender's temporarily related conduct or statements before, during or after the offense, including ethnic, sexual orientation, religious or racial slurs, and by the totality of the facts, circumstances and conduct surrounding the commission of the offense.
- (c) Whoever violates this section is guilty of discriminatory intimidation. Discriminatory intimidation is a misdemeanor of the first degree.
- (d) This section does not apply if the facts alleged in the complaint would constitute a felony under O.R.C. 2927.12.

**State law reference(s)**—(ORC 2927.12)

### **545.05 PETTY 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;
  - (5) By intimidation.
- (b) (1) Whoever violates this section is guilty of theft.
  - (2) Except as otherwise provided in this subsection, a violation of this section is ~~petty~~

misdemeanor theft, a misdemeanor of the first degree.

- (3) Theft is a felony and shall be prosecuted under appropriate State law if:
- A. The value of the property or services stolen is \$1,000.00 or more and is less than \$7,500.00 or if the property stolen is any of the property listed in Ohio R.C. 2913.71; or
  - B. The value of the property or services stolen is \$7,500.00 or more and is less than \$150,000.00, a violation of this section is grand theft;
  - C. The value of the property or services stolen is \$150,000.00 or more and is less than \$750,000.00, a violation of this section is aggravated theft;
  - D. The value of the property or services is \$750,000.00 or more and is less than \$1,500,000.00, a violation of this section is aggravated theft;
  - E. The value of the property or services stolen is \$1,500,000.00 or more, a violation of this section is aggravated theft of \$1,500,000.00 or more;
  - F. The victim of the offense is an elderly person, disabled adult, active-duty service member, or spouse of an active
  - G. duty service member, a violation of this subsection is theft from a person in a protected class,
  - H. The property stolen is a firearm or dangerous ordnance, a violation of this subsection is grand theft;
  - I. property stolen is a motor vehicle, a violation of this section is grand theft of a motor vehicle;
  - J. The property stolen is any dangerous drug, a violation of this section is theft of drugs;
  - K. property stolen is a police dog or horse or an assistance dog and the offender knows or should know that the property stolen is a police dog or horse or an assistance dog, a violation of this section is theft of a police dog or horse or an assistance dog;
  - L. property stolen is anhydrous ammonia, a violation of this section is theft of anhydrous ammonia;
  - M. property stolen is a special purpose article as defined in Ohio R.C. 4737.04 or is a bulk merchandise container as defined in Ohio R.C. 4737.012, a violation of this section is theft of a special purpose article or articles or theft of a bulk merchandise container or containers.

- (c) In addition to the offenses/penalties described in subsection (b) of this section, if the

offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline that was dispensed into the fuel tank of the motor vehicle or into another container, the court may do one of the following:

- (1) Unless subsection (c)(2) of this section applies, suspend for not more than six months the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege;
- (2) If the offender's driver's license, probationary driver's license, commercial driver's license, temporary instruction permit, or nonresident operating privilege has previously been suspended pursuant to subsection (c)(1) of this section, impose a class seven suspension of the offender's license, permit, or privilege from the range specified in Ohio R.C. 4510.02(A)(7), provided that the suspension shall be for at least six months.
- (3) The court, in lieu of suspending the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege pursuant to subsections (c)(1) or (2) of this section, instead may require the offender to perform community service for a number of hours determined by the court.
- (d) In addition to the penalties described in subsection (b) hereof, if the offender committed the violation by stealing rented property or rental services, the court may order that the offender make restitution pursuant to Ohio R.C. 2929.18 or 2929.28. Restitution may include, but is not limited to, the cost of repairing or replacing the stolen property, or the cost of repairing the stolen property and any loss of revenue resulting from deprivation of the property due to theft of rental services that is less than or equal to the actual value of the property at the time it was rented. Evidence of intent to commit theft of rented property or rental services shall be determined pursuant to the provisions of Ohio R.C. 2913.72.
- (e) The sentencing court that suspends an offender's license, permit, or nonresident operating privilege under subsection (c) of this section may grant the offender limited driving privileges during the period of the suspension in accordance with Ohio R.C. Chapter 4510. (Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference—**(ORC 2913.02)

