

IN THE SUPREME COURT OF OHIO

State of Ohio, : Case Nos. 2008-1942 and 2008-2170  
 :  
 Plaintiff-Appellant, : On Appeal and Certified Conflict from  
 : the Union County Court of Appeals,  
 v. : Third Appellate District, No. 14-07-20  
 :  
 Raynell Robinson, :  
 :  
 Defendant-Appellee :

---

**MERIT BRIEF OF APPELLEE RAYNELL ROBINSON**

---

David W. Phillips, 0019966  
Union County Prosecutor

Melissa A. Chase, 0042508  
Assistant Prosecuting Attorney  
Counsel of Record

221 West Fifth Street, Suite 333  
Marysville, Ohio 43040  
(937) 645-4190; (937) 645-4191 (fax)  
mchase@co.union.oh.us

Richard Cordray, 0038034  
Ohio Attorney General  
Benjamin C. Mizer, 0083089  
Solicitor General, Counsel of Record  
Elisabeth A. Long, 0084128  
Deputy Solicitor  
Lori J. Weisman, 0018480  
Assistant Solicitor

30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
614-466-8980; 614-466-5087 fax  
bmizer@ag.state.oh.us

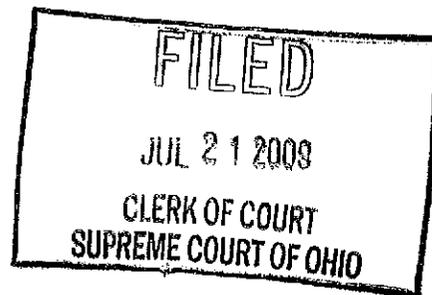
Counsel for Amicus,  
the Ohio Attorney General

Office of the Ohio Public Defender

By: Stephen P. Hardwick, 0062932  
Assistant Public Defender

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167 (fax)  
stephen.hardwick@opd.ohio.gov

Counsel for Appellee,  
Raynell Robinson



**TABLE OF CONTENTS**

**Page No.**

**TABLE OF AUTHORITIES** .....iii

**STATEMENT OF THE CASE AND FACTS** ..... 1

**ARGUMENT** ..... 6

**PROPOSITION OF LAW NO. I:**

**The General Assembly intended that the prohibition against the disruption of public Services, R.C. 2909.04, apply only to only utility services provided to the public as a whole or any sizable segment of the public, not the destruction of a single, private telephone.** ..... 6

**PROPOSITION OF LAW NO. II:**

**A person does not “substantially impair” emergency services when those services arrive only briefly later than they otherwise would have arrived and where the State fails to prove any substantial effect on anyone from the short delay.** ..... 8

**CONCLUSION** .....15

**CERTIFICATE OF SERVICE** .....15

**APPENDIX**

Fifth Amendment, United States Constitution ..... A-1

Fourteenth Amendment, United States Constitution ..... A-2

R.C. 2903.10 ..... A-4

R.C. 2903.31 ..... A-7

R.C. 2903.341 ..... A-11

R.C. 2905.01 ..... A-15

R.C. 2907.03 ..... A-19

R.C. 2909.02 .....	A-23
R.C. 2909.04 .....	A-25
R.C. 2909.06 .....	A-28
R.C. 2909.08 .....	A-30
R.C. 2921.04 .....	A-33
R.C. 2921.32 .....	A-36
R.C. 2921.321 .....	A-40
R.C. 2921.33 .....	A-47
R.C. 2921.331 .....	A-49
R.C. 2929.01 .....	A-53
Black's Law, 8 <sup>th</sup> Edition, p. 1469.....	A-67

**TABLE OF AUTHORITIES**

**Page No.**

**CASES:**

E. Ohio Gas Co. v. Pub. Util. Comm. (1988), 39 Ohio St.3d 295 .....10

Jackson v. Virginia (1979), 443 U.S. 307, 99 S.Ct. 2781,  
61 L.Ed.2d 560 ..... 8

In re Andrew, 119 Ohio St. 3d 466, 2008-Ohio-4791.....10

Myers v. Toledo, 110 Ohio St.3d 218, 2006-Ohio-4353.....10

State v. Jackson, 102 Ohio St.3d 380, 2004-Ohio-3206 ..... 6

State v. Jenks (1991), 61 Ohio St.3d 259, 574 N.E.2d 492 ..... 8

State ex rel. Mitman v. Greene Cty. Bd. of Commrs. (1916),  
94 Ohio St. 296 .....10

State ex rel. Pratt v. Weygandt (1956), 164 Ohio St. 463 ..... 7

State v. Zeh (1987), 31 Ohio St. 3d 99.....1,14

**CONSTITUTIONAL PROVISIONS:**

Fifth Amendment, United States Constitution ..... 8

Fourteenth Amendment, United States Constitution ..... 8

**STATUTES:**

R.C. 2903.31 .....12

R.C. 2903.341 .....12

R.C. 2905.01 .....12

R.C. 2907.03 .....13

R.C. 2909.02 .....12

R.C. 2909.04 .....*passim*

R.C. 2909.06 .....	12
R.C. 2909.08 .....	12
R.C. 2903.10 .....	11
R.C. 2921.04 .....	7
R.C. 2921.23 .....	7
R.C. 2921.32 .....	7
R.C. 2921.321 .....	7
R.C. 2921.33 .....	7
R.C. 2921.331 .....	7
R.C. 2929.01 .....	11
<b>OTHER:</b>	
Black's Law, 8 <sup>th</sup> Edition, p. 1469.....	11

## **Statement of the Facts**

The destruction of the cell phone in this case did not substantially delay the emergency response. When the first officer arrived at the apartment complex, he “briefly” interviewed a woman who was outside. During that “brief[]” interview, his fellow officer arrived at the scene of the 911 call. They “very quickly” called for an ambulance, which arrived within “a few minutes.”

### **A fight and calls to 911.**

At 3:33 a.m., Antonio Robinson called 911 to report that Appellee Raynell Robinson was assaulting him. T.p. 69-70. Heather Hoge was watching from a nearby truck. T.p. 69. During that phone call, Antonio told the dispatcher that they needed a “squad” at the Meadows apartment complex. State’s Exhibit 1. The dispatcher asked Antonio for the address, but Antonio said that he did not know what address they were at. Id. The conversation lasted 27 seconds. Id. The call ended when Appellee Robinson threw Antonio’s phone on the ground. T.p. 69-70. According to Ms. Hoge, Antonio and Mr. Robinson Robinson “got into it again.” T.p. 72. She called 911 while they were fighting. 71, 83. That conversation lasted a minute and a half. State’s Exhibit 1. Around that time, Mr. Robinson and Antonio “ended up on the ground, and that’s when [she] had to click off [her] cell phone.” T.p. 72. She was afraid to leave the truck because she believed that Mr. Robinson “would have hit” her. Id. She called a second time, setting the phone on the seat so that Mr. Robinson could not see it. T.p. 73. That call also lasted a minute and a half. State’s Exhibit 1.

The dispatcher testified that the “time of the recordings” was 3: 33 a.m. T.p. 47. It is unclear if that is the time of the last call or the first call. The State did not introduce any time logs to show when the calls were actually made. After the first call, the dispatcher sent police, fire and ambulance services to the Meadows apartment complex. T.p. 48.

**The police respond.**

Marysville Police Officers Robert Bartholomew and Erik Collier responded to the call. The State did not introduce evidence to show how long it took for the officers to reach the complex after the first dispatch, but when Officer Collier arrived at the complex, he saw Judy Newhard crying and stopped to speak with her. T.p. 107. Collier interviewed Newhard only “very briefly.” T.p. 114. As Officer Collier was “briefly” speaking with Newhard, Bartholomew arrived at the complex. T.p. 107. Bartholomew “did a quick circle through” a part of the complex, T.p. 95, and then “went ahead and went into the high end area” where a man standing outside pointed Bartholomew to a row of apartments around the corner. T.p. 96-7. Bartholomew went around the corner and found Appellee Raynell Robinson and two other men. T.p. 96-7. Bartholomew radioed to Collier, who was still holding his “very brief[]” conversation with Ms. Newhard. T.p. 107-8. Officer Collier arrived at the scene “within seconds.” The officers requested an ambulance “pretty quickly” and it arrived within “a few minutes[.]” T.p. 111-2.

