

**CRIMINAL STATUTES AFTER THE *COLON*,
HORNER, AND *JOHNSON* CASES**

By
David J. Diroll &
Shawn Patrick Welch

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OHIO CRIMINAL SENTENCING COMMISSION

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65 South Front Street · Fifth Floor · Columbus · 43215 · Telephone: (614) 387-9305 · Fax: (614) 387-9309

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EXECUTIVE SUMMARY

To commit a crime, the offender must do two things: engage in a voluntary act or omission and do so with a specified mental state (sometimes called *mens rea*). Historically, the exception is when the General Assembly intends that a statute carry strict criminal liability. In such cases, the act alone constitutes the crime; the prosecutor does not also have to prove the offender's mental culpability.

Nevertheless, Ohio has many criminal statutes and divisions of statutes that don't clearly indicate a culpable mental state or the intent to impose strict liability. These statutes cause consternation for judges, prosecutors, defendants, victims, and juries.

Trial courts frequently wrestle with how to properly interpret such statutes. The cases periodically reach the Ohio Supreme Court for resolution. In fact, since 2008, the Court has issued six decisions on point, including the two *Colon* cases from 2008 and the *Horner* and *Johnson* decisions from the last half of 2010.

Colon I underscored the need to make the mental state clear for each crime that isn't meant to carry strict liability. For most prosecutors, who charged crimes by the *actual* language of the relevant criminal statute, this meant drafting indictments differently. But the most controversial aspect of *Colon I* was that it seemed to be retroactive. That raised the specter of offenders filing lawsuits based on improper convictions and inmates petitioning for release from prison.

In *Colon II*, the Supreme Court quickly clarified that it intended its *Colon I* ruling to be prospective only, with few exceptions. Last summer, in *Horner*, the Court overruled *Colon I*. This largely took us back to the law before *Colon*. And that law was confusing, indeed. Uncertainty permeated scores of offenses that lack a *mens rea* standard, but didn't clearly show a legislative taste for strict liability. The provision that instructs courts to default to "recklessly" in such cases isn't easy to apply and doesn't always make sense. And the definition of "recklessly" itself confuses people.

On December 28, 2010, the Supreme Court crafted a rule that might reduce future appeals based on the default statute for a particular group of cases. In *State v. Johnson*, 2010-Ohio-6301, the Court held that, in cases in which the General Assembly expressed a culpable mental state in *any* part of a statute, the statute is effectively complete and there is no need to apply the default rule to remaining clauses. The result effectively makes the divisions in these statutes that lack clear mental elements into strict liability offenses. In these situations, *Johnson* puts the legislature's default language on the sideline—avoiding the case-by-case debate between strict liability and recklessness.

Johnson doesn't address many situations in which courts wrestle with the default statute, however. For instance, the case doesn't directly deal with the 70+ statutes in the criminal code that provide *no* culpable mental state in *any* division. Yes, some of these were probably intended as strict liability offenses, but that isn't always clear.

Moreover, while one would hope that the intent regarding *mens rea* gets discussed with each new enactment, we know that isn't always the case. Often legislators amend criminal sections at different times for specific purposes, without consulting the mental state(s) set by other divisions. Often the legislature adds crimes to an existing statute as an efficient drafting technique. The added clauses easily could have been made stand-alone sections.

In short, while courts have worked hard to deal with individual statutes with *mens rea* voids—including six remarkably different holdings by the Supreme Court since 2008—the ultimate solutions lie with the General Assembly. The Sentencing Commission proposes four intertwined changes (see pp. 12-15):

- Consider filling the culpable mental state gaps in the criminal code (Title 29). The recommendation appears on page 13 and a list of problem statutes and Commission's proposals appear in the Appendix, beginning at page 16.
- Recognize that the current default statute (§2901.01) is fraught with problems and should be amended to help practitioners, defendants, and victims to better understand the law. The revision may or may not include the partial solution suggested in *Johnson*. The Commission's proposal is on page 13.
- Clearly indicate when the legislature intends to impose strict criminal liability. See page 14.
- Keep "recklessly" as the default mental state for statutes that contain no *mens rea* or where a default to strict liability may not make sense, but redefine the term to minimize jury confusion. Our proposal appears on page 14.

CONFUSING STATUTES

The General Assembly enacted §2901.21 to instruct courts in the elements necessary to commit a crime (div. (A)) and to provide a default when the mental element is missing from a statute (div. (B)). The statute is critical to the run of Ohio Supreme Court cases over the past 30 years that culminates in last month's *Johnson* decision. Those decisions, in turn, underscore the need for the General Assembly to fill gaps in current law and to clarify §2901.21.

Basic Statutory Rule. Generally, for a crime to be committed in Ohio, §2901.21(A) requires that a person must *both*:

- Engage in a voluntary act or omission; and
- Do so with a specified mental state (sometimes called *mens rea*).

For instance, to be convicted of murder, one must not only kill another person (the voluntary act), but must do so "purposely" (the culpable mental state). If the same person causes another's death "recklessly," the offense becomes reckless homicide, not murder. If the killing is done "negligently," the crime is negligent homicide. Both crimes carry much lower penalties than those for murder. Liability for various other

manslaughters and homicides, and their varying penalties, also turns on *mens rea*. Examples abound in the laws governing other groups of crimes as well.

Ohio has four defined culpable mental states. In descending order of mental involvement they are: purposely, knowingly, recklessly, and negligently (§2901.22). The *mens rea* distinction is very important in differentiating conduct for penalty purposes, as we just saw in the brief discussion of homicides.

Most, but certainly not all, offenses in Title 29 adhere to the basic rule. The Supreme Court relied on this fundamental concept in *Colon I*, discussed below.

Strict Liability Exception. The legislature enacted a statutory exception to the rule requiring both a guilty act and a culpable mental state. The tenet for these “strict liability” offenses appears in §2901.21(B):

When the section defining an offense does not specify any degree of culpability, and *plainly indicates a purpose to impose strict liability* for the conduct described in the section, *then culpability is not required* for a person to be guilty of the offense. (Emphasis added.)

Most traffic violations are enforced as strict liability offenses. If you operate a vehicle while impaired by alcohol or other drugs, it doesn’t matter what you were thinking. Being drunk or drugged in a vehicle suffices for the offense. Similarly, if you exceed the speed limit, you are guilty of speeding irrespective of whether you were acting intentionally or were oblivious.

Default Rule. When the General Assembly enacts an offense without clearly indicating either a *mens rea* or the intent to impose strict liability, courts must turn to the last sentence of §2901.21(B):

When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.

In short, “recklessly” is the default culpable mental state needed to comply with the basic rule in §2901.21(A).

The Problems. We have seen that §2901.21 clearly requires both a guilty act and culpable mental state, carves an exception for strict liability situations, and establishes a default *mens rea* (recklessly) where the culpable mental state or intent to impose strict liability isn’t clear. So why do courts struggle with the statute?

The greatest difficulty comes when the General Assembly fails to clearly state a culpable mental state *and* does not “plainly indicate” that strict liability is intended, especially in situations where defaulting to “recklessly” may not make sense. You might think this is a rare occurrence, but nearly 100 statutes and divisions of statutes

have this problem in Title 29 alone. These voids—and the need for case-by-case determinations—continue to exist after *Horner*. Most of them are not affected by *Johnson*, as we will see when we discuss the key cases in the next section.

The list could have been much longer. However, after pouring over the statutes that do not clearly indicate a culpable mental state for each element, it became clear to the Commission that some parts of statutes do not need a specific *mens rea*, even though they are not literally strict liability provisions.

In these situations, the culpable mental state often flows from an introductory clause, a definition, or other indications in the statute. Also, many statutes import *mens rea* from another offense. A classic example is “felony murder” where the intent to commit murder is imputed from the underlying intent to rape, kidnap, rob, *etc.* Historically, no added *mens rea* is needed for the actual killing.

