



CRIMINAL SENTENCING COMMISSION

65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

→ → → → → Location Change:

**\*\*\*Rhodes Tower – Conference Room 2925\*\*\***

## AGENDA

December 13, 2018 10:00 a.m.

- I. Call to order, roll call & approval of meeting notes from September 27, 2018  
Vice-Chair Selvaggio
- II. Drug Trend Overview  
Ohio Department of Public Safety – Director John Born  
Mental Health and Addiction Services
- III. Drug Chapter Discussion  
Director Andrews will facilitate a constructive roundtable discussion among Commission Members on proposed changes to Ohio's drug sentencing laws including:  
  
The "Klein-O'Brien Plan" – Lara Baker-Morrish  
The Recodification/Commission draft – Scott Shumaker  
"Ohio's Fresh Start Plan" – Keller Blackburn  
Ohio Judicial Conference – Paul Pfeifer  
Ohio Prosecuting Attorney Association – Paul Dobson  
Ohio State Public Defender's Office  
SB341 (Obhof, Eklund) – *To express the intent of the General Assembly to develop and enact legislation to reform Ohio's drug sentencing laws.*
- IV. General Updates  
Written update provided.
- V. Adjourn

### **2019 Full Commission Meeting Dates**

**Thursday, March 21, 2019 Riffe Center – 31<sup>st</sup> floor**

**Thursday, June 20, 2019 Ohio Judicial Center, Room 101**

**Thursday, September 19, 2019 Riffe Center – 31<sup>st</sup> floor**

**Thursday, December 12, 2019 Riffe Center – 31<sup>st</sup> floor**

Additional information is available on the Commission website

<http://www.supremecourt.ohio.gov/Boards/Sentencing/>

# DRUG PROPOSAL COMPARISON DOCUMENT

Topic	Commission/Recodification	O'Brien/Klein
<b>Low level drug possession</b>	Makes low level possession an unclassified misdemeanor subject to up to 1 year in jail and eligible for alternative residential placements.  Uses recodification threshold amounts	Reduces current F4/F5 threshold amount drug possession offenses to misdemeanors.  Not punishable by jail time if offender agrees to a treatment program unless court finds public safety interests warrant a jail term
<b>Drugs excluded from reduction to misdemeanor</b>	Fentanyl-related compounds and GHB	Fentanyl related compounds and “sexual assault-enabling drugs” (new category defined by proposal as GHB, flunitrazepam, clonazepam, alprazolam, and ketamine”
<b>Enhancement for multiple convictions</b>	After the third conviction in three years, these low-level possession misdemeanors could be enhanced to a felony.	No enhancement provisions for multiple convictions
<b>Retroactive reclassification of conviction</b>	No retroactive provisions proposed at this time	Provides procedures for reclassification of prior convictions for low level possession offenses at a court hearing
<b>Possession of large amounts</b>	Merges possession into trafficking statute at the proposed F3 threshold, recognizing that possession of large amounts is indicative of trafficking behavior	Maintains separate possession and trafficking statutes.  Replaces mandatory prison sentences for possession of current F2 and F1 (non MDO) threshold amounts with a presumption of prison
<b>Possession with intent to distribute</b>	Adds “obtain or possess with purpose (intent) to sell or distribute” to proposed F4/F5 “petty trafficking” offenses.  This is a codification of current practice and reflects statutory distinctions made in nearly every state except Ohio.	Makes no changes to trafficking statutes.
<b>Thresholds at all felony levels</b>	Generally raises threshold amounts necessary at all felony levels.  See threshold amount comparison attached to Commission proposal.	Unchanged.
<b>Mandatory prison sentences</b>	Maintains mandatory sentences for high level offenses	Replaces mandatory prison sentences for possession of current F2 and F1 (non MDO) threshold amounts with a presumption of prison
<b>Definition of “technical violations”</b>	No proposal	Proposes definition for technical violations of community control applicable only to low level violations of chapter 2925.

