

## Chapter 2925: DRUG OFFENSES

### ~~2925.01 Drug offense definitions:~~

Comment [MT1]: Moving all definitions to 2901

As used in this chapter:

~~(A) "Administer," "controlled substance," "controlled substance analog," "dispense," "distribute," "hypodermic," "manufacturer," "official written order," "person," "pharmacist," "pharmacy," "sale," "schedule I," "schedule II," "schedule III," "schedule IV," "schedule V," and "wholesaler" have the same meanings as in section 3719.01 of the Revised Code.~~

~~(B) "Drug dependent person" and "drug of abuse" have the same meanings as in section 3719.011 of the Revised Code.~~

~~(C) "Drug," "dangerous drug," "licensed health professional authorized to prescribe drugs," and "prescription" have the same meanings as in section 4729.01 of the Revised Code.~~

~~(D) "Bulk amount" of a controlled substance means any of the following:~~

~~(1) For any compound, mixture, preparation, or substance included in schedule I, schedule II, or schedule III, with the exception of controlled substance analogs, marijuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (D)(2) or (5) of this section, whichever of the following is applicable:~~

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

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

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

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

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

~~(f) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a~~

~~compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant that is in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the federal drug abuse control laws, as defined in section 3719.01 of the Revised Code, that is or contains any amount of a schedule II depressant substance or a schedule II hallucinogenic substance;~~

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

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

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

~~(4) An amount equal to or exceeding two hundred fifty milliliters or two hundred fifty grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule V substance;~~

~~(5) An amount equal to or exceeding two hundred solid dosage units, sixteen grams, or sixteen milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III anabolic steroid.~~

~~(E) "Unit dose" means an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.~~

~~(F) "Cultivate" includes planting, watering, fertilizing, or tilling.~~

~~(G) "Drug abuse offense" means any of the following:~~

~~(1) A violation of division (A) of section 2913.02 that constitutes theft of drugs, or a violation of section 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code;~~

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

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

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

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

~~(I) "Harmful intoxicant" does not include beer or intoxicating liquor but means any of the following:~~

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

~~(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;~~

~~(b) Any aerosol propellant;~~

~~(c) Any fluorocarbon refrigerant;~~

~~(d) Any anesthetic gas.~~

~~(2) Gamma-Butyrolactone;~~

~~(3) 1,4-Butanediol.~~

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

~~(K) "Possess" or "possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.~~

~~(L) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to~~

~~prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.~~

~~(M) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of references that are approved by the state board of pharmacy.~~

~~(N) "Juvenile" means a person under eighteen years of age.~~

~~(O) "Counterfeit controlled substance" means any of the following:~~

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

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

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

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

~~(P) An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.~~

~~(Q) "School" means any school operated by a board of education, any community school established under Chapter 3314. of the Revised Code, or any nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.~~

~~(R) "School premises" means either of the following:~~

~~(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;~~

~~(2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under Chapter 3314. of the Revised~~

~~Code, or the governing body of a nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.~~

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

~~(T) "Disciplinary counsel" means the disciplinary counsel appointed by the board of commissioners on grievances and discipline of the supreme court under the Rules for the Government of the Bar of Ohio.~~

~~(U) "Certified grievance committee" means a duly constituted and organized committee of the Ohio state bar association or of one or more local bar associations of the state of Ohio that complies with the criteria set forth in Rule V, section 6 of the Rules for the Government of the Bar of Ohio.~~

~~(V) "Professional license" means any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in divisions (W)(1) to (36) of this section and that qualifies a person as a professionally licensed person.~~

~~(W) "Professionally licensed person" means any of the following:~~

~~(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under Chapter 3719. of the Revised Code;~~

~~(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under Chapter 4701. of the Revised Code and who holds an Ohio permit issued under that chapter;~~

~~(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under Chapter 4703. of the Revised Code;~~

~~(4) A person who is registered as a landscape architect under Chapter 4703. of the Revised Code or who holds a permit as a landscape architect issued under that chapter;~~

~~(5) A person licensed under Chapter 4707. of the Revised Code;~~

~~(6) A person who has been issued a certificate of registration as a registered barber under Chapter 4709. of the Revised Code;~~

~~(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of Chapter 4710. of the Revised Code;~~

~~(8) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, managing cosmetologist's license, managing hair designer's license, managing manicurist's license, managing esthetician's license, managing natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license, or tanning facility permit under Chapter 4713. of the Revised Code;~~

~~(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under Chapter 4715. of the Revised Code;~~

~~(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under Chapter 4717. of the Revised Code;~~

~~(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under Chapter 4723. of the Revised Code;~~

~~(12) A person who has been licensed to practice optometry or to engage in optical dispensing under Chapter 4725. of the Revised Code;~~

~~(13) A person licensed to act as a pawnbroker under Chapter 4727. of the Revised Code;~~

~~(14) A person licensed to act as a precious metals dealer under Chapter 4728. of the Revised Code;~~

~~(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under Chapter 4729. of the Revised Code;~~

~~(16) A person who is authorized to practice as a physician assistant under Chapter 4730. of the Revised Code;~~

~~(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under Chapter 4731. of the Revised Code;~~

~~(18) A person licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code;~~

- ~~(19) A person registered to practice the profession of engineering or surveying under Chapter 4733. of the Revised Code;~~
- ~~(20) A person who has been issued a license to practice chiropractic under Chapter 4734. of the Revised Code;~~
- ~~(21) A person licensed to act as a real estate broker or real estate salesperson under Chapter 4735. of the Revised Code;~~
- ~~(22) A person registered as a registered sanitarian under Chapter 4736. of the Revised Code;~~
- ~~(23) A person licensed to operate or maintain a junkyard under Chapter 4737. of the Revised Code;~~
- ~~(24) A person who has been issued a motor vehicle salvage dealer's license under Chapter 4738. of the Revised Code;~~
- ~~(25) A person who has been licensed to act as a steam engineer under Chapter 4739. of the Revised Code;~~
- ~~(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under Chapter 4741. of the Revised Code;~~
- ~~(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under Chapter 4747. of the Revised Code;~~
- ~~(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under Chapter 4749. of the Revised Code;~~
- ~~(29) A person licensed and registered to practice as a nursing home administrator under Chapter 4751. of the Revised Code;~~
- ~~(30) A person licensed to practice as a speech language pathologist or audiologist under Chapter 4753. of the Revised Code;~~
- ~~(31) A person issued a license as an occupational therapist or physical therapist under Chapter 4755. of the Revised Code;~~
- ~~(32) A person who is licensed as a licensed professional clinical counselor , licensed professional counselor, social worker , independent social worker, independent marriage and family therapist, or marriage and family therapist, or registered as a social work assistant under Chapter 4757. of the Revised Code;~~

~~{33} A person issued a license to practice dietetics under Chapter 4759. of the Revised Code;~~

~~{34} A person who has been issued a license or limited permit to practice respiratory therapy under Chapter 4761. of the Revised Code;~~

~~{35} A person who has been issued a real estate appraiser certificate under Chapter 4763. of the Revised Code;~~

~~{36} A person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.~~

~~{X} "Cocaine" means any of the following:~~

~~{1} A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;~~

~~{2} Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;~~

~~{3} A salt, compound, derivative, or preparation of a substance identified in division (X)(1) or (2) of this section that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.~~

~~{Y} "L.S.D." means lysergic acid diethylamide.~~

~~{Z} "Hashish" means the resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.~~

~~{AA} "Marihuana" has the same meaning as in section 3719.01 of the Revised Code, except that it does not include hashish.~~

~~{BB} An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.~~

~~{CC} "Presumption for a prison term" or "presumption that a prison term shall be imposed" means a presumption, as described in division (D) of section 2929.13 of the Revised Code, that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code.~~

~~{DD} "Major drug offender" has the same meaning as in section 2929.01 of the Revised Code.~~

~~{EE} "Minor drug possession offense" means either of the following:~~

~~(1) A violation of section 2925.11 of the Revised Code as it existed prior to July 1, 1996;~~

~~(2) A violation of section 2925.11 of the Revised Code as it exists on and after July 1, 1996, that is a misdemeanor or a felony of the fifth degree.~~

~~{FF} "Mandatory prison term" has the same meaning as in section 2929.01 of the Revised Code.~~

~~{GG} "Adulterate" means to cause a drug to be adulterated as described in section 3715.63 of the Revised Code.~~

~~{HH} "Public premises" means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.~~

~~{II} "Methamphetamine" means methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine.~~

~~{JJ} "Lawful prescription" means a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.~~

~~{KK} "Deception" and "theft offense" have the same meanings as in section 2913.01 of the Revised Code.~~

~~Amended by 130th General Assembly File No. TBD, HB 232, §1, eff. 7/10/2014.~~

~~Amended by 129th General Assembly File No. 189, HB 334, §1, eff. 12/20/2012.~~

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 01-01-2004; 09-23-2004; 05-06-2005; 05-17-2006; 2008 HB195 09-30-2008~~

## **2925.02 Corrupting another with drugs.**

(A) No person shall knowingly do any of the following:

(1) By force, threat, or deception, administer to another or induce or cause another to use a controlled substance;

(2) By any means, administer or furnish to another or induce or cause another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to cause the other person to become drug dependent; or

**Comment [MT2]:** LSC Note: Please move "Possession of controlled substances" under 2925.11 to 2925.02. Likewise, please move "Corrupting another with drugs" under 2925.02 to 2925.11. The workgroup wanted to keep them under their current section numbers so that the committee could see the exact track changes from current law.

(3) By any means, administer or furnish to another or induce or cause another to use a controlled substance, and thereby cause serious physical harm to the other person, or cause the other person to become drug dependent.

~~(4) By any means, do any of the following:~~

~~(a) Furnish or administer a controlled substance to a juvenile who is at least two years the offender's junior, when the offender knows the age of the juvenile or is reckless in that regard;~~

~~(b) Induce or cause a juvenile who is at least two years the offender's junior to use a controlled substance, when the offender knows the age of the juvenile or is reckless in that regard;~~

~~(c) Induce or cause a juvenile who is at least two years the offender's junior to commit a felony drug abuse offense, when the offender knows the age of the juvenile or is reckless in that regard;~~

~~(d) Use a juvenile, whether or not the offender knows the age of the juvenile, to perform any surveillance activity that is intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or to prevent the arrest of the offender or any other person for the commission of a felony drug abuse offense.~~

**Comment [MT3]:** Removed enhancement

~~(5) By any means, furnish or administer a controlled substance to a pregnant woman or induce or cause a pregnant woman to use a controlled substance, when the offender knows that the woman is pregnant or is reckless in that regard.~~

**Comment [MT4]:** Moved to (A)(4) because the language fits with the other provisions in (A)(4)

(B) Division (A)(1) ~~and, (3), (4), or (5) of this section~~ does not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters RC 3719., 4715., 4723., 4729., 4730., 4731., and 4741. ~~of the Revised Code.~~

(C) Whoever violates this section is guilty of corrupting another with drugs. The penalty for the offense shall be determined as follows:

(1) 2nd degree felony ~~if the offense is a violation of division (A)(1), (2), (3), or (4) of this section~~ and the drug involved is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, ~~the offender shall be punished as follows:~~

~~(a) Except as otherwise provided in division (C)(1)(b) of this section, corrupting another with drugs committed in those circumstances is a felony of the second degree and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(b) If the offense was committed in the vicinity of a school, corrupting another with drugs committed in those circumstances is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(2) 3rd degree felony if the offense is a violation of division (A)(~~1~~, ~~2~~, ~~3~~), or ~~(4)~~ of this section and the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V, the offender shall be punished as follows:~~

~~(a) Except as otherwise provided in division (C)(2)(b) of this section, corrupting another with drugs committed in those circumstances is a felony of the second degree and there is a presumption for a prison term for the offense.~~

~~(b) If the offense was committed in the vicinity of a school, corrupting another with drugs committed in those circumstances is a felony of the second degree and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(3) 4th degree felony if the offense is a violation of division (A)(~~1~~, ~~2~~, ~~3~~), or ~~(4)~~ of this section and the drug involved is marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, the offender shall be punished as follows:~~

~~(a) Except as otherwise provided in division (C)(3)(b) of this section, corrupting another with drugs committed in those circumstances is a felony of the fourth degree and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) If the offense was committed in the vicinity of a school, corrupting another with drugs committed in those circumstances is a felony of the third degree and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(4) If the offense is a violation of division (A)(5) of this section and the drug involved is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, corrupting another with drugs is a felony of the first degree and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(5) If the offense is a violation of division (A)(5) of this section and the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V, corrupting~~

~~another with drugs is a felony of the second degree and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(6) If the offense is a violation of division (A)(5) of this section and the drug involved is marihuana, 1 Pentyl 3-(1-naphthoyl)indole, 1 Butyl 3-(1-naphthoyl)indole, 1 [2-(4-morpholinyl)ethyl] 3-(1-naphthoyl)indole, 5 (1,1-dimethylheptyl) 2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, or 5 (1,1-dimethyloctyl) 2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, corrupting another with drugs is a felony of the third degree and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section or the clerk of that court shall do all of the following that are applicable regarding the offender:~~

~~(1)~~

~~(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.~~

~~(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, any mandatory fine imposed pursuant to division (D)(1)(a) of this section and any fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (F) of section 2925.03 of the Revised Code.~~

~~(c) If a person is charged with any violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the forfeited bail shall be paid by the clerk of the court pursuant to division (D)(1)(b) of this section as if it were a fine imposed for a violation of this section.~~

~~(2) The court shall suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension. Upon the filing of the motion and the court's finding of good cause for the termination, the court may terminate the suspension.~~

(43) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with ~~RCsection 2925.38 of the Revised Code.~~

~~(DE)~~ Notwithstanding the prison term otherwise authorized ~~or required~~ for the offense under division (C) ~~of this section and sections 2929.13 and 2929.14 of the Revised Code~~, if ~~the trier of fact determines that~~ the violation of division (A) ~~of this section~~ involves the sale, offer to sell, or possession of ~~at least one hundred times the bulk amount of any~~ schedule I or II controlled substance, with the exception of marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, ~~and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender the court shall impose as a mandatory prison term the maximum prescribed for a 1st degree felony and is guilty of a specification of the type described in section 2941.1410 of the Revised Code, the court, in lieu of the prison term that otherwise is authorized or required, shall impose upon the offender the mandatory prison term specified in division (B)(3)(a) of section 2929.14 of the Revised Code.~~

**Comment [MT5]:** Throughout the draft, the workgroup edited each applicable penalty section so that the previous MDO spec is now just a mandatory sentence within the substantive offense's penalty section.

