

Recodification

Proposed Amendments to the ORC & their
impact upon misdemeanor prosecutions

Lara Baker–Morrish

Chief Prosecutor, Columbus City Attorney Rick
Pfeiffer's Office
July 28, 2017



Proposed Amendments to Criminal Statutes >>

Chapter 2903 – Homicide and Assault

What has NOT changed:

- ▶ 2013.05 – Negligent Homicide
 - ▶ 2903.14 – Negligent Assault
 - ▶ 2903.341 – Patient Endangerment
- 

What has changed in form only:

- ▶ 2903.16 – Failing to Provide for a Functionally Impaired Person
 - omitted “physical harm” added to reckless provision
- ▶ 2903.34 – Patient Abuse or Neglect
 - Definitions of “abuse,” “gross neglect,” and “neglect” are incorporated directly into statutory elements rather than being referenced
 - 2903.36 – Discrimination, retaliation – moved into this section as are the provisions of existing 2903.37 – License revocation
- ▶ 2903.35 – Filing False Patient Abuse/Neglect Complaints
 - Section eliminated and moved to 2921.13 – Falsification

What HAS changed:

- ▶ 2903.06 – Vehicular Homicide & Vehicular Manslaughter:
 - Vehicular Homicide:
 - **ELIMINATES the mandatory license suspension and makes it discretionary**
 - **Vehicular Manslaughter: ELIMINATED entirely**
- ▶ 2903.08 – Vehicular Assault
 - **ELIMINATES the mandatory license suspension and makes in discretionary**

What HAS changed:

- ▶ 2903.13 – Assault
 - “Attempt to cause” removed
 - **All “special victim” enhancements (with the exception of assault on a pregnant woman which can be included as a specification) have been ELIMINATED.**
- ▶ 2903.21 – Aggravated Menacing & Menacing
 - Two offenses merged into one statute
 - “Reasonably” added to modify “believe”
 - **Corporate provisions are ELIMINATED**
 - Clarifies that it is “physical damage” to property

What HAS changed:

- ▶ 2903.22 – Menacing By Stalking
 - Replaces prior Menacing section number
 - “Reasonably” added to modify “believe”
 - **ELIMINATES felony enhancement for minor victims**
 - **ELIMINATES felony enhancement for public /private children’s services workers**
- ▶ 2903.31 – Hazing
 - Elevates violation for recklessly permitting the hazing of another by school employees from an M4 to an M3



Proposed Amendments to Criminal Statutes >>

Chapter 2905 – Kidnapping and Extortion

What has NOT changed:

- ▶ 2905.22 - Extortionate Extension of Credit

What has changed in form only:

- ▶ 2905.03 – Unlawful Restraint
 - Changes as to syntax only

What HAS changed

- ▶ 2905.05 – Criminal Child Enticement
 - Age threshold lowered from 14 to 13
 - Age threshold for prior violation to enhance to a felony raised from 16 to 17
 - **The language “whether or not the offender knows the age of the child” is ELIMINATED**
 - **The violation is limited to circumstances in which the behavior is done “for the purpose of violating...” kidnapping, abduction, unlawful restraint, trafficking in persons or various sex offenses” and prior language regarding lack of parental consent, emergency services, etc is ELIMINATED**

What HAS changed:

▶ 2905.12 – Coercion

- Paragraphs (A)(1) and (2) have been entirely re-worked – archaic language (such as “calumny “) has been removed and the statute is more specific as to the harm threatened:
 - (A) No person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following:
 - (1) Unlawfully threaten harm against any person or damage to any property;
 - (2) Unlawfully threaten damage to any of the following types of property:
 - (a) An occupied structure or any of its contents;
 - (b) A motor vehicle;
 - (c) Any personal property necessary for its owner or possessor to engage in the owner’s or possessor’s profession business, trade, or occupation;
 - (d) An heirloom, memento, collector’s item, antique, museum piece, manuscript, document, record, or other item that has intrinsic worth to its owner that is irreplaceable.
 - (e) A companion animal;
 - (f) Any property valued at two thousand five hundred dollars or more



SEXUAL ASSAULT

Proposed Amendments to Criminal Statutes >>

Chapter 2907 – Sex Offenses

What has NOT changed:

- 2907.23 – Procuring Prostitution
- 2907.38 – Permitting Unlawful Operation of Viewing Booths Depicting Sexual Conduct

What has changed in form only:

- ▶ 2907.31 – Disseminating Matter Harmful to Juveniles
 - Material or performances which are obscene still elevate the level of the offense to a felony (in the penalty section) but obscenity is no longer referenced as distinct from harmful materials in the violation provisions
- ▶ 2907.39 – Unlawful Advertisement
 - Dealing with massage parlors and currently found at 2927.17 – re-numbered, no other changes

What HAS changed

- ▶ 2907.06 – Sexual Imposition
 - **ELIMINATES spousal exception**
 - Removes “whether or not the offender knows the age of such person” and replaces it with “...the person KNOWS the other person [is between 13–15]... or is RECKLESS in that regard...”
 - **ELIMINATES provision requiring that victim’s testimony be supported by other evidence**
- ▶ 2907.08 – Voyeurism
 - “Secretly or surreptitiously” changed to “Knowingly and secretly”
- ▶ 2907.09 – Public Indecency
 - **ELIMINATES engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation**
 - **ELIMINATES all felony violations**