The basis of the State’s assertion of a fifteen to twenty minute delay appears to be from Officer Bartholomew’s testimony that the officers “got there

at 3:30” and that he spoke to witness Hoge “[n]o later than 3:45.” T.p. 102, Slip. Op. at ¶9. But Officer Bartholomew did not immediately speak with Ms. Hoge upon arriving at the scene. Instead, he testified that when he arrived, Mr. Robinson approached and asked the officer to leave. T.p. 97. The officer then worked to calm Mr. Robinson down, to separate the people, and to move Mr. Robinson to a nearby lawn chair. T.p. 97-8. He interviewed Robinson “slightly thereafter[.]” T.p. 98. The officer did not say when in the process he eventually interviewed Ms. Hoge.

When Officer Collier arrived, he went to a pick up truck that was parked at the scene to identify the people inside. T.p. 108. One was Ms. Hoge, and one Mr. Robinson’s brother, Anthony. The third was Mr. Robinson’s nephew Antonio. Id. Antonio, who had a “severely cut lip[,]” came out of the truck, spoke with the officer, and tried to calm the other two passengers down. T.p. 108. Officer Collier tried to interview Anthony, but Collier said Anthony was angry and wanted them to leave. T.p. 109. Ms. Hoge “didn’t say too much.” Id. The officers processed the scene, cited Appellee Robinson with disorderly conduct, and left without arresting anyone. T.p. 110-16.

### **Summary**

Officer Bartholomew arrived at the scene “briefly” after he and his colleague arrived at the complex. They “pretty quickly” called an ambulance, which arrived within “a few minutes.” No one testified that the police could have stopped any crime or gathered any more evidence but for their “brief[.]” delay. No one testified that the ambulance’s delay of a “few minutes” caused

any harm to Antonio, Heather Hoge, or anyone else. No one testified that the delay had any “substantial” effect on anyone.

The fight quickly broke up. The police arrived. The police spoke with all of the witnesses. The police gathered evidence. The police issued a citation to Mr. Robinson. The police were as effective as if they had not been “briefly” delayed. The disruption of the phone call may have “impaired” the police response, but not in any substantive way.

## **Summary of Argument**

The court of appeals correctly found that when read in the context of the first two paragraphs of R.C. 2909.04, the General Assembly intended the third paragraph to apply to the “substantial interference with public emergency systems and utilities, and not destruction of a single, private telephone or cell phone.” Slip. Op. at ¶30. The decision makes sense because courts are required to interpret statutes as a whole, and not to take individual paragraphs out of the context the General Assembly intended.

But if the State is correct that R.C. 2909.04(A)(3) concerns individual impairment of individual emergency services, Mr. Robinson still prevails because the State has not shown that his destruction of a cell phone impaired an emergency response in any substantial way.

## Argument

### Proposition of Law No. I:

**The General Assembly intended that the prohibition against the disruption of public services, R.C. 2909.04, apply only to only utility services provided to the public as a whole or any sizable segment of the public, not the destruction of a single, private telephone.**

The court of appeals correctly held that the General Assembly intended R.C. 2909.04(A) to prevent disruption of public services, not individual services. Slip. Op. at ¶24-30. When read in the context of the first two paragraphs, paragraph (A)(3) concerns actions that would substantially impair emergency services to respond to emergencies generally:

No person, purposely by any means or knowingly by damaging or tampering with any property, shall . . . [s]ubstantially impair the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

The references to “law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel” are general. The references to “any person or property” refer to the public generally.

If this Court finds that the General Assembly was ambiguous about whether references to “law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel” and to “any person or property” are to the public generally, it may examine the statute in pari materia. State v. Jackson, 102 Ohio St.3d 380, 2004-Ohio-3206, ¶34;

State ex rel. Pratt v. Weygandt (1956), 164 Ohio St. 463, paragraph two of the syllabus.

The General Assembly placed the emergency services provision in a code section generally concerned with protecting public services instead of in a section concerning the hindrance of law enforcement officers in specific points. R.C. 2909.04(A)(1) and (2) concern general services (“television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;” or “public transportation. . . , or water supply, gas, power, or other utility service to the public”). Emphasis supplied.

By contrast, the provision could have been placed in sections governing interference with specific officers in specific cases. See, e.g., R.C. 2921.04 (victim intimidation); R.C. 2921.23 (failure to aid a law enforcement officer); R.C. 2921.32 (obstructing justice); R.C. 2921.321 (assaulting or harassing police dog or horse or service dog); R.C. 2921.33 (resisting arrest); R.C. 2921.331 (failure to comply with order or signal of police officer).

Accordingly, the court of appeals correctly held that the offense of disrupting public services applied to disrupting public services, not individual phone service.

**Proposition of Law No. II:**

**A person does not “substantially impair” emergency services when those services arrive only briefly later than they otherwise would have arrived and when the State fails to prove any substantial effect on anyone from the short delay.**

**The State and Amicus incorrectly equate delay with impairment, and impairment with substantial impairment.**

The State has not shown a substantial impairment because there was none. The State introduced no evidence to show that the delay, which its own police officer witness called “brief[,]” was of any practical consequence. The State’s failure to introduce any evidence that the impairment was substantial left the court of appeals with no choice but to hold that the evidence was insufficient because no “rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” State v. Jenks (1991), 61 Ohio St.3d 259; Jackson v. Virginia (1979), 443 U.S. 307. As a result, the conviction violated Mr. Robinson’s right under the Fifth and Fourteenth Amendments to the United States Constitution to require the State to prove each element beyond a reasonable doubt. Id.

**The State never attempted to prove that the “brief[]” delay in police response made a difference to anyone.**

A substantial impairment is one that matters. If an impairment has no practical effect, it is not substantial. The briefs of the State and Amicus equate a substantial impairment with simple impairment. In fact, the State was direct:

When time is of the essence in so many of the domestic violence incidents, any delay caused solely by the Defendant’s actions

substantially impairs law enforcement and other emergency personnel's ability to respond to an emergency situation.

State's Brief at 16. See also, Brief of Amicus at 14-15. A delay may be an impairment, but not necessarily a substantial one. The State does not show that the delay harmed anyone at all, let alone that the delay substantially harmed anyone. The victim had broken teeth and required stitches, T.p. 91-2, but the State failed to prove or even argue that the "few minutes" of delay in arrival of the ambulance made any difference at all. And given that many people needing stitches wait a lot longer than a "few minutes" for treatment in an emergency room, again, the State failed to show any substantial delay.

**The General Assembly raised the burden of proof as to impairment of emergency services, as opposed to other public services.**

The emergency services section of R.C. 2909.04, which Mr. Robinson was charged with violating, requires proof the defendant sought to "[s]ubstantially impair" public services. The other two paragraphs of the same section require merely a showing that the defendant sought to "impair" a public service:

Disruption of Public Services, 2909.04 (emphasis supplied)

(A) No person, purposely by any means or knowingly by damaging or tampering with any property, shall do any of the following:

(1) Interrupt or impair television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

(2) Interrupt or impair public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;

(3) Substantially impair the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

(B) No person shall knowingly use any computer, computer system, computer network, telecommunications device, or other electronic device or system or the internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.

The inclusion of the word “substantial” in paragraph (A)(3) and its omission from paragraphs (A)(1), (A)(2), and (B) demonstrate that the General Assembly intended a higher burden of proof for impairment of emergency services. “The canon *expressio unius est exclusio alterius* tells us that the express inclusion of one thing implies the exclusion of the other.” Myers v. Toledo, 110 Ohio St.3d 218, 2006-Ohio-4353, ¶24. Further, “if possible the court should give meaning to every word in every act.” In re Andrew, 119 Ohio St.3d 466, 2008-Ohio-4791, at ¶6, quoting State ex rel. Mitman v. Greene Cty. Bd. of Commrs. (1916), 94 Ohio St. 296, 308; and citing E. Ohio Gas Co. v. Pub. Util. Comm. (1988), 39 Ohio St.3d 295, 299 (“a basic rule of statutory construction [is] that words in statutes should not be construed to be redundant, nor should any words be ignored”).

**A substantial impairment is more than a “significant” impairment.**

“Substantial[]” impairment does not mean “any” impairment, or even a “significant” impairment. It means an impairment that made some practical difference. The criminal code does not define “substantial” or “substantial

impairment.” But it does define “substantial risk” as “a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.” R.C. 2929.01(A)(8). If a “substantial risk” is a “strong” as opposed to a “significant” possibility, then a “substantial impairment” is a “strong” as opposed a merely “significant” impairment.