#### **549.04 IMPROPERLY HANDLING FIREARMS IN A MOTOR VEHICLE.**

(a) No person shall knowingly transport or have a firearm in a motor vehicle, unless the person may lawfully possess that firearm under applicable law of this state or the United States, the firearm is unloaded, and the firearm is carried in one of the following ways:

- (1) In a closed package, box or case;

- (2) In a compartment 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) If the firearm is at least 24 inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least 18 inches in length, either in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.
- (b) No person who has been issued a concealed handgun license, who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in Ohio R.C. 5503.34, and who is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, shall do any of the following:
- (1) Fail to promptly inform any law enforcement officer who approaches the vehicle while stopped that the person has been issued a concealed handgun license and that the person then possesses or has a loaded handgun in the motor vehicle;
  - (2) Fail to promptly inform the employee of the unit who approaches the vehicle while stopped that the person has been issued a concealed handgun license and that the person then possesses or has a loaded handgun in the commercial motor vehicle.
  - (3) Knowingly fail to remain in the motor vehicle while stopped, or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer.
  - (4) Knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.
- (c) (1) This section does not apply to any of the following:
- A. An officer, agent or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's or employee's duties;
  - B. Any person who is employed in this State, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the requirements of Ohio R.C. 109.801, unless the appointing

authority of the person has expressly specified that the exemption provided in subsection (c)(1)B. does not apply to the person.

(2) Subsection (a) of this section does not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, both of the following apply:

A. The person transporting or possessing the handgun is carrying a valid concealed handgun license or is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of Ohio R.C. 2923.125.

B. The person transporting or possessing the handgun is not knowingly in a place described in division (B) of Ohio R.C. 2923.126.

(3) Subsection (a) of this section does not apply to a person if all of the following apply:

A. The person possesses a valid all-purpose vehicle permit issued under Ohio R.C. 1533.103 by the Chief of the Division of Wildlife.

B. The person is on or in an all-purpose vehicle as defined in Ohio R.C. 1531.01 or a motor vehicle during the open hunting season for a wild quadruped or game bird.

C. The person is on or in an all-purpose vehicle as defined in Ohio R.C. 1531.01 on private or publicly owned lands or on or in a motor vehicle that is parked on a road that is owned or administered by the Division of Wildlife.

(d) (1) The affirmative defenses authorized in Section 549.02(d)(1) and (2) are affirmative defenses to a charge under subsection (a) that involves a firearm other than a handgun.

(2) It is an affirmative defense to a charge under subsection (a) of improperly handling firearms in a motor vehicle that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on the actor's own property, provided that the affirmative defense is not available unless the person, immediately prior to arriving at the actor's own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited by subsection (a) while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(e) (1) No person who is charged with a violation of subsection (a) shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(2) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty



to a violation of subsection (b) of this section as it existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of subsection (b) of this section on or after September 30, 2011, the person may file an application under Ohio R.C. 2953.35 requesting the expungement of the record of conviction.

(3) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of subsection (a) of this section as the subsection existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of subsection (a) of this section on or after September 30, 2011, due to the application of subsection (b)(4) of this section as it exists on and after September 30, 2011, the person may file an application under Ohio R.C. 2953.35 requesting the expungement of the record of conviction.