What HAS changed:

- ▶ 2907.10 – Dangerous Sexual Activity
 - This is a new offense, incorporating some aspects of current felonious assault, dealing with acts that can transmit HIV.
 - **There is one misdemeanor provision:**
 - (C) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly engage in sexual conduct with another person if both of the following apply:
 - (1) Prior to engaging in sexual conduct, the person failed to disclose to the other person that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;
 - (2) The person recklessly failed to take reasonable precautions to prevent the transmission of the virus. For purposes of this division, reasonable precautions include, but are not limited to, either of the following:
 - (a) Using a condom or other device or substance designed to prevent the transmission of the virus,
 - (b) Actively taking antiretroviral medication sufficiently in advance of the sexual conduct to reasonably prevent transmission, in accordance with the instructions of the prescribing medical professional.

What HAS changed:

▶ 2907.24 – Soliciting

- Adds “knowingly” to soliciting another who is 16/17
- Replaces “whether or not the offender knows the age” with “..the person knows other person is under age 16, or is reckless in that regard”
- HIV provisions are removed and placed in new 2907.10 section

▶ 2907.25 – Prostitution

- HIV provisions are removed and placed in new 2907.10 section
- Adds an affirmative defense of being compelled to engage in prostitution

What HAS changed:

- ▶ 2907.311 – Displaying Matters Harmful to Juveniles
 - Adds “knowingly” to modify “display”
 - Offense amended from M1 to Unclassified – punishable “only by a fine of up to one thousand dollars on the organization...”
- ▶ 2907.323 – Illegal Use of Nudity Oriented Material Involving a Minor
 - **New misdemeanor provision is added:**
 - (A) No person shall knowingly do any of the following:
 - (4) Solicit, procure, or cause to be obtained a photograph or video of a minor depicting that minor in a state of nudity, if the person is age eighteen or over and knows that the person is five or more years older than the minor depicted in the photograph or video, or is reckless in that regard, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, attorney, or other person having a proper interest in the material or performance
 - This violation becomes an F5 if the offender was ten or more years older than the minor and an F4 if the minor was under 13 and the offender knew that or was reckless in that regard

What HAS changed:

- ▶ 2907.324 – Illegal Dissemination of a Nude Photo
 - **This is a new offense, designed to compliment 2907.323:**
 - (A) No person who receives a photograph or video of a person under age eighteen in a state of nudity shall knowingly disseminate or share that photograph or video with any third party who was not the initial recipient of the photograph or video, unless the material or performance is disseminated or shared for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, attorney, or other person having a proper interest in the material or performance.
 - A violation is an M1, but if the photo/video is published, made available on a website, etc., it is an F5

What HAS changed:

- ▶ 2907.33 – Deception to obtain matter harmful to juveniles
 - Moves the prohibitions against allowing minors on the premises of and minors attempting to gain access to an adult entertainment establishment from 2907.39 to this provision – currently there are M1 offenses – this makes them M2s
- ▶ 2907.40 – Illegally Operating Sexually Oriented Business
 - Removes “touch the clothing” and limits offense to touching the person
 - **Makes all touching an M4, ELIMINATES M1 touching violation**



Proposed Amendments to Criminal Statutes >>

Chapter 2909 – Arson and Terrorism

What HAS changed:

- ▶ 2909.03 – Arson
 - Removes requirement that public facilities be “used for a public purpose”
 - Increases valuation to elevate to a felony from \$1000 to \$2500
 - **Adds felony enhancement for prior convictions**

What HAS changed:

- ▶ 2909.05 – Vandalism, Criminal Damaging, and Criminal Mischief
 - Combines all of these violations into one statute
 - (A) Vandalism:
 - **OVERALL: If the property/structure listed in (A) is physically damaged, it is Vandalism**
 - “Without privilege to do so” added as an element
 - **ELIMINATES need to show that structure was occupied**
 - Replaces “Serious physical harm to property” with “Physical damage”
 - **ELIMINATES provisions pertaining solely to professions, business or trade**
 - Defines property that is owned by the government more broadly
 - Adds to Vandalism the damaging or defacing of public monuments, art work, triangulation stations, places of worship, etc that were previously found in criminal mischief and desecration statutes (2927.11)

What HAS changed:

- ▶ 2909.05 – continued
 - (B) Criminal Damaging
 - **OVERALL:** If a substantial risk of physical damage to the property/structure listed in (A) is created, it is Criminal Damaging
 - Adds element of “without privilege to do so”
 - (C) Criminal Mischief
 - **OVERALL:** If the property/structure listed in (A) is moved or tampered with, it is Criminal Mischief
 - **ELIMINATES** violations under this provision for defacing, damaging or destroying **EXCEPT** for computers
 - **ELIMINATES** need to demonstrate that use of tear gas, etc was done with purpose to interfere with the use or enjoyment of property of another

What HAS changed:

- ▶ 2909.05 – continued
 - Penalties for violations of all provisions are now based, primarily, upon the amount of loss sustained:
 - If less than \$500, all are M3s
 - If between \$500–\$2500, all are M1s
 - If the loss is less than \$2500 but creates a substantial risk of physical harm to any person, then the offense is an F5