The list goes on. The point is that the default statute should be revised to make clear that—after filling the gaps identified in the chart at the end of this report—certain parts of statutes require no added culpable mental state. This will save practitioners from squabbling over side issues and give clearer guidance to defendants and victims.

“Recklessly” seems to be a logical default *mens rea*. But the definition of “recklessly” isn’t pellucid. §2901.22(C) provides:

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

Because the definition uses wording rarely heard in common speech (such as “heedless”), oddly phrased (is there “indifference” that isn’t “heedless?”), or prone to misleading interpretations (“perversely disregard” has taken on unintended sexual connotations), many practitioners would like to see the language modified. Anecdotally, some prosecutors report that they would rather charge the higher *mens rea* of “knowingly” because the definition of “recklessly” makes it hard to prove, particularly in jury trials.

Before turning to the Commission’s suggestions, let’s look at recent court cases that illustrate the difficulties in interpreting §2901.21’s general rule and default clauses.

FROM *WAC* THROUGH *COLON* AND *HORNER* TO *JOHNSON*

Trial courts routinely wrestle with §2901.01 in cases involving criminal statutes that do not contain a specific culpable mental state. On multiple occasions since 1980, the

Ohio Supreme Court issued opinions on point. Several of those cases follow. As noted, they illustrate how hard it is to apply §2901.21(A) and (B).

State v. Wac. In *Wac*, 68 Ohio St. 2d 84 (1981), the Supreme Court addressed *mens rea* issues in the prohibitions against bookmaking and operating a gambling house. The bookmaking part of the gambling statute (§2915.01(A)(1)) states that a person shall not “[e]ngage in bookmaking, or knowingly engage in conduct that facilitates bookmaking.” Note that the same division contains two offenses: “facilitating” bookmaking, which requires “knowing” conduct, and “engaging” in bookmaking, which contains no specified mental element.

In applying the default statute (§2901.21(B)) to the clause that does not contain a culpable mental state, one could argue that the *mens rea* for the naked “engaging” charge defaults to “recklessly.” Conversely, one could read the same default statute to contend that the General Assembly intended strict liability, even though it did not expressly say so.

The Supreme Court found:

[W]hen a single subsection of a statute with two discrete clauses contains one clause that expresses a culpable mental state and another discrete clause that does not, then the General Assembly has plainly indicated a purpose to impose strict criminal liability under R.C. 2901.01(B).

In short, when the legislature places a culpable mental state in one clause but does not include a mental element in another clause *in the same division* of a statute, one can assume that the General Assembly *chose* not to require any *mens rea* for the latter clause, making it a strict liability offense.

The Court applied the same reasoning to the prohibition against operating a gambling house, which provides a culpable mental state in one division of a criminal statute, but not in another division of the same section. §2915.03(A) forbids a person with control of premises to “(1) Use or occupy such premises for gambling...; (2) Recklessly permit such premises to be used for gambling...” Note that “reckless” conduct is needed to permit using the premises for gambling, but the direct use prohibition does not contain a culpable mental state.

Once again, under the default statute, one could argue either that the silent statute defaults to “recklessly” or that the General Assembly intended strict liability, despite not plainly indicating it.

The Supreme Court once more sliced the Gordian Knot, holding that, by specifying “recklessly” in one division, while omitting *mens rea* from another division in the same section, “This exclusion ‘plainly indicates a purpose to impose strict criminal liability.’”

The Court reasoned that the General Assembly *chose* not to require any *mens rea* for the provisions that do not indicate a culpable mental state when *another division* of the statute addressed mental culpability.

State v. Maxwell. Many offenses in the Revised Code begin with a general prohibition followed by a list of ways that it might be violated. The introductory language often contains a culpable mental state, while the subsequent clauses may or may not do so. Sometimes the opening *mens rea* clearly applies throughout the section (*e.g.*, No person shall knowingly do any of the following ...). But other times it is less clear.

In *State v. Maxwell*, 95 Ohio St. 3d 254 (2002), the Ohio Supreme Court addressed language that proscribes bringing obscene material into Ohio under the pandering obscenity involving a minor statute. §2907.321 states:

(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:

* * *

(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

Note that the introductory clause requires “knowledge” of the nature of the material, but the sixth prohibition in the list does not add another mental element for bringing the material into Ohio. Also note that the knowledge element in the opening clause seems to apply internally (“knowledge of the character of the material or performance”), rather than clearly require that each act in the list must also be done knowingly. Should the default statute fill the gap or did the legislature intend strict liability, albeit without making a clear statement to that effect?

The Court noted that “we need to determine whether the entire section includes a mental element, not just whether division (A)(6) includes such an element.” The Court concluded that, under the introductory clause:

[K]nowledge is a requirement only for the discrete clause within which it resides: ‘with knowledge of the character of the material or performance involved.’ Thus, the state must prove that appellee knew the character of the material at issue. The state is not required to prove that appellee knew that in downloading files via America Online he was also transmitting those files from Virginia into Ohio.”

The court held that division (A)(6) plainly indicates a purpose to impose strict liability, precluding the application of recklessness as the culpable mental state under the default statute.

The Problems. *Wac* and *Maxwell* clearly give trial courts guidance on when the General Assembly may have intended that conduct is subject to strict liability. But there are practical problems:

- Courts must apply *Wac* and *Maxwell* on a statute-by-statute basis, as they come up. This is not only tedious, it can result in different interpretations in distinct parts of the state.
- For statutes where the legislative intent may be less clear than for the crimes analyzed in *Wac* and *Maxwell*, it can be risky for a trial court to conclude that the General Assembly intended something that it did not clearly say. After all, the default statute prefers recklessly unless the legislature “*plainly indicates a purpose to impose strict liability*” [emphasis added]. It is highly unlikely that the legislature intends to make *every* statute that does not mention a culpable mental state into a strict liability offense.
- *Wac* and *Maxwell* may not work as well when the clauses or divisions being compared are enacted at different times or for different purposes.
- These cases do not help much when a stand-alone offense does not contain a culpable mental state anywhere in the statute.
- The Supreme Court itself has not always relied on the *Wac* and *Maxwell* analysis in addressing statutes that are silent as to *mens rea*. (See, e.g., *State v. Adams*, Ohio St. 2d 151 (1980), predating *Wac*, *State v. Wharf*, 86 Ohio St. 3d 375 (1999), *State v. Clay*, 120 Ohio St. 3d 528 (2008), *State v. Lester*, 123 Ohio St. 3d 396 (2009), and, of course, *Colon*.)

Colon I. In 2008, the Ohio Supreme Court caused a stir in the criminal courts when it ruled that an indictment must clearly indicate the culpable mental state needed to commit a crime. At a glance, *State v. Colon*, 118 Ohio St. 3d 26, looked like Criminal Law 101. When charging a crime, the prosecutor must include both the defendant’s actual act plus whether he or she was acting purposely, knowingly, recklessly, or negligently. That is, *Colon* seemed to call for literal compliance with the basic rule in §2901.21(A), discussed earlier.

But there were problems. As noted, many criminal statutes or divisions of statutes do not clearly indicate a culpable mental state. The statute (§2901.21) telling courts what to do if there is not a clear mental state is confusing. And many prosecutors routinely charged defendants by using the *exact language* of the statute allegedly violated, even if the statute did not indicate a mental state. *Colon* seemed to end this practice.

Prosecutors were shaken, particularly since the Court decided that failure to include a culpable mental state was a “structural error,” which could trigger reviews not only in pending and future cases, but also of criminal cases already decided. Practitioners worried that the case would lead to the retroactive review of thousands of sentences. In turn, this could mean that hundreds of inmates might be released from prison and thousands of wrongful conviction suits could be filed against the state. Prosecutors began to routinely add “recklessly” to indictments when the statutes violated failed to clearly indicate a culpable mental state, including situations in which defaulting to “recklessly” doesn’t make much sense.