## **Operation and Leadership**

Committees of diverse membership – including members outside of the Commission and its Advisory Committee – and Ad Hoc Committees meet regularly, while the full Commission meets quarterly. The next full Commission meeting is December 13, 2018. Chief Justice O'Connor chairs the Commission and the Vice-Chair is Judge Nick Selvaggio from the Champaign County Court of Common Pleas.

## **Sentencing Commission Project Updates**

### **— Drug Chapter Proposal**

Our membership has long discussed the need for common sense changes to modernize and refine the provisions of Revised Code section 2925 dealing with controlled substance offenses. We've agreed that at minimum those efforts must address the way trace amount drug cases are handled while ensuring the distinction between drug users and drug traffickers and recognizing that relapse is a part of recovery. To that end, Commission staff has referred to the work of the Recodification Committee, monitored legislative efforts, considered the content of Issue 1 and subsequent draft proposals (i.e. "the Klein-O'Brien plan"), and researched reform efforts in other states in order to help inform the discussion of recommended changes to Chapter 2925.

The proposal was considered by a Committee of the Commission on 11-15-18. Consequently, the Committee voted to advance it to interested parties as well as leadership in the General Assembly. This decision was made because the group recognized and agreed that time is of the essence since other proposals are already in legislative draft form (i.e. the "Klein-O'Brien" plan) and due to the compressed legislative lame duck schedule. The Committee also noted there are additional issues associated with any "possession of drug offense reduction", such as sharing of probationary resources and modifying residential treatment admission program standards. Additionally, since the meeting of the Committee, we've asked DRC for estimated bed impact from the proposal, which they said is possible and will get back to us about how long it will take to produce that information.

The full Commission will consider the proposal its meeting on December 13, 2018.

### **— Recodification**

Commission staff has continued work in partnership with the Ohio Judicial Conference (OJC) to move forward portions of the Recodification Committee recommendations. We have parsed many of the recommendations into two proposed bills, one specific to the drafting conventions to improve readability and those in which a mens rea element was added. The second bill contains changes deemed non-controversial aimed at nonviolent and property related crimes. Both bills are currently being drafted by LSC, and Commission and OJC staff will work with the legislature to identify potential sponsors in the upcoming general assembly.

### **— Juvenile Committee**

The Committee recently voted to seek funding for a proposed study of juvenile sentencing practices in Ohio. A small workgroup was formed to look for revenue streams to cover the cost of the study, estimated to be approximately \$60,000. The Committee also considered the effect of School Safety Initiatives on juvenile justice issues at its November 2018 meeting.

### — Justice Reinvestment

The final scheduled meeting of the Ohio Criminal Sentencing Commission’s Justice Reinvestment (JR) 2.0 Ad Hoc Committee was on November 8, 2018. The goal of the group is to “develop a statewide public safety strategy to reduce crime, improve behavioral health treatment and adopt more cost-effective sentencing, corrections and supervision policies.” The work has resulted in four related policy objectives: reducing violent crime, expanding mental health and drug treatment, reducing recidivism and its costs, and improving criminal data collection – all of which received final votes by committee members. A provisional written report is expected by year end and a longer, definitive report will be prepared once legislation is enacted by (the 133<sup>rd</sup>) General Assembly.

[More information is available here.](#)

### — Bail and Pretrial Services

The report and recommendations from the Commission inspired legislation Sub.HB439 (Dever, Ginter) and SB274 (McColley), which is not expected to advance in the lame duck session. In March 2018, staff of the Ohio Criminal Sentencing Commission produced a report to estimate costs associated of implementation for provisions in the proposed legislation.