~~Amended by 130th General Assembly File No. TBD, SB 276, §1, eff. 3/19/2015.~~

~~Amended by 130th General Assembly File No. TBD, HB 394, §1, eff. 3/19/2015.~~

~~Amended by 129th General Assembly File No. 43, HB 64, §1, eff. 10/17/2011.~~

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 01-01-2004; 05-17-2006~~

### **2925.03 [Effective 9/29/2015] Trafficking, aggravated trafficking in drugs.**

(A) No person shall knowingly do any of the following:

- (1) Sell ~~or offer to sell~~ a controlled substance or a controlled substance analog;
- (2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

**Comment [MJT6]:** Removed "offer to sell." Workgroup would like to make an "offer to sell" an attempted "trafficking" under 2923.02.

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

- (1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters ~~RC~~ 3719., 4715., 4723., 4729., 4730., 4731., and 4741. ~~of the Revised Code;~~

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

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) ~~of this section~~ is guilty of trafficking in drugs and shall be punished according to the following chart~~one of the following~~:

**Comment [MT7]:** New penalties are reflected by the new trafficking chart provided

DRUG	AMOUNT	LEVEL
Schedule I or II*	< bulk	F-4
	≥ bulk → < 50 x bulk	F-3
	≥ 50 → < 100 x bulk	F-2
	≥ 100 x bulk	F-1 (MDO)
Schedule III, IV, or V*	< bulk	F-5
	≥ bulk → < 50 x bulk	F-4
	≥ 50 x bulk	F-2
Marijuana	Gift ≤ 20 g	MM†
	< 200 g	F-5
	≥ 200 g → < 1 kg	F-4
	≥ 1 kg → < 20 kg	F-3
	≥ 20 kg	F-2
Cocaine: Powder or Crack	< 10 g	F-5
	≥ 10 g → < 27 g	F-4
	≥ 27 g → < 100 g	F-3
	≥ 100 g → < 500 g	F-2
	≥ 500 g	F-1 (MDO)
LSD: Solid	< 50 UD	F-5
	≥ 50 UD → < 250 UD	F-4
	≥ 250 UD → < 5000 UD	F-3
	≥ 5000 UD	F-2
LSD: Liquid	< 5 g	F-5
	≥ 5 g → < 25 g	F-4
	≥ 25 g → < 500 g	F-3
	≥ 500 g	F-2
Heroin/Fentanyl♦	< 1 g; < 10 UD	F-5
	≥ 1 g → < 10 g; ≥ 10 UD → < 100 UD	F-4
	≥ 10 g → < 50 g; ≥ 100 UD → < 500 UD	F-3
	≥ 50 g → < 250 g; ≥ 500 UD → < 2500 UD	F-1
	≥ 250 g; ≥ 2500 UD	F-1 (MDO)
Hashish: Solid	Gift ≤ 1 g	MM†
	< 10 g	F-5
	≥ 10 g → < 50 g	F-4
	≥ 50 g → < 1 kg	F-3
Hashish: Liquid	≥ 1 kg	F-2
	Gift ≤ 0.2 g	MM†
	< 2 g	F-5
	≥ 2 g → < 10 g	F-4
	≥ 10 g → < 200 g	F-3
Controlled Substance Analog	≥ 200 g	F-2
	< 10 g	F-5
	≥ 10 g → < 30 g	F-4
	≥ 30 g → < 50 g	F-2
	≥ 50 g	F-1 (MDO)

\* The schedule of controlled substances is in O.R.C. §3719.41.

† Minor misdemeanor (MM) on first offense, M-3 on a subsequent offense.

MDO (Major Drug Offender) = Mandatory maximum term from F-1 range

‡ F-5 if the offender previously has been convicted of a drug abuse offense.

♦ Heroin/Fentanyl shall include any derivative of either heroin or fentanyl and any mixture containing both heroin and fentanyl.

Note: As used in this section, "drug" includes any substance that is represented to be a drug.

~~(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If aggravated trafficking in drugs is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(e) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

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

~~(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.~~

~~(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), (g), or (h) of this section, trafficking in marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(3)(e), (d), (e), (f), (g), or (h) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.~~

~~(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.~~

~~(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty thousand grams but is less than forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds forty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(h) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.~~

~~(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, trafficking in cocaine is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than twenty grams of cocaine, trafficking in cocaine is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in cocaine is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty grams but is less than twenty seven grams of cocaine, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds twenty seven grams but is less than one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(g) If the amount of the drug involved equals or exceeds one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in L.S.D. is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile,~~

~~trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, trafficking in heroin is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for~~

~~the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.~~

~~(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(g) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), (f), or (g) of this section, trafficking in hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(7)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in~~

~~hashish is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.~~

~~(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.~~

~~(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than two thousand grams of hashish in a solid form or equals or exceeds two hundred grams but is less than four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is~~

~~a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(8) If the drug involved in the violation is a controlled substance analog or compound, mixture, preparation, or substance that contains a controlled substance analog, whoever violates division (A) of this section is guilty of trafficking in a controlled substance analog. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(8)(b), (c), (d), (e), (f), or (g) of this section, trafficking in a controlled substance analog is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) Except as otherwise provided in division (C)(8)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than twenty grams, trafficking in a controlled substance analog is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty grams but is less than thirty grams, trafficking in a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the second degree, and there is a presumption for a prison term for the offense.~~

~~(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds thirty grams but is less than forty grams, trafficking in a controlled substance analog is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, and the~~

~~court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds forty grams but is less than fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(g) If the amount of the drug involved equals or exceeds fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:~~

~~(1) The court shall impose as a mandatory prison term the maximum prescribed for a felony of the 1st degree if the trier of fact determines that the violation of division (A) involves the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one of the following:~~

~~(a) at least one hundred grams of cocaine;~~

~~(b) at least two thousand five hundred unit doses or two hundred fifty grams of heroin;~~

~~(c) 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;~~

~~(d) at least fifty grams of a controlled substance analog; or~~

~~(e) at least one hundred times the bulk amount of any other schedule I or II controlled substance other than marihuana. If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and~~

**Comment [MT8]:** As mentioned above in Comment MT5, this new division replaces the previous MDO spec by placing the spec directly into the penalty section as a mandatory sentence. Nothing has changed except hashish is removed from being considered for a mandatory sentences.

~~forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.~~

~~(2) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section.~~

~~(23) If the offender is a professionally licensed person, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

~~(F)~~

~~(1) Notwithstanding any contrary provision of section 3719.21 of the Revised Code and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to division (A) or (B)(5) of section 2929.18 of the Revised Code to the county, township, municipal corporation, park district, as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.~~

~~(2) Prior to receiving any fine moneys under division (F)(1) of this section or division (B) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the~~

~~receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.~~

~~(3) As used in division (F) of this section:~~

Comment [MT9]: Moved definitions to 2901

~~(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.~~

~~(b) "Prosecutor" has the same meaning as in section 2925.01 of the Revised Code.~~

~~(c) When required under division (D)(2) of this section or any other provision of this chapter, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any violation of this section or any other specified provision of this chapter. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the suspension.~~

~~(E)~~

~~(1) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, in addition to any other penalty or sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter RC 2981. of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section RC 2929.13(E) of the Revised Code. A fine imposed under division (E)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible community addiction services providers in accordance with divisions (E)(2) and (3) of this section.~~

~~(2) The court that imposes a fine under division (E)(1) of this section shall specify in the judgment that imposes the fine one or more eligible community addiction services providers for the support of which the fine money is to be used. No community addiction services provider shall receive or use money paid or collected in satisfaction of a fine imposed under division (E)(1) of this section unless the services provider is specified in the judgment that imposes the fine. No community addiction services provider shall be specified in the judgment unless the services provider is an eligible community addiction services provider and, except as otherwise~~

provided in division ~~(FH)(2) of this section~~, unless the services provider is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible community addiction services provider is located in any of those counties, the judgment may specify an eligible community addiction services provider that is located anywhere within this state.

(3) Notwithstanding any contrary provision of ~~RCsection 3719.21 of the Revised Code~~, the clerk of the court shall pay any fine imposed under division ~~(FH)(1) of this section~~ to the eligible community addiction services provider specified pursuant to division ~~(FH)(2) of this section~~ in the judgment. The eligible community addiction services provider that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification of services under ~~RCsection 5119.36 of the Revised Code~~ or in the application for a license under ~~RCsection 5119.391 of the Revised Code~~ filed with the department of mental health and addiction services by the community addiction services provider specified in the judgment.

(4) Each community addiction services provider that receives in a calendar year any fine moneys under division ~~(FH)(3) of this section~~ shall file an annual report covering that calendar year with the court of common pleas and the board of county commissioners of the county in which the services provider is located, with the court of common pleas and the board of county commissioners of each county from which the services provider received the moneys if that county is different from the county in which the services provider is located, and with the attorney general. The community addiction services provider shall file the report no later than the first day of March in the calendar year following the calendar year in which the services provider received the fine moneys. The report shall include statistics on the number of persons served by the community addiction services provider, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the community addiction services provider. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under ~~section RC 149.43 of the Revised Code~~.

~~(5) As used in divisions (H)(1) to (5) of this section:~~

Comment [MT10]: Moved definitions to 2901

~~(a) "Community addiction services provider" and "alcohol and drug addiction services" have the same meanings as in section 5119.01 of the Revised Code.~~

~~(b) "Eligible community addiction services provider" means a community addiction services provider, as defined in section 5119.01 of the Revised Code, or a community addiction services provider that maintains a methadone treatment program licensed under section 5119.391 of the Revised Code.~~

~~(G)~~ As used in this section, "drug" includes any substance that is represented to be a drug.

~~(H)~~ It is an affirmative defense to a charge of trafficking in a controlled substance analog ~~under division (C)(8) of this section~~ that the person charged with violating that offense sold or offered to sell, or prepared for shipment, shipped, transported, delivered, prepared for distribution, or distributed an item described in division (HH)(2)(a), (b), or (c) of ~~RCsection 3719.01 of the Revised Code~~.

~~Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.~~

~~Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.~~

~~Amended by 129th General Assembly File No. 189, HB 334, §1, eff. 12/20/2012.~~

~~Amended by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.~~

~~Amended by 129th General Assembly File No. 43, HB 64, §1, eff. 10/17/2011.~~

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 01-01-2004; 05-17-2006; 07-01-2007; 2008 HB195 09-30-2008~~

## **2925.04 Illegal manufacture of drugs - illegal cultivation of marihuana - methamphetamine offenses.**

(A) No person shall knowingly do any of the following:

~~(1) Cultivate marihuana; or knowingly~~

~~(2) Manufacture or otherwise engage in any substantial part of the production of a controlled substance.~~

(B) This section does not apply to any person listed in division (B)(1), (2), or (3) of ~~RCsection 2925.03 of the Revised Code~~ to the extent and under the circumstances described in those divisions.

~~(C) No person who is found guilty of violating division (A)(2) shall also be found guilty of violating R.C. 2925.041(A) if the chemicals used to illegally manufacture drugs under division (A)(2) are the same chemicals that would give rise to a charge under R.C. 2925.041(A).~~

~~(D)~~

(1) Whoever commits a violation of division (A) ~~of this section~~ that involves any drug other than marihuana is guilty of illegal manufacture of drugs, and whoever commits a violation of division (A) ~~of this section~~ that involves marihuana is guilty of illegal cultivation of marihuana.

**Comment [MT11]:** "Substantial" modifier included because workgroup wants this section to target the people who are actually manufacturing drugs; not just someone who buys chemicals like in 2925.041.

**Comment [MT12]:** Currently, trial courts do not merge 2925.04 and 2925.041 under the current allied offenses statute because defendants' actions will often constitute separate conduct. For instance, defendants will often purchase the actual chemicals on Day 1 with an intent to manufacture (R.C. 2925.041) and on Day 2 the defendant actually manufacture the drug using the chemicals.

Think of it like merging an attempt offense with the completed offense. Under 2923.02, no person can be convicted of an attempt to commit an offense if that person is also convicted of committing the completed offense. Similarly, if R.C. 2925.041 is to be understood as criminalizing the attempt to manufacture illegal drugs by merely possessing the chemicals with an intent to manufacture, then R.C. 2925.04 is criminalizing the completed offense of actually manufacturing the drugs. Therefore, if a person is convicted under 2925.04, that same person should not also be convicted under 2925.041 if the same chemicals used to manufacture the illegal drugs would also support a conviction under 2925.041.