Colon II. Was the sky falling after *Colon I*? Perhaps not, but it was raining hard. The Supreme Court quickly clarified its intent. *Colon II* (*State v. Colon*, 119 Ohio St. 3d 304 (2008)) held that *Colon I* was prospective only. It also held that failure to include the culpable mental state in an indictment was not a structural error unless there were “multiple errors throughout the trial that are inextricably linked to the defective indictment.”

Colon was now a semi-*Colon*. Clearly, *Colon II* allayed many of the fears engendered by *Colon I*. But it left in place the sentiment from *Colon I* that was sometimes lost in the brouhaha: generally, criminal statutes should contain a culpable mental state unless the General Assembly intends to create a “strict liability” offense without a specified mental state. After all, that is the basic rule enacted by the General Assembly in §2910.21(A).

State v. Horner. On August 27, 2010, the Ohio Supreme Court finished the colectomy by explicitly overruling *Colon I*. In *State v. Horner*, 126 Ohio St. 3d 466, the Court held that an indictment that charges an offense by tracking the language of the criminal statute is not defective for failure to identify a culpable mental state when the statute itself fails to specify a mental state. In short, prosecutors could again indict to the literal language of the statute.

The *Colon II* and *Horner* rulings provide comfort for practitioners using longstanding practices. *Horner* largely places us back to where we were before *Colon I*. Remember, however, that *Horner* only deals with indictments. At trial, courts will still have to make case-by-case and statute-by-statute decisions on the appropriate mental state, if any. Additionally, by revivifying *Wac* and *Maxwell*, *Horner* also breathes new life into the concerns with applying those cases noted earlier. Moreover, the courts are largely powerless to address the systemic problems with incomplete statutes.

State v. Johnson. Late last month, the Supreme Court took a stab at developing a broader rule to address *mens rea* deficiencies in a certain type of statute. The case involved the offense of having a weapon “under disability.” §2923.13 provides:

(A) ... no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

* * *

(3) The person is under indictment for ... any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse

The opinion reviewed some, but not all, of the earlier cases interpreting the key statute on what’s needed for a crime (§2901.01). Among cases not discussed earlier, these include *State v. Adams*, 62 Ohio St. 2d 151 (1980), which applied the default statute (§2901.21(B)) to a law that contained *no* culpable mental state *anywhere* in the section. *Adams* concluded that division (B) required a default to “recklessly” because there was no clear indication of strict liability. Similarly, in the 1999 case of *State v.*

Wharf, involving another statute completely devoid of *mens rea*, the Court applied §2901.21(B), this time concluding that there was an indication of strict liability. (Interestingly, the Court did not mention *Colon I*, *Colon II*, or *Horner* in *Johnson*.)

After acknowledging that “our use of R.C. 2901.21(B) has been imprecise,” the Court distinguished situations like those in *Adams* and *Wharf* from *Johnson*’s predicament. The decision essentially expanded on *Wac* and *Maxwell*, holding that a different rule applies when *any* part of a statute specifies a culpable mental state, even if the clause at issue is silent:

We now conclude ... that the plain language of R.C. 2901.21(B) [the default statute] does *not* cover ... cases in which the General Assembly has specified a *mens rea* in only one discrete clause or subsection of a section defining the offense, excluding another clause or subsection of the offense. R.C. 2901.21(B) requires us to examine the entire section defining the offense, not merely a clause or subsection.” [emphasis added]

The Court then announced a rule that effectively trumps the default statute when *mens rea* is specified *somewhere* in the statute under interpretation. It upheld *Johnson*’s conviction by finding that the General Assembly specifically required the “knowing” possession of a firearm and (presumably) chose not to specify a mental state for the element of being under indictment for a drug offense.

The Court held, “In these offenses, if the General Assembly intends for the additional elements to carry their own *mens rea*, it must say so. Otherwise, no culpable mental state need be provided for those elements.”

Here is how we read the *Johnson* case:

- The culpable mental state is determined by examining the whole section defining the crime charged. If a *mens rea* is provided even once, *anywhere* in the section, the default statute (§2901.21(B)) doesn’t apply and the standard effectively becomes strict liability (or more specifically, no need to prove a culpable mental state) for the other divisions, because recklessness isn’t to be considered. In the words of the Court, “R.C. 2901.21(B) does not supply the *mens rea* of recklessness unless there is a *complete absence* of *mens rea* in the [entire] section defining the offense *and* there is *no plain indication* of a purpose to impose *strict liability*.” (Syllabus, ¶2) [emphasis ours].

This is true even if:

- The *mens rea* clause does not directly relate to the division of the statute in question. This was arguably the situation in *Johnson*. Violations in the other divisions of the weapons under disability law are fairly clear. A mentally competent person tends to know that he or she has been convicted of another crime or is on the lam. However, a person placed

under indictment typically learns about it only on receiving formal notice. Making that part essentially a strict liability offense may deny a reasonable defense where a person otherwise legally carrying a weapon did not yet know of the indictment. (In fact, the Court ruled differently on this very issue two years earlier in *State v. Clay*, 120 Ohio St. 3d 528 (2008).) Thus, while *Johnson* may help courts to efficiently deal with such cases, we suggest that the General Assembly should review statutes where application of the case would not square with legislative intent.

- The division in question was enacted at a different time for different purposes or where logic might dictate otherwise. Veteran State House watchers know that the legislature adds new crimes to related, existing statutes for drafting efficiency. The added clauses easily could be written to stand alone, leaving the default to recklessness in place.
- *Johnson* has no direct application to statutes in which the legislature fails to specify mental culpability *anywhere* in the section. There are over 70 such statutes in the criminal code alone, including many common crimes. For those statutes, we still need to look to *Adams*, *Wharf*, *Wac*, and *Maxwell* and apply the default statute case-by-case to determine if the offense covers reckless conduct or should be read to impose strict criminal liability.

Because *Johnson* did not have to reach the question, it provided no new test to help courts ascertain when the legislature “plainly” indicates strict liability to negate a default to recklessness. This issue begs for clarity from the General Assembly.

This analysis isn’t presented to fault the *Johnson* decision. It clearly reflects the Supreme Court’s ongoing effort to develop a rule to address a class of statutes that causes headaches for courts. And it helps to settle certain issues from a judicial perspective until the General Assembly revisits the default statute and other *mens rea* topics.

RECOMMENDATIONS

Problems with the current default statute and the run of Ohio Supreme Court cases culminating in *Johnson* underscore the need for the General Assembly to address *mens rea* issues. Although *Colon II* and *Horner* quelled anxieties raised by *Colon I*, many underlying problems remained. The Court tried to address some of them in *Johnson*, but questions linger.

The criminal code contains dozens of statutes that do not clearly indicate the mental state intended by the General Assembly. Many of them do not seem to be intended as strict liability offenses. The default statute (§2901.21(B)) telling us how to address the situation is confusing and requires many statute-by-statute rulings, even after

Johnson. And the default to “recklessly” when *mens rea* is unclear can be a challenge to jurors because of how the Code defines the term (§2901.22(C)).

Implementing these proposals will make life easier for trial courts and minimize the number of appeals otherwise needed to resolve whether a statute imposes strict liability or defaults to “recklessly.”

With these things in mind, the Sentencing Commission recommends:

1. Beginning with Title 29, the General Assembly should insert a culpable mental state in any criminal offense that does not contain one, unless the legislature clearly shows its intent to create a strict liability offense.