Last year, the Commission asked the Rules of Practice and Procedure to consider its Bail and Pretrial Services Report and Recommendations that impacted Crim. R. 46. Accordingly, the Commission on the Rules of Practice and Procedure has proposed a number of changes to the Rules of Evidence and the Rules of Criminal Procedure, including Rule 46(B). The revisions suggest that bond should be set based on the least restrictive conditions that, in the court’s judgment, will reasonably ensure the defendant’s appearance in court, the protection of the safety of any person or the community, and that the defendant will not obstruct the criminal justice process. In Crim. R. 46, the Commission also proposed adding an additional item for the court to consider in setting bond – a risk assessment tool.

In October 2018, we received notice that we were awarded a grant in collaboration with the Office of Criminal Justice Services regarding data collection for bail and pretrial services with five courts – Parma Municipal, Fairborn Municipal and Courts of Common Pleas in Franklin, Lucas and Tuscarawas counties. The summary description is as follows:

*Under the Special Emphasis project, OCJS will collaborate with the Ohio Criminal Sentencing Commission, an Affiliated Office of the Supreme Court of Ohio, to move Ohio municipal and common pleas courts toward better and more comprehensive data collection on bail and pretrial services. OCJS and the Criminal Sentencing Commission will carry out the following activities:*

- 1) Assess the quality of local court data and examine the extent to which these records can support analysis of bail and pretrial services;*
- 2) Make recommendations regarding data collection based on local needs and the standards identified as most critical in assessing outcome and performance measures for the bail and pretrial services field, and their related court functions; and*
- 3) To work with identified courts on early implementation of these recommendations.*



### — **Appellate Review of Felony Sentencing**

Sentencing Commission members and the Ohio Judicial Conference are working on a legislative proposal to amend ORC 2952.08 dealing with Appellate Review of Felony Sentencing. The chapter currently contains language that has been subject to inconsistent and often conflicting interpretation throughout the state. These efforts are intended to provide a method for uniform and meaningful review of felony sentencing by appellate courts through clear drafting and concise statements of standards. Judges, prosecutors, and representatives of the defense bar presented a legislative to the full Commission in September 2018, which was tabled for future discussion. The working group intends to meet in December 2018 to refine the proposal.

### — **Case disposition**

This ongoing project uses a variety of data sources in an effort to better understand where people go when they leave the court. We started with 2016 data using a small subset of counties (and Common Pleas courts) to explore whether we could put data together to comprehensively tell disposition outcomes for all cases in a county where an F5 was the highest offense of conviction. We are now gathering 2017 data. This type of analyses allows us not only understand the number of cases sentenced to prison, but also to see those sentenced to community control (and types of community control, if available) or jail.

### — **T-CAP**

In an effort to contribute to the conversation in useful and meaningful ways, the Commission has been studying, and trying to better understand, why T-CAP eligible F5 offenders might be sent to prison. Our purpose and intent is to consider what was/is happening at the local level. We chose a “deep dive” approach – a small, intensive, qualitative study of journal entries of sentence in just a few counties, some now participating in T-CAP and some not. Using both allowed us to better see if there may be similarities or differences between the groups, while at the same time knowing it was/is a small case study and not representative of all counties or Ohio.

### — **Jail recidivism**

This project is in collaboration with the Buckeye State Sheriff’s Association, the Stepping Up initiative in Ohio and the Council of State Governments. The project goal is to establish, and then possibly measure, the concept of jail recidivism. We are also considering partnering the conversation of defining jail recidivism with an effort to identify trends and patterns of jail population over time using the historical jail data the Commission has from the early 2000s in combination with more recent data.

Questions? Contact Sara Andrews, Director [sara.andrews@sc.ohio.gov](mailto:sara.andrews@sc.ohio.gov)



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## Chapter 2925 Proposal

### **Members of the Committee –**

Our membership has long discussed the need for common sense changes to modernize and refine the provisions of Revised Code section 2925 dealing with controlled substance offenses. We've agreed that at minimum those efforts must address the way trace amount drug cases are handled while ensuring the distinction between drug users and drug traffickers and recognizing that relapse is a part of recovery. To that end, Commission staff has referred to the work of the Recodification Committee, monitored legislative efforts, considered the content of Issue 1 and subsequent draft proposals (i.e. "the Klein-O'Brien plan"), and researched reform efforts in other states in order to help inform the discussion of recommended changes to Chapter 2925.