(f) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. Violation of subsection (a) of this section is a misdemeanor of the fourth degree. Except as otherwise provided in this subsection, a violation of subsection (b)(1) or (b)(2) of this section is a misdemeanor of the first degree, and, in addition to any other penalty or sanction imposed for the violation, the offender's concealed handgun license shall be suspended pursuant to Ohio R.C. 2923.128(A)(2). If at the time of the stop of the offender for a traffic stop, for another law enforcement purpose, or for a purpose defined in Ohio R.C. 5503.34 that was the basis of the violation any law enforcement officer involved with the stop or the employee of the motor carrier enforcement unit who made the stop had actual knowledge of the offender's status as a licensee, a violation of subsection (b)(1) or (b)(2) of this section is a minor misdemeanor, and the offender's concealed handgun license shall not be suspended pursuant to division (A)(2) of Ohio R.C. 2923.128. A violation of subsection (b)(3) or (4) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of subsection (b)(3) or (4) of this section, a felony and shall be prosecuted under appropriate State law. In addition to any other penalty or sanction imposed for a misdemeanor violation of subsection (b)(3) or (4) of this section, the offender's concealed handgun license shall be suspended pursuant to Ohio R.C. 2923.128(A)(2).

(g) If a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the motor vehicle surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this subsection, division (B) of Ohio

R.C. 2923.163 applies.

(h) As used in this section:

(1) *Motor vehicle, street* and *highway* have the same meanings as in Ohio R.C. 4511.01.

(2) A. *Unloaded* means:

1. With respect to a firearm other than a firearm described in subsection (h)(2)B. of this section, that no ammunition is in the firearm in question, no magazine or speed loader containing ammunition is inserted into the firearm in question and one of the following applies:

(A) There is no ammunition in a magazine or speed loader that is in the vehicle in question and that may be used with the firearm in question.

(B) Any magazine or speed loader that contains ammunition and that may be used with the firearm in question is stored in a compartment within the vehicle in question that cannot be accessed without leaving the vehicle or is stored in a container that provides complete and separate enclosure.

2. For the purposes of subsection (h)(2)A.1.b. of this section, a "container that provides complete and separate enclosure" includes, but is not limited to, any of the following:

(A) A package, box or case with multiple compartments, as long as the loaded magazine or speed loader and the firearm in question either are in separate compartments within the package, box, or case, or, if they are in the same compartment, the magazine or speed loader is contained within a separate enclosure in that compartment that does not contain the firearm and that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents or the firearm is contained within a separate enclosure of that nature in that compartment that does not contain the magazine or speed loader;

(B) A pocket or other enclosure on the person of the person in question that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents.

3. For the purposes of subsection (h)(2)A. of this section, ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded

into a magazine or speed loader.

B. *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.

(3) *Commercial motor vehicle* has the same meaning as in Ohio R.C. 4506.25(A).

(4) *Motor carrier enforcement unit* means the motor carrier enforcement unit in the Department of Public Safety, Division of State Highway Patrol, that is created by Ohio R.C. 5503.34.

(i) Subsection (h)(2) of this section does not affect the authority of a person who is carrying a valid concealed handgun license to have one or more magazines or speed loaders containing ammunition anywhere in a vehicle, without being transported as described in that subsection, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any other provision of this chapter or Ohio R.C. Chapter 2923. A person who is carrying a valid concealed handgun license may have one or more magazines or speed loaders containing ammunition anywhere in a vehicle without further restriction, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any provision of this chapter or Ohio R.C. Chapter 2923.

(Ord. No. 0002-2022, § 1(Exh. A), 2-22-22)

**State law reference**—(ORC 2923.16)

Section 7. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule, or regulation adopted or issued in pursuance thereof shall be punished by a fine or imprisonment, or both. The fine shall not exceed five hundred dollars (\$500.00) and imprisonment shall not exceed six months.

Section 8. If any section, subsection, sentence, clause, phrase or portion of the Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances. The governing authority of the City of Gahanna, Ohio hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

Section 9. All ordinances and parts of ordinances in conflict herewith are expressly repealed.

Section 10. The adoption date of this ordinance is \_\_\_\_\_ and the effective date of this ordinance shall be \_\_\_\_\_.

ORDAINED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

City of Gahanna, Ohio

X

\_\_\_\_\_  
President of Council

ATTEST:

X

\_\_\_\_\_  
Mayor

I certify that the foregoing ordinance was duly passed by the governing authority of the said city council on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

X

\_\_\_\_\_  
Clerk of Council

APPROVED AS TO FORM:

X

\_\_\_\_\_  
City Attorney