This can be a daunting task. To make things easier, the Commission spent many months reviewing lists of problem statutes and making suggestions to fill the culpable mental state voids (see the Appendix, starting at p.16). Perhaps there is less urgency after *Horner* and *Johnson*, but the gaps remain, necessitating case-by-case decisions on the true elements of various criminal statutes. (The Commission also drafted the suggested changes in bill form, available upon request.)

Why focus on Title 29? With the exception of traffic cases in misdemeanor courts, the vast majority of crimes prosecuted in Ohio reside in the criminal code.

2. The General Assembly should modify the default statute (§2901.21(B)).

The Commission suggests enacting a new version of §2901.21(B) once the legislature addresses the list of offenses with *mens rea* problems listed in the Appendix. The remodeled section would:

- Continue to use a default to “recklessly” or strict liability for the largely regulatory offenses that lie outside of Title 29 (division (C) below);
- Close the door on endless interpretation debates by making clear that—once the legislature addresses the statutory gaps mentioned in recommendation #1—no culpable mental state need be proved other than those either laid out in the statute, carried over from an underlying offense incorporated into the crime (*e.g.*, the “knowing” aspect of theft is part of the crime of burglary or robbery), or specified in a definition (*e.g.*, gross neglect is defined as a “knowing” act in the patient abuse statutes). (New division (B) below.)

Here is our proposed redraft of the default language:

§2901.21. (A) Except as provided in division (B) and (C) of this section, a person is not guilty of an offense unless both of the following apply:

- (1) The person’s liability is based on conduct that includes either a voluntary act, or an omission to perform an act or duty that the person is capable of performing;

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

(B) For offenses set forth in this title, no culpable mental state is required other than the culpable mental state: set forth in the statute defining the offense; set forth in the statute defining an underlying offense incorporated into the offense charged; or contained in a definition that specifies a culpable mental state.

(C) ~~When~~ For offenses not set forth in this title, when the section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in the section, then culpability is not required for a person to be guilty of the offense. When the section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.

* * *

3. When the General Assembly intends to make a crime subject to strict liability, it should do so more clearly.

The main reason these cases are so difficult for courts is that the General Assembly has not provided a clear test on how it “plainly” indicates an offense carries strict criminal liability and does not default to recklessness. A lucid statement of strict liability would make crimes easier for prosecutors to charge, give defendants a better understanding of the charges against them, help victims comprehend the law, and minimize the times a court would have to divine what the legislature intended. For instance, the statutory rape provision avoids guesswork by clearly providing that, if the victim is under 13, the crime occurs “whether or not the offender knows the age of the other person” (§2907.02(A)(1)(b)).

Short of inserting new language in each provision, the General Assembly could achieve greater clarity about strict liability with a statute that tells courts when strict liability is “plainly” intended. This could be done as part of recommendation #2.

4. Replace the Definition of “Recklessly.”

Given the problems in the current definition (“heedless indifference”; “perverse disregard”), the Commission proposes a definition of “recklessly” more closely tied to the Model Penal Code (MPC), which set the mold for the other definitions in the section but, oddly, not the definition of “recklessly.” According to research conducted by the Ohio Public Defender’s office, at least 30 states plus the District of Columbia use some form of the MPC definition.

We suggest amending the definition of “recklessly” in §2901.22(C) as follows:

(C) A person acts recklessly when, ~~with heedless indifference to the consequences, he perversely~~ that person consciously disregards a known substantial and unjustifiable risk that his conduct is likely to cause a certain result or is likely to be of a certain nature a criminal offense will result from the person’s conduct. The risk, when considering the purpose of the

person's conduct and circumstances known to the person, involves a substantial departure from the standard of conduct that a reasonable person would observe in the actor's situation. A person is reckless with respect to circumstances when, ~~with heedless indifference to the consequences, he~~ perversely the person consciously disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

The proposal uses gender-neutral language. Similar non-substantive changes should be made to the existing definitions of “purposely,” “knowingly,” and “negligently” in the same section.

Even if the General Assembly prefers alternative language, Commission members strongly feel that the current definition should be replaced.

APPENDIX

ASSIGNING A CULPABLE MENTAL STATE TO FILL STATUTORY VOIDS Ohio Criminal Sentencing Commission, 2010

This list contains sections and division in Title 29 that do not clearly indicate a culpable mental state for the crime, together with the Sentencing Commission’s suggestions for filling the gaps. The suggestions came largely from the Commission’s *Colon Work Group*, which met for nearly two years. Members included: OSBA representative Paula Brown, Ross County Common Pleas Court Judge W. Jhan Corzine, Hocking County Prosecutor Laina Fetherolf, defense attorney Kort Gatterdam; Delaware Municipal Court Judge David Gormley, Asst. Warren County Prosecutor Jason Hilliard, Asst. State Public Defender Bob Lane, Youngstown City Attorney Jay Macejko, John Murphy of the Ohio Prosecuting Attorneys Association, appellate court Judge Colleen Mary O’Toole, Jim Slagle of the Attorney General’s office, Parma Municipal Court Judge Ken Spanagel, and Shawn P. Welch of the Commission’s Staff. The Commission owes a debt to the Delaware County Prosecutor’s office for initial work on this list.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2903.02: Murder	(B) Cause death as proximate result of committing certain offenses of violence (“felony murder”).	(B): 15-life or, with specs, 30-life or life without parole.	(B): No additional mental state needed. Reason: <i>Mens rea</i> imputed from underlying offense, consistent with perceived legislative intent and historical practice.
§2903.04: Involuntary Manslaughter	Cause death while: (A) Committing a felony; (B) Committing a misdemeanor.	(A): F1 (B): F3	(A) & (B): No additional mental state needed. Reasons: <i>Mens rea</i> imputed from underlying offense, consistent with perceived legislative intent and historical practice.
§2903.06: Aggravated Vehicular Homicide	(A)(1) Cause death while OVI; (A)(2)(b) Cause CZ (construction zone) death while reckless; (A)(3)(b) Cause CZ death while speeding; (A)(4) Cause death during traffic MM.	(A)(1): F2→F1; (A)(2): F3→F2; (A)(3): M1→F4; (A)(4): M2→M1	All: No additional mental state needed. Reasons: Underlying offenses are strict liability, consistent with perceived legislative intent and historical practice.
§2903.08: Aggravated Vehicular Assault	(A)(1) Cause injury while OVI; (A)(2)(a) Cause SPH (serious physical harm) in construction zone while reckless; (A)(3) Cause CZ SPH during traffic MM.	(A)(1): F3→F2; (A)(2): F4→F3; (A)(3): M1→F4	All: No additional mental state needed. Reasons: Underlying offenses in (A)(1), (A)(3), &, perhaps, (A)(2)(a) are strict liability, consistent with perceived legislative intent.
§2903.15: Permitting Child Abuse	(A) Permit abuse that causes SPH or death to child.	(A): F3→F1	(A): Knowingly. Reason: High penalty level and “cause harm” element indicates more than reckless or negligent conduct intended. Child endangerment covers abuse with less <i>mens rea</i> .