The Ohio Criminal Recodification Committee brought together a variety of stakeholders from across the Ohio criminal justice system with the common goal of meaningfully reforming Ohio's criminal code. The Recodification Committee spent substantial time and effort specifically on the drug chapter, and focused on distinguishing between those suffering from addiction while punishing drug traffickers. The end result was a significant restructuring of drug trafficking provisions, alteration of threshold amounts, and a significant simplification of offense classification. The proposed reforms were so considerable that legislation was separately drafted to be considered apart from the entire recodification bill package.

That standalone draft legislation is the basis for the following proposal. Commission staff have made efforts to harmonize that bill with recent legislation such as Senate Bill 1, effective 10-31-18, to make adjustments to incorporate best practices from other states<sup>1</sup>, and to reflect discussions of our Committee. As drafted, the proposal constitutes an updated, refreshed attempt to advance the meaningful reforms proposed by the Recodification Committee and members of the Sentencing Commission, and is presented as a foundation for further discussion and refinement through the legislative process.

### **Proposal Synopsis**

#### **Aggravated Trafficking and Trafficking (pages 1-6, lines 1-195):**

This draft presents a substantial rewrite of the trafficking provisions of the drug chapter. The Recodification Committee proposed that Ohio eliminate the possession/trafficking distinction with regard to thresholds that are accepted as well beyond personal use amounts, and to redefine trafficking at 3 levels based on amount of drugs involved. Aggravated

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<sup>1</sup> This fall, Commission staff created a document aimed at detailing low level possession statutes in all 50 states and including information about recent reform efforts. That document can be viewed [here](#) and contains information about how, in recent years, states like Utah, Alaska, and Maryland (amongst others) have addressed criminal justice reform issues, including reducing first offense drug possession cases from felonies to misdemeanors.



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Trafficking and Trafficking charges represent felonies of the first, second, and third degree and can be proven by mere possession as well as by the existing elements of trafficking such as sale or offer to sell. Aggravated Trafficking retains mandatory sentences as well as major drug offender provisions, severely punishing those distributing massive amounts of drugs in the state.

### **Petty Trafficking** (pages 6-10, lines 197-333):

Low level trafficking offenses are termed Petty Trafficking, and include a provision that provides for convictions based on possession with proof of “purpose to distribute or sell.” Notably, this change is reflective of applicable statutes in nearly all states that provide an enhanced charge based on “possession with intent” or similar language. The burden remains on the state to prove the purpose or “intent” to sell or distribute.

### **Possession** (pages 10-14, lines 335-485):

As mere possession above the F3 amounts constitutes Trafficking, the simple possession statute is much more condensed. Under the original Recodification Committee proposal from 2016, these were felonies of the fourth and fifth degree. After research into reforms and statutes in other states, Commission staff proposes low level drug possession as an “unclassified” misdemeanor subject to a sentence of up to a year in jail and includes language to allow placement in a Community Based Correctional Facility. Most states with misdemeanor possession statutes provide punishment of up to a year in jail. Further, this change reflects Ohio’s commitment as well as practice at the national level to alleviate collateral consequences of felony charges for low level drug offenders suffering from addiction and a recognition that that treatment needs are often best met in the community.

Additionally, the proposed language includes that the misdemeanor charge is enhanceable to a felony of the fifth degree with two prior possession offenses in a three year period, which again, is consistent with sentencing best practices on the national level.

Fentanyl possession and possession of the date rape drug GHB is maintained as a felony of the fifth degree. The Recodification proposal also separated low level marijuana possession into its own section for clarity. That provision is retained with the sole change being a reduction of possession at the felony five level to that of a first degree misdemeanor.

