

## FELONY OR MISDEMEANOR

### QUESTION: How does a person know whether an alleged crime is a felony or a misdemeanor?

*Ohio Revised Code 2901.02 in part states...*

*(D) Regardless of the penalty that may be imposed, any offense specifically classified as a felony is a felony, and any offense specifically classified as a misdemeanor is a misdemeanor.*

*(E) Any offense not specifically classified is a felony if imprisonment for more than one year may be imposed as a penalty.*

*(F) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty.*

The wording above comes directly from the Ohio Revised Code, and although it may sound a little ridiculous, it does make sense if you understand the context. We first start out with the premise that most criminal offenses in Ohio are classified in the actual criminal statute as either a misdemeanor or a felony. This means that the only way we know if a “crime” is either a misdemeanor or a felony is by reading the statute to figure it out. Here is an example...

#### **§ 2903.13. Assault**

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

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

*(C) Whoever violates this section is guilty of assault. **Except as otherwise provided in division (C) (1), (2), (3), (4), or (5) of this section, assault is a misdemeanor of the first degree.***

*(1) Except as otherwise provided in this division, if the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, **assault is a felony of the fourth degree.** If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, if the offender previously has been convicted of or pleaded guilty to a violation of this section or [section 2903.11](#) or [2903.16](#) of the Revised Code, and if in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, **assault is a felony of the third degree.***

*...and on and on...*

So, under ORC 2901.02(D) a person actually needs to know the facts alleged and the statute involved in order to look at the statute to determine whether the alleged crime is classified in the statute as either a felony or a misdemeanor.

If there is no classification contained in the statute, then ORC 2901.02 (E) or (F) apply in determining whether the crime alleged is either a felony or a misdemeanor. The statute would specifically state how much imprisonment could be given for a violation of the statute, and it would then be a misdemeanor if less than one year imprisonment or a felony if more than one year imprisonment.

(Prepared by Scot Dewhirst, Attorney and former Assistant Prosecutor 6/27/05)

## FELONY OR MISDEMEANOR

### **QUESTION: How does a person know whether an alleged crime is a felony or a misdemeanor and why is that important to mediation under the UMA?**

In Ohio a crime that is more serious is punished by a sentence of at least a year incarceration in a State prison and is referred to as a felony. There are levels of classification of crimes that are felonies from fifth degree (least serious) to first degree (most serious). Most people understand that the felony classification includes crimes such as robbery, rape, burglary, and of course, murder.

If a crime is less serious it is a misdemeanor and is punished by a sentence of less than a year incarceration in a county jail. There are various levels of misdemeanor as well, including the minor misdemeanor classification, which is a fine without any jail time. Examples of misdemeanors include passing bad checks, disorderly conduct and petty theft (theft of goods or services of less than \$500 value).

Under Ohio law, a person is required to report to law enforcement if the person knows that a felony has been committed or will in the near future—permits law enforcement to solve crimes or stop them if they have not yet been committed. As a matter of public policy the UMA does not protect mediations communications of the commission of a felony either as confidential or privileged—an exception to the sanctity of the mediation session. The main decision of the mediator is whether or not the information provided is sufficient for the mediator to know the crime was committed—not just that it is being alleged to have been committed.

In Ohio, the UMA language proposed was changed to reflect the decision that whether or not to protect misdemeanor information will be decided by the Judge in a meeting in chambers. The proponent of the evidence must show the judge that (1) the evidence is not otherwise available and (2) disclosure is necessary to prevent manifest injustice.

If the criminal information is used in the proceeding, only the parts of the mediation communication necessary to provide the required information is useable—the rest of the mediation communication will be privileged and not useable. This holds true if the mediation is not being used to plan the commission of a crime. If the mediation is being used as a means to commit a crime, it taints the entire mediation session and nothing said is privileged.

The last question the mediator must decide in a mediation in which there is discussion of a crime is whether or not the mediator is a mandated reporter of certain information. For instance, in the area of child abuse, if evidence is provided to persons in certain professions, they must report it to those charged with protecting the child. Even if the evidence does not rise to the level of knowing that a felony was committed, a mediator may be required to report the information if, in addition to mediation, the mediator is a member of any mandated reporting profession such as teacher, social worker, attorney, etc.

Prepared 06/30/05 by Shirley Cochran