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2903.34: Patient Abuse or Neglect	(A)(1) Abuse by care facility – definition contains knowingly causing physical harm or recklessly causing SPH; (A)(2) Gross neglect – definition contains knowingly; (A)(3) Neglect – definition contains recklessly. [See §2903.33definitions.]	(A)(1): F4→F3; (A)(2): M1→F5; (A)(3): M2→F5	Clarifies, by definition: (A)(1): Knowingly & recklessly (A)(2): Knowingly (A)(3): Recklessly Reason: While not clearly stated now, <i>mens rea</i> for each division is imputed from RC §2903.33 definitions of “abuse,” “gross neglect,” “neglect,” & “inappropriate use of a physical or chemical restraint, medication, or isolation.” Since they only apply to this section, the definitions should move here from current §2903.33(B), (C), & (D).
§2903.341: Patient Endangerment	(B) MR/DD caretaker creating substantial risk to patient’s health or safety. (C) Caretaker can’t condone or knowingly permit certain acts.	(B): M1→F3; (C): M1→F3	(B): Recklessly. Reason: create “substantial risk” rather than actual harm implies less than knowing conduct. (C): Make clear that “knowingly” modifies condone & permit. Reason: Clarity.
§2903.36: Retaliation for Reporting Abuse	No criminal penalty.	None	No change. Note to G.A.: There is no clear indication that this is a crime. It should be rewritten if a criminal penalty is intended.
§2905.01: Kidnapping	(A) Restrain liberty for certain purposes.	(A): F1 → F2	Clarify that removal & restraint must be done “knowingly”. Reason: Restraint with purpose implies more than recklessness. Consistent with “knowingly” in abduction and unlawful restraint.
§2905.22: Extortionate Credit/Usury	(A)(3) Possess document to record usurious transaction, knowing it records such.	(A)(3): M1	Clarify that offender must “knowingly” possess the document, knowing the contents. Reason: Implies knowing conduct (since must know contents), consistent with (A)(1) & (2).
§2907.02: Rape	Engage in sexual conduct &: (A)(1)(a) with purpose to prevent resistance, drug, or impair by surreptition, force, threat, or deceit; (A)(1)(b) < 13; (A)(1)(c) Know or should know that consent is impaired due to mental/ physical condition; (A)(2) compelling with force/threat.	All: F1 + up to life under Sexual Predator Law.	Add “knowingly” engage in sexual conduct to preface. (A)(1)(b): Strict liability re age disclaimer. (A)(1)(c): Streamline after moving “knowingly” to preface. Reason: Engaging in sexual conduct is at least a “knowing” act for perpetrator.
§2907.03: Sexual Battery	(A)(5)-(12) Engage in sexual conduct & acts by various custodians.	All: F3→F2	Add “knowingly” engage in sexual conduct to preface. (A)(5)-(12) – strict liability once prove knowledge. Reason: Engaging in sexual conduct is at least a “knowing” act for perpetrator.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2907.04: Sexual Con- duct w Minor	Engage in sexual conduct with minor.	M1→F3 Depending on age difference.	Add “knowingly” engage in sexual conduct to preface. Reason: Engaging in sexual conduct is at least a “knowing” act for perpetrator.
§2907.05: Gross Sexual Imposition	Have sex contact +: (A)(2) Give drug to prevent resistance, or impair by surrepti- tion, force, threat, or deceit; (A)(4) < 13; (A)(5) Offender knows consent impaired due to condition.	(A)(1): F4; (A)(2): F4→F3; (A)(3): F4; (A)(4): F3; (A)(5): F4; (B): F3	Parallel changes in rape: Add “knowingly” engage in sexual contact to prefatory clauses; (A)(2)-(5) – No additional mental state needed. Reasons: Parallels rape, <i>etc.</i> Engaging in sexual conduct should be a “knowing” act for perpetrator; age disclaimer in (A)(4) traditionally treated as strict liability.
§2907.06 : Sexual Imposition	Have sex contact +: (A)(4) Victim 13-15; (A)(5) Abuse patient by MH professional.	All: M3→M1	Add “knowingly” engage in sexual contact to prefatory clauses; (A)(1)-(5) – No additional mental state needed. Reasons: Engaging in sexual contact is a “knowing” act for perpetrator; (A)(4) & (5) are traditionally treated as strict liability. Clarify.
§2907.07: Importuning	Solicit sex: (A) Victim < 13; (B) Victim 13-15; (C) & (D) By telecom device when knew or should have known age.	(A): F3→F2; (B): F5→F4; (C): F3→F2; (D): F5→F4	All: Strict liability as to the age requirement “Knowingly” as to the solicitation; Reason: Knowingly solicit, consistent with the recommendation for solicitation, §2907.24.
§2907.08: Voyeurism	(A) – (C): Act with purpose of sexually arousing/gratifying; (D) Act for purpose of viewing body or undergarments.	(A): M3; (B): M2; (C): M1; (D): F5	(A) - (D): Knowingly re surreptitious act. Reason: Watching is a “knowing” act; “purpose” of sexual gratification; <i>mens rea</i> provided by the underlying trespass.
§2907.24: Solicitation	(A) Solicit sexual activity for hire. (B) Solicit with knowledge of having HIV.	(A): M1; (B): F3→F2 (Depending on date of violation)	(A): Knowingly. Reason: Soliciting is a “knowing” act. (B): No additional mental state needed. Requires knowledge of HIV + elements of (A).
§2907.25: Prostitution	(A) Engage in sexual activity for hire; (B) Engage with knowledge of having HIV.	(A): M3; (B): F3→F2 (Depends on date of violation)	(A): Knowingly. (B): Knowingly (requires knowledge of HIV). Reason: Engaging in sexual activity is a “knowing” act.
§2907.311: Display that’s Harmful to Juveniles	Display material harmful to juveniles with knowledge of nature of the content.	M1 - Each day is a separate offense.	Recklessly display with knowledge of content. Reason: Reckless conduct sufficient, with actual knowledge, for offenses designed to protect children.
§2907.32: Pandering Obscenity	Produce, promote, <i>etc.</i> obscene material with knowledge of nature of content.	All: F5→F4	Recklessly produce with knowledge of content. Reason: Reckless conduct sufficient, with actual knowledge, for these offenses .
§2907.321: Pandering Obscenity re Minor	Produce, promote, <i>etc.</i> involving minor with knowledge of nature of the content.	(A)(1)-(4): F2; (A)(5): F4→F3; (A)(6): F2	All recklessly. Reason: Reckless conduct sufficient, with actual knowledge, for these offenses designed to protect children.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2907.322: Pandering Sexually Oriented Matter Re Minor	Produce, promote, <i>etc.</i> involving minor with knowledge of content. ((A)(5) requires “knowing” conduct for lesser offense of acquire, possess, <i>etc.</i>)	(A)(1): F2; (A)(2): F2; (A)(3): F2; (A)(4): F2; (A)(5): F4→F3; (A)(6): F2	(A)(1)-(4), (6): Recklessly. Reason: Reckless conduct sufficient, with actual knowledge, for these offenses designed to protect children. Note to G.A.: (A)(6) ought to be split between bringing material to Ohio and the more serious bringing children in to engage in sex activity.
§2907.323: Use of Minor in Nude Material or Performance	Photograph, consent to use, or possess.	(A)(1): F2; (A)(2): F2; (A)(3): F5→F4	All Recklessly. Reason: Reckless conduct sufficient, with actual knowledge, for these offenses designed to protect children.
§2907.33: Deception to obtain matter harmful to juveniles	Act with purpose to help juvenile obtain harmful matter: (A)(2) Furnish false ID;(B)(2) Juvenile using false ID.	(A): M2; (B): Unruly child	(A): Knowingly; (B): Knowingly. Reason: Misrepresenting identity or age, with purpose to gain access, is a knowing act.
§2907.34: Compelling Acceptance of Objectionable Materials	(A) Compel consignee, <i>etc.</i> to receive materials; (B) Threaten consignee <i>etc.</i> to take.	All: F5	(A): Knowingly; (B): Knowingly. Reason: Compelling & threatening are knowing acts.