What HAS changed:

- ▶ 2909.08 – Endangering Aircraft or Airport Operations
 - **All provisions dealing with aircraft that were previously located in criminal damaging or mischief are now found here & are now misdemeanors unless physical harm to a person is caused**
 - Broadens list of “projectiles” that one may not project over an airport
 - Removes “knowingly” from provision that oddly stated “knowingly or recklessly”
- ▶ 2909.081 – Interference with Aircraft by Laser
 - **Creates a misdemeanor violation for recklessly discharging a laser or other device that creates a visible light onto an operating aircraft – M1**

What HAS changed:

- ▶ 2909.09 – Vehicular or Railroad Interference
 - This statute combines current 2909.09 (vehicular vandalism); 2909.10 (Railroad vandalism) and 2909.101 (Railroad grade crossing device vandalism) into one statute.
 - Where it does not exist, adds element of knowingly to the violation
 - **ELIMINATES violation for entering or remaining on the land or premises of a railroad company**
- ▶ 2909.31 – Person Entering Transportation Facility to Show Identification
 - **Provides a penalty for failure to present ID – makes it an M4**
 - Adds requirement to present ID when present in transportation infrastructure facility, not just when entering



Proposed Amendments to Criminal Statutes >>

Chapter 2911 – Robbery, Burglary and Safecracking

What HAS changed:

- ▶ 2911.06 – Criminal Trespass
 - A number of statutes – Breaking & Entering (2911.13); Aggravated Trespass (2911.211) and Trespass in a Place of Amusement (2911.23) have been combined into one, labeled “Criminal Trespass” and re-numbered
 - (A) – Current B&E – still a felony
 - (B) – Current Agg Trespass
 - Element of “knowingly” added
 - **ELIMINATES causing another person to believe that the offender will cause physical harm as predicate misdemeanor**

What HAS changed:

- ▶ 2911.06 – continued
 - (C) – Current Trespass in Place of Amusement
 - **ELIMINATES necessity of written notice of restricted area and laundry list of things that might be such an area.**
 - **ELIMINATES provision allowing for written notice to constitute sufficient notice**
 - Adds need to demonstrate that the person “knows, or has reasonable cause to believe” that the area is restricted
 - (D) – Current Criminal Trespass
 - Allows for enhancement to an M3 for prior violation within two years
 - **ELIMINATES provisions allowing for doubled fines for offenses committed with snowmobiles, ATVs, etc.**




Proposed Amendments to Criminal Statutes >>>

Chapter 2913 – Theft and Fraud

Violations that have NOT changed:

- ▶ 2913.02 – Theft
- ▶ 2913.03 – Unauthorized Use of a Vehicle
- ▶ 2913.05 – Telecommunications Fraud
- ▶ 2913.07 – Motion Picture Piracy
- ▶ 2913.11 – Passing Bad Checks
- ▶ 2913.21 – Misuse of Credit Cards
- ▶ 2913.40 – Medicaid Fraud
- ▶ 2913.41 – Medicaid Eligibility Fraud
- ▶ 2913.42 – Tampering with Records
- ▶ 2913.43 – Securing Writings by Deception

Violations that have NOT changed:

- ▶ 2913.45 - Defrauding Creditors
 - ▶ 2913.46 - Illegal Use of Food Stamps or WIC Program Benefits
 - ▶ 2913.48 - Workers' Compensation Fraud
 - ▶ 2913.51 - Receiving Stolen Property
- 

Violations that have changed:

- ▶ 2913.04 – Unauthorized Use of Property
 - Moves the provisions related to computer hacking to new section 2913.08
 - Removes “attempt” from the LEADS and OHLEG access provisions
- ▶ 2913.06 – Unlawful Use of Telecommunications Device
 - **ELIMINATES provision prohibiting violating with purpose to avoid a lawful charge for the service**
- ▶ 2913.31 – Forgery
 - Merges Criminal Simulation (2913.32) into this violation
 - Adds “without privilege to do so”
 - Combines two writing provisions into one – “forge any writing”
 - **ELIMINATES the prohibition against forging an ID card/selling a forged ID card**
 - Adds a provision generally prohibiting making or altering any object so that it appears to have value it does not possess or uttering the same

Violations that have changed:

- ▶ 2919.33 – Making or Using Slugs
 - **This section has been ELIMINATED**
- ▶ 2913.32 – Tampering with Coins
 - Currently 2911.32, this section has been re-numbered
- ▶ 2913.34 – Trademark Counterfeiting
 - This section has been re-worked to consolidate provisions into 2 provisions rather than 5 but the prohibited conduct is essentially the same
- ▶ 2913.44 – Personating an Officer
 - **This section has been ELIMINATED**
- ▶ 2913.441 – Unlawful Display of Law Enforcement Emblem
 - **This section has been ELIMINATED**
- ▶ 2919.47 – Insurance Fraud
 - **ELIMINATES the aid, abet, solicit, etc provision**

The BIG change???