(2) Except as otherwise provided in this division, if the drug involved in the violation of division (A)(2) of this section is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of methamphetamine or marihuana, illegal manufacture of drugs is a 2nd degree felony of the second degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of methamphetamine or marihuana, and if the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation of division (A) of this section is methamphetamine, the penalty for the violation shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b) of this section, if the drug involved in the violation is methamphetamine, illegal manufacture of drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose a mandatory prison term on the offender determined in accordance with this division. Except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(b) If the drug involved in the violation is methamphetamine and if the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose a mandatory prison term on the offender determined in accordance with this division. Except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree that is not less than four years. If the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree that is not less than five years.

(34) If the drug involved in the violation of division (A)(2) of this section is any compound, mixture, preparation, or substance included in schedule III, IV, or V, illegal manufacture of drugs is a 3rd degree felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and there is a presumption for a prison term for the offense.

~~(45)~~ If the drug involved in the violation is marihuana, the penalty for the offense shall be determined as follows:

**Comment [MT13]:** Keyed marijuana amounts to the new trafficking/possession chart

~~(a)~~ Except as otherwise provided in division ~~(DE)~~~~(45)~~(b), (c), ~~or~~ (d), ~~or (e), or (f) of this section,~~ illegal cultivation of marihuana is a minor misdemeanor ~~or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the fourth degree.~~

~~(b)~~ If the amount of marihuana involved equals or exceeds one hundred grams but is less than two hundred grams, illegal cultivation of marihuana is a 4th degree misdemeanor ~~of the fourth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a misdemeanor of the third degree.~~

~~(c)~~ If the amount of marihuana involved equals or exceeds two hundred grams but is less than one thousand grams, illegal cultivation of marihuana is a 5th degree felony ~~of the fifth degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(d)~~ If the amount of marihuana involved equals or exceeds one thousand grams but is less than ~~five thousand~~twenty thousand grams, illegal cultivation of marihuana is a 4th degree felony ~~of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(e)~~ If the amount of marihuana involved equals or exceeds five thousand grams but is less than twenty thousand grams, illegal cultivation of marihuana is a felony of the third degree or, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, a felony of the second degree, and there is a presumption for a prison term for the offense.

**Comment [MT14]:** Deleted. Group wanted marijuana cultivation capped at an "F4"

~~(f)~~ Except as otherwise provided in this division, if the amount of marihuana involved equals or exceeds twenty thousand grams, illegal cultivation of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds twenty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal cultivation of marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

~~(E)~~ In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

~~(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail as if the forfeited bail were a fine imposed for a violation of this section.~~

~~(2) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.~~

~~(3) If the offender is a professionally licensed person, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

~~(EE) Notwithstanding the prison term otherwise authorized or required for the offense under division (DC) of this section and sections 2929.13 and 2929.14 of the Revised Code, if the trier of fact determines that the violation of division (A) of this section involves the sale, offer to sell, or possession of at least one hundred times the bulk amount of any schedule I or II controlled substance, with the exception of marihuana, the court shall impose as a mandatory prison term the maximum prescribed for a felony of the 1st degree and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section 2941.1410 of the Revised Code, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division (B)(3) of section 2929.14 of the Revised Code.~~

~~(GF) It is an affirmative defense, as provided in section RC 2901.05 of the Revised Code, to a charge under this section for a 5<sup>th</sup> degree felony violation of illegal cultivation of marihuana that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstances that indicate that the marihuana was solely for personal use.~~

~~Notwithstanding any contrary provision of division (GF) of this section, if, in accordance with section RC 2901.05 of the Revised Code, a person who is charged with a violation of illegal cultivation of marihuana that is a 5<sup>th</sup> degree felony of the fifth degree sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the person may be prosecuted for and may be~~

~~convicted of or found guilty plead guilty to of~~ a misdemeanor violation of illegal cultivation of marihuana.

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

~~Amended by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.~~

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 01-01-2004; 08-11-2004; 05-17-2006~~

### **2925.041 Illegal assembly or possession of chemicals for manufacture of drugs.**

(A) No person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the ~~purpose~~intent to manufacture a controlled substance in schedule I or II in violation of ~~section RC 2925.04 of the Revised Code.~~

(B) In a prosecution under this section, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a controlled substance in schedule I or II. The assembly or possession of a single chemical that may be used in the manufacture of a controlled substance in schedule I or II, with the intent to manufacture a controlled substance in either schedule, is sufficient to violate this section.

~~(C) Whoever violates this section is guilty of illegal assembly or possession of chemicals for the manufacture of drugs. Except as otherwise provided in this division, illegal assembly or possession of chemicals for the manufacture of drugs is a 5th degree felony of the third degree, and, except as otherwise provided in division (C)(1) or (2) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal assembly or possession of chemicals for the manufacture of drugs is a felony of the second degree, and, except as otherwise provided in division (C)(1) or (2) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the violation of division (A) of this section is a felony of the third degree under this division and if the chemical or chemicals assembled or possessed in violation of division (A) of this section may be used to manufacture methamphetamine, there either is a presumption for a prison term for the offense or the court shall impose a mandatory prison term on the offender, determined as follows:~~

~~(1) Except as otherwise provided in this division, there is a presumption for a prison term for the offense. If the offender two or more times previously has been convicted of or pleaded guilty to a~~

**Comment [MT15]:** Ohio has adopted the MPC mens rea. To keep consistent mens rea throughout Ohio's criminal code and to reduce confusion, the group wants to replace "intent" with "purpose" Ohio courts and OJI have both stated that "intent" means "purposefully." See State v. Haas, 2014-Ohio-5770; see also 4 OJI 409.01.

**Comment [MJT16]:** Penalty is capped at an F5

~~felony drug abuse offense, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense and if at least one of those previous convictions or guilty pleas was to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.04 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.~~

~~(2) If the violation of division (A) of this section is a felony of the second degree under division (C) of this section and the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the violation of division (A) of this section is a felony of the second degree under division (C) of this section, if the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (A) of this section, a violation of division (B)(6) of section 2919.22 of the Revised Code, or a violation of division (A) of section 2925.04 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.~~

~~(D) In addition to any prison term authorized by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of this section shall do all of the following that are applicable regarding the offender:~~

~~(1) The court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section under division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code. If a person charged with a violation of this section posts bail and forfeits the bail, the clerk shall pay the forfeited bail as if the forfeited bail were a fine imposed for a violation of this section.~~

~~(2) The court shall revoke or suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is revoked in accordance with that division, the offender may request termination of, and the court may terminate, the revocation in accordance with that division.~~

~~(3)~~ If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, the court shall comply with ~~section RC 2925.38 of the Revised Code~~.

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 08-07-2001; 08-11-2004; 05-17-2006~~

### **2925.05 Funding, aggravated funding of drug or marihuana trafficking.**

(A) No person shall ~~purposefully knowingly~~ provide money or other items of value to another person ~~with the purpose that the recipient of the money or items of value use them~~ to obtain any controlled substance for the purpose of violating ~~RC section 2925.04 of the Revised Code~~ or for the purpose of selling ~~or offering to sell~~ the controlled substance in the following amount:

(1) If the drug to be sold or offered for sale is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, or schedule III, IV, or V, an amount of the drug that ~~equals or exceeds the bulk amount of the drug~~;

(2) If the drug to be sold or offered for sale is marihuana or a compound, mixture, preparation, or substance other than hashish containing marihuana, an amount of the marihuana that ~~equals or exceeds two hundred grams~~;

(3) If the drug to be sold or offered for sale is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the cocaine that equals or exceeds ~~five ten~~ grams ;

(4) If the drug to be sold or offered for sale is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the L.S.D. that equals or exceeds ~~ten fifty~~ unit doses if the L.S.D. is in a solid form or equals or exceeds ~~one five~~ grams if the L.S.D. is in a liquid concentrate, liquid extract, or liquid distillate form;

(5) If the drug to be sold or offered for sale is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the heroin that ~~equals or exceeds ten unit doses or equals or exceeds one gram~~;

(6) If the drug to be sold or offered for sale is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the hashish that equals or exceeds ~~ten fifty~~ grams if the hashish is in a solid form or equals or exceeds ~~two ten~~ grams if the hashish is in a liquid concentrate, liquid extract, or liquid distillate form.

(B) This section does not apply to any person listed in division (B)(1), (2), or (3) of ~~RC section 2925.03 of the Revised Code~~ to the extent and under the circumstances described in those divisions.

**Comment [MT17]:** Currently, 2925.05 has three different applicable mental states. This can be confusing to read and apply. By deleting the seemingly extraneous info on the left, this section still retains the concept that purposefully providing money to another to obtain a controlled substance for the purpose of manufacturing drugs or selling drugs should be criminalized.

**Comment [MT18]:** Removed "offer to sell" and instead, make "offer to sell" an "attempt" for this section under 2923.02

**Comment [MJT19]:** Note: Current law has these amounts keyed to different felony drug possession amounts (mostly F-3s, F-4s, and F-5s).

**Comment [MT20]:** No change needed. Equal or exceeding bulk amount is currently an F-3, and proposed also an F-3 for equal to or exceeding bulk amount

**Comment [MT21]:** Equal or exceeding 200g of marijuana is currently an F-4, but our proposed F-4 amount is equal to or exceeding 1kg of marijuana. Changed to 1 kg to reflect new F-4 level for marijuana

**Comment [MT22]:** Equal or exceeding 5 g of cocaine is currently an F-4, but our proposed amounts no longer have 5g because our proposed F-4 amount is cocaine equal to or exceeding 10 g of cocaine. Changed to 10g to reflect new F-4 level for cocaine

**Comment [MT23]:** Equal or exceeding 10 UD of LSD is currently an F-4, but our proposed amounts no longer have 10 UD because our proposed F-4 amount is LSD equal to or exceeding 50 UD. Changed to 50 UD to reflect new proposed F-4 level for LSD

**Comment [MT24]:** Equal or exceeding 1 g of LSD is currently an F-4, but our proposed amounts no longer have 1g because our proposed F-4 amount is LSD equal to or exceeding 5 g. Changed to 5 g to reflect new proposed F-4 level for LSD

**Comment [MT25]:** No change needed. Currently an F-4 equal to or exceeding 10 UD of heroin and equal to or exceeding 1 g of heroin; Current law already mirrors the proposed amounts for F-4 heroin.

**Comment [MT26]:** Equal or exceeding 10 g of solid hashish is currently an F-4, but our proposed F-4 amount is solid hashish equal to or exceeding 50 g. Changed to 50 g to reflect new proposed F-4 level for liquid hashish

**Comment [MT27]:** Equal or exceeding 2 g of liquid hashish is currently an F-4, but our proposed F-4 amount is liquid hashish equal to or exceeding 10 g. Changed to 10 g to reflect new proposed F-4 level for liquid hashish

(C)

**Comment [MJT28]:** Very disproportionate penalties. Changed the penalties so that they are proportionate to their "possession" counterparts. Currently, it is an F1 for funding what would otherwise be an F3 possession amount for schedule I and II drugs. Similarly, an F2 for funding what would otherwise be an F4 amount for schedule II, III, and IV and an F3 for funding what would otherwise be an F4 amount of marijuana.

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, whoever violates division (A) ~~of this section~~ is guilty of aggravated funding of drug trafficking, a 3rd degree felony ~~of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) ~~of this section~~ is guilty of funding of drug trafficking, a 4th degree felony ~~of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

(3) If the drug involved in the violation is marihuana, whoever violates division (A) ~~of this section~~ is guilty of funding of marihuana trafficking, a 4th degree felony ~~of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If funding of marihuana trafficking is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.~~

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) ~~The court shall impose the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. The clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine in accordance with division (F) of section 2925.03 of the Revised Code. If a person is charged with a violation of this section, posts bail, and forfeits the bail, the forfeited bail shall be paid as if the forfeited bail were a fine imposed for a violation of this section.~~

(2) ~~The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.~~

(3) ~~If the offender is a professionally licensed person, the court immediately shall comply with section 2925.38 of the Revised Code.~~

(E) Notwithstanding the prison term otherwise authorized ~~or required~~ for the offense under division (C) ~~of this section and sections 2929.13 and 2929.14 of the Revised Code~~, if the trier of fact determines that the violation of division (A) ~~of this section~~ involves the sale, offer to sell, or possession of at least one hundred times the bulk amount of any schedule I or II controlled substance, with the exception of marihuana, the court shall impose as a mandatory prison term the maximum prescribed for a felony of the 1st degree ~~and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section 2941.1410 of the Revised Code, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division (B)(3) of section 2929.14 of the Revised Code.~~

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 01-01-2004~~

### **2925.06 Illegal administration or distribution of anabolic steroids.**

(A) No person shall knowingly administer to a human being, or prescribe or dispense for administration to a human being, any anabolic steroid not approved by the United States food and drug administration for administration to human beings.

(B) This section does not apply to any person listed in division (B)(1), (2), or (3) of ~~section RC 2925.03 of the Revised Code~~ to the extent and under the circumstances described in those divisions.