§2907.40: Sex Business Violations	(B) Being open from 12-6 a.m.	(B): M1	(B) Strict liability [No change needed if default statute recommendation were adopted.] Reason: Consistent with perceived legislative intent and historical practice.
§2909.10: Trespass on Train	(B) Unprivileged train entry; (C) Disrupting train.	(B): M1→F2; (C): M1→F2.	(B): Knowingly; (C): Purposely. Reason: (B)’s getting on a train without permission probably a knowing act. (C): Disruption seems purposeful.
§2909.23: Making terror threat	(A)(1) Make threat “with purpose”	All: F3	No additional mental state needed; perhaps clarify “with purpose” means “purposely”. Reason: “Purposely” seems to be intent.
§2909.28: Prohibited Weapons Violations	(A) With intent to manufacture... knowingly assemble or possess.	All: F4	No additional mental state needed. Reason: “Intent” to manufacture; requires knowingly assemble or possess.
§2911.01: Aggravated Robbery	(A) Theft offense +: (1) Use, display, <i>etc.</i> weapon; (2) Have dangerous ordnance; or (3) Inflict SPH.	All: F1	(A)(1) & (2): No additional mental state needed as to weapon or ordnance once <i>mens rea</i> imputed from underlying theft. Reason: Consistent with perceived legislative intent and historical practice. (A)(3) – Strict liability. Reason: Consistent with <i>Horner</i> .
§2911.02: Robbery	(A) Theft offense +: (1) Have weapon; (2) Inflict physical harm; or (3) Use, threaten force.	(A)(1): F2; (A)(2): F2; (A)(3): F3.	(A)(1): No additional mental state needed as to weapon once <i>mens rea</i> imputed from underlying theft. Reason: Consistent with <i>Horner</i> . (A)(2): Strict liability Reason: Consistent with <i>Horner</i> . (A)(3): Recklessly. Reason: Consistent with lower penalty.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2911.11: Aggravated Burglary	(A) Trespass in structure with occupant present +: (1) Physical harm; or (2) Have weapon or ordnance.	All: F1	(A)(1): Strict liability. Reason: Consistent with <i>Horner</i> . (A)(2): No additional mental state needed as to weapon once show force, <i>etc.</i> Reason: Consistent with perceived legislative intent, historical practice.
§2911.12: Burglary	(A)(1)-(3): Other trespasses by force, stealth, deception in occupied structure, with purpose to commit offense; (A)(4): Trespass if other likely at home.	(A)(1): F2; (A)(2): F2; (A)(3): F3; (A)(4): F4.	(A)(1)-(4): No additional mental state needed. Reason: Consistent with perceived legislative intent, historical practice.
§2911.13: Breaking & Entering	(A) Trespass by force, stealth, deception with purpose to steal; (B) Trespass to commit felony.	All: F5	(A) & (B): No additional mental state needed. Reason: “Purpose” is sufficient <i>mens rea</i> .
§2911.211: Agg. Trespass	Trespass with purpose to commit misdemeanor.	M1	No additional mental state needed. Reason: Purpose read as “purposely”.
§2913.43: Securing Writings by Deception	Cause another to dispose or encumber property by deception.	M1→F2 (Depends on value & victim’s age/disability).	Knowingly. Reason: Inherent in deception, consistent with other frauds.
§2913.49: Identity Fraud	(B) – (E) Use, obtain, possess another’s ID info for various criminal intents, without consent.	F5→F1 (Depends on value & victim’s age/disability).	(B), (C), (D) & (E): Knowingly. Reason: Traditionally, theft and fraud are knowing acts; consistency. (Ohio’s theft statute requires <i>knowingly</i> obtaining property with purpose to deprive owner (§2913.02).)
§2915.02: Gambling	(A)(1) Bookmaking; (2) Knowingly facilitate it; (4) Betting, etc. for profit; (5) Have gambling device with purpose to violate (1)-(4).	All: M1→F5	(A): Knowingly do any of the following... Reason: Gambling generally is a knowing act; consistency throughout chapter. Note: In <i>Wac</i> , the Ohio Supreme Court held that “engage in bookmaking” is strict liability.
§2915.03: Operate Gambling House	(A)(1) Use or occupy premises for gambling.	All: M1→F5	(A)(1): Knowingly. Reason: To be a crime, use should be a knowing act; consistency throughout chapter. Note: In <i>Wac</i> , the Court found this to be a strict liability offense.
§2915.04: Public Gaming	(A) Gambling in public places.	All: MM→M4	(A): Knowingly. Reason: Gambling generally is a knowing act; consistency.
§2915.05: Cheating	(A) Corrupting various activities with fraudulent purpose.	(A): M1→F5; (B): F5→F4	(A): Knowingly. Reason: Cheating is a knowing act; consistency in chapter.
§2915.06: Amusement Machines	(A) Providing certain prizes.	M1→F5	(A): Knowingly. Reason: To be a crime, providing should be a knowing act; consistency throughout chapter.
§2915.07: Illegal Bingo	(A) Conducting non-charitable bingo.	F4	(A): Knowingly. Reason: Bingo is a knowing act; consistency in chapter.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2915.081: Illegally Distribute Bingo Supplies	(A) Unlicensed sale; (E)(1) Sale to non-charitable org.; (E)(2) Give in exchange for exclusivity; (E)(3) Buy from unlicensed distributor; (E)(4) Have interest in premises.	(A): M1→F5; (E): M1→F5	All knowingly. Reason: Distributing generally is a knowing act; consistency throughout chapter.
§2915.082 Manufacture & Sale-Bingo	(A) Unlicensed manufacture; (D) Sale to unlicensed person.	(A): M1→F5; (D): M1→F5	(A): Knowingly. (D): Knowingly. Reason: Manufacture is a knowing act; consistency throughout chapter.
§2915.09: Illegal Bingo Games	(A)(1)-(3), (B)(1)-(3), (C)(1)-(12), (D)(1), (2) Various illegal bingo practices.	(A)(2): F4; (A)(1) & (3), (B), (C)(1)-(12) & (D): M→M1; (C)(12):M1→F4	All knowingly. Reason: To be a crime, bingo should be a knowing act; consistency throughout chapter. Note to G.A.: The section provides conflicting penalties for violating (C)(12).
§2915.091: Illegal Instant Bingo	(A)(1)-(17) Illegal instant bingo acts; (C) Violate AG rules.	(A): M1→F5; (C): M1→F5	All knowingly. Reason: Consistent with §2915.09.
§2915.092: Illegal Raffles	(C) Conduct raffles for profit.	M1→F5	(C): Knowingly. Reason: Conducting is a knowing act; consistency in chapter.
§2915.093: Bingo Locations	No criminal penalty.	None	No change. Note to G.A.: There is no clear indication that this is a crime. It should be rewritten if a criminal penalty is intended.
§2915.094: Instant Bingo Offenses	(C) Non-compliance with Chapter; (D) Violate contract.	All: M1→F5	(C) & (D): Knowingly. Reason: Bingo is a knowing act; consistency throughout chapter. Note to G.A.: Recklessly should suffice for (E)(2)'s license suspension or revocation.
§2915.10: Bingo Records Violations	(A) Records offenses; (B) Fail to notify AG of records' location; (D) Inventory; (F) Distributor records; (G) Manufacturer records; (I) Destroy, etc.	(A) & (I): M1; (B), (D), (F), & (G): None	Knowingly in (A) & (I). Reason: Consistency throughout chapter. No change re (B), (D), (F), & (G). Note to G.A.: There is no clear indication that (B), (D), (F), & (G) are crimes. They should be rewritten if a criminal penalty is intended.
§2917.11: Disorderly Conduct	(B) Certain acts while voluntary intoxicated.	All: MM→M4	(B): No additional mental state needed. Reason: Seems to be the legislative intent, with recklessness implied in the intoxication.
§2917.31: Induce Panic	(A) Cause panic by: (1) False warnings; (2) threaten violence; (3) Commit alarming offense with reckless disregard.	All: M1→F2	(A): Knowingly, by doing any of the following Reason: Consistent with similar offenses below.
§2917.32: Making False Alarms	(A) Initiate false alarm: (1) "knowing" it's likely to cause panic; (3) "knowing" alarm is false.	All: M1→F3	(A): No person shall knowingly Reason: Initiating is a knowing act; knowing conduct already required by (A)(2).