In the context of impairment, “strong” means an impairment that matters. The root of “substantial” is “substance.” And “substance” generally means the “essence of something; the essential quality of something, as opposed to its mere form[.]” Black’s Law, 8<sup>th</sup> Edition, p. 1469. The “essence” of impairment is preventing someone from accomplishing something. Section 2903.10(A) defines a “[f]unctionally impaired person” as someone “who has a physical or mental impairment that prevents him from providing for his own care or protection. . . .” We would not say a person is “impaired” unless they can’t do something. No one would say that a police officer was “substantially impaired” unless that impairment actually caused the officer to not do something of substance. Here, there is no evidence that the delay caused anything of substance to happen, or stopped anything of substance from happening.

**A substantial impairment is more than a “substantial risk” or impairment.**

The State and the Attorney General do make a case that destroying a single cell phone may lead to a substantial impairment of law enforcement in specific cases. In effect, they have shown that disrupting a call to 911 poses a

“substantial risk” of impairment of emergency services. They have cited cases in which the State has proven that a defendant actually prevented law enforcement from assisting. But what they have not shown is that Mr. Robinson’s act of destroying the cell phone prevented law enforcement from doing anything or stopping anything.

Further, the General Assembly could have criminalized causing “a substantial risk that the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm might be impaired.” The General Assembly has done so in other statutes. See, e.g., R.C. 2903.31 (A) (hazing); R.C. 2903.341(B) (patient endangerment); R.C. 2905.01(B) (kidnapping); 2909.02(A)(1) and (3) (aggravated arson); R.C. 2909.06(A) (criminal damaging or endangering); 2909.08 (D) and (E) (endangering aircraft or airport operations).

But when crafting the disruption of public services statute, the General Assembly required more than a substantial risk of impairment. The General Assembly required the State to prove that a defendant “substantially impaired” the ability of law enforcement to respond to an emergency. And in this case, the State failed to prove that the “brief[]” delay made any substantial difference to anyone.

**The discussion of “substantially impaired” in State v. Zeh (1987), 31 Ohio St. 3d 99, is not helpful because the definition of “substantially” was not at issue in the case.**

In State v. Zeh (1987), 31 Ohio St. 3d 99, this Court looked at the definition of “substantial impairment” of a sexual assault victim under R.C. 2907.03, but this Court did not address what was meant by “substantial” because the question was not appear at issue. Instead, the parties disputed whether the alleged victim’s impairment resulted from a generally low I.Q. or some other specific factor and on how that impairment could be proven. In that discussion, this Court noted that:

The phrase “substantially impaired,” in that it is not defined in the Ohio Criminal Code, must be given the meaning generally understood in common usage. As cogently stated by the appellate court, substantial impairment must be established by demonstrating a present reduction, diminution or decrease in the victim’s ability, either to appraise the nature of his conduct or to control his conduct. This is distinguishable from a general deficit in ability to cope, which condition might be inferred from or evidenced by a general intelligence or I.Q. report.

Zeh, at 103-4.

The parties in Zeh were not disputing the degree of impairment. Accordingly, this Court limited the syllabus, and therefore the holdings of the case, to the disputed issues of whether the defense should have been allowed to conduct an independent psychological examination of the alleged victim:

1. Generally, a prosecution witness for the state has the right to refuse an extra-judicial, pre-trial interview, deposition, or examination by an agent of the defendant.
2. When the mental condition of the victim-potential witness is a contested, essential element of the crime charged, the defense may move the court that the state be barred from utilizing evidence of such mental condition obtained in a clinical interview of the

witness prior to trial, unless such witness voluntarily agrees to a court-appointed, independent examination with the results being made available to both sides.

Zeh at paragraphs one and two of the syllabus. Further, at the time this Court issued Zeh, “the syllabus of a Supreme Court opinion states the controlling point or points of law decided in and necessarily arising from the facts of the specific case before the Court for adjudication.” S.Ct. R.Rep.Op. 1(B) (1987).

**Sometimes seconds matter. Sometimes they don't.**

When responding to an emergency, sometimes seconds are a matter of life and death. But sometimes minutes make no difference. And, as anyone who has arrived at a busy emergency room needing stitches knows, sometimes waits can seem long. In this case, the State failed to prove that any delay caused anyone to be injured, any medical treatment to be significantly (let alone, “substantially”), delayed, or any evidence lost.

To the contrary, the 911 operator dispatched police to the complex based on the first call. T.p. 48. Officer Bartholomew arrived at the scene “briefly” after he and his colleague arrived at the complex. T.p. 114. They “pretty quickly” called an ambulance, which arrived within “a few minutes.” T.p. 111-2. No one testified that the police could have stopped any crime or gathered any more evidence but for their “brief[]” delay. No one testified that the ambulance’s delay of a “few minutes” caused any harm to Antonio, Heather Hoge, or anyone else. No one testified that the delay had any “substantial” effect on anyone.

### **Conclusion**

Disruption of a public service requires disruption of a truly public service, not just an individual cell phone. And even if destruction of a single cell phone may be sufficient to prove the charge, the State must prove that the destruction substantially impaired the ability to respond to the emergency. The State failed to meet its burden in this case. This Court should affirm the decision of the court of appeals.

Respectfully submitted,

Office of the Ohio Public Defender



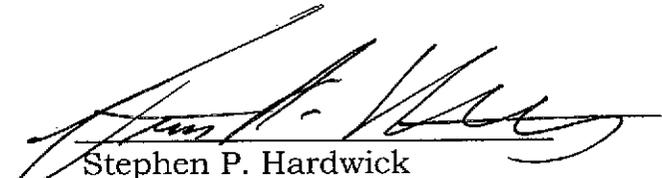
By: Stephen P. Hardwick (0062932)  
Assistant Public Defender

250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394  
(614) 752-5167 (Fax)

Counsel for Raynell Robinson

### **Certificate of Service**

I certify that on July 21, 2009, a copy of the foregoing was served via email to Melissa A. Chase, Assistant Prosecuting Attorney, 937-645-4191 and [mchase@co.union.oh.us](mailto:mchase@co.union.oh.us); and via email to Benjamin C. Mizer, Solicitor General, [bmizer@ag.state.oh.us](mailto:bmizer@ag.state.oh.us).



Stephen P. Hardwick  
Assistant Public Defender

#301869

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	Case Nos. 2008-1942 and 2008-2170
	:	
Plaintiff-Appellant,	:	On Appeal and Certified Conflict from
	:	the Union County Court of Appeals,
v.	:	Third Appellate District, No. 14-07-20
	:	
Raynell Robinson,	:	
	:	
Defendant-Appellee	:	

---

**APPENDIX TO  
MERIT BRIEF OF APPELLEE RAYNELL ROBINSON**

---

## AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

### AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.



LEXSTAT O R.C. 2903.10

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2903. HOMICIDE AND ASSAULT

HOMICIDE

**Go to the Ohio Code Archive Directory**

ORC Ann. 2903.10 (2009)

§ 2903.10. Definitions: functionally impaired person; caretaker

As used in sections 2903.13 and 2903.16 of the Revised Code:

(A) "Functionally impaired person" means any person who has a physical or mental impairment that prevents him from providing for his own care or protection or whose infirmities caused by aging prevent him from providing for his own care or protection.

(B) "Caretaker" means a person who assumes the duty to provide for the care and protection of a functionally impaired person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "Caretaker" does not include a person who owns, operates, or administers, or who is an agent or employee of, a care facility, as defined in section 2903.33 of the Revised Code.

**HISTORY:**

142 v H 642. Eff 3-17-89.

**NOTES:**

Section Notes

*Not analogous to former RC § 2903.10 (126 v 1039; 130 v 658; 130 v PtII, 143), repealed 134 v H 511, § 2, eff 1-1-74.*

Practice Manuals & Treatises

Anderson's Ohio Manual of Criminal Complaints and Indictments § 2903.10 Assault--  
definitions



LEXSTAT ORC 2903.31

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2903. HOMICIDE AND ASSAULT

STALKING

**Go to the Ohio Code Archive Directory**

ORC Ann. 2903.31 (2009)

**§ 2903.31. Hazing**

(A) As used in this section, "hazing" means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.

(B) (1) No person shall recklessly participate in the hazing of another.