(C) Whoever violates division (A) ~~of this section~~ is guilty of illegal administration or distribution of anabolic steroids, a 4th degree felony ~~of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

(D) ~~In addition to any prison term authorized or required by division (C) of this section, and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:~~

~~(1) The court shall suspend the offender's driver's or commercial driver's license or permit in accordance with division (G) of section 2925.03 of the Revised Code. If an offender's driver's or commercial driver's license or permit is suspended in accordance with that division, the offender may request termination of, and the court may terminate, the suspension in accordance with that division.~~

~~(2) If the offender is a professionally licensed person, the court immediately shall comply with RC section 2925.38 of the Revised Code.~~

~~(E) If a person commits any act that constitutes a violation of division (A) of this section and that also constitutes a violation of any other provision of the Revised Code, the prosecutor, as defined in section 2935.01 of the Revised Code, using customary prosecutorial discretion, may prosecute the person for a violation of the appropriate provision of the Revised Code.~~

**Comment [MJT29]:** Superfluous. Establishes that a prosecutor may use customary prosecutorial discretion, which is already inherent in a prosecutor's powers and does not need to be restated.

~~Effective Date: 01-01-2004~~

### **2925.07 [Repealed]:**

~~Effective Date: 02-13-2001~~

### **2925.09 Unapproved drugs - dangerous drug offenses involving livestock.**

(A) No person shall knowingly administer, dispense, distribute, manufacture, possess, sell, or use any drug, other than a controlled substance, that is not approved by the United States food and drug administration, or the United States department of agriculture, unless one of the following applies:

(1) The United States food and drug administration has approved an application for investigational use in accordance with the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the drug is used only for the approved investigational use;

(2) The United States department of agriculture has approved an application for investigational use in accordance with the federal "Virus-Serum-Toxin Act," 37 Stat. 832 (1913), 21 U.S.C.A. 151, as amended, and the drug is used only for the approved investigational use;

(3) A licensed health professional authorized to prescribe drugs, other than a veterinarian, prescribes or combines two or more drugs as a single product for medical purposes;

(4) A pharmacist, pursuant to a prescription, compounds and dispenses two or more drugs as a single product for medical purposes.

(B)

~~(1) As used in this division, "dangerous drug," "prescription," "sale at retail," "wholesale distributor of dangerous drugs," and "terminal distributor of dangerous drugs," have the same meanings as in section 4729.01 of the Revised Code.~~

(12) Except as provided in division (B)(~~23~~) of this section, no person shall administer, dispense, distribute, manufacture, possess, sell, or use any dangerous drug to or for livestock or any animal that is generally used for food or in the production of food, unless the drug is prescribed by a licensed veterinarian by prescription or other written order and the drug is used in accordance with the veterinarian's order or direction.

(23) Division (B)(~~12~~) ~~of this section~~ does not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, possesses for sale, or sells, at retail, a drug in accordance with Chapters RC 3719., 4729., or 4741. ~~of the Revised Code.~~

(C) Whoever violates division (A) or (B)(~~12~~) ~~of this section~~ is guilty of a 5th degree felony ~~of the fifth degree~~ on a first offense and of a 4th degree felony ~~of the fourth degree~~ on each subsequent offense.

~~Effective Date: 1996 SB269 07-01-1996; 1998 SB66 07-22-1998~~

### **2925.11 Possession of controlled substances.**

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

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

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters RC 3719., 4715., 4723., 4729., 4730., 4731., and 4741. ~~of the Revised Code;~~

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

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

(4) Any person who obtained the controlled substance pursuant to a lawful prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A) ~~of this section~~ is guilty of possession of controlled substances and shall be punished according to the following chart ~~one of the following:~~

**Comment [MT30]:** LSC Note: The workgroup would like to place this section in the beginning of the chapter where "Corrupting another with drugs" currently is under 2925.02 so that "Possession" will be right next to "Trafficking" since more people are charged with Possession and Trafficking than any other section in Chapter 2925 combined. This section is retained here so that the committee can see the track changes.

**Comment [MT31]:** New penalties are reflected by the new possession chart provided here

DRUG	AMOUNT	LEVEL
Schedule I or II*	< bulk	F-5
	≥ bulk → < 50 x bulk	F-3
	≥ 50 → < 100 x bulk	F-2
	≥ 100 x bulk	F-1 (MDO)
Schedule III, IV, or V*	< bulk	M-1†
	≥ bulk → < 50 x bulk	F-4
	≥ 50 x bulk	F-2
Marijuana	< 100 g	MM
	≥ 100 g → < 200 g	M-4
	≥ 200 g → < 1 kg	F-5
	≥ 1 kg → < 20 kg	F-4
	≥ 20 kg	F-2
Cocaine: Powder or Crack	< 10 g	F-5
	≥ 10 g → < 27 g	F-4
	≥ 27 g → < 100 g	F-3
	≥ 100 g → < 500 g	F-2
	≥ 500 g	F-1 (MDO)
LSD: Solid	< 50 UD	F-5
	≥ 50 UD → < 250 UD	F-4
	≥ 250 UD → < 5000 UD	F-3
LSD: Liquid	≥ 5000 UD	F-2
	< 5 g	F-5
	≥ 5 g → < 25 g	F-4
Heroin/Fentanyl*	≥ 25 g → < 500 g	F-3
	≥ 500 g	F-2
	< 1 g → < 10 UD	F-5
	≥ 1 g → < 10 g; ≥ 10 UD → < 100 UD	F-4
	≥ 10 g → < 50 g; ≥ 100 UD → < 500 UD	F-3
Hashish: Solid	≥ 50 g → < 250 g; ≥ 500 UD → < 2500 UD	F-1
	≥ 250 g; ≥ 2500 UD	F-1 (MDO)
	< 5 g	MM
	≥ 5 g → < 10 g	M-4
	≥ 10 g → < 50 g	F-5
Hashish: Liquid	≥ 50 g → < 1 kg	F-4
	≥ 1 kg	F-2
	< 1 g	MM
	≥ 1 g → < 2 g	M-4
	≥ 2 g → < 10 g	F-5
Controlled Substance Analog	≥ 10 g → < 200 g	F-4
	≥ 200 g	F-2
	< 10 g	F-5
	≥ 10 g → < 30 g	F-4
≥ 30 g → < 50 g	F-2	
≥ 50 g	F-1 (MDO)	

\* The schedule of controlled substances is in O.R.C. §3719.41.

^ Minor misdemeanor (MM) on first offense, M-3 on a subsequent offense.

MDO (Major Drug Offender) = Mandatory maximum term from F-1 range

† F-5 if the offender previously has been convicted of a drug abuse offense.

◆ Heroin/Fentanyl shall include any derivative of either heroin or fentanyl and any mixture containing both heroin and fentanyl.

Note: As used in this section, "drug" includes any substance that is represented to be a drug.

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish,

~~and controlled substance analogs, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(1)(b), (c), (d), or (e) of this section, aggravated possession of drugs is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(e) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

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

~~(a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the first degree or, if the offender previously has been convicted of a drug abuse offense, a felony of the fifth degree.~~

~~(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount, possession of drugs is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), or (g) of this section, possession of marihuana is a minor misdemeanor.~~

~~(b) If the amount of the drug involved equals or exceeds one hundred grams but is less than two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.~~

~~(c) If the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(d) If the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, possession of marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(e) If the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, possession of marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.~~

~~(f) If the amount of the drug involved equals or exceeds twenty thousand grams but is less than forty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years.~~

~~(g) If the amount of the drug involved equals or exceeds forty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.~~

~~(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, possession of cocaine is a felony of the fourth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) If the amount of the drug involved equals or exceeds ten grams but is less than twenty grams of cocaine, possession of cocaine is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If possession of cocaine is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.~~

~~(d) If the amount of the drug involved equals or exceeds twenty grams but is less than twenty-seven grams of cocaine, possession of cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(e) If the amount of the drug involved equals or exceeds twenty-seven grams but is less than one hundred grams of cocaine, possession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds one hundred grams of cocaine, possession of cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(5) If the drug involved in the violation is L.S.D., whoever violates division (A) of this section is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), or (f) of this section, possession of L.S.D. is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) If the amount of L.S.D. involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) If the amount of L.S.D. involved equals or exceeds fifty unit doses, but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form,~~

~~possession of L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) If the amount of L.S.D. involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(e) If the amount of L.S.D. involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of L.S.D. involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of possession of heroin. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), or (f) of this section, possession of heroin is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) If the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, possession of heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(c) If the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, possession of heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) If the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, possession of heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(e) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams, possession of heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

~~(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), (f), or (g) of this section, possession of hashish is a minor misdemeanor.~~

~~(b) If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.~~

~~(c) If the amount of the drug involved equals or exceeds ten grams but is less than fifty grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(d) If the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(e) If the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.~~

~~(f) If the amount of the drug involved equals or exceeds one thousand grams but is less than two thousand grams of hashish in a solid form or equals or exceeds two hundred grams but is less than four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate~~

~~form, possession of hashish is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years.~~

~~(g) If the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.~~

~~(8) If the drug involved is a controlled substance analog or compound, mixture, preparation, or substance that contains a controlled substance analog, whoever violates division (A) of this section is guilty of possession of a controlled substance analog. The penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(8)(b), (c), (d), (e), or (f) of this section, possession of a controlled substance analog is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) If the amount of the drug involved equals or exceeds ten grams but is less than twenty grams, possession of a controlled substance analog is a felony of the fourth degree, and there is a presumption for a prison term for the offense.~~

~~(c) If the amount of the drug involved equals or exceeds twenty grams but is less than thirty grams, possession of a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

~~(d) If the amount of the drug involved equals or exceeds thirty grams but is less than forty grams, possession of a controlled substance analog is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.~~

~~(e) If the amount of the drug involved equals or exceeds forty grams but is less than fifty grams, possession of a controlled substance analog is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.~~

~~(f) If the amount of the drug involved equals or exceeds fifty grams, possession of a controlled substance analog is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.~~

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any

application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term or jail term authorized or required by division (C) ~~of this section and sections 2929.13, 2929.14, 2929.22, 2929.24, and 2929.25 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section, sections 2929.11 to 2929.18, or sections 2929.21 to 2929.28 of the Revised Code~~, the court that sentences an offender who is ~~convicted of or pleads found~~ guilty ~~of~~ a violation of division (A) ~~of this section~~ shall do all of the following that are applicable regarding the offender:

(1) The court shall impose as a mandatory prison term the maximum prescribed for a felony of the 1st degree if the trier of fact determines that the violation of division (A) involves the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least one of the following:

**Comment [MT32]:** Replaces MDO spec by placing the spec directly into the penalty section as a mandatory sentence. Nothing has changed except hashish is removed from the mandatory sentences.

(a) at least one hundred grams of cocaine;

(b) at least two thousand five hundred unit doses or two hundred fifty grams of heroin;

(c) 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;

(d) at least fifty grams of a controlled substance analog; or

(e) at least one hundred times the bulk amount of any other schedule I or II controlled substance other than marijuana.

~~(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.~~

~~(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.~~

~~(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it were a mandatory fine imposed under division (E)(1)(a) of this section.~~

~~(2) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~

~~(23) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

~~(F) It is an affirmative defense, as provided in RCsection 2901.05 of the Revised Code, to a charge of a ~~fourth~~ degree felony violation under this section that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. Notwithstanding any contrary provision of this section, if, in accordance with RCsection 2901.05 of the Revised Code, an accused ~~who~~ is charged with a ~~fourth~~ degree felony violation of ~~division (C)(2), (4), (5), or (6) when the drug involved is cocaine, L.S.D., heroin, or any schedule III, IV, or V drug of this section~~ sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the accused may be prosecuted for and may ~~plead guilty to or be found guilty of~~ convicted of a misdemeanor violation ~~of when the drug involved is a schedule III, IV, or V drug~~ division (C)(2) of this section or a ~~5~~ fifth degree felony violation ~~when the drug involved is cocaine, L.S.D., or heroin of division (C)(4), (5), or (6) of this section respectively.~~~~

~~(G) When a person is charged with possessing a bulk amount or multiple of a bulk amount, RCdivision (E) of section 2925.03(E) of the Revised Code applies regarding the determination of the amount of the controlled substance involved at the time of the offense.~~

~~(H) It is an affirmative defense to a charge of possession of a controlled substance analog under division (C)(8) of this section that the person charged with violating that offense obtained, possessed, or used an item described in division (HH)(2)(a), (b), or (c) of RCsection 3719.01 of the Revised Code.~~

~~Amended by 129th General Assembly File No. 189, HB 334, §1, eff. 12/20/2012.~~

~~Amended by 129th General Assembly File No. 43, HB 64, §1, eff. 10/17/2011.~~

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 01-01-2004; 05-17-2006; 2008 HB195 09-30-2008~~

## **2925.12 Illegal use or possession of drug paraphernalia Possessing drug abuse instruments.**

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

**Comment [MT33]:** Merging 2925.12, 2925.14, and 2925.141. Penalty sections for each merged section were placed into this new section but the penalties themselves were left unaltered.

**Comment [MT34]:** The current 2925.14 drug paraphernalia section already encompasses "a hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body." 2925.14(12). The Ohio Supreme Court has also already held that the current 2925.12 applies only to "hypodermics and syringes." State v. Mateo, 57 Ohio St. 3d 50, 54 (1991). This makes both 2925.14 and 2925.12 seemingly duplicative.

The workgroup realizes it was the General Assembly's intention to criminalize the use of syringes/hypodermics when using a dangerous drug differently than other drug paraphernalia. This concern is addressed in the penalty division (G) of this new merged statute by expressly stating that if a syringe/hypodermic is used to administer/prepare a dangerous drug, a violation of division (A) will be a M-2 penalty compared to the normal M-4 penalty where a syringe/hypodermic is not being used. Using a syringe/hypodermic still retains the same penalty as the current 2925.12 but is merely merged into this new statute.