Penalties, Penalties, Penalties:

- ▶ Unless the measured value of the violation requires that an offense be enhanced or prior offenses require that the offense be enhanced, **the following are M3s:**
 - **Theft (NOT anhydrous ammonia or firearms)**
 - **Unauthorized Use of Vehicle (less than 48hrs)**
 - **Unauthorized Use of Property (not LEADS or OHLEG)**
 - **Passing Bad Checks**
 - **Misuse of Credit Cards**
 - **Receiving Stolen Property (NOT anhydrous ammonia or firearms)**

Penalties, Penalties, Penalties:

- ▶ Unless the measured value of the violation requires that an offense be enhanced or prior offenses require that the offense be enhanced, **the following are M1s:**
 - **Unauthorized Use of a Vehicle (over 48hrs)**
 - **Telecommunications Fraud**
 - **Unlawful Use of a Telecommunications Device**
 - Motion Picture Piracy
 - **Forgery**
 - **Tampering with Coin Machines**
 - **Trademark Counterfeiting**
 - Medicaid Fraud
 - Medicaid Eligibility Fraud
 - Tampering with Records (unless records owned by gov't)
 - Securing Writings by Deception
 - Defrauding Creditors
 - **Illegal Use of Food Stamps or WIC Program Benefits**
 - Insurance Fraud
 - Workers' Compensation Fraud

Enhancements...

- ▶ For those provisions allowing for an enhancement for the measured value of the offense, the following applies:
 - \$500 or more = M1
 - \$2500 or more = F5 (and upwards)
- ▶ In addition to enhancements for measured value, 2 or more prior violations within 5 years results in:
 - M3 becomes M1
 - M1 becomes F5 (and upwards)



Proposed Amendments to Criminal Statutes >>

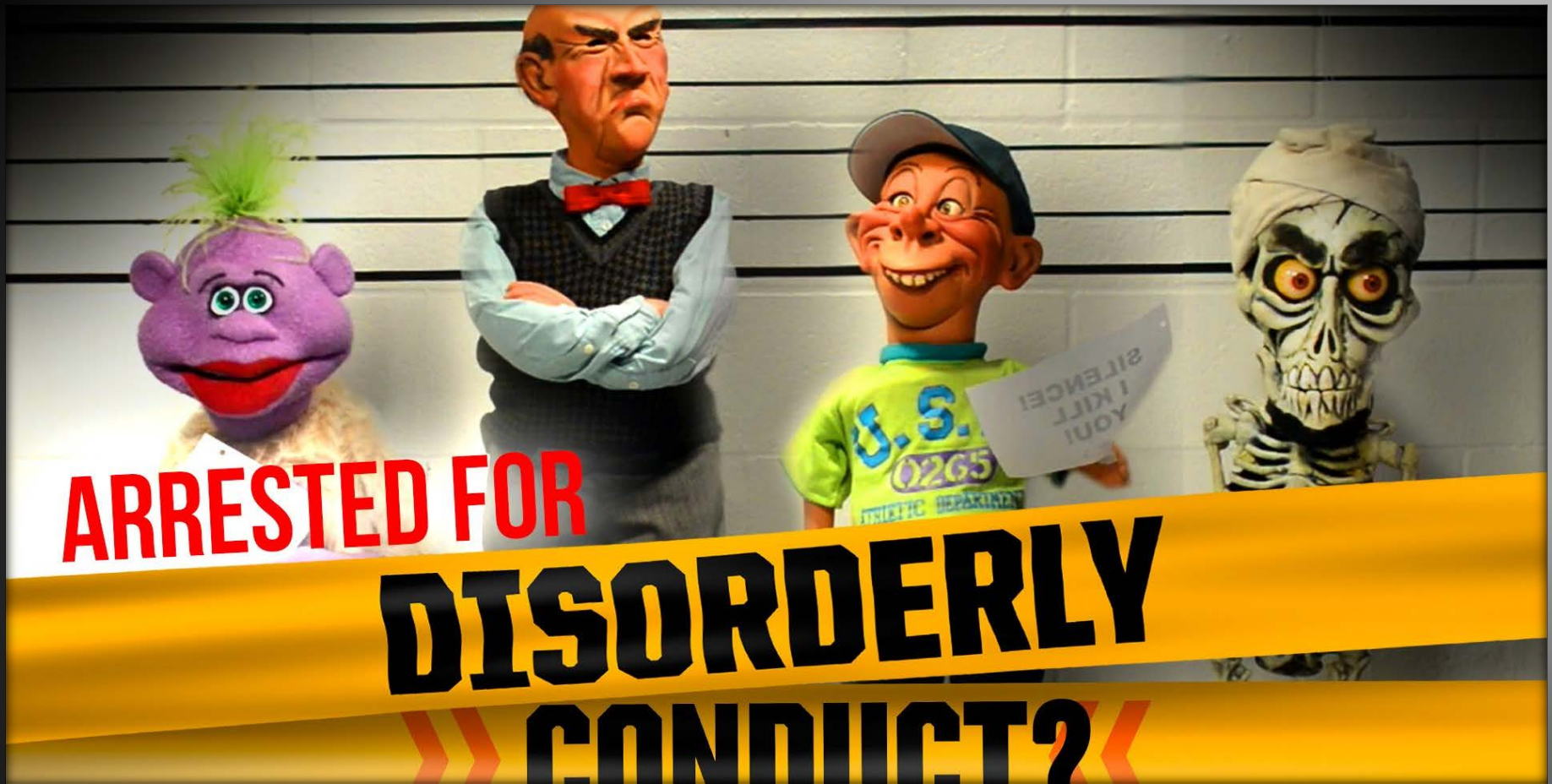
Chapter 2915 – Gambling

What has NOT changed:

- ▶ 2915.02 – Gambling
- ▶ 2915.03 – Operating a Gambling House
- ▶ 2915.04 – Public Gaming
- ▶ 2915.05 – Cheating
- ▶ 2915.06 – Skill-based Amusement Machine Prohibited Conduct
- ▶ 2915.09 – Illegally Conducting Bingo Game
- ▶ 2915.10 – Bingo Records Retention
- ▶ 2915.11 – Bingo Game Operator Requirements
- ▶ 2915.13 – Veteran’s Organization or Fraternal Organization Authorized to Conduct Bingo

What HAS changed:

- ▶ 2915.081 – Distributor license for bingo supplies
 - **ELIMINATES felony enhancement for priors**
- ▶ 2915.082 – Illegally Operating as Manufacturer of Bingo Supplies
 - **ELIMINATES felony enhancement for priors**
- ▶ 2915.091 – Illegally Conducting Instant Bingo
 - **ELIMINATES felony enhancement for priors**
- ▶ 2915.092 – Illegal Conduct of Raffles
 - **ELIMINATES felony enhancement for priors**
- ▶ 2915.094 – Owner or lessor Conducting Instant Bingo other than at a Bingo Session
 - **ELIMINATES felony enhancement for priors**



Proposed Amendments to Criminal Statutes >>

Chapter 2917 – Offenses Against the Public Peace
Peace

What HAS changed:

- ▶ 2917.01 – Inciting to Violence
 - Replaces “clear and present danger” with “an imminent danger”
 - Requires that to prove the violation, must establish BOTH imminent danger & that the conduct proximately results in the commission of an offense
 - If the offense of violence committed is a misdemeanor, a violation of this statute is the next lesser degree than the misdemeanor violated
 - Only an M1 if the offense of violence committed is an F5

What HAS changed:

- ▶ 2917.03 – Riot
 - Specifies that participation means “actual participation in the specified conduct”
- ▶ 2917.04 – Failure to Disperse
 - Changes “physical harm” to “physical damage” to property
 - Elevates the offense from an MM/M4 to an M4/M3

What HAS changed:

- ▶ 2917.11 – Disorderly Conduct
 - **Elevates *mens rea* to Knowingly**
 - (A)Changes “physical harm” to “physical damage” to property
 - Combines (1) & (5) into one provision
 - (2)Removes offensively coarse utterance, gesture or display
 - (4)Removes public street, road or highway
 - (B)Adds element of recklessness
 - (1)Removes ordinary sensibilities and would know if not intoxicated
 - If a person appears to an ordinary observer to be intoxicated that is enough for probable cause but not sufficient to prove guilt – that would need to meet impairment definition
 - Removes M4 enhancement for commission in front of law enforcement, etc. – only school provision remains

What HAS changed:

- ▶ 2917.12 – Disturbing a Lawful Meeting
 - Removes provision outlawing making utterances, gestures, displays which outrage the sensibilities of the group
- ▶ 2917.13 – Misconduct at Emergency
 - Makes all violations an M2 instead of M4/M1
- ▶ 2917.21 – Telecommunications Harassment
 - Elevates threshold for economic harm to \$2500 for a felony

What HAS changed:

- ▶ 2917.31 – Inducing Panic
 - Adds element of recklessly
 - Combines offense of Making False Alarms (2917.32) into this section (B)
 - **ELIMINATES provision prohibiting initiating or circulating a false report or warning...**
- ▶ 2917.41 – Misconduct on Public Transportation
 - Mental state of knowingly added
 - **ELIMINATES provisions related to smoking, eating, drinking, loud music, etc**



Proposed Amendments to Criminal Statutes >>

Chapter 2919 – Offenses Against the Family

What has NOT changed:

- ▶ 2919.12 - 2919.205 - Abortion provisions were not reviewed by the Committee
- ▶ 2919.224 - 2919.227 - Child Care Disclosures

What HAS changed:

- ▶ 2919.01 – Bigamy
 - **ELIMINATES violation based upon cohabitation**
- ▶ 2919.21 – Nonsupport or Contributing to Nonsupport of Dependents
 - Adds element of Knowingly
 - **ELIMINATES obligation to provide support to a person's aged or infirm parent**
 - **ELIMINATES provision pertaining to contributing to a juvenile becoming a dependent child**
 - Requires the court to consider placing the offender on probation

What HAS changed:

- ▶ 2919.22 – Endangering Children
 - Adds element of recklessly to the (A) violation as well as (B)(1) – abuse; (B)(3) – corporal punishment; and (B)(4) – disciplinary measures
 - Adds element of Knowingly to (B)(2) – torture; and (B)(5) – be on land where drugs are manufactured
 - **ELIMINATES provision pertaining to enticing, coercing, etc a minor to model or be photographed, etc in obscene materials, etc.**
 - Clarifies that one can be convicted of both this violation and OVI & separate endangering charge per child in the car

What HAS changed:

- ▶ 2919.222 – Parental Educational Neglect
 - Adds *mens rea* of Purposefully
- ▶ 2919.23 – Interference With Custody
 - Adds Knowingly to modify take, keep, etc.
 - Adds provision protecting persons adjudicated incompetent who have a guardian
 - Combines the elements of the two affirmative defenses into one defense with two obligations
 - Makes all violations an M1 on a first offense unless the person is removed from the state or the person suffers physical harm as a result of the violation

What HAS changed:

- ▶ 2919.231 – Interfering with Action to issue or Modify Support Order
 - Adds element of Recklessly
 - Removes attempt language
 - Merges to prohibit actions to establish paternity into this section as well
 - **ELIMINATES felony enhancement for priors**

What HAS changed:

- ▶ 2919.24 – Contributing to Unruliness or Delinquency of a Minor
 - Adds “knowing that the child is under age 18 or being reckless in that regard”
 - Adds Knowingly
 - **ELIMINATES provision prohibiting acting in a way tending to cause a child to be unruly**
 - **ELIMINATES language stating that each day is a separate violation**

What HAS changed:


- ▶ 2919.25 – Domestic Violence
 - Removes attempt language
 - Adds “reasonably” to modify believe in the M4
 - Can be enhanced to a felony for any prior serious offenses of violence committed against a family or household member while an adult
 - Can be enhanced to a felony where the instant violation causes serious physical harm
 - The M4 violation can be enhanced to M2 for prior serious offenses of violence; M1 for 2 or more prior serious offenses of violence



Proposed Amendments to Criminal Statutes >>

Chapter 2921 – Offenses Against Justice and
Public Integrity

What has NOT changed:

- ▶ 2921.43 - Soliciting or Accepting Improper Compensation
 - ▶ 2921.52 - Using Sham Legal Process
- 

What has changed in form only:

- ▶ 2921.34 – Escape
 - As to the misdemeanor violation, changes in syntax only
- ▶ 2921.45 – Interfering with Civil Rights
 - Gender neutrality addressed, Attempt removed

What HAS changed:

- ▶ 2921.03 – Intimidation
 - The offenses of Intimidation and Witness Intimidation (2921.04) have been combined
 - As to the misdemeanor provision, Knowingly is replaced with Recklessly
 - Attempt is removed
- ▶ 2921.11 – Perjury
 - **ELIMINATES provision necessitating that proof of falsity be supported by more than contradiction by testimony**
 - **BIG CHANGE: Perjury can now be a misdemeanor:**
 - If the official proceeding is an M1, Perjury is an F4
 - If the official proceeding is an M2–M4, Perjury is an M1
 - If the official proceeding is an MM, Perjury is an M3

What HAS changed:

▶ 2921.13 – Falsification

- An attempt has been made to locate all false statement violations into this statute
- (A)(3) – to mislead a public official now qualified:
 - (a) statement is in writing; or
 - (b) statement actually hampers or impedes the public official in performing the public official's official function
- (A)(4) – generalizes the violation to “secure the payment of any benefit administered by a governmental agency or paid out of public treasury”
- (A)(7) – combines writing in connection with report (7) and on an account, form, etc (11)
- **(A)(9) – ELIMINATED – provision dealing with purpose to commit or facilitate theft offense**
- Adds false report of child abuse – **ELIMINATES 2921.14**
- Adds “writing directed to law enforcement agent or agency that a peace officer engaged in misconduct during the performance of the officer's official duties” – **ELIMINATES 2921.15**

What HAS changed:

- ▶ 2921.21 – Compounding a Crime
 - Expands scope of offenses for which one might be a victim to “an offense for which the victim is capable of receiving restitution”
 - Requires that the prosecuting attorney “was notified of the pretrial restitution agreement”
- ▶ 2921.23 – Failure to Aid a Law Enforcement Officer
 - **Adds an M1 provision:**
 - (B) No person shall knowingly fail or refuse to aid a law enforcement officer, when called upon for assistance in protecting the officer, when the person knows or has reasonable cause to believe that the officer is in danger of suffering serious physical harm, when such aid can be given without a substantial risk of serious physical harm to the person giving aid.

What HAS changed:

- ▶ 2921.24 – Disclosure of Confidential Information
 - Adds “employee of municipality” to list of individuals prohibited from disclosing info
 - Adds “purposefully”
 - Adds judges of a court of record and Mayors presiding over Mayor’s Courts
 - Merges Disclosure of Home Addresses (2921.25) into this section

What HAS changed:

- ▶ **New provisions divide out current section 2921.22 (Failure to Report a Crime, Death, Burn injury) into discrete violations:**
 - 2921.26 – Failure to Report a Crime or Death
 - Adds Negligently to failure to report a body, streamlines the language
 - 2921.27 – Failure to Report Serious Physical Injury
 - Makes clear that this provision applies only to professionals who give aid to injured persons
 - Adds duty to report “any serious physical harm... believed resulted from an offense of violence”
 - Requires medical professionals to document in patient files if they have reasonable cause to believe that the patient has been the victim of domestic violence and exempts said documents from patient–client privilege
 - 2921.28 – Failure to Report Burn Injury
 - Makes a negligent violation an MM and a knowing violation an M2

What HAS changed:

- ▶ 2921.29 – Failure to Disclose Name/Address
 - Adds knowingly to refuse to disclose
 - Requires that the officer: “...has advised the person that the disclosure of the person’s name or address is required by law because the officer reasonably suspects the person of any of the conduct described in division (A)(1)”
 - Removes the obligation to provide a date of birth

What HAS changed:

- ▶ 2921.31 – Obstructing Noninvestigatory Official Business
 - Adds that the act must “actually” hamper or impede
 - **ELIMINATES application of this section to one who “prevents, obstructs, or delays a law enforcement agent investigating a criminal offense.”**
- ▶ 2921.32 – Obstructing Justice
 - Adds that the person must “materially” hinder the investigation, etc
 - Applies to acts that hinder prosecution, etc of “any person” not “another”
 - **ELIMINATES destroying or concealing physical evidence for the crime as a violation**
 - **Adds an M2 misdemeanor violation:**
 - (B) No person, knowing that the person is being detained for investigative purposes, shall recklessly fail to comply with a lawful order to remain in a specific location during the pendency of a lawful stop based on reasonable suspicion for investigative purposes.

What HAS changed:

- ▶ 2921.321 – Assaulting or Harassing Police Animal or Assistance Dog
 - Changes Police dog or horse to “police animal”
 - Combines “Assistance Dog” prohibitions into same section as police animals
 - Removes Attempt
 - **ELIMINATES a number of provisions dealing with specific conduct that is currently prohibited such as Taunting, tormenting or striking an animal**
 - Adds a provision that specifies that the section only applies to offenders “who know or should know “ that the animal is a police animal or assistance dog

What HAS changed:

- ▶ 2921.33 – Resisting Arrest
 - Changes Recklessly to Knowingly
 - **ELIMINATES force as an element**
 - **BIG change – penalties are gradated. Offense starts as an M2 but can go higher:**
 - (1) Resisting arrest is a first degree misdemeanor if the trier of fact finds that during the commission of the violation the offender recklessly caused physical harm to any person.
 - (2) Resisting arrest is a fourth degree felony if the trier of fact finds that during the commission of the violation the offender recklessly caused physical harm to any person by means of a deadly weapon.
 - (3) Resisting arrest is a third degree felony if the trier of fact finds that during the commission of the violation the offender recklessly caused serious physical harm to any person.

What HAS changed:

- ▶ 2921.331 – Failure to Comply
 - Adds Recklessly
 - Changes Willfully to Purposely elude
 - License suspensions on misdemeanor violations no longer mandatory
- ▶ 2921.36 – Illegal Conveyance
 - Removes Attempt
 - Adds an Affirmative Defense:
 - (2) It is an affirmative defense to a charge under this section that the item was conveyed by a person who was placed under arrest and conveys the item to the detention facility, as a result of the involuntary transport of the person under arrest to the facility.
 - **Adds a prohibition on delivering tobacco products – an M2**

What HAS changed:

- ▶ 2921.44 – Dereliction of Duty
 - Clarifies that it is officers with “supervisory control” of a detention facility that are liable
 - Elevates the provisions pertaining to fiscal obligations (D) and recklessly failing to perform a duty expressly imposed by law or recklessly doing any act expressly forbidden by law (E) to an M1
- ▶ 2921.51 – Impersonation of Peace Officer
 - Adds Knowingly to modify impersonate
 - Elevates the (A) violation from an M4 to an M2
 - Combines all other provisions into two additional violations – impersonating with purpose to commit a misdemeanor or with purpose to detain or search (M1) and impersonating with purpose to commit a felony (F+)



The **RICO** Act

Proposed Amendments to Criminal Statutes >>

Chapter 2923 – Conspiracy, Attempt, and
Complicity; Weapons Control; Corrupt Activity

What has NOT changed:

- ▶ 2923.19 - Failure to Secure a Dangerous Ordnance

What has changed in form only:

- ▶ 2923.15 - Using Weapons While Intoxicated
 - Makes plain that this is a strict liability offense

What HAS changed:

▶ 2923.02 – Attempt

- It is the intention of the committee that this section be used as the exclusive manner through which to charge attempts except for Attempted Aggravated Rape
- **Language clarified as to culpable mental state:**
 - (A) No person, with the same mental state needed for the commission of an offense, shall engage in conduct that, if successful, would constitute the commission of that offense.
- **There are no attempts for MM violations**

What HAS changed:

▶ 2923.03 – Complicity

◦ Clarifies the culpability language:

- (A) No person with the same mental state needed for the commission of an offense shall knowingly do either of the following:

◦ **ELIMINATES Conspiracy and causing an innocent or irresponsible person from committing the offense**

- Adds that it is no defense that another has not been charged or found guilty of committing the offense

- Removes language to be used by Court in addressing accomplice issues in favor of:

- (E) No person shall be found guilty of complicity based solely on the unsupported or uncorroborated testimony of an accomplice unless the testimony is believed by the trier of fact and proves complicity beyond a reasonable doubt, after the trier of fact has been made aware of the facts and circumstances surrounding the accomplice's decision to testify and the accomplice's alleged involvement in the offense.