### **Drug Threshold Amounts, Mandatory Fines and Proximity to Schools:**

Drug threshold amounts proposed by the Recodification Committee generally raised the amount necessary at each felony level. Those threshold amounts are retained in this draft proposal, and a new category of “fentanyl-related compound” has been inserted to harmonize the proposal with Senate Bill 1. Please see the attached chart detailing the changes from current threshold amounts. Similarly, the Recodification Committee moved away from “collateral sanctions with no real deterrent effect” like mandatory fines, and did not include enhancement provisions for proximity to schools or juveniles.

### **Everything else:**

Changes to the remaining sections of the chapter are largely untouched from the recodification proposal. The summary of the Recodification Committee plan available [here](#) (beginning on page 54) does an excellent job explaining the changes to remaining sections of chapter 2925, as well as the rationale for those changes.

Provisions providing for a program of “intensive supervision” based on Hawaii’s HOPE model were not retained based on a belief that legislation of supervision policies is not the preferred approach. The original proposal also contained provisions expanding eligibility for intervention in lieu of conviction (ILC) for drug offenders which were removed because the enactment of Senate Bill 66 provided nearly the same recommendations to increase participation in ILC.

## **2925.02 Aggravated Trafficking**

(A)(1)(a) Except as otherwise provided in division, no person shall knowingly obtain, possess, sell, or offer to sell a controlled substance or controlled substance analog in an amount listed in division (A)(2).

(b) Except as otherwise provided in division (B), no person shall prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or controlled substance analog in an amount listed in division (A)(2) when the person knows or has reasonable cause to believe that the controlled substance or controlled substance analog is intended for sale or resale.

(2) Division (A)(1) applies to conduct involving any of the following:

(a) Fifty times the bulk amount or more of any controlled substance included in schedule I or schedule II, other than marijuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance analog;

(b) Fifty grams or more of cocaine;

(c) An amount of L.S.D. equal to or exceeding five hundred unit doses or more in solid form or fifty grams in liquid concentrate, liquid extract, or liquid distillate form;

(d) An amount of heroin equal to or exceeding three hundred unit doses or thirty grams;

(e) An amount of a fentanyl-related compound equal to or exceeding one hundred unit doses or ten grams;

(f) Forty thousand grams or more of marijuana, other than hashish;

(g) Two thousand grams or more of hashish;

(h) Thirty grams or more of 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 is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;

(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. 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 under a lawful prescription issued by a licensed health professional authorized to prescribe drugs.

(C) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(a) is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(1) 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 trafficking in drugs is a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated trafficking in drugs is a first degree felony and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(D) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(b) is guilty of aggravated trafficking in cocaine. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds fifty grams but is less than one hundred grams, aggravated trafficking in cocaine is a second degree felony and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds one hundred grams but is less than two hundred fifty grams, aggravated trafficking in cocaine is a first degree felony and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(3) If the amount of the drug involved equals or exceeds two hundred fifty grams, aggravated trafficking in cocaine is a first degree felony, the offender is a major drug offender, and the court shall impose as a mandatory prison term of 10 or 11 years.

(E) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(c) is guilty of aggravated trafficking in L.S.D. The penalty for the offense shall be determined as follows:

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

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

(F) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(d) is guilty of aggravated trafficking in heroin. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds three hundred unit doses or thirty grams but is less than five hundred unit doses or fifty grams, aggravated trafficking in heroin is a

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

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

(3) If the amount of the drug involved equals or exceeds one thousand unit doses or equals or exceeds one hundred grams, aggravated trafficking in heroin is a first degree felony, the offender is a major drug offender, and the court shall impose a mandatory prison term of 10 or 11 years.