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

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

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

**Comment [MJT35]:** Removed outdated specific language (ex. Handbill?) from previous 2925.14. Because a "publication" ostensibly encompasses a newspaper, magazine, and a handbill already, the workgroup would like to limit the wording to simply "publication."

(D) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

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

(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter;

(3) The proximity of the equipment, product, or material to any controlled substance;

(4) The existence of any residue of a controlled substance on the equipment, product, or material;

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

(6) Any oral or written instruction provided with the equipment, product, or material concerning its use;

(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use;

(8) National or local advertising concerning the use of the equipment, product, or material;

(9) The manner and circumstances in which the equipment, product, or material is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the equipment, product, or material in the community;

(12) Expert testimony concerning the use of the equipment, product, or material.

(E) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by R.C. 3719.172.

(F) Notwithstanding Chapter 2981. of the Revised Code, any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to division (B) of R.C. 2981.12.

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

(1) Except as otherwise provided in (G)(2) and (G)(3), whoever violates division (A) is guilty of illegal use or possession of drug paraphernalia, a 4th degree misdemeanor.

(2) Whoever violates this division (A) by using a hypodermic or syringe to unlawfully administer, use, or prepare a dangerous drug is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If an offender violating division (A) by using a hypodermic or syringe to unlawfully administer, use, or prepare a dangerous drug has previously plead guilty or found guilty of a drug abuse offense, a violation of division (A) is a 1st degree misdemeanor.

(3) Whoever violates division (A) by using drug paraphernalia to introduce marihuana into the human body is guilty of illegal use or possession of marihuana drug paraphernalia, a minor misdemeanor.

(4) Whoever violates division (B) is guilty of dealing in drug paraphernalia, a 2nd degree misdemeanor.

(5) Whoever violates division (C) is guilty of illegal advertising of drug paraphernalia, a 2nd degree misdemeanor.

~~(D) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

~~Effective Date: 01-01-2004; 05-17-2006~~

### **2925.13 Permitting drug abuse.**

(A) No person who is the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other vehicle, as defined in ~~division (A) of RCsection 4501.01(A) of the Revised Code,~~ shall knowingly permit the vehicle to be used for the commission of a felony drug abuse offense.

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

(C)

(1) Whoever violates this section is guilty of permitting drug abuse.

(2) Except as provided in division (C)(3)~~of this section,~~ permitting drug abuse is a 1st degree misdemeanor~~of the first degree.~~

(3) Permitting drug abuse is a 5th degree felony ~~of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender,~~ if the felony drug abuse offense in question is a violation of RCsection 2925.02 or 2925.03~~of the Revised Code.~~

~~(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences a person who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:~~

~~(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~

~~(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

~~(E) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.~~

~~(F)~~ Any premises or real estate that is permitted to be used in violation of division (B) ~~of this section~~ constitutes a nuisance subject to abatement pursuant to Chapter 3767. of the Revised Code.

Effective Date: 01-01-2004

### **2925.14 Illegal use or possession of drug paraphernalia:**

Comment [MT36]: Merged into 2925.12

Comment [MT37]: Moved to 2901

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

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

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

~~(3) Any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine;~~

~~(4) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;~~

~~(5) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance;~~

~~(6) A scale or balance for weighing or measuring a controlled substance;~~

~~(7) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance;~~

~~(8) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;~~

~~(9) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;~~

~~(10) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;~~

~~(11) A container or device for storing or concealing a controlled substance;~~

~~(12) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;~~

~~(13) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.~~

~~(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:~~

~~(1) Any statement by the owner, or by anyone in control, of the equipment, product, or material, concerning its use;~~

~~(2) The proximity in time or space of the equipment, product, or material, or of the act relating to the equipment, product, or material, to a violation of any provision of this chapter;~~

~~(3) The proximity of the equipment, product, or material to any controlled substance;~~

~~(4) The existence of any residue of a controlled substance on the equipment, product, or material;~~

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

~~(6) Any oral or written instruction provided with the equipment, product, or material concerning its use;~~

~~(7) Any descriptive material accompanying the equipment, product, or material and explaining or depicting its use;~~

~~(8) National or local advertising concerning the use of the equipment, product, or material;~~

~~(9) The manner and circumstances in which the equipment, product, or material is displayed for sale;~~

~~(10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or material to the total sales of the business enterprise;~~

~~(11) The existence and scope of legitimate uses of the equipment, product, or material in the community;~~

~~(12) Expert testimony concerning the use of the equipment, product, or material.~~

~~(C)~~

~~(1) Subject to division (D)(2) of this section, no person shall knowingly use, or possess with purpose to use, drug paraphernalia.~~

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

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

~~(D)~~

~~(1) This section does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by section 3719.172 of the Revised Code.~~

~~(2) Division (C)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing,~~

~~concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana.~~

~~(E) Notwithstanding Chapter 2981. of the Revised Code, any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to division (B) of section 2981.12 of the Revised Code.~~

~~(F)~~

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

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

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

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

~~(G) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.~~

~~Amended by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.~~

~~Effective Date: 01-01-2004; 05-17-2006; 07-01-2007~~

**2925.141 Illegal use or possession of marihuana drug paraphernalia.**

Comment [MT38]: Merged into 2925.12

~~(A) As used in this section, "drug paraphernalia" has the same meaning as in section 2925.14 of the Revised Code.~~

~~(B) In determining if any equipment, product, or material is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, all factors identified in division (B) of section 2925.14 of the Revised Code.~~

~~(C) No person shall knowingly use, or possess with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the~~

~~person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana.~~

~~(D) This section does not apply to any person identified in division (D)(1) of section 2925.14 of the Revised Code, and it shall not be construed to prohibit the possession or use of a hypodermic as authorized by section 3719.172 of the Revised Code.~~

~~(E) Division (E) of section 2925.14 of the Revised Code applies with respect to any drug paraphernalia that was used or possessed in violation of this section.~~

~~(F) Whoever violates division (C) of this section is guilty of illegal use or possession of marihuana drug paraphernalia, a minor misdemeanor.~~

~~(G) In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section 2925.38 of the Revised Code.~~

~~Added by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.~~

### **2925.21 [Repealed]:**

~~Effective Date: 11-20-1990~~

### **2925.22 Deception to obtain a dangerous drug.**

(A) No person, by deception, shall knowingly do any of the following:

~~(1) Procure the administration of, a prescription for, or the dispensing of, a dangerous drug; or~~

~~(2) Possess an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug.~~

(B) Whoever violates this section is guilty of deception to obtain a dangerous drug. The penalty for the offense shall be determined as follows:

(1) If the person possesses an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug or if the drug involved is a dangerous drug, except as otherwise provided in division (B)(2) or (3) ~~of this section~~, deception to obtain a dangerous drug is a 5th degree felony ~~of the fifth degree~~ or, if the offender previously has been found convicted ~~of or pleaded guilty of~~ a drug abuse offense, a 4th degree felony ~~of the fourth degree~~. ~~Division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender pursuant to this division.~~

(2) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, the penalty for deception to obtain drugs is one of the following:

(a) Except as otherwise provided in division (B)(2)(b), (c), or (d) ~~of this section~~, it is a 4th degree felony ~~of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than fiftyve times the bulk amount, or if the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than fiftyve times the bulk amount, it is a 3rd degree felony ~~of the third degree, and there is a presumption for a prison term for the offense.~~

**Comment [MT39]:** Keyed to current F3 trafficking amount; Changed the amount to reflect the new F3 amount in our new proposed possession/trafficking amounts chart

(c) If the amount of the drug involved equals or exceeds fiftyve times the bulk amount but is less than one hundredfifty times the bulk amount, or if the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed fiftyve times the bulk amount but would be less than fifty-one hundred times the bulk amount, it is a 2nd degree felony ~~of the second degree, and there is a presumption for a prison term for the offense.~~

**Comment [MT40]:** Keyed to current F2 trafficking amount; Changed the amount to reflect the new F2 amount in our new proposed possession/trafficking amounts chart

(d) If the amount of the drug involved equals or exceeds one hundredfifty times the bulk amount, or if the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed one hundredfifty times the bulk amount, it is a 1st degree felony ~~of the first degree, and there is a presumption for a prison term for the offense.~~

**Comment [MT41]:** Keyed to current F1 trafficking amount; Changed the amount to reflect the new F1 amount in our new proposed possession/trafficking amounts chart

(3) If the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marihuana, the penalty for deception to obtain a dangerous drug is one of the following:

(a) Except as otherwise provided in division (B)(3)(b) ~~or~~, (c) ~~or (d) of this section~~, it is a 5th degree felony ~~of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than fiftyve times the bulk amount, or if the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than fiftyve times the bulk amount, it is a 4th degree felony ~~of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

**Comment [MT42]:** Keyed to current F4 trafficking amount; Changed the amount to reflect the new F4 amount in our new proposed possession/trafficking amounts chart

~~(c) If the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, or if the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed five times the bulk amount but would be less than fifty times the bulk amount, it is a felony of the third degree, and there is a presumption for a prison term for the offense.~~

**Comment [MT43]:** Keyed to current F-3 trafficking amount, but because the workgroup eliminated the F-3 distinction in new proposed possession/trafficking amounts chart, this division is no longer needed

(d) If the amount of the drug involved equals or exceeds fifty times the bulk amount, or if the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed fifty times the bulk amount, it is a 2nd degree felony ~~of the second degree, and there is a presumption for a prison term for the offense.~~

**Comment [MT44]:** Keyed to current and proposed F-2 trafficking amounts so no change needed

~~(C) In addition to any prison term authorized or required by division (B) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:~~

~~(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~

~~(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

~~(D) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.~~

Effective Date: 01-01-2004; 2008 HB195-09-30-2008

### **2925.23 Illegal processing of drug documents.**

(A) No person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter RC 3719. or 4729. ~~of the Revised Code.~~

(B) No person shall purposefully~~intentionally~~ make, utter, or sell, or knowingly possess any of the following that is a false or forged:

- (1) Prescription;
- (2) Uncompleted preprinted prescription blank used for writing a prescription;
- (3) Official written order;
- (4) License for a terminal distributor of dangerous drugs as required in RCsection 4729.60 ~~of the Revised Code~~;
- (5) Registration certificate for a wholesale distributor of dangerous drugs as required in section-RC 4729.60 ~~of the Revised Code~~.

(C) No person, by theft as defined in ~~section RC 2913.02 of the Revised Code~~, purposefully shall acquire any of the following:

- (1) A prescription;
- (2) An uncompleted preprinted prescription blank used for writing a prescription;
- (3) An official written order;
- (4) A blank official written order;
- (5) A license or blank license for a terminal distributor of dangerous drugs as required in ~~section RC 4729.60 of the Revised Code~~;
- (6) A registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs as required in ~~section RC 4729.60 of the Revised Code~~.

(D) No person shall knowingly make or affix any false or forged label to a package or receptacle containing any dangerous drugs.

(E) Divisions (A) and (D) ~~of this section~~ do not apply to licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters RC 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741. ~~of the Revised Code~~.

(F) Whoever violates this section is guilty of illegal processing of drug documents. If the offender violates division (B)(2), (4), or (5) or division (C)(2), (4), (5), or (6) ~~of this section~~, illegal processing of drug documents is a 5th degree felony ~~of the fifth degree~~. If the offender violates division (A), division (B)(1) or (3), division (C)(1) or (3), or division (D) ~~of this section~~, the penalty for illegal processing of drug documents shall be determined as follows:

(1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, illegal processing of drug documents is a 4th degree felony ~~of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender~~.

(2) If the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marihuana, illegal processing of drug documents is a 5th degree felony ~~of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender~~.

(G) ~~In addition to any prison term authorized or required by division (F) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court~~

~~that sentences an offender who is convicted of or pleads guilty to any violation of divisions (A) to (D) of this section shall do both of the following:~~

~~(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~

~~(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

~~(H) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.~~

~~Effective Date: 01-01-2004; 05-17-2006~~

### **2925.24 Tampering with drugs.**

(A) No person shall knowingly adulterate or alter any dangerous drug or substitute any dangerous drug with another substance.

(B) No person shall knowingly adulterate or alter any package or receptacle containing any dangerous drug or substitute any package or receptacle containing any dangerous drug with another package or receptacle.

(C) Divisions (A) and (B) ~~of this section~~ do not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, nurses, and other persons, when the conduct of the manufacturer, practitioner, pharmacist, owner of a pharmacy, nurse, or other person is in accordance with Chapters RC 3719., 4715., 4723., 4729., 4731., and 4741. ~~of the Revised Code.~~

(D) It is an affirmative defense to a charge under this section alleging that a person altered a dangerous drug that the dangerous drug the person allegedly altered was lawfully prescribed for the person's personal use and that the person did not sell or transfer or intend to sell or transfer the dangerous drug to another person.

(E) Whoever violates this section is guilty of tampering with drugs, a 3rd degree felony ~~of the third degree~~. If the violation results in physical harm to any person, tampering with drugs is a 2nd degree felony ~~of the second degree~~.

~~Effective Date: 02-09-2000~~

### **2925.31 Abusing harmful intoxicants.**

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

(B) Whoever violates this section is guilty of abusing harmful intoxicants, a 1st degree misdemeanor ~~of the first degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a felony of the fifth degree.~~

(C) ~~In addition to any other sanction imposed upon an offender for a violation of this section, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~ If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with section RC 2925.38 of the Revised Code.