(2) No administrator, employee, or faculty member of any primary, secondary, or post-secondary school or of any other educational institution, public or private, shall recklessly permit the hazing of any person.

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

**HISTORY:**

139 v H 444. Eff 3-3-83.

**NOTES:****Related Statutes & Rules****Cross-References to Related Statutes**

Penalty, RC § 2929.21.

Civil action by victim, RC § 2307.44.

Recklessly defined, RC § 2901.22.

Substantial risk defined, RC § 2901.01.

### Comparative Legislation

HAZING: CA--Cal Ed Code § 32051

FL--Fla. Stat. §§ 240.262, 240.326

IL--720 ILCS §§ 120/5, 120/10

IN--Burns Ind. Code Ann. § 35-42-2-2

NY--NY CLS Penal §§ 120.16, 120.17

### Practice Manuals & Treatises

Anderson's Ohio Manual of Criminal Complaints and Indictments § 2903.31 Hazing

### Case Notes & OAGs

ANALYSIS Constitutionality Applicability Civil liability Consent

### CONSTITUTIONALITY.

The definition of "hazing" in RC § 2903.31 is not unconstitutionally vague or overbroad on its face. However, some offensive or insulting speech may be protected expression: *Carpetta v. Pi Kappa Alpha Fraternity*, 100 Ohio Misc. 2d 42, 718 N.E.2d 1007, 1998 Ohio Misc. LEXIS 68 (1998).

### APPLICABILITY.

RC §§ 2307.44 and 2903.31 did not apply where the freshman-victim was simply bullied by upperclassmen, rather than initiated into a student or other organization: *Duitch v. Canton City Schs.*, 157 Ohio App. 3d 80, 809 N.E.2d 62, 2004 Ohio App. LEXIS 1878, 2004 Ohio 2173, (2004).

#### CIVIL LIABILITY.

Defendants were not entitled to judgment on the pleadings on the basis of RC Chapter 2744 where it was alleged that they failed to respond properly to complaints concerning a new student at the school: *Wencho v. Lakewood Sch. Dist.*, 177 Ohio App. 3d 469, 895 N.E.2d 193, 2008 Ohio App. LEXIS 2976, 2008 Ohio 3527, (2008).

School was not entitled to judgment on the pleadings on the claims for hazing and loss of consortium: *Vinicky v. Pristas*, 163 Ohio App. 3d 508 (2005).

#### CONSENT.

Consent is not a defense to a charge of hazing: *State v. Brown*, 90 Ohio App. 3d 674, 630 N.E.2d 397, 1993 Ohio App. LEXIS 3496 (1993).



LEXSTAT ORC 2903.341

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2903. HOMICIDE AND ASSAULT

PATIENT ABUSE AND NEGLECT IN CARE FACILITIES

**Go to the Ohio Code Archive Directory**

ORC Ann. 2903.341 (2009)

## § 2903.341. Patient endangerment

(A) As used in this section:

(1) "MR/DD caretaker" means any MR/DD employee or any person who assumes the duty to provide for the care and protection of a mentally retarded person or a developmentally disabled person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "MR/DD caretaker" includes a person who is an employee of a care facility and a person who is an employee of an entity under contract with a provider. "MR/DD caretaker" does not include a person who owns, operates, or administers a care facility or who is an agent of a care facility unless that person also personally provides care to persons with mental retardation or a developmental disability.

(2) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code.

(3) "MR/DD employee" has the same meaning as in section 5123.50 of the Revised Code.

(B) No MR/DD caretaker shall create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person. An MR/DD caretaker does not create a substantial risk to the health or safety of a mentally retarded person or a developmentally disabled person under this division when the MR/DD caretaker treats a physical or mental illness or defect of the mentally retarded person or developmentally disabled person by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(C) No person who owns, operates, or administers a care facility or who is an agent of a care facility shall condone, or knowingly permit, any conduct by an MR/DD caretaker who is employed by or under the control of the owner, operator, administrator, or agent that is in violation of division

(B) of this section and that involves a mentally retarded person or a developmentally disabled person who is under the care of the owner, operator, administrator, or agent. A person who relies upon treatment by spiritual means through prayer alone, in accordance with the tenets of a recognized religious denomination, shall not be considered endangered under this division for that reason alone.

(D) (1) It is an affirmative defense to a charge of a violation of division (B) or (C) of this section that the actor's conduct was committed in good faith solely because the actor was ordered to commit the conduct by a person to whom one of the following applies:

(a) The person has supervisory authority over the actor.

(b) The person has authority over the actor's conduct pursuant to a contract for the provision of services.

(2) It is an affirmative defense to a charge of a violation of division (C) of this section that the person who owns, operates, or administers a care facility or who is an agent of a care facility and who is charged with the violation is following the individual service plan for the involved mentally retarded person or a developmentally disabled person or that the admission, discharge, and transfer rule set forth in the Administrative Code is being followed.

(3) It is an affirmative defense to a charge of a violation of division (C) of this section that the actor did not have readily available a means to prevent either the harm to the person with mental retardation or a developmental disability or the death of such a person and the actor took reasonable steps to summon aid.

(E) (1) Except as provided in division (E)(2) or (E)(3) of this section, whoever violates division (B) or (C) of this section is guilty of patient endangerment, a misdemeanor of the first degree.

(2) If the offender previously has been convicted of, or pleaded guilty to, a violation of this section, patient endangerment is a felony of the fourth degree.

(3) If the violation results in serious physical harm to the person with mental retardation or a developmental disability, patient endangerment is a felony of the third degree.

**HISTORY:**

150 v S 178, § 1, eff. 1-30-04.

LEXSTAT ORC ANN. 2905.01

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2905. KIDNAPPING AND EXTORTION

KIDNAPPING AND RELATED OFFENSES

**Go to the Ohio Code Archive Directory**

ORC Ann. 2905.01 (2009)

§ 2905.01. Kidnapping

(A) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:

- (1) To hold for ransom, or as a shield or hostage;
- (2) To facilitate the commission of any felony or flight thereafter;
- (3) To terrorize, or to inflict serious physical harm on the victim or another;
- (4) To engage in sexual activity, as defined in section 2907.01 of the Revised Code, with the victim against the victim's will;
- (5) To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority.

(B) No person, by force, threat, or deception, or, in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall knowingly do any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim:

- (1) Remove another from the place where the other person is found;
- (2) Restrain another of the other person's liberty;
- (3) Hold another in a condition of involuntary servitude.

(C) (1) Whoever violates this section is guilty of kidnapping. Except as otherwise provided in this division or division (C)(2) or (3) of this section, kidnapping is a felony of the first degree. Except as otherwise provided in this division or division (C)(2) or (3) of this section, if the offender releases the victim in a safe place unharmed, kidnapping is a felony of the second degree.

(2) If the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 [2941.14.22] of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code and, except as otherwise provided in division (C)(3) of this section, shall sentence the offender to a mandatory prison term as provided in division (D)(7) of section 2929.14 of the Revised Code.

(3) If the victim of the offense is less than thirteen years of age and if the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, kidnapping is a felony of the first degree, and, notwithstanding the definite sentence provided for a felony of the first degree in section 2929.14 of the Revised Code, the offender shall be sentenced pursuant to section 2971.03 of the Revised Code as follows:

(a) Except as otherwise provided in division (C)(3)(b) of this section, the offender shall be sentenced pursuant to that section to an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment.

(b) If the offender releases the victim in a safe place unharmed, the offender shall be sentenced pursuant to that section to an indefinite term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(D) As used in this section, "sexual motivation specification" has the same meaning as in section 2971.01 of the Revised Code.

#### **HISTORY:**

134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 1-5-83); 146 v S 2. Eff 7-1-96; 152 v S 10, § 1, eff.  
1-1-08; 152 v H 280, § 1, eff. 4-7-09.

LEXSTAT ORC ANN. 2907.03

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2907. SEX OFFENSES

SEXUAL ASSAULTS

**Go to the Ohio Code Archive Directory**

ORC Ann. 2907.03 (2009)

§ 2907.03. Sexual battery

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(C) As used in this section:

(1) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Institution of higher education" means a state institution of higher education defined in section 3345.011 [3345.01.1] of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant

to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

(4) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 145 v H 454 (Eff 7-19-94); 146 v S 2 (Eff 7-1-96); 147 v S 6 (Eff 6-20-97); 147 v H 32 (Eff 3-10-98); 149 v S 9 (Eff 5-14-2002); 149 v H 510. Eff 3-31-2003; 151 v S 17, § 1, eff. 8-3-06; 151 v H 95, § 1, eff. 8-3-06; 152 v H 209, § 1, eff. 4-7-09.