(G) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(d) is guilty of - aggravated trafficking in a fentanyl-related compound. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds one hundred unit doses or ten grams but is less than two hundred unit doses or twenty grams, aggravated trafficking in a fentanyl-related compound is a second degree felony and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds two hundred unit doses or twenty grams but is less than five hundred unit doses or fifty grams, aggravated trafficking in a fentanyl-related compound is a first degree felony and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(3) If the amount of the drug involved equals or exceeds five hundred unit doses or fifty grams but is less than one thousand unit doses or one hundred grams, aggravated trafficking in a fentanyl-related compound is a first degree felony and the court shall impose a mandatory prison term of 10 or 11 years.

(4) If the amount of the drug involved equals or exceeds one thousand unit doses or equals or exceeds one hundred grams, aggravated trafficking in a fentanyl-related compound is a first degree felony, the offender is a major drug offender, and the court shall impose a mandatory prison term of 10 or 11 years.

(5) If the drug involved in the violation is a compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and marihuana, one of the following applies:

(a) Except as otherwise provided in division (G)(5)(b) of this section, the offender is guilty of trafficking in marihuana and shall be punished under division (H) of this section, or under 2925.03 (H), or 2925.04(A)(8) as appropriate by amount involved. The offender is not guilty of trafficking in a fentanyl-related compound and shall not be charged with, convicted of, or punished under division (G) of this section for aggravated trafficking in a fentanyl-related compound.

(b) If the offender knows or has reason to know that the compound, mixture, preparation, or substance that is the drug involved contains a fentanyl-related



112 compound, the offender is guilty of trafficking in a fentanyl-related compound and shall  
113 be punished under division (G) of this section.

114 (H) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(g) is guilty of  
115 aggravated trafficking in marijuana, a second degree felony, and the court shall impose as a mandatory  
116 prison term one of the prison terms prescribed for a second degree felony.

117 (I) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(g) is guilty of  
118 aggravated trafficking in hashish, a second degree felony, and the court shall impose as a mandatory  
119 prison term one of the prison terms prescribed for a second degree felony.

120 (J) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(h) is guilty of  
121 aggravated trafficking in a controlled substance analog. The penalty for the offense shall be determined  
122 as follows:

123 (1) If the amount of the drug involved equals or exceeds thirty grams but is less than forty  
124 grams, aggravated trafficking in a controlled substance analog is a second degree felony and the  
125 court shall impose as a mandatory prison term one of the prison terms prescribed for a second  
126 degree felony.

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

130 (3) If the amount of the drug involved equals or exceeds fifty grams, aggravated trafficking of a  
131 controlled substance analog is a first degree felony, the offender is a major drug offender, and  
132 the court shall impose a mandatory prison term of ten or eleven years.

133 (K) If a person found guilty of a violation of this section is a professionally licensed person, in addition to  
134 any other sanction imposed for a violation of this section, the court immediately shall comply with R.C.  
135 2925.38.

136

## 137 **2925.021 Trafficking**

138 (A)(1)(a) Except as provided in division (B), no person shall knowingly obtain, possess, sell, or offer to sell  
139 a controlled substance or controlled substance analog in an amount listed in division (A)(2).

140 (c) Except as otherwise provided in division (B), no person shall prepare for shipment,  
141 ship, transport, deliver, prepare for distribution, or distribute a controlled substance or  
142 controlled substance analog in an amount listed in division (A)(2) when the person  
143 knows or has reasonable cause to believe that the controlled substance or controlled  
144 substance analog is intended for sale or resale.

145 (2) Division (A)(1) applies to conduct involving any of the following:

146 (a) Five times or more, but less than fifty times the bulk amount of any controlled  
147 substance included in schedule I or schedule II, with the exception of marijuana,