~~Effective Date: 01-01-2004~~

### **2925.32 Trafficking in harmful intoxicants - improperly dispensing or distributing nitrous oxide.**

(A) Divisions (A)(1) and (2) ~~of this section~~ do not apply to the dispensing or distributing of nitrous oxide.

(1) No person shall knowingly dispense or distribute a harmful intoxicant to any person age eighteen or older ~~if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of RCsection 2925.31 of the Revised Code. Division (A)(1) does not prohibit either of the following:~~

~~(2) No person shall knowingly dispense or distribute a harmful intoxicant to a person under age eighteen if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of section 2925.31 of the Revised Code. Division (A)(2) of this section does not prohibit either of the following:~~

**Comment [MT45]:** Removed (A)(2) and changed (A)(1) to simply state "any person" rather than distinguishing the age of the offender because currently, both (A)(1) and (A)(2) prohibit a person (either over or under 18) from dispensing harmful intoxicants if they know it will be abused. Therefore, the age threshold presented seems arbitrary.

(a) Dispensing or distributing a harmful intoxicant to a person under age eighteen if a written order from the juvenile's parent or guardian is provided to the dispenser or distributor;

(b) Dispensing or distributing gasoline or diesel fuel to a person under age eighteen if the dispenser or distributor does not know or have reason to believe the product will be used in violation of RCsection 2925.31 of the Revised Code. Division (A)(2)(a) ~~of this section~~ does not require a person to obtain a written order from the parent or guardian of a person under age eighteen in order to distribute or dispense gasoline or diesel fuel to the person.

(B)

(1) No person shall knowingly dispense or distribute nitrous oxide to a person age twenty-one or older if the person who dispenses or distributes it knows or has reason to believe the nitrous oxide will be used in violation of ~~RCsection 2925.31 of the Revised Code.~~

(2) Except for lawful medical, dental, or clinical purposes, no person shall knowingly dispense or distribute nitrous oxide to a person under age twenty-one.

(3) No person, at the time a cartridge of nitrous oxide is sold to another person, shall knowingly sell a device that allows the purchaser to inhale nitrous oxide from cartridges or to hold nitrous oxide released from cartridges for purposes of inhalation. The sale of any such device constitutes a rebuttable presumption that the person knew or had reason to believe that the purchaser intended to abuse the nitrous oxide.

(4) No person who dispenses or distributes nitrous oxide in cartridges shall knowingly fail to comply with either of the following:

(a) The record-keeping requirements established under division (F) ~~of this section;~~

(b) The labeling and transaction identification requirements established under division (G) ~~of this section.~~

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

(D)

(1) Whoever violates division (A)(1) or (2) or division (B)(1), (2), or (3) ~~of this section~~ is guilty of trafficking in harmful intoxicants, a 5th degree felony ~~of the fifth degree~~. If the offender previously has been convicted of a drug abuse offense, trafficking in harmful intoxicants is a 4th degree felony ~~of the fourth degree~~. ~~In addition to any other sanction imposed upon an offender for trafficking in harmful intoxicants, the court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~ If the offender is a professionally licensed person, in addition to any other sanction imposed for trafficking in harmful intoxicants, the court immediately shall comply with ~~RCsection 2925.38 of the Revised Code.~~

(2) Whoever violates division (B)(4)(a) or (b) ~~of this section~~ is guilty of improperly dispensing or distributing nitrous oxide, a 4th degree misdemeanor ~~of the fourth degree~~.

(E) It is an affirmative defense to a charge of a violation of division ~~(A)(2) or (B)(2) of this section~~ that:

(1) An individual exhibited to the defendant or an officer or employee of the defendant, for purposes of establishing the individual's age, a driver's license or permit issued by this state, a

**Comment [MT46]:** Removed (B)(2) from the affirmative defenses applicable in division (E). This affirmative defense does not make sense because under current and proposed law, an individual's age does not matter if the person distributing/dispensing an intoxicant

commercial driver's license or permit issued by this state, an identification card issued pursuant to ~~RCsection 4507.50 of the Revised Code~~, for another document that purports to be a license, permit, or identification card described in this division;

(2) The document exhibited appeared to be a genuine, unaltered document, to pertain to the individual, and to establish the individual's age;

(3) The defendant or the officer or employee of the defendant otherwise did not have reasonable cause to believe that the individual was under the age represented.

(F) Beginning July 1, 2001, a person who dispenses or distributes nitrous oxide shall record each transaction involving the dispensing or distributing of the nitrous oxide on a separate card. The person shall require the purchaser to sign the card and provide a complete residence address. The person dispensing or distributing the nitrous oxide shall sign and date the card. The person shall retain the card recording a transaction for one year from the date of the transaction. The person shall maintain the cards at the person's business address and make them available during normal business hours for inspection and copying by officers or employees of the state board of pharmacy or of other law enforcement agencies of this state or the United States that are authorized to investigate violations of Chapter ~~RC 2925., 3719., or 4729. of the Revised Code~~ or the federal drug abuse control laws.

The cards used to record each transaction shall inform the purchaser of the following:

(1) That nitrous oxide cartridges are to be used only for purposes of preparing food;

(2) That inhalation of nitrous oxide can have dangerous health effects;

(3) That it is a violation of state law to distribute or dispense cartridges of nitrous oxide to any person under age twenty-one, punishable as a felony of the fifth degree.

(G)

(1) Each cartridge of nitrous oxide dispensed or distributed in this state shall bear the following printed warning:

"Nitrous oxide cartridges are to be used only for purposes of preparing food. Nitrous oxide cartridges may not be sold to persons under age twenty-one. Do not inhale contents. Misuse can be dangerous to your health."

(2) Each time a person dispenses or distributes one or more cartridges of nitrous oxide, the person shall mark the packaging containing the cartridges with a label or other device that identifies the person who dispensed or distributed the nitrous oxide and the person's business address.

~~Effective Date: 01-01-2004~~

### **2925.33 Possessing nitrous oxide in motor vehicle.**

~~(A) As used in this section, "motor vehicle," "street," and "highway" have the same meanings as in section 4511.01 of the Revised Code.~~

~~(B)~~ Unless authorized under Chapter RC 3719., 4715., 4729., 4731., 4741., or 4765. ~~of the Revised Code~~, no person shall knowingly possess an open cartridge of nitrous oxide in either of the following circumstances:

(1) While operating or being a passenger in or on a motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking;

(2) While being in or on a stationary motor vehicle on a street, highway, or other public or private property open to the public for purposes of vehicular traffic or parking.

~~(C)~~ Whoever violates this section is guilty of possessing nitrous oxide in a motor vehicle, a 4th degree ~~misdemeanor of the fourth degree~~.

~~Effective Date: 01-01-1997~~

### **2925.34 Restriction against sale of or offer for sale of a pure caffeine product; misdemeanor. [Effective 9/24/2015].**

~~(A) As used in this section:~~

~~(1) "Pure caffeine product" means, subject to division (A)(2) of this section, a product that consists solely or primarily of caffeine and is manufactured into a crystalline, liquid, or powdered form.~~

~~(2) "Pure caffeine product" does not include any of the following that contains caffeine and is formulated, manufactured, and labeled in accordance with the laws and regulations enforced by the United States Food and Drug Administration:~~

~~(a) Coffee, tea, any soft drink, any energy drink, or any other caffeine-containing beverage;~~

~~(b) Any energy product.~~

~~(B)~~ Except as provided in division ~~(C) of this section~~, no person shall knowingly sell or offer for sale a pure caffeine product.

~~(C)~~ Division ~~(A) of this section~~ does not prohibit a person from selling or offering for sale any product manufactured in a unit-dose form such as a pill, tablet, or caplet, but only if each unit dose of the product contains not more than two hundred fifty milligrams of caffeine.

~~(D)~~ Nothing in this section prohibits either of the following:

**Comment [MT47]:** Make "attempt" under 2923.02

- (1) Possession of a product described in division ~~(BC) of this section~~;
- (2) Possession of a pure caffeine product by any of the following:
  - (a) A food processing establishment, as defined in ~~RCsection 3715.021 of the Revised Code~~;
  - (b) A manufacturer of a drug that is available without a prescription;
  - (c) A laboratory that holds a current, valid category III terminal distributor of dangerous drugs license issued by the state board of pharmacy under ~~RCsection 4729.54 of the Revised Code~~;
  - (d) A laboratory, as defined in ~~RCsection 3719.01 of the Revised Code~~;
  - (e) A laboratory of any agency or department of this state that performs testing, analysis, and other laboratory services on behalf of the state;
  - (f) A postal or delivery service that transports or delivers a pure caffeine product to an entity specified in divisions ~~(CD)(2)(a) to (e) of this section~~.
- ~~(DE) Whoever violates division (AB) of this section is guilty of illegal sale of pure caffeine, a minor misdemeanor on a first offense and a 3rd degree misdemeanor of the third degree on each subsequent offense.~~

~~Added by 131st General Assembly File No. TBD, SB 7, §1, eff. 9/24/2015.~~

### **2925.36 Illegal dispensing of drug samples.**

- (A) No person shall knowingly furnish another a sample drug.
- (B) Division (A) ~~of this section~~ does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with Chapters RC 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741. ~~of the Revised Code~~.
- (C)
  - (1) Whoever violates this section is guilty of illegal dispensing of drug samples.
  - (2) If the drug involved in the offense is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, ~~the penalty for the offense shall be determined as follows:~~
    - ~~(a) Except as otherwise provided in division (C)(2)(b) of this section, illegal dispensing of drug samples is a 5th degree felony of the fifth degree, and, subject to division (E) of this section,~~

~~division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a felony of the fourth degree, and, subject to division (E) of this section, division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

(3) If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V, or is marihuana, ~~the penalty for the offense shall be determined as follows:~~

~~(a) Except as otherwise provided in division (C)(3)(b) of this section, illegal dispensing of drug samples is a 2nd degree misdemeanor of the second degree.~~

~~(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree.~~

~~(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do both of the following:~~

~~(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~

~~(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with RC section 2925.38 of the Revised Code.~~

(E) Notwithstanding the prison term authorized or required by division (C) ~~of this section and sections 2929.13 and 2929.14 of the Revised Code~~, if the violation of division (A) of this section involves the sale, offer to sell, or possession of at least one hundred times the bulk amount of any schedule I or II controlled substance, with the exception of marihuana, the court shall impose as a mandatory prison term the maximum prescribed for a felony of the 1st degree and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a major drug offender and is guilty of a specification of the type described in section ~~2941.1410~~ of the Revised Code, the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender the mandatory prison term specified in division ~~(B)(3)(a) of section 2929.14 of the Revised Code.~~

~~(F) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of~~

~~division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.~~

~~Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.~~

~~Effective Date: 01-01-2004; 05-17-2006~~

### **2925.37 Counterfeit controlled substance offenses.**

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

(B) No person shall knowingly make, sell, ~~offer to sell,~~ or deliver any substance that the person knows is a counterfeit controlled substance.

(C) No person shall knowingly make, possess, sell, ~~offer to sell,~~ or deliver any punch, die, plate, stone, or other device knowing or having reason to know that it will be used to print or reproduce a trademark, trade name, or other identifying mark upon a counterfeit controlled substance.

~~(D) No person knowingly shall sell, offer to sell, give, or deliver any counterfeit controlled substance to a juvenile.~~

**Comment [MJT48]:** Removed enhancement.

~~(E) No person shall knowingly directly or indirectly represent a counterfeit controlled substance as a controlled substance by describing its effects as the physical or psychological effects associated with use of a controlled substance.~~

**Comment [MT49]:** Removed because of 1st amendment free speech concerns.

~~(F) No person shall knowingly directly or indirectly falsely represent or advertise a counterfeit controlled substance as a controlled substance. As used in this division, "advertise" means engaging in "advertisement," as defined in RCsection 3715.01 of the Revised Code.~~

~~(G) Whoever violates division (A) of this section is guilty of possession of counterfeit controlled substances, a 1st degree misdemeanor of the first degree.~~

~~(H) Whoever violates division (B) or (C) of this section is guilty of trafficking in counterfeit controlled substances. Except as otherwise provided in this division, trafficking in counterfeit controlled substances is a 5th degree felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in counterfeit controlled substances is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(I) Whoever violates division (D) of this section is guilty of aggravated trafficking in counterfeit controlled substances. Except as otherwise provided in this division, aggravated trafficking in counterfeit controlled substances is a felony of the fourth degree, and division (C) of~~

~~section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(J) Whoever violates division (E) of this section is guilty of promoting and encouraging drug abuse. Except as otherwise provided in this division, promoting and encouraging drug abuse is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, promoting and encouraging drug abuse is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(K) Whoever violates division (D) of this section is guilty of fraudulent drug advertising. Except as otherwise provided in this division, fraudulent drug advertising is a 5th degree felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, fraudulent drug advertising is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.~~

~~(H) In addition to any prison term authorized or required by divisions (H) to (K) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (B), (C), (D), (E), or (F) of this section shall do both of the following:~~

~~(1) The court shall suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit.~~

~~(2) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with RCsection 2925.38 of the Revised Code.~~

~~(M) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.~~

~~Effective Date: 01-01-2004~~

### **2925.38 Notice of conviction of professionally licensed person sent to regulatory or licensing board or agency.**

If a person who is ~~found convicted of or pleads guilty of~~ a violation of ~~RCsection~~ 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13

, ~~2925.14, 2925.141, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code~~ is a professionally licensed person, in addition to any other sanctions imposed for the violation, the court, except as otherwise provided in this section, immediately shall transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency that has the administrative authority to suspend or revoke the offender's professional license. If the professionally licensed person who is ~~found convicted of or pleads~~ found guilty to a violation of any section listed in this section is a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanctions imposed for the violation, the court immediately shall transmit a certified copy of the judgment entry of conviction to the secretary of the board of commissioners on grievances and discipline of the supreme court and to either the disciplinary counsel or the president, secretary, and chairperson of each certified grievance committee.