LEXSTAT ORC ANN. 2909.02

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2909. ARSON AND RELATED OFFENSES

**Go to the Ohio Code Archive Directory**

ORC Ann. 2909.02 (2009)

§ 2909.02. Aggravated arson

(A) No person, by means of fire or explosion, shall knowingly do any of the following:

- (1) Create a substantial risk of serious physical harm to any person other than the offender;
- (2) Cause physical harm to any occupied structure;
- (3) Create, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure.

(B) (1) Whoever violates this section is guilty of aggravated arson.

(2) A violation of division (A)(1) or (3) of this section is a felony of the first degree.

(3) A violation of division (A)(2) of this section is a felony of the second degree.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 136 v S 282 (Eff 5-21-76); 139 v S 199 (Eff 1-5-83); 146 v S 2 (Eff 7-1-96); 146 v S 269. Eff 7-1-96.

LEXSTAT ORC ANN. 2909.04

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2909. ARSON AND RELATED OFFENSES

**Go to the Ohio Code Archive Directory**

ORC Ann. 2909.04 (2009)

§ 2909.04. Disrupting public services

(A) No person, purposely by any means or knowingly by damaging or tampering with any property, shall do any of the following:

(1) Interrupt or impair television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

(2) Interrupt or impair public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;

(3) Substantially impair the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

(B) No person shall knowingly use any computer, computer system, computer network, telecommunications device, or other electronic device or system or the internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.

(C) Whoever violates this section is guilty of disrupting public services, a felony of the fourth degree.

(D) As used in this section:

(1) "Emergency medical services personnel" has the same meaning as in section 2133.21 of the Revised Code.

(2) "Emergency facility personnel" means any of the following:

(a) Any of the following individuals who perform services in the ordinary course of their professions in an emergency facility:

- (i) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;
  - (ii) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code;
  - (iii) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;
  - (iv) Health care workers;
  - (v) Clerical staffs.
- (b) Any individual who is a security officer performing security services in an emergency facility;
- (c) Any individual who is present in an emergency facility, who was summoned to the facility by an individual identified in division (D)(2)(a) or (b) of this section.
- (3) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.
- (4) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.
- (5) "Health care worker" means an individual, other than an individual specified in division (D)(2)(a), (b), or (c) of this section, who provides medical or other health-related care or treatment in an emergency facility, including medical technicians, medical assistants, orderlies, aides, or individuals acting in similar capacities.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 148 v H 137 (Eff 3-10-2000); 149 v S 40. Eff 1-25-2002; 150 v S 146, § 1, eff. 9-23-04.

LEXSTAT ORC ANN. 2909.06

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2909. ARSON AND RELATED OFFENSES

**Go to the Ohio Code Archive Directory**

ORC Ann. 2909.06 (2009)

§ 2909.06. Criminal damaging or endangering

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

(1) Knowingly, by any means;

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

(B) Whoever violates this section is guilty of criminal damaging or endangering, a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, criminal damaging or endangering is a misdemeanor of the first degree. If the property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a risk of physical harm to any person, criminal damaging or endangering is a felony of the fifth degree. If the property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal damaging or endangering is a felony of the fourth degree.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 140 v H 570 (Eff 3-28-85); 146 v S 2. Eff 7-1-96.

LEXSTAT ORC ANN. 2909.08

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc.

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2909. ARSON AND RELATED OFFENSES

**Go to the Ohio Code Archive Directory**

ORC Ann. 2909.08 (2009)

§ 2909.08. Endangering aircraft or airport operations

(A) As used in this section:

(1) "Air gun" means a hand pistol or rifle that propels its projectile by means of releasing compressed air, carbon dioxide, or other gas.

(2) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(3) "Spring-operated gun" means a hand pistol or rifle that propels a projectile not less than four or more than five millimeters in diameter by means of a spring.

(4) "Airport operational surface" means any surface of land or water that is developed, posted, or marked so as to give an observer reasonable notice that the surface is designed and developed for the purpose of storing, parking, taxiing, or operating aircraft, or any surface of land or water that is actually being used for any of those purposes.

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

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

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

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

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

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

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

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

(F) Any bow and arrow, air gun, spring-operated gun, or firearm that has been used in a felony violation of this section shall be seized or forfeited, and shall be disposed of pursuant to Chapter 2981. of the Revised Code.

**HISTORY:**

140 v H 570 (Eff 3-28-85); 146 v S 2. Eff 7-1-96; 151 v H 241, § 1, eff. 7-1-07.

LEXSTAT ORC ANN. 2921.04

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

BRIBERY AND INTIMIDATION

**Go to the Ohio Code Archive Directory**

ORC Ann. 2921.04 (2009)

§ 2921.04. Intimidation of attorney, victim or witness in criminal case

(A) No person shall knowingly attempt to intimidate or hinder the victim of a crime in the filing or prosecution of criminal charges or a witness involved in a criminal action or proceeding in the discharge of the duties of the witness.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property, shall attempt to influence, intimidate, or hinder the victim of a crime in the filing or prosecution of criminal charges or an attorney or witness involved in a criminal action or proceeding in the discharge of the duties of the attorney or witness.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information, by participating in the arbitration, mediation, compromise, settlement, or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or conciliation of a dispute of that nature that is conferred by any of the following:

(1) A section of the Revised Code;

(2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the supreme court in accordance with Section 5 of Article IV, Ohio Constitution;

(3) A local rule of court, including, but not limited to, a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement, or other conciliation programs;

(4) The order of a judge of a municipal court, county court, or court of common pleas.

(D) Whoever violates this section is guilty of intimidation of an attorney, victim, or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony of the third degree.

**HISTORY:**

140 v S 172 (Eff 9-26-84); 146 v H 88. Eff 9-3-96.

LEXSTAT ORC ANN. 2921.32

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

OBSTRUCTING AND ESCAPE

**Go to the Ohio Code Archive Directory**

ORC Ann. 2921.32 (2009)

§ 2921.32. Obstructing justice

(A) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime, and no person, with purpose to hinder the discovery, apprehension, prosecution, adjudication as a delinquent child, or disposition of a child for an act that if committed by an adult would be a crime or to assist a child to benefit from the commission of an act that if committed by an adult would be a crime, shall do any of the following:

(1) Harbor or conceal the other person or child;

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

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

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

(5) Communicate false information to any person;

(6) Prevent or obstruct any person, by means of force, intimidation, or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child.

(B) A person may be prosecuted for, and may be convicted of or adjudicated a delinquent child for committing, a violation of division (A) of this section regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed. The crime or act the person or child aided committed shall be used under division (C) of this section in determining the penalty for the violation of division (A) of this section, regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty

to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed.

(C) (1) Whoever violates this section is guilty of obstructing justice.

(2) If the crime committed by the person aided is a misdemeanor or if the act committed by the child aided would be a misdemeanor if committed by an adult, obstructing justice is a misdemeanor of the same degree as the crime committed by the person aided or a misdemeanor of the same degree that the act committed by the child aided would be if committed by an adult.

(3) Except as otherwise provided in divisions (C)(4) and (5) of this section, if the crime committed by the person aided is a felony or if the act committed by the child aided would be a felony if committed by an adult, obstructing justice is a felony of the fifth degree.

(4) If the crime committed by the person aided is aggravated murder, murder, or a felony of the first or second degree or if the act committed by the child aided would be one of those offenses if committed by an adult and if the offender knows or has reason to believe that the crime committed by the person aided is one of those offenses or that the act committed by the child aided would be one of those offenses if committed by an adult, obstructing justice is a felony of the third degree.

(5) If the crime or act committed by the person or child aided is an act of terrorism, obstructing justice is one of the following:

(a) Except as provided in division (C)(5)(b) of this section, a felony of the second degree;

(b) If the act of terrorism resulted in the death of a person who was not a participant in the act of terrorism, a felony of the first degree.

(D) As used in this section:

(1) "Adult" and "child" have the same meanings as in section 2151.011 [2151.01.1] of the Revised Code.