- 148 cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance  
149 analog;
- 150 (b) Fifty times the bulk amount or more of any substance included in schedule III, IV, or  
151 V;
- 152 (c) Twenty-seven grams or more, but less than fifty grams of cocaine;
- 153 (d) L.S.D. in an amount equal to or exceeding two hundred unit doses but less than five  
154 hundred unit doses in solid form or equal to or exceeding twenty grams but less than  
155 fifty grams in liquid concentrate, liquid extract, or liquid distillate form;
- 156 (e) An amount of heroin equal to or exceeding one hundred unit doses or ten grams, but  
157 less than three hundred unit doses or thirty grams;
- 158 (f) An amount of a fentanyl-related compound equal to or exceeding fifty unit doses or  
159 five grams but less than one hundred unit doses or ten grams;
- 160 (g) Five thousand grams or more, but less than forty thousand grams of marijuana, other  
161 than hashish;
- 162 (h) Two hundred fifty grams or more but less than two thousand grams of hashish;
- 163 (i) Twenty grams or more, but less than thirty grams of a controlled substance analog.

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

- 165 (1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists,  
166 owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters  
167 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;
- 168 (2) If the offense involves an anabolic steroid, any person who is conducting or participating in a  
169 research project involving the use of an anabolic steroid if the project has been approved by the  
170 United States food and drug administration;
- 171 (3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or  
172 other nonhuman species an anabolic steroid that is expressly intended for administration  
173 through implants to livestock or other nonhuman species and approved for that purpose under  
174 the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C. 301, as amended,  
175 and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in  
176 accordance with that act.
- 177 (4) Any person who obtained the controlled substance under a lawful prescription issued by a  
178 licensed health professional authorized to prescribe drugs.

179 (C)(1) Except as provided in division (D), whoever violates this section is guilty of trafficking in drugs, a  
180 third degree felony.

181 (2) If the drug involved in the violation is a compound, mixture, preparation, or substance that is  
182 a combination of a fentanyl-related compound and marihuana, one of the following applies:

(a) Except as otherwise provided in division (C)(2)(b) of this section, the offender is guilty of trafficking in marihuana and shall be punished under division (H) of this section, or 2925.04(A)(8) as appropriate by amount involved. The offender is not guilty of trafficking in a fentanyl-related compound and shall not be charged with, convicted of, or punished under division (G) of this section for aggravated trafficking in a fentanyl-related compound.

(b) If the offender knows or has reason to know that the compound, mixture, preparation, or substance that is the drug involved contains a fentanyl-related compound, the offender is guilty of trafficking in a fentanyl-related compound and shall be punished under division (C)(1).

(D) If a person found guilty of a violation of this section is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. 2925.38.

## **2925.03 Petty Trafficking In Drugs**

(A)(1)(a) Except as provided in division (C), no person shall knowingly sell or offer to sell a controlled substance or controlled substance analog in an amount listed in division (A)(2).

(b) Except as otherwise provided in this division, no person shall obtain or possess, with purpose to distribute or sell, a controlled substance or controlled substance analog in an amount listed in division (A)(2)

(c) Except as otherwise provided in division (B), no person shall prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or controlled substance analog in an amount listed in division (A)(2) when the person knows or has reasonable cause to believe that the controlled substance or controlled substance analog is intended for sale or resale.

(2) Division (A)(1) applies to conduct involving all of the following:

(a) Twenty-five one-thousandths of one gram or more, but less than five times the bulk amount of any controlled substance included in schedule I or II other than marijuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance analog;

(b) Twenty-five one-thousandths of one gram or more, but less than fifty times the bulk amount of any controlled substance included in schedule III, IV, or V;

(c) Twenty-five one-thousandths of one gram or more, but less than twenty seven grams of cocaine;

(d) An amount of L.S.D. equal to or exceeding one-fourth of one unit dose, but less than two hundred unit doses of L.S.D. in solid form, or equal to or exceeding twenty-five one-

219           thousandths of one gram, but less than twenty grams in liquid concentrate, liquid  
220           extract, or liquid distillate form;

221           (e) An amount of heroin equal to or exceeding twenty-five one-thousandths of one  
222           gram, or one-fourth of one unit dose, but less than ten grams or one hundred unit  
223           doses;

224           (f) An amount of a fentanyl-related compound equal to or exceeding twenty-five one-  
225           thousandths of one gram, or one-fourth of one unit dose, but less than five grams or  
226           fifty unit doses

227           (g) Twenty-five one-thousandths of one gram or more, but less than five thousand  
228           grams of marijuana, other than hashish;

229           (h) Twenty-five one-thousandths of one gram or more, but less than two hundred fifty  
230           grams of hashish;

231           (i) Twenty-five one-thousandths of one gram or more, but less than twenty grams of a  
232           controlled substance analogue.