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2917.33: Hoax WMD Offenses	(A) Manufacture, possess, <i>etc.</i> fake WMD “with intent” to deceive, <i>etc.</i>	F4	(A): Knowingly. Reason: Consistent with similar offenses above and below.
§2917.41: Public Transit Misconduct	(A) & (B) Evade fares; (C) Other disruptive acts; (D) Defacing; (E) Fail to comply with lawful order.	(A) & (B): M4; (C): MM→M4; (D): M3; (E): M4	All Knowingly. Reason: Consistent with similar offenses above and below.
§2917.46: Misuse Block Parent Sign	(A), (B), (C), (D) – Display symbol “with intent to” mislead.	All: MM	All: No person shall knowingly Reason: Consistent with similar offenses above and below.
§2919.01: Bigamy	(A) Marriage or cohabiting by already married person.	M1	No additional mental state needed. Reason: Offense is directed at the <i>married</i> person, who should know he or she is married. Affirmative defense helps in cases where knowledge is unclear. Note to G.A.: Since offense also includes cohabiting with married person, another good faith affirmative defense might be needed.
§2919.12: Unlawful Abortion	(A) Perform abortion without informed consent or (B) Without following rules re minors.	(A): M1→F4; (B): M1→F5	(A): No additional mental state needed. Reason: “Purposely” is imputed from the definition of “abortion” in §2919.11.
§2919.13: Abortion Manslaughter	(B) Fail to take measures to preserve aborted child	All: F1	(B): Purposely. Reason: Consistency with (A), given seriousness. Note to G.A.: A different mens rea might make sense if (B) carried a lower penalty, particularly since the child may survive in (B).
§2919.14: Abortion Trafficking	Experimenting on or selling aborted fetus.	M1	Knowingly. Reason: Experimentation & sale are knowing acts. Note to G.A.: There should be an exception for stem cell research that’s permitted by law.
§2919.18: Failure to Perform Viability Test	(A)(1) & (2) Fail to perform viability test after 22 nd week.	All: M4	(A)(1) & (2): Recklessly. Reason: Recklessly suffices, particularly for misdemeanor conduct, since more serious offenses require purposeful & knowing acts.
§2919.21: Nonsupport	(A) Fail to provide adequate support to spouse, kids, elders; (B) Fail to adhere to a court support order; (C) Contribute to dependency.	(A): M1→F4; (B): M1→F4; (C): M1 & each day is a separate offense.	(A) & (B): Knowingly; (C): Recklessly. Reason: Failure to support or to follow a court order is a knowing act; G.A. seems to intend to make (C) less than knowing, consistent with contributing below.
§2919.22: Endangering Children	(A) Create substantial risk to child; (B)(1)-(6) abuse, torture, <i>etc.</i> child; (C) OVI with child.	(A): M1→F4; (B)(1): M1→F2; (B)(2)-(4) & (6): F3→F2; (B)(5): F2; (C): M1→F4	(A): Recklessly; (B)(1)-(6): Knowingly; (C): No additional mental state needed. Reason: (A) one can be reckless about creating a risk, but (B) abuse, torture, <i>etc.</i> are knowing acts. (C) Strict liability, consistent with OVI offenses.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2919.222: Parental Ed. Neglect	Failing to attend education program when ordered.	M4	Knowingly. Reason: To be a crime, failure to attend school should be a knowing act.
§§2919.225 & 2919.227: Day Care Disclosures	(A) Not disclose earlier death, injury; (B) Not provide certain notices of such.	Both: M4	(A) & (B): No additional mental state needed. Reason: Once you <i>know</i> , the information is so significant to the day care provider that an oversight is unlikely.
§2919.231: Interference With Support	Harassing or threats to prevent enforcing support order.	M1→F5	Knowingly. Reason: To be a crime, harassment should be a knowing act.
§2919.24: Contributing to Unruliness, Delinquency	(A)(1) & (2) Contribute to unruliness or delinquency; (A)(3) Fail to register	All: M1 with each day as a separate offense.	(A)(1) - (3): Recklessly. Reason: G.A. seems to intend to cover less than knowing conduct consistent with contributing aspect of nonsupport.
§2921.22: Failure to Report Crimes & Injuries	Know of the situation & (C) Fail to report patient's death to doctor; (D) Fail to allow investigation of such; (E)(2)-(4) Med. failure to report burn injuries; (F)(1) Fail to report known DV.	(A)(1): M4; (A)(2): M2; (B): M2; (C) & (D): M4; (E)(neg.): MM; (E)(know.): M2; (F) None.	(C), (D) & (F): Knowingly. (E): No change. Reason: Person must <i>know</i> of the situation and fail to act. However, (E) states different penalties for "knowing" and "negligent" conduct. Note to G.A.: There is no clear indication that (F) is a crime. It should be rewritten if a criminal penalty is intended.
§2921.24: Disclosing Address of Officer, <i>Etc.</i>	(A) Disclose home address of certain peace officers by certain officials.	M4	(A): Recklessly. Reason: G.A. seems to intend to cover less than knowing conduct.
§2921.25: Judge Not to Disclose	(A) Judge ordering such improper disclosure.	None.	No change. Note to G.A.: There is no clear indication that this is a crime. It should be rewritten if a criminal penalty is intended.
§2921.29: Failure to Disclose Info	(A) Refusing to give cop info in certain circumstances.	All: M4	(A): Knowingly. Reason: To be a crime, refusing should be a knowing act.
§2921.331: Failure to Comply With Police Officer Order	(A)(1) Fail to comply with lawful order; (B) Proscribes "willful" fleeing.	(A): M1; (B): M1→F3	(A): Recklessly. Reason: G.A. seems to intend to cover less than knowing conduct. (B): Replace "willfully" with "purposely". Reason: "willfully" isn't a defined <i>mens rea</i> .
§2921.38: Harassment by Inmate	Inmate, with "intent" to harass, threaten, <i>etc.</i> : (A) Throws or (B) Expels bodily substance; (C) With knowledge of HIV ...	(A): F5; (B): F5; (C): F3	(A) & (B): Recklessly. (C): No additional mental state needed. Reason: Once prove knowledge of HIV, no need for additional <i>mens rea</i> .
§2921.41: Theft in Office	(A)(1) Use office for theft or permitting or assenting to its use for theft offense.	All: F5→F3	(A)(1): Culpable mental state of knowingly imputed from underlying offense. Reason: Thefts and frauds usually require knowing conduct.
§2921.51: Impersonating Certain Officers	(B) Impersonating; (C) Arrest/detain while impersonating; (E) Felony while impersonating.	(B): M4; (C): M1; (D): M1→F4; (E): F3	No change. There is an underlying "purpose" in the definition of "impersonate" in (A)(4), then no additional mental state needed as to the acts while impersonating. Reason: Definition infers purposeful conduct.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2923.121: Possessing Firearm in Liquor Permit Premises	Possess firearm in a place with a liquor permit.	F5→F3 - Penalty increases for “knowingly carrying” or concealed firearm.	No additional mental state needed. Reason: Penalty increases for “knowingly carrying or having the firearm concealed”, suggesting a legislative intent for strict liability for base offense.
§2923.1211: False Con- cealed Hand- gun License	(A) Altering or creating a license; (B) “Possession” of revoked license.	(A): F5; (B): M3	(A): Knowingly alter or create; (B) “the person knows” of the revocation or suspension. Reason: Alter & create are knowing acts. “Possession” defined in §2901.21(D)(1) as knowing.
§2923.13: Weapon Un- der Disability	“Possession” Unclear re disability situations.	All: F3	Knowingly do any of the following.... Reason: “Possession” defined in as knowing in §2901.21(D)(1).
§2923.131: Weapon Un- der Detention	(B) “Possession” of weapon while detained.	M1→F1	Knowingly. Reason: “Possession” defined as knowing in §2901.21(D)(1).
§2923.15: Using Wea- pons While Intoxicated	(A) Carry or use a weapon while under the influence.	M1	(A) No additional mental state needed. Reason: Consistent with other intoxication related offenses.
§2923.162: Discharge Firearm in Prohibited Places	(A)(1)-(3) Discharge at or near cemetery, park, road, <i>etc.</i>	(A)(1): M4; (A)(2): M4; (A)(3): M1→F1	(A)(1)-(3): All knowingly. Reason: Should have to know you’re in a prohibited place for penalty. Other offenses cover any harm caused.
§2923.17: Illegal Manu- facture of Explosives	(B) Unlicensed manufacture.	(B): F2	Knowingly. Reason: High penalty level implies at least knowing conduct.
§2923.20: Unlawful Transactions in Weapons	(A)(3) Manufacture, sell, <i>etc.</i> switch-blade, black-jack, brass knuckles, <i>etc.</i>	(A)(1) & (2): F4; (A)(3): M2; (A)(4): M2; (A)(5): M4	(A)(3): Knowingly. Reason: Manufacture, sale, <i>etc.</i> are knowing acts.
§2923.201: Defacing Firearms	(A)(1) Deface firearm ID mark; (A)(2) Knowing possession of defaced firearm.	All: M1→F4	(A)(1): Knowingly. Reason: Defacing is a knowing act. (A)(2) No additional mental state needed. Reason: already requires knowing conduct.
§2923.21: Furnishing Firearm to Underage Person	(A)(1)-(3) Sell/furnish firearm to minor. (A)(4) & (5) Sell/furnish to person with “purpose to” violate. (A)(6) & (7) Purchase “with intent to” violate.	All: F5	(A)(1) - (3): Recklessly. Reason: Must be less than knowingly to avoid “don’t ask/don’t tell” transactions. (A)(4) - (7): No additional mental state needed. Reason: No mental additional mental state needed once prove “purpose” or “intent” to violate.
§2923.211: Underage Firearm Purchase	(A) Purchase firearm if under 18. (B) Purchasing handgun if under 21 (with exceptions).	(A): F4 delinquent act; (B): M2	(A) & (B): No additional mental state needed. Reason: Consistent with perceived legislative intent and historical treatment of these as status offenses.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i> /Reasons
§2923.32: Corrupt Activity	(A)(1) Participate in corrupt activity; & (A)(2) Acquire property through corrupt activity.	All: F2→F1	(A)(1): Knowingly conduct or participate. (A)(2): Knowingly acquire. Reason: These are knowing acts.
§2925.09: Unapproved Livestock Drugs	(A) & (B)(2) Administering unapproved drugs to food livestock.	F5→F4	(A) & (B)(2): Recklessly. Reason: Proving knowledge and likelihood of denial of knowing call for lesser standard.
§2925.22: Deception to Obtain Dangerous Drug	(A) Unclear re deception to obtain drug or possessing prescription blanks.	F5→F1 (Depends on drug/amount.)	(A) No change re deception; knowingly re possession. Reason: Restates current “knowing” possession. Note to G.A.: There are drafting issues with possessing blank scripts.
§2925.23 Illegal processing of drug documents.	(B) “Intentionally” make, utter, sell, or knowingly possess false or forged docs.	(B)(1)&(3): F5→F4 (B)(2),(4)&(5): F5	Change “intentionally” to “purposely”. Reason: “Intentionally” is not a one of the mental states recognized in Ohio. Replace with its equivalent.
§2925.33: Nitrous Oxide in a Vehicle	(B) Possess nitrous oxide in a vehicle.	M4	(B): Knowingly. Reason: Consistent with drug possession under §2925.11.
§2925.56: Transfer of Pseudoephedrine	(B)(1) Transfer to person < 18; (C) Fail to comply with distributor requirements.	(B)(1): M4; (C): M2	(B)(1): No additional mental state needed. Reason: Affirmative defense in §2925.58 allows rebuttal. (C) – Recklessly. Reason: Involves disregarding duties.
§2927.01: Abuse of a Corpse	Abuse a human corpse in ways that outrage: (A) family; (B) community.	(A): M2; (B): F5	(A) & (B): Knowingly treat a human corpse... Reason: For a criminal penalty, corpse abuse should be a knowing act.
§2927.02: Illegal Distribution of Tobacco	(B)(1) & (2) Distribute to minor; (B)(4) & (5) Make or sell nonstandard packages; (C) Sell in impermissible places.	All: M4→M3	(B)(1): No additional mental state needed. Reason: Affirmative defense in §2927.022 allows rebuttal. (B)(2), (4) & (5) & (C): Recklessly. Reason: To be a crime, these should be done recklessly.
§2927.021: Illegal Tobacco Product Scans	(B)(2) Sale when scan shows fraud; (D)(1) Improper recording of scan info; (D)(2) & (3) Improper use; (D)(4) selling info.	Civil penalty of \$1000 for (B)(2) & (D).	No change. Reason: Penalty is not criminal.
§2927.023: Unlawful Transport of Tobacco	(B)(1) Ship to unauthorized person; (C) Unmarked shipping.	None, but fine of \$1000 for (B)(1), (2) & (C).	(B)(1): Knowingly (consistent with (B)(2)). (C): Recklessly. Note to G.A.: Are these unclassified offenses? The “fine” so indicates. Clarify.
§2927.03: Interfering with Housing	(A)(1)-(3) Interfere with housing based on race, gender, creed	All: M1	(A): Replace “willfully” with “purposely” Reason: “Willfully” is not a defined <i>mens rea</i> in Ohio; purposely is its equivalent.
§2927.21: Non-indigenous Animal Escapes	(A) Fail to report animal’s escape.	M1	(A) No additional mental state needed once you know of escape. Reason: Once you know the animal is loose, you assume the risk of penalty for non-report.