(2) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(3) "Act of terrorism" has the same meaning as in section 2909.21 of the Revised Code.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 147 v H 161 (Eff 12-31-97); 148 v S 179, § 3  
(Eff 1-1-2002); 149 v S 184. Eff 5-15-2002.

LEXSTAT ORC ANN. 2921.321

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

OBSTRUCTING AND ESCAPE

**Go to the Ohio Code Archive Directory**

ORC Ann. 2921.321 (2009)

§ 2921.321. Assaulting or harassing police dog or horse or assistance dog

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

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

(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 is assisting a law enforcement officer in the performance of the officer's duties or that the person knows is a police dog or horse.

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

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

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

(D) No person shall recklessly do any of the following:

(1) Taunt, torment, or strike an assistance dog;

(2) Throw an object or substance at an assistance dog;

(3) Interfere with or obstruct an assistance dog, or interfere with or obstruct a blind, deaf or hearing impaired, or mobility impaired person who is being assisted or served by an assistance dog, in a manner that does any of the following:

(a) Inhibits or restricts the assisted or served person's control of the dog;

(b) Deprives the assisted or served person of control of the dog;

(c) Releases the dog from its area of control;

(d) Enters the area of control of the dog without the consent of the assisted or served person, including placing food or any other object or substance into that area;

(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 blind, deaf or hearing impaired, or mobility impaired person or that the person knows is an assistance dog.

(E) (1) Whoever violates division (A) of this section is guilty of assaulting a police dog or horse. Except as otherwise provided in this division, 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 a felony of the third degree. 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 a felony of the fourth degree. If the violation results in physical harm to the police dog or horse other than death or serious physical harm, assaulting a police dog or horse is a misdemeanor of the first degree.

(2) Whoever violates division (B) of this section is guilty of harassing a police dog or horse. Except as otherwise provided in this division, 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, harassing a police dog or horse is a felony of the third degree. 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 of the fourth degree. If the violation results in physical harm to the police dog or horse, but does not result in its death or in serious physical harm to it, harassing a police dog or horse is a misdemeanor of the first degree.

(3) Whoever violates division (C) of this section is guilty of assaulting an assistance dog. Except as otherwise provided in this division, assaulting an assistance dog is a misdemeanor of the second degree. If the violation results in the death of the assistance dog, assaulting an assistance dog is a felony of the third degree. If the violation results in serious physical harm to the assistance dog other than its death, assaulting an assistance dog is a felony of the fourth degree. If the violation results in physical harm to the assistance dog other than death or serious physical harm, assaulting an assistance dog is a misdemeanor of the first degree.

(4) Whoever violates division (D) of this section is guilty of harassing an assistance dog. Except as otherwise provided in this division, harassing an assistance dog is a misdemeanor of the second degree. If the violation results in the death of the assistance dog, harassing an assistance dog is a felony of the third degree. If the violation results in serious physical harm to the assistance dog, but does not result in its death, harassing an assistance dog is a felony of the fourth degree. 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, Chapter 2929., or any other provision of the Revised Code, whoever violates division (A), (B), (C), or (D) of this section is responsible for the payment of all of the following:

(a) Any veterinary bill or bill for medication incurred as a result of the violation by the police department regarding a violation of division (A) or (B) of this section or by the blind, deaf or hearing impaired, or mobility impaired person assisted or served by the assistance dog regarding a violation of division (C) or (D) of this section;

(b) The cost of any damaged equipment that results from the violation;

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

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

(F) This section does not apply to a licensed veterinarian whose conduct is in accordance with Chapter 4741. of the Revised Code.

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

(H) As used in this section:

(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 "mobility impaired person" have the same meanings as in section 955.011 [955.01.1] of the Revised Code.

**HISTORY:**

145 v S 116 (Eff 9-29-94); 146 v S 2 (Eff 7-1-96); 148 v H 701. Eff 4-9-2001; 150 v H 369, § 1, eff. 11-26-04; 151 v H 530, § 101.01, eff. 6-30-06.

LEXSTAT ORC ANN. 2921.33

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

OBSTRUCTING AND ESCAPE

**Go to the Ohio Code Archive Directory**

ORC Ann. 2921.33 (2009)

§ 2921.33. Resisting arrest

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

(B) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, cause physical harm to a law enforcement officer.

(C) No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person if either of the following applies:

(1) The offender, during the course of or as a result of the resistance or interference, recklessly causes physical harm to a law enforcement officer by means of a deadly weapon;

(2) The offender, during the course of the resistance or interference, brandishes a deadly weapon.

(D) Whoever violates this section is guilty of resisting arrest. A violation of division (A) of this section is a misdemeanor of the second degree. A violation of division (B) of this section is a misdemeanor of the first degree. A violation of division (C) of this section is a felony of the fourth degree.

(E) As used in this section, "deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

**HISTORY:**

134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 147 v H 151. Eff 9-16-97.

LEXSTAT ORC ANN. 2921.331

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2921. OFFENSES AGAINST JUSTICE AND PUBLIC ADMINISTRATION

OBSTRUCTING AND ESCAPE

**Go to the Ohio Code Archive Directory**

ORC Ann. 2921.331 (2009)

§ 2921.331. Failure to comply with order or signal of police officer

(A) No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.

(B) No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.

(C) (1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.

(2) A violation of division (A) of this section is a misdemeanor of the first degree.

(3) Except as provided in divisions (C) (4) and (5) of this section, a violation of division (B) of this section is a misdemeanor of the first degree.

(4) Except as provided in division (C) (5) of this section, a violation of division (B) of this section is a felony of the fourth degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that, in committing the offense, the offender was fleeing immediately after the commission of a felony.

(5) (a) A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:

(i) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property.

(ii) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

(b) If a police officer pursues an offender who is violating division (B) of this section and division (C) (5) (a) of this section applies, the sentencing court, in determining the seriousness of an offender's conduct for purposes of sentencing the offender for a violation of division (B) of this sec-

tion, shall consider, along with the factors set forth in sections 2929.12 and 2929.13 of the Revised Code that are required to be considered, all of the following:

- (i) The duration of the pursuit;
- (ii) The distance of the pursuit;
- (iii) The rate of speed at which the offender operated the motor vehicle during the pursuit;
- (iv) Whether the offender failed to stop for traffic lights or stop signs during the pursuit;
- (v) The number of traffic lights or stop signs for which the offender failed to stop during the pursuit;
- (vi) Whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required;
- (vii) Whether the offender committed a moving violation during the pursuit;
- (viii) The number of moving violations the offender committed during the pursuit;
- (ix) Any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense.

(D) If an offender is sentenced pursuant to division (C) (4) or (5) of this section for a violation of division (B) of this section, and if the offender is sentenced to a prison term for that violation, the offender shall serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender.

(E) In addition to any other sanction imposed for a violation of this section, the court shall impose a class two suspension from the range specified in division (A)(2) of section 4510.02 of the Revised Code. If the offender previously has been found guilty of an offense under this section, the court shall impose a class one suspension as described in division (A)(1) of that section. The court shall not grant limited driving privileges to the offender. No judge shall suspend the first three years

of suspension under a class two suspension of an offender's license, permit, or privilege required by this division on any portion of the suspension under a class one suspension of an offender's license, permit, or privilege required by this division.

(F) As used in this section:

(1) "Moving violation" has the same meaning as in section 2743.70 of the Revised Code.

(2) "Police officer" has the same meaning as in section 4511.01 of the Revised Code.

**HISTORY:**

GC § 6307-3; 119 v 766, § 3; Bureau of Code Revision, RC § 4511.02, 10-1-53; 132 v H 380 (Eff 1-1-68); 137 v S 381 (Eff 10-19-78); RC § 2921.33.1, 143 v S 49 (Eff 11-3-89); 148 v H 29. Eff 10-29-99; 149 v S 123, § 1, eff. 1-1-04.

LEXSTAT ORC ANN. 2929.01

PAGE'S OHIO REVISED CODE ANNOTATED

Copyright (c) 2009 by Matthew Bender & Company, Inc

a member of the LexisNexis Group

All rights reserved.

\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED WITH THE SECRETARY OF STATE THROUGH JULY 6, 2009 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2009 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JUNE 1, 2009 \*\*\*

TITLE 29. CRIMES -- PROCEDURE

CHAPTER 2929. PENALTIES AND SENTENCING

IN GENERAL

**Go to the Ohio Code Archive Directory**

ORC Ann. 2929.01 (2009)

§ 2929.01. Definitions

As used in this chapter:

(A) (1) "Alternative residential facility" means, subject to division (A)(2) of this section, any facility other than an offender's home or residence in which an offender is assigned to live and that satisfies all of the following criteria:

(a) It provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation.