What HAS changed:

- ▶ The Committee has taken provisions of the code dealing with CCW generally and broken them out into three distinct violations:
 - 2923.12 – Carrying Concealed Weapons
 - Converts existing exemptions from the violation into affirmative defenses
 - 2923.124 – Concealed Handgun License Duties
 - All violations related to CCW Permits have been rolled into this section including falsification of a handgun license and possession of a revoked or suspended license
 - 2923.16 – Improperly Handling Firearms in a Motor Vehicle
 - Provisions pertaining to CCW permit holders have been removed and re-located in 2923.124

What HAS changed:


- ▶ 2923.24 – Possessing Criminal Tools
 - Adds Knowingly to modify possess
 - **ELIMINATES felony enhancement**



Proposed Amendments to Criminal Statutes >>

Chapter 2925 - Drug Offenses

What has NOT changed:

- ▶ 2925.13 – Permitting Drug Abuse
 - ▶ 2925.32 – Trafficking in Harmful Intoxicants
 - ▶ 2925.34 – Restriction Against Sale of or Offer for Sale of Pure Caffeine Product
 - ▶ 2925.37 – Counterfeit Controlled Substance Offenses
 - ▶ 2925.55 – Unlawful Purchase of Pseudoephedrine or Ephedrine Product
- 

What HAS changed:

- ▶ 2925.03 – Petty Trafficking in Drugs
 - The Committee has carved out a Petty Drug Trafficking Violation which are F4 & F5 offenses – HOWEVER, the “gifting” of less than 20g of marijuana is classified as an MM
- ▶ 2925.041 – Marijuana & Hashish Possession
 - Marijuana and hashish are given their own section and the provisions currently found in 2925.11 are now located here
 - A Minimum marijuana amount is provided = .025g and the cap for the MM violation is raised to 200g
 - 200g < 400g = M4 – an amount over 400g = felony
 - A minimum hashish amount is provided = .025g and the cap for the MM violation is raised to 10g
 - 10g < 20g = M4 – an amount over 20g = felony

What HAS changed:

- ▶ 2925.05 – Corrupting Another with Drugs
 - This section is re-numbered from 2925.02
 - **All violations of this statute that involve marijuana as the controlled substance being used to corrupt are now M1 violations**
- ▶ 2925.06 – Illegal Manufacture of Drugs
 - **ELIMINATES the enhancement for cultivation of marijuana near a school, etc.**
 - Increases the amount necessary to produce to enhance the violation:
 - $0 < 200\text{g} = \text{MM}$
 - $200\text{g} < 400\text{g} = \text{M4}$ – over 400g = felony

What HAS changed:

- ▶ 2925.09 – Unapproved Drugs – Livestock
 - Adds Knowingly to modify administer, etc
 - **Makes all such violations M1s (currently F5/4) with no felony enhancements for priors**
- ▶ 2925.14 – Drug Paraphernalia
 - Combines drug abuse instruments into this violation
 - **ELIMINATES mandatory driver's license suspensions**
- ▶ 2925.22 – Deception to Obtain a Dangerous Drug
 - **Changes the violation for possessing a uncompleted preprinted prescription blank used for writing a prescription from an F5 to an M1, absent enhancements**

What HAS changed:

- ▶ 2925.31 – Abusing Harmful Intoxicants
 - **ELIMINATES felony enhancements for priors**
- ▶ 2925.33 – Possessing Nitrous Oxide in Motor Vehicle
 - Adds Knowingly to modify possess
 - **ELIMINATES mandatory driver's license suspension**
- ▶ 2925.36 – Illegal Dispensing of Drug Samples
 - **ELIMINATES mandatory driver's license suspension**
- ▶ 2925.56 – Unlawful Sale of Pseudoephedrine or Ephedrine Product
 - Adds Knowingly to sell, etc
 - Pulls into this section the affirmative defenses currently listed in 2925.58



Miscellaneous

Proposed Amendments to Criminal Statutes >>>

Chapter 2927 – Miscellaneous Offenses

What has NOT changed:

- ▶ 2927.15 - Unlawful Collection of a Bodily Substance

What has changed in form only:

- ▶ 2927.12 - Ethnic Intimidation
 - Changes as to syntax only

What HAS changed:

- ▶ 2927.01 Abuse of a Corpse
 - Adds Knowingly
 - **ELIMINATES violation for acts that would “outrage reasonable family sensibilities”**
 - Adds F5 violations for Unlawful disinterment, etc. and sexual activity with or involving a human corpse
 - **Makes the current F5 outrage of community sensibilities an M1**


What HAS changed:

- ▶ 2927.023 – Unlawful Transportation of Tobacco Products
 - Adds Recklessly to cause to be shipped
 - Expands prohibitions involving shipping cigarettes to all tobacco products
 - Changes Knowingly to Recklessly for Motor Carrier transport

What HAS changed:

- ▶ 2927.03 – Injure, Intimidate or Interfere with Fair Housing Rights
 - Changes “Willfully injure” to “Purposefully injure”
 - **ELIMINATES all the provisions that prohibit intimidating another from participating in a program (as distinguished from actual participation or prior participation)**

What HAS changed:

- ▶ 2927.27 – Illegal Bail Bond Agent Practices
 - Adds Recklessly to modify apprehend, etc
 - Changes “off-duty peace officer” to “off-duty law enforcement officer”
 - Adds Recklessly to represent the person’s self to be a bail enforcement agent...
- 

Any Questions?????

Lnbaker-morrish@columbus.gov