Offense	Problem	Offense Level	Recommended <i>Mens Rea</i>/Reasons
§2927.24: Spreading False Conta- mination Rpt.	(C)(1) & (2) Spreading a false report about contamination.	(B)(1) & (2): F1; (C)(1) & (2): F4	(C)(1) & (2): No additional mental state needed as to spreading of the false report. Reason: Still requires knowledge the report is false.
§2927.27: Illegal Bail Bond Agent Practices	(A) Apprehend, detain, or arrest a principal on bond (unless...); (B) Represent one's self to be a bail agent or bounty hunter.	(A): M1 →F3; (B): M1→F3	No additional mental state needed. Reason: Seems intended to be strict liability. Note to G.A.: (B) may be broad enough to criminalize innocent behavior.
§2950.04: SORN – Duty to Register	(E) Failure of sex offender to register or send notice of intent to reside.	F4→F1 (Depends on offense that was the basis of the registration.)	Recklessly. Reason: Nothing higher than default <i>mens rea</i> seems to be intended by the legislature.
§2950.041: SORN - Registration with Sheriff	(E) Failure of sex offender to register or send notice of intent to reside.	F4→F1 (Depends on the offense that was the basis of the registration.)	Recklessly. Reason: Nothing higher than default <i>mens rea</i> seems to be intended by the legislature.
§2950.05: SORN – Ad- dress Change Notice	(F)(1) & (2) Failure to notify a sheriff of a change of address or a change in vehicle.	F4→F1 (Depends on the offense that was the basis of the registration.)	Recklessly. Reason: Nothing higher than default <i>mens rea</i> seems to be intended by the legislature.
§2950.06: SORN - Verification of Current Address	(F) Failure to verify current residence, address of school/ college, or place of employment address.	F4→F1 (Depends on the offense that was the basis of the registration.)	Recklessly. Reason: Nothing higher than default <i>mens rea</i> seems to be intended by the legislature.