(b) It has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency that is responsible for licensing or certifying that type of education, training, treatment, habilitation, or service.

(2) "Alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison.

(B) "Basic probation supervision" means a requirement that the offender maintain contact with a person appointed to supervise the offender in accordance with sanctions imposed by the court or imposed by the parole board pursuant to section 2967.28 of the Revised Code. "Basic probation supervision" includes basic parole supervision and basic post-release control supervision.

(C) "Cocaine," "crack cocaine," "hashish," "L.S.D.," and "unit dose" have the same meanings as in section 2925.01 of the Revised Code.

(D) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to sections 2301.51 to 2301.58 of the Revised Code.

(E) "Community control sanction" means a sanction that is not a prison term and that is described in section 2929.15, 2929.16, 2929.17, or 2929.18 of the Revised Code or a sanction that is not a jail term and that is described in section 2929.26, 2929.27, or 2929.28 of the Revised Code. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

(F) "Controlled substance," "marihuana," "schedule I," and "schedule II" have the same meanings as in section 3719.01 of the Revised Code.

(G) "Curfew" means a requirement that an offender during a specified period of time be at a designated place.

(H) "Day reporting" means a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

(I) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(J) "Drug and alcohol use monitoring" means a program under which an offender agrees to submit to random chemical analysis of the offender's blood, breath, or urine to determine whether the offender has ingested any alcohol or other drugs.

(K) "Drug treatment program" means any program under which a person undergoes assessment and treatment designed to reduce or completely eliminate the person's physical or emotional reliance upon alcohol, another drug, or alcohol and another drug and under which the person may be required to receive assessment and treatment on an outpatient basis or may be required to reside at a facility other than the person's home or residence while undergoing assessment and treatment.

(L) "Economic loss" means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the offense. "Economic loss" does not include non-economic loss or any punitive or exemplary damages.

(M) "Education or training" includes study at, or in conjunction with a program offered by, a university, college, or technical college or vocational study and also includes the completion of primary school, secondary school, and literacy curricula or their equivalent.

(N) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.

(O) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to section 2967.14 of the Revised Code as a suitable facility for the care and treatment of adult offenders.

(P) "House arrest" means a period of confinement of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board pursuant to section 2967.28 of the Revised Code and during which all of the following apply:

(1) The offender is required to remain in the offender's home or other specified premises for the specified period of confinement, except for periods of time during which the offender is at the offender's place of employment or at other premises as authorized by the sentencing court or by the parole board.

(2) The offender is required to report periodically to a person designated by the court or parole board.

(3) The offender is subject to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board.

(Q) "Intensive probation supervision" means a requirement that an offender maintain frequent contact with a person appointed by the court, or by the parole board pursuant to section 2967.28 of the Revised Code, to supervise the offender while the offender is seeking or maintaining necessary employment and participating in training, education, and treatment programs as required in the court's or parole board's order. "Intensive probation supervision" includes intensive parole supervision and intensive post-release control supervision.

(R) "Jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.

(S) "Jail term" means the term in a jail that a sentencing court imposes or is authorized to impose pursuant to section 2929.24 or 2929.25 of the Revised Code or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

(U) "Delinquent child" has the same meaning as in section 2152.02 of the Revised Code.

(V) "License violation report" means a report that is made by a sentencing court, or by the parole board pursuant to section 2967.28 of the Revised Code, to the regulatory or licensing board or agency that issued an offender a professional license or a license or permit to do business in this state and that specifies that the offender has been convicted of or pleaded guilty to an offense that

may violate the conditions under which the offender's professional license or license or permit to do business in this state was granted or an offense for which the offender's professional license or license or permit to do business in this state may be revoked or suspended.

(W) "Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one thousand grams of hashish; at least one hundred grams of crack cocaine; at least one thousand grams of cocaine that is not crack cocaine; at least two thousand five hundred unit doses or two hundred fifty grams of heroin; at least five thousand unit doses of L.S.D. or five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least one hundred times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to section 2925.03, 2925.04, 2925.05, or 2925.11 of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

(X) "Mandatory prison term" means any of the following:

(1) Subject to division (X)(2) of this section, the term in prison that must be imposed for the offenses or circumstances set forth in divisions (F)(1) to (8) or (F)(12) to (18) of section 2929.13 and division (D) of section 2929.14 of the Revised Code. Except as provided in sections 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11 of the Revised Code, unless the maximum or another specific term is required under section 2929.14 or 2929.142 [2929.14.2] of the Revised Code, a mandatory prison term described in this division may be any prison term authorized for the level of offense.

(2) The term of sixty or one hundred twenty days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to division (G)(2) of sec-

tion 2929.13 and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to division (G)(2) of section 2929.13 of the Revised Code..

(3) The term in prison imposed pursuant to division (A) of section 2971.03 of the Revised Code for the offenses and in the circumstances described in division (F)(11) of section 2929.13 of the Revised Code or pursuant to division (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and that term as modified or terminated pursuant to section 2971.05 of the Revised Code.

(Y) "Monitored time" means a period of time during which an offender continues to be under the control of the sentencing court or parole board, subject to no conditions other than leading a law-abiding life.

(Z) "Offender" means a person who, in this state, is convicted of or pleads guilty to a felony or a misdemeanor.

(AA) "Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of section 2967.141 of the Revised Code.

(BB) "Prison term" includes either of the following sanctions for an offender:

(1) A stated prison term;

(2) A term in a prison shortened by, or with the approval of, the sentencing court pursuant to section 2929.20, 2967.26, 5120.031 [5120.03.1], 5120.032 [5120.03.2], or 5120.073 [5102.07.3] of the Revised Code.

(CC) "Repeat violent offender" means a person about whom both of the following apply:

(1) The person is being sentenced for committing or for complicity in committing any of the following:

(a) Aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;

(b) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense described in division (CC)(1)(a) of this section.

(2) The person previously was convicted of or pleaded guilty to an offense described in division (CC)(1)(a) or (b) of this section.

(DD) "Sanction" means any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense. "Sanction" includes any sanction imposed pursuant to any provision of sections 2929.14 to 2929.18 or 2929.24 to 2929.28 of the Revised Code.

(EE) "Sentence" means the sanction or combination of sanctions imposed by the sentencing court on an offender who is convicted of or pleads guilty to an offense.

(FF) "Stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to section 2929.14, 2929.142 [2929.14.2], or 2971.03 of the Revised Code or under section 2919.25 of the Revised Code. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to section 2967.193 [2967.19.3] of the Revised Code.

(GG) "Victim-offender mediation" means a reconciliation or mediation program that involves an offender and the victim of the offense committed by the offender and that includes a meeting in which the offender and the victim may discuss the offense, discuss restitution, and consider other sanctions for the offense.

(HH) "Fourth degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the fourth degree.

(II) "Mandatory term of local incarceration" means the term of sixty or one hundred twenty days in a jail, a community-based correctional facility, a halfway house, or an alternative residential facility that a sentencing court may impose upon a person who is convicted of or pleads guilty to a fourth degree felony OVI offense pursuant to division (G)(1) of section 2929.13 of the Revised Code and division (G)(1)(d) or (e) of section 4511.19 of the Revised Code.

(JJ) "Designated homicide, assault, or kidnapping offense," "violent sex offense," "sexual motivation specification," "sexually violent offense," "sexually violent predator," and "sexually violent predator specification" have the same meanings as in section 2971.01 of the Revised Code.

(KK) "Sexually oriented offense," "child-victim oriented offense," and "tier III sex offender/child-victim offender," have the same meanings as in section 2950.01 of the Revised Code.

(LL) An offense is "committed in the vicinity of a child" if the offender commits the offense within thirty feet of or within the same residential unit as a child who is under eighteen years of age, regardless of whether the offender knows the age of the child or whether the offender knows the offense is being committed within thirty feet of or within the same residential unit as the child and regardless of whether the child actually views the commission of the offense.

(MM) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(NN) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

(OO) "Detention" and "detention facility" have the same meanings as in section 2921.01 of the Revised Code.

(PP) "Third degree felony OVI offense" means a violation of division (A) of section 4511.19 of the Revised Code that, under division (G) of that section, is a felony of the third degree.