~~Amended by 129th General Assembly File No. 131, SB 337, §1, eff. 9/28/2012.~~

~~Effective Date: 01-01-2004~~

### **2925.41 [Repealed]**

~~Effective Date: 07-01-2007~~

### **2925.42 Criminal forfeiture of property relating to felony drug abuse offense.**

(A) If a person is ~~convicted of or pleads~~ found guilty to a felony drug abuse offense, or a juvenile is found by a juvenile court to be a delinquent child for an act that, if committed by an adult, would be a felony drug abuse offense, and derives profits or other proceeds from the offense or act, the court that imposes sentence or an order of disposition upon the offender or delinquent child, in lieu of any fine that the court is otherwise authorized or required to impose, may impose upon the offender or delinquent child a fine of not more than twice the gross profits or other proceeds so derived.

(B) Notwithstanding any contrary provision of ~~RCsection 3719.21 of the Revised Code~~, all fines imposed pursuant to this section shall be paid by the clerk of the court to the county, municipal corporation, township, park district, as created pursuant to ~~RCsection 511.18 or 1545.01 of the Revised Code~~, or state law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. However, no fine so imposed shall be paid to a law enforcement agency unless the agency has adopted a written internal control policy under ~~division (F)(2) of RCsection 2925.03(F)(2) of the Revised Code~~ that addresses the use of the fine moneys that it receives under this division and ~~division (F)(1) of section RC 2925.03(F)(1) of the Revised Code~~. The fines imposed and paid pursuant to this division shall be used by the law enforcement agencies to subsidize their efforts pertaining to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under ~~division (F)(2) of RCsection 2925.03(F)(2) of the Revised Code~~.

~~(C) As used in this section:~~

~~(1) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.~~

Comment [MT50]: Moved to 2901

~~(2) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.~~

~~Effective Date: 01-01-2002; 07-01-2007~~

### ~~**2925.43 [Repealed]:**~~

~~Effective Date: 07-01-2007~~

### ~~**2925.44 [Repealed]:**~~

~~Effective Date: 07-01-2007~~

### ~~**2925.45 [Repealed]:**~~

~~Effective Date: 07-01-2007~~

## **2925.50 Conviction or acquittal under federal drug abuse control laws bar to state prosecution.**

If a violation of this chapter is a violation of the federal drug abuse control laws, as defined in ~~RCsection 3719.01 of the Revised Code~~, a conviction or acquittal under the federal drug abuse control laws for the same act is a bar to prosecution in this state.

~~Effective Date: 07-22-1998~~

## **2925.51 Evidence in drug offense cases.**

Comment [MT51]: Reworded certain divisions for clarity. No substantive changes.

~~\_(A) In any criminal prosecution for a violation of this chapter or Chapter 3719. of the Revised Code, a laboratory report from the bureau of criminal identification and investigation, a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the association of American universities or the north central association of colleges and secondary schools, primarily for the purpose of providing scientific services to law enforcement agencies and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima-facie evidence of the content, identity, and weight or the existence and number of unit dosages of the substance. In any criminal prosecution for a violation of section 2925.041 of the Revised Code or a violation of this chapter or Chapter 3719. of the Revised Code that is based on the possession~~

~~of chemicals sufficient to produce a compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V, a laboratory report from the bureau or from any laboratory that is operated or established as described in this division that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is prima facie evidence of the content, identity, and weight of the substances.~~

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

(A) In any criminal prosecution for a violation of this chapter or Chapter 3719 of the Revised Code that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V or the content, identity, and weight or the existence and number of unit dosages of the substance, a laboratory report is prima-facie evidence if the report satisfies all of the following :

(1) The report is produced by the bureau of criminal identification and investigation, a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state which is accredited by the association of American universities or the north central association of colleges and secondary schools, primarily for the purpose of providing scientific services to law enforcement agencies.

(2) The report is signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed, stating the findings as to the content, weight, and identity of the substance, and stating that it contains any amount of a controlled substance and the number and description of unit dosage, if applicable.

(3) Attached to that report is a copy of a notarized statement by the signer of the report demonstrating the name of the signer, that the signer is an employee of the laboratory issuing the report, and that performing the analysis is a part of the signer's regular duties. The attached report shall provide outline of the signer's education, training, and experience for performing an analysis of materials included under this section. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

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

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

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

(E) Any person who is accused of a violation of this chapter or of Chapter 3719. ~~of the Revised Code~~ is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is, or of each of the substances that are, the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or, if the accused is indigent, by a qualified laboratory analyst appointed by the court.

(F) Such portion shall be a representative sample of the entire substance that is, or of each of the substances that are, the basis of the alleged violation and shall be of sufficient size, in the opinion of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance or substances.

(G) The prosecuting attorney shall provide the accused's analyst with the sample portion at least fourteen days prior to trial, unless the trial is to be held in a court not of record or unless the accused person is charged with a minor misdemeanor, in which case the prosecuting attorney shall provide the accused's analyst with the sample portion at least three days prior to trial. If the prosecuting attorney determines that such a sample portion cannot be preserved and given to the accused's analyst, the prosecuting attorney shall so inform the accused person or his attorney. In such a circumstance, the accused person is entitled, upon written request made to the prosecuting attorney, to have the accused's privately employed or court appointed analyst present at an analysis of the substance that is, or the substances that are, the basis of the alleged violation, and, upon further written request, to receive copies of all recorded scientific data that result from the analysis and that can be used by an analyst in arriving at conclusions,

findings, or opinions concerning the identity of the substance or substances subject to the analysis.

(H) In addition to the rights provided under division (E) ~~of this section~~, any person who is accused of a violation of this chapter or of Chapter ~~RC 3719. of the Revised Code~~ that involves a bulk amount of a controlled substance, or any multiple thereof, or who is accused of a violation of ~~section RC 2925.11 of the Revised Code~~, other than a minor misdemeanor violation, that involves marihuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions, findings, or opinions concerning the weight, volume, or number of unit doses of the substance subject to the measurement or weighing.

~~Effective Date: 08-07-2001~~

### **2925.511 Reimbursement for costs of positive drug tests.**

In addition to the financial sanctions authorized or required under ~~RCsections 2929.18 and 2929.28 of the Revised Code~~ and to any costs otherwise authorized or required under any provision of law, the court imposing sentence upon an offender who is ~~convicted of or pleads found~~ guilty to a drug abuse offense may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in having tests performed under ~~RCsection 2925.51 of the Revised Code~~ or in any other manner on any substance that was the basis of, or involved in, the offense to determine whether the substance contained any amount of a controlled substance if the results of the tests indicate that the substance tested contained any controlled substance. No court shall order an offender under this section to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance.

The court shall hold a hearing to determine the amount of costs to be imposed under this section. The court may hold the hearing as part of the sentencing hearing for the offender.

~~Effective Date: 10-12-2006~~

### **2925.52 Motion for destruction of chemicals for methamphetamine production.**

(A) If a person is charged with a violation of ~~section RC 2925.041 of the Revised Code~~ or with any violation of this chapter or Chapter ~~RC 3719. of the Revised Code~~ that is based on the possession of chemicals sufficient to produce methamphetamine, the law enforcement agency that has custody of the chemicals may file a motion with the court in which the charges are

pending requesting the court to order the chemicals destroyed in accordance with this division. If a law enforcement agency files a motion of that type with a court, the court may issue an order that requires the containers in which the chemicals are contained be photographed, orders the chemicals forfeited, and requires that the chemicals be destroyed.

(B) If the court issues an order under division (A) ~~of this section~~, the court may include in the order a requirement that the chemicals be sampled prior to their destruction and that the samples be preserved.

~~Effective Date: 08-07-2001; 05-17-2006~~

### **2925.55 Unlawful purchase of pseudoephedrine or ephedrine product.**

~~(A) As used in sections 2925.55 to 2925.58 of the Revised Code:~~

Comment [MT52]: All moved to 2901

~~(1) "Consumer product" means any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.~~

~~(2) "Terminal distributor of dangerous drugs" has the same meaning as in section 4729.01 of the Revised Code.~~

~~(3) "Pseudoephedrine" means any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.~~

~~(4) "Pseudoephedrine product" means a consumer product that contains pseudoephedrine.~~

~~(5) "Retailer" means a place of business that offers consumer products for sale to the general public.~~

~~(6) "Single ingredient preparation" means a compound, mixture, preparation, or substance that contains a single active ingredient.~~

~~(7) "Ephedrine" means any material, compound, mixture, or preparation that contains any quantity of ephedrine, any of its salts, optical isomers, or salts of optical isomers.~~

~~(8) "Ephedrine product" means a consumer product that contains ephedrine.~~

~~(A)~~

(1) No individual shall knowingly purchase, receive, or otherwise acquire an amount of pseudoephedrine product or ephedrine product that is greater than either of the following unless the pseudoephedrine product or ephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the

conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Chapter RC 3719., 4715., 4723., 4729., 4730., 4731., or 4741. ~~of the Revised Code:~~

- (a) Three and six tenths grams within a period of a single day;
- (b) Nine grams within a period of thirty consecutive days.

The limits specified in divisions ~~(AB)~~(1)(a) and (b) ~~of this section~~ apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The limits do not apply to the product's overall weight.

(2) It is not a violation of division ~~(AB)~~(1) ~~of this section~~ for an individual to receive or accept more than an amount of pseudoephedrine product or ephedrine product specified in division ~~(AB)~~(1)(a) or (b) ~~of this section~~ if the individual is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

~~(BE)~~

(1) No individual under eighteen years of age shall knowingly purchase, receive, or otherwise acquire a pseudoephedrine product or ephedrine product unless the pseudoephedrine product or ephedrine product is dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Chapter RC 3719., 4715., 4723., 4729., 4730., 4731., or 4741. ~~of the Revised Code.~~

(2) Division ~~(BE)~~(1) of this section does not apply to an individual under eighteen years of age who purchases, receives, or otherwise acquires a pseudoephedrine product or ephedrine product from any of the following:

(a) A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides the pseudoephedrine product or ephedrine product to that individual and whose conduct is in accordance with Chapter RC 3719., 4715., 4723., 4729., 4730., 4731., or 4741. ~~of the Revised Code;~~

(b) A parent or guardian of that individual who provides the pseudoephedrine product or ephedrine product to the individual;

(c) A person, as authorized by that individual's parent or guardian, who dispenses, sells, or otherwise provides the pseudoephedrine product or ephedrine product to the individual;

(d) A retailer or terminal distributor of dangerous drugs who provides the pseudoephedrine product or ephedrine product to that individual if the individual is an employee of the retailer or terminal distributor of dangerous drugs and the individual receives or accepts from the retailer or terminal distributor of dangerous drugs the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(~~CD~~) No individual under eighteen years of age shall knowingly show or give false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise acquiring a pseudoephedrine product or ephedrine product.

(~~DE~~) No individual shall knowingly fail to comply with the requirements of ~~division (B) of RCsection 3715.051(B) of the Revised Code.~~

(~~EF~~) Whoever violates division (~~AB~~)(1) ~~of this section~~ is guilty of unlawful purchase of a pseudoephedrine product or ephedrine product, a 1st degree misdemeanor ~~of the first degree.~~

(~~EG~~) Whoever violates division (~~BC~~)(1) ~~of this section~~ is guilty of underage purchase of a pseudoephedrine product or ephedrine product, a delinquent act that would be a 4th degree misdemeanor ~~of the fourth degree~~ if it could be committed by an adult.

(~~GH~~) Whoever violates division (~~CD~~) ~~of this section~~ is guilty of using false information to purchase a pseudoephedrine product or ephedrine product, a delinquent act that would be a 1st degree misdemeanor ~~of the first degree~~ if it could be committed by an adult.

(~~HI~~) Whoever violates division (~~DE~~) ~~of this section~~ is guilty of improper purchase of a pseudoephedrine product or ephedrine product, a 4th degree misdemeanor ~~of the fourth degree.~~

~~Amended by 129th General Assembly File No. 189, HB 334, §1, eff. 3/20/2013.~~

~~Effective Date: 05-17-2006~~

## **2925.56 Unlawful sale of pseudoephedrine or ephedrine product.**

(A)

(1) Except as provided in division (A)(2) ~~of this section~~, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, ~~offer to sell,~~ hold for sale, deliver, or otherwise provide to any individual an amount of pseudoephedrine product or ephedrine product that is greater than either of the following:

(a) Three and six tenths grams within a period of a single day;

**Comment [MT53]:** Merged 2925.58 with 2925.56. 2925.58 was an entirely separate section dedicated to an affirmative defense specifically for 2925.56. Other affirmative defenses throughout 2925 are within their respective sections, so this will maintain consistency throughout the Chapter.

**Comment [MT54]:** Removed "offer to sell" language. Instead, an offer to sell should be considered an "attempt" under this section using 2923.02.

(b) Nine grams within a period of thirty consecutive days.

The maximum amounts specified in divisions (A)(1)(a) and (b) ~~of this section~~ apply to the total amount of base pseudoephedrine or base ephedrine in the pseudoephedrine product or ephedrine product, respectively. The maximum amounts do not apply to the product's overall weight.