(QQ) "Random drug testing" has the same meaning as in section 5120.63 of the Revised Code.

(RR) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.

(SS) "Body armor" has the same meaning as in section 2941.1411 [2941.14.11] of the Revised Code.

(TT) "Electronic monitoring" means monitoring through the use of an electronic monitoring device.

(UU) "Electronic monitoring device" means any of the following:

(1) Any device that can be operated by electrical or battery power and that conforms with all of the following:

(a) The device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in division (UU)(1)(b) of this section if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an ap-

propriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver.

(b) The device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in division (UU)(1)(a) of this section, can transmit continuously those signals by telephone to a central monitoring computer of the type described in division (UU)(1)(c) of this section, and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with.

(c) The device has a central monitoring computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in division (UU)(1)(b) of this section and can monitor continuously the person to whom an electronic monitoring device of the type described in division (UU)(1)(a) of this section is attached.

(2) Any device that is not a device of the type described in division (UU)(1) of this section and that conforms with all of the following:

(a) The device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means.

(b) The device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(3) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

(VV) "Non-economic loss" means nonpecuniary harm suffered by a victim of an offense as a result of or related to the commission of the offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

(WW) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(XX) "Continuous alcohol monitoring" means the ability to automatically test and periodically transmit alcohol consumption levels and tamper attempts at least every hour, regardless of the location of the person who is being monitored.

(YY) A person is "adjudicated a sexually violent predator" if the person is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that violent sex offense or if the person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that designated homicide, assault, or kidnapping offense.

(ZZ) An offense is "committed in proximity to a school" if the offender commits the offense in a school safety zone or within five hundred feet of any school building or the boundaries of any school premises, regardless of whether the offender knows the offense is being committed in a

school safety zone or within five hundred feet of any school building or the boundaries of any school premises.

(AAA) "Human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is to compel a victim or victims to engage in sexual activity for hire, to engage in a performance that is obscene, sexually oriented, or nudity oriented, or to be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.

(2) It involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply:

(a) Each of the felony offenses is a violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323 [2907.32.3], or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code or is a violation of a law of any state other than this state that is substantially similar to any of the sections or divisions of the Revised Code identified in this division.

(b) At least one of the felony offenses was committed in this state.

(c) The felony offenses are related to the same scheme or plan, are not isolated instances, and are not so closely related to each other and connected in time and place that they constitute a single event or transaction.

(BBB) "Material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as in section 2907.01 of the Revised Code.

(CCC) "Material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

(DDD) "Performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity.

**HISTORY:**

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v H 480 (Eff 10-16-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 378 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 148 v S 9 (Eff 3-8-2000); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v H 349 (Eff 9-22-2000); 148 v S 222 (Eff 3-22-2001); 148 v S 179, § 3 (Eff 1-1-2002); 149 v H 327. Eff 7-8-2002; 149 v H 490, § 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 1, Eff 7-31-03; 150 v S 5, § 3, eff. 1-1-04; 150 v S 57, § 1, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 162, § 1, eff. 10-12-06; 151 v S 260, § 1, eff. 1-2-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09.

dial measures is not admissible to prove negligence, but it may be admitted to prove ownership, control, feasibility, or the like. Fed. R. Evid. 407. [Cases: Evidence ⇨219.10. C.J.S. Evidence § 387.]

**subservant.** See *subagent* under AGENT (2).

**subsidence** (səb-sid-ən[t]s), *n.* Any movement of the soil from its natural position; esp., a sinking of soil.

**subsidiarie** (səb-sid-ee-air-ee-ee). [Law Latin] *Scots law.* Subsidiarily.

**subsidiary** (səb-sid-ee-er-ee), *adj.* Subordinate; under another's control. See *subsidiary corporation* under CORPORATION.

**subsidiary, n.** See *subsidiary corporation* under CORPORATION.

**subsidiary corporation.** See CORPORATION.

**subsidiary merger.** See *triangular merger* under MERGER.

**subsidiary motion.** See MOTION (2).

**subsidy** (səb-sə-dee), *n.* 1. A grant, usu. made by the government, to any enterprise whose promotion is considered to be in the public interest. • Although governments sometimes make direct payments (such as cash grants), subsidies are usu. indirect. They may take the form of research-and-development support, tax breaks, provision of raw materials at below-market prices, or low-interest loans or low-interest export credits guaranteed by a government agency. — Also termed *grant*. [Cases: United States ⇨82(1). C.J.S. United States §§ 155, 158.] 2. A specific financial contribution by a foreign government or public entity conferring a benefit on exporters to the United States. • Such a subsidy is countervailable under 19 USCA §§ 1671, 1677. [Cases: Customs Duties ⇨21.5(2).]

**countervailable subsidy** (kown-tər-vayl-ə-bəl). A foreign government's subsidy on the manufacture of goods exported to another country, giving rise to the importing country's entitlement to impose a countervailing duty on the goods if their import caused or threatens to cause material injury to domestic industry. See *countervailing duty* under DUTY (4). [Cases: Customs Duties ⇨21.5(2).]

3. *Int'l law.* Financial assistance given by one nation to another to preserve the receiving nation's neutrality or to support it in a war, even if the donor nation does not directly participate. — **subsidize**, *v.*

**sub sigillo** (səb si-jil-oh). [Latin "under the seal (of confession)"] *Hist.* In the strictest confidence.

**sub silentio** (səb si-len-shee-oh). [Latin] Under silence; without notice being taken; without being expressly mentioned (such as precedent *sub silentio*).

**subsistence.** Support; means of support. See NECESSARIES.

**sub spe reconciliationis** (səb spee rek-ən-sil-ee-ay-shee-ən-sis). [Latin] *Hist.* Under the hope of reconciliation.

**substance.** 1. The essence of something; the essential quality of something, as opposed to its mere form (<matter of substance>). 2. Any matter, esp. an ad-

dictive drug <illegal substance> <abuse of a substance>.

**substance-abuse evaluation and treatment.** A drug offender's court-ordered participation in a drug rehabilitation program. • This type of treatment is esp. common in DUI cases. — Abbr. SAET.

**substantial-capacity test.** *Criminal law.* The Model Penal Code's test for the insanity defense, stating that a person is not criminally responsible for an act if, as a result of a mental disease or defect, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the law. • This test combines elements of both the *McNaghten* rules and the irresistible-impulse test by allowing consideration of both volitional and cognitive weaknesses. This test was formerly used by the federal courts and many states, but since 1984 many jurisdictions (including the federal courts) — in response to the acquittal by reason of insanity of would-be presidential assassin John Hinckley — have narrowed the insanity defense and adopted a new test resembling the *McNaghten* rules, although portions of the substantial-capacity test continue to be used. Model Penal Code § 4.01. — Also termed *Model Penal Code test*; *MPC test*; *American Law Institute test*; *ALI test*. See INSANITY DEFENSE. [Cases: Criminal Law ⇨48.]

**substantial-certainty test.** *Copyright.* The test for deciding whether a second work was copied from the first. • The question is whether a reasonable observer would conclude with substantial certainty that the second work is a copy. [Cases: Copyrights and Intellectual Property ⇨53(1).]

**substantial change in circumstances.** See CHANGE IN CIRCUMSTANCES.

**substantial-compliance rule.** See SUBSTANTIAL-PERFORMANCE DOCTRINE.

**substantial-continuity doctrine.** A principle for holding a successor corporation liable for the acts of its predecessor corporation, if the successor maintains the same business as the predecessor, with the same employees, doing the same jobs, for the same supervisors, under the same working conditions, and using the same production processes to produce the same products for the same customers. — Also termed *continuity-of-enterprise doctrine*. Cf. MERE-CONTINUATION DOCTRINE. [Cases: Corporations ⇨445.1. C.J.S. Corporations § 657.]

**substantial damages.** See DAMAGES.

**substantial equivalent.** *Patents.* The same essential thing as the patented item, so that if two devices perform substantially the same function in substantially the same way to achieve the same result, they are equivalent even though they differ in name, form, or shape. — Also termed *substantial equivalent of a patented device*. [Cases: Patents ⇨237. C.J.S. Patents §§ 425-426.]

**substantial error.** See ERROR (2).

**substantial evidence.** See EVIDENCE.

**substantial-evidence jurisdiction.** See *significant-connection jurisdiction* under JURISDICTION.