(2)

(a) Division (A)(1) ~~of this section~~ does not apply to any quantity of pseudoephedrine product or ephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs if the conduct of the pharmacist and the licensed health professional authorized to prescribe drugs is in accordance with Chapter RC 3719., 4715., 4723., 4729., 4730., 4731., or 4741. ~~of the Revised Code.~~

(b) It is not a violation of division (A)(1) ~~of this section~~ for a retailer, terminal distributor of dangerous drugs, or employee of either to provide to an individual more than an amount of pseudoephedrine product or ephedrine product specified in division (A)(1)(a) or (b) ~~of this section~~ under either of the following circumstances:

(i) The individual is an employee of the retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer, terminal distributor of dangerous drugs, or employee the pseudoephedrine product or ephedrine product in a sealed container in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product;

(ii) A stop-sale alert is generated after the submission of information to the national precursor log exchange under the conditions described in ~~division (A)(2) of section RC 3715.052(A)(2) of the Revised Code.~~

(B)

(1) Except as provided in division (B)(2) of this section, no retailer or terminal distributor of dangerous drugs or an employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, ~~offer to sell,~~ hold for sale, deliver, or otherwise provide a pseudoephedrine product or ephedrine product to an individual who is under eighteen years of age.

(2) Division (B)(1) ~~of this section~~ does not apply to any of the following:

(a) A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides a pseudoephedrine product or ephedrine product to an individual under eighteen years of age and whose conduct is in accordance with Chapter RC 3719., 4715., 4723., 4729., 4730., 4731., or 4741. ~~of the Revised Code;~~

(b) A parent or guardian of an individual under eighteen years of age who provides a pseudoephedrine product or ephedrine product to the individual;

(c) A person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a pseudoephedrine product or ephedrine product to an individual under eighteen years of age;

(d) The provision by a retailer, terminal distributor of dangerous drugs, or employee of either of a pseudoephedrine product or ephedrine product in a sealed container to an employee of the retailer or terminal distributor of dangerous drugs who is under eighteen years of age in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product.

(C) No retailer or terminal distributor of dangerous drugs shall knowingly fail to comply with the requirements of ~~RC division (A) of section 3715.051(A) or division (A)(2) of section 3715.052(A)(2) of the Revised Code.~~

(D) No retailer or terminal distributor of dangerous drugs shall knowingly fail to comply with the requirements of ~~division (A)(1) of section RC 3715.052(A)(1) of the Revised Code.~~

(E) Whoever violates division (A)(1) ~~of this section~~ is guilty of unlawfully selling a pseudoephedrine product or ephedrine product, a misdemeanor of the first degree.

(F) Whoever violates division (B)(1) ~~of this section~~ is guilty of unlawfully selling a pseudoephedrine product or ephedrine product to a minor, a misdemeanor of the fourth degree.

(G) Whoever violates division (C) ~~of this section~~ is guilty of improper sale of a pseudoephedrine product or ephedrine product, a misdemeanor of the second degree.

(H) Whoever violates division (D) ~~of this section~~ is guilty of failing to submit information to the national precursor log exchange, a misdemeanor for which the offender shall be fined not more than one thousand dollars per violation.

(I)

(1) It is an affirmative defense for a seller or an agent or employee of a seller where the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the seller, agent, or employee proves that all of the following occurred:

(a) A card holder attempting to purchase or receive a pseudoephedrine product presented a driver's or commercial driver's license or an identification card.

(b) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.

(c) The pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(2) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense, the trier of fact in the action for the alleged violation shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of this section. For purposes of division (I)(1)(c), the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

(a) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is eighteen years of age or older;

(b) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(3) In any criminal action in which the affirmative defense provided by division (A) of this section is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under RC 4507.50 to 4507.52 shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles in the action.

~~Amended by 129th General Assembly File No. 189, HB 334, §1, eff. 3/20/2013.~~

~~Effective Date: 05-17-2006~~

### **2925.57 Illegal pseudoephedrine or ephedrine product transaction scan.**

~~(A) As used in this section and section 2925.58 of the Revised Code:~~

~~(1) "Card holder" means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive any pseudoephedrine product or ephedrine product from the seller, agent, or employee.~~

~~(2) "Identification card" and "transaction scan device" have the same meanings as in section 2927.021 of the Revised Code.~~

~~(3) "Seller" means a retailer or terminal distributor of dangerous drugs.~~

~~(4) "Transaction scan" means the process by which a seller or an agent or employee of a seller checks by means of a transaction scan device the validity of a driver's or commercial driver's~~

Comment [MT55]: Move to 2901

~~license or an identification card that is presented as a condition for purchasing or receiving any pseudoephedrine product or ephedrine product.~~

(~~AB~~)

(1) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder a pseudoephedrine product or ephedrine product.

(2) If the information deciphered by the transaction scan performed under division (~~AB~~)(1) ~~of this section~~ fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any pseudoephedrine product or ephedrine product to the card holder.

(3) Division (~~AB~~)(1) ~~of this section~~ does not preclude a seller or an agent or employee of a seller as a condition for selling, giving away, or otherwise distributing a pseudoephedrine product or ephedrine product to the person presenting the document from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card if the document includes a bar code or magnetic strip that may be scanned by the device.

(~~BE~~) Rules adopted by the registrar of motor vehicles under ~~division (C) of section RC 4301.61(C) of the Revised Code~~ apply to the use of transaction scan devices for purposes of this section and ~~RCsection 2925.56(1)2925.58 of the Revised Code.~~

**Comment [MT56]:** Changed to reflect the merger of 2925.58 into 2925.56

(~~CD~~)

(1) No seller or agent or employee of a seller shall knowingly electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

(a) The name, address, and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

(b) The expiration date, identification number, and issuing agency of the driver's or commercial driver's license or identification card presented by a card holder.

(2) No seller or agent or employee of a seller shall knowingly use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (~~CD~~)(1) of this section except for purposes of RCsection 2925.58 or ~~division (A)(1) of section RC 3715.052(A)(1) of the Revised Code.~~

(3) No seller or agent or employee of a seller shall knowingly use a transaction scan device for a purpose other than the purpose specified in division (~~AB~~)(1) ~~of this section~~.

(4) No seller or agent or employee of a seller shall knowingly sell or otherwise disseminate the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by RCsection 2925.56(I)8 or another section of the Revised Code.

(~~DE~~) Nothing in this section or ~~section RC 2925.56(I)8 of the Revised Code~~ relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of pseudoephedrine products or ephedrine products.

(~~EF~~) Whoever violates division (~~AB~~)(2) or (~~CD~~) ~~of this section~~ is guilty of engaging in an illegal pseudoephedrine product or ephedrine product transaction scan, and the court may impose upon the offender a civil penalty of up to one thousand dollars for each violation. The clerk of the court shall pay each collected civil penalty to the county treasurer for deposit into the county treasury.

~~Amended by 129th General Assembly File No. 189, HB 334, §1, eff. 3/20/2013.~~

~~Effective Date: 05-17-2006~~

~~**2925.58 Unlawful sale of pseudoephedrine product to minor—  
affirmative defense:**~~

Comment [MT57]: Merged with 2925.56

~~(A) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of section 2925.56 of the Revised Code in which the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:~~

~~(1) A card holder attempting to purchase or receive a pseudoephedrine product presented a driver's or commercial driver's license or an identification card.~~

~~(2) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.~~

~~(3) The pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.~~

~~(B) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (A) of this section, the trier of fact in the action for the alleged violation of section 2925.56 of the Revised Code shall consider any written policy that the~~

~~seller has adopted and implemented and that is intended to prevent violations of section 2925.56 of the Revised Code. For purposes of division (A)(3) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:~~

~~(1) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is eighteen years of age or older;~~

~~(2) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.~~

~~(C) In any criminal action in which the affirmative defense provided by division (A) of this section is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles in the action.~~

~~Effective Date: 05-17-2006~~

## **2925.61 [Effective 10/15/2015] Lawful administration of naloxone.**

~~(A) As used in this section:~~

~~(1)~~

~~"Law enforcement agency" means a government entity that employs peace officers to perform law enforcement duties.~~

~~(2) "Licensed health professional" means all of the following:~~

~~(a) A physician ;~~

~~(b) A physician assistant who is licensed under Chapter 4730. of the Revised Code, holds a valid prescriber number issued by the state medical board, and has been granted physician-delegated prescriptive authority;~~

~~(c) A clinical nurse specialist, certified nurse-midwife, or certified nurse-practitioner who holds a certificate to prescribe issued under section 4723.48 of the Revised Code.~~

~~(3) "Peace officer" has the same meaning as in section 2921.51 of the Revised Code.~~

Comment [MT58]: Moved to 2901

~~(4) "Physician" means an individual who is authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.~~

~~(AB) A family member, friend, or other individual who is in a position to assist an individual who is apparently experiencing or at risk of experiencing an opioid-related overdose, is not subject to criminal prosecution for a violation of RCsection 4731.41 of the Revised Code or criminal prosecution under this chapter if the individual, acting in good faith, does all of the following:~~

~~(1) Obtains naloxone pursuant to a prescription issued by a licensed health professional or obtains naloxone from one of the following: a licensed health professional, an individual who is authorized by a physician under section RC 4731.941 of the Revised Code to personally furnish naloxone, or a pharmacist or pharmacy intern who is authorized by a physician or board of health under section RC 4729.44 of the Revised Code to dispense naloxone without a prescription;~~

~~(2) Administers the naloxone obtained as described in division (AB)(1) of this section to an individual who is apparently experiencing an opioid-related overdose;~~

~~(3) Attempts to summon emergency services as soon as practicable either before or after administering the naloxone.~~

~~(BC) Division (AB) of this section does not apply to a peace officer or to an emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, as defined in RCsection 4765.01 of the Revised Code.~~

~~(CD) A peace officer employed by a law enforcement agency is not subject to administrative action, criminal prosecution for a violation of RCsection 4731.41 of the Revised Code, or criminal prosecution under this chapter if the peace officer, acting in good faith, obtains naloxone from the peace officer's law enforcement agency and administers the naloxone to an individual who is apparently experiencing an opioid-related overdose.~~

**2925.62 Safe reporting of overdoses.**

**Comment [MT59]:** New section proposed by the workgroup

~~(A) It is an affirmative defense to a prosecution under R.C. 2925.02(A)(3), 2925.11, 2925.12, and 2925.13 if all of the following apply:~~

~~(1) The person, in good faith, seeks or obtains timely emergency medical attention for the person's self or another person for a drug overdose event on the reasonable belief that the person or another person was in need of immediate medical attention to prevent death or serious bodily injury due to a drug overdose;~~

(2) The person remained at the scene of the overdose or an alternative location to which the person or another person requiring medical attention has been transported until a law enforcement officer responds to the report of the overdose;

(3) The person did not obstruct the law enforcement officer or emergency services personnel;  
and

(4) The evidence for a prosecution under R.C. 2925.02(A)(3), 2925.11, 2925.12, or 2925.13 was obtained as a result of the person seeking or obtaining emergency medical attention.

(B) If a person is found to be in violation of any condition of probation or community control sanction and if the violation is a result of all of the following, there shall be a presumption that the court orders the person's participation or continued participation in a drug treatment program, or otherwise modifies the terms of community control without imposing a prison term. The prosecutor may overcome that presumption, by a preponderance of the evidence, by offering relevant evidence that continued participation in probation or community control is inadequate to punish the offender and protect the public from future crime based on the applicable factors under RC 2929.12:

(1) The person, in good faith, seeks or obtains timely emergency medical attention for the person's self or another person for a drug overdose event on the reasonable belief that the person or another person was in need of immediate medical attention to prevent death or serious bodily injury due to a drug overdose;

(2) The person remained at the scene of the overdose or an alternative location to which the person or another person requiring medical attention has been transported until a law enforcement officer responds to the report of the overdose; and

(3) The person did not obstruct the law enforcement officer or emergency services personnel.

(C) If a person is found to be in violation of any postrelease control sanction and if the violation is a result of all of the following, the court or the parole board shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty specified in RC 2929.141 or 2967.28, whichever is applicable, after which the court or the parole board has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty with the mitigating factor specified in either of those applicable sections:

(1) The person, in good faith, seeks or obtains timely emergency medical attention for the person's self or another person for a drug overdose event on the reasonable belief that the person or another person was in need of immediate medical attention to prevent death or serious bodily injury due to a drug overdose;

(2) The person remained at the scene of the overdose or an alternative location to which the person or another person requiring medical attention has been transported until a law enforcement officer responds to the report of the overdose;

(3) The person did not obstruct the law enforcement officer or emergency services personnel.

(D) The protections provided under division (A), (B), and (C) are limited in the following ways:

(1) Nothing shall be construed to limit the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest.

(2) No person may assert protection if the person sought or obtained emergency medical attention for the person's self or another person after the commencement of a search warrant or after the commencement of a lawful search or a lawful arrest.

(3) This section does not establish protection for any person or offense other than those listed in division (A), (B), or (C).

(E) As used in this section:

"Drug overdose event" means an acute medical condition, including, but not limited to, severe physical illness, coma, mania, hysteria or death, which is the result of consumption or use of one or more controlled substances causing an adverse reaction. A patient's condition shall be deemed to be a drug overdose if a prudent layperson, possessing an average knowledge of medicine and health, would reasonably believe that the condition is in fact a drug overdose and requires immediate medical attention.

"Emergency services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, or other emergency services personnel acting within the ordinary course of their profession.