233       (B)(1) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(a) is guilty of  
234       petty trafficking in schedule I or schedule II drugs. The penalty for the offense shall be  
235       determined as follows:

236           (a) If the amount of the drug involved equals or exceeds the bulk amount, but is less  
237           than five times the bulk amount, petty trafficking in schedule I or schedule II drugs is a  
238           fourth degree felony.

239           (b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of  
240           one gram, but is less than the bulk amount, petty trafficking in schedule I or schedule II  
241           drugs is a fifth degree felony.

242       (2) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(b) is guilty of  
243       petty trafficking in drugs. The penalty for the offense shall be determined as follows:

244           (a) If the amount of the drug involved equals or exceeds five times the bulk amount, but  
245           is less than fifty times the bulk amount, petty trafficking in drugs is a fourth degree  
246           felony.

247           (b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of  
248           one gram, but is less than five times the bulk amount, petty trafficking in drugs is a fifth  
249           degree felony.

250       (3) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(c) is guilty of  
251       petty trafficking in cocaine. The penalty for the offense shall be determined as follows:

252           (a) If the amount of the drug involved equals or exceeds ten grams, but is less than  
253           twenty-seven grams, petty trafficking in cocaine is a fourth degree felony.

254           (b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of  
255           one gram, but is less than ten grams, petty trafficking in cocaine is a fifth degree felony.

(4) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(d) is guilty of petty trafficking in L.S.D. The penalty for the offense shall be determined as follows:

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

(b) If the amount of the drug involved equals or exceeds one-fourth of one unit dose, but is less than fifty unit doses in solid form, or equals or exceeds twenty-five one-thousandths of one gram, but is less than five grams in liquid concentrate, liquid extract, or liquid distillate form, petty trafficking in L.S.D. is a fifth degree felony.

(5) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(e) is guilty of petty trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds one gram or ten unit doses, but is less than ten grams or one hundred unit doses, petty trafficking in heroin is a fourth degree felony.

(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit dose, but is less than one gram or ten unit doses, petty trafficking in heroin is a fifth degree felony.

(6) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(e) is guilty of petty trafficking in a fentanyl-related compound. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds one gram or ten unit doses, but is less than five grams or fifty unit doses, petty trafficking in a fentanyl-related compound is a fourth degree felony.

(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit dose, but is less than one gram or ten unit doses, petty trafficking in a fentanyl-related compound is a fifth degree felony.

(7) If the drug involved in the violation is a compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and marihuana, one of the following applies:

(a) Except as otherwise provided in division (B)(7)(b) of this section, the offender is guilty of trafficking in marihuana and shall be punished under division (B)(8) of this section. The offender is not guilty of trafficking in a fentanyl-related compound and shall not be charged with, convicted of, or punished under division (B)(6) of this section for aggravated trafficking in a fentanyl-related compound.

(b) If the offender knows or has reason to know that the compound, mixture, preparation, or substance that is the drug involved contains a fentanyl-related compound, the offender is guilty of trafficking in a fentanyl-related compound and shall be punished under division (B)(6).

(8) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(f) is guilty of petty trafficking in marijuana. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds one thousand grams, but is less than five thousand grams, petty trafficking in marijuana is a fourth degree felony.

(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than one thousand grams, petty trafficking in marijuana is a fifth degree felony.

(9) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(g) is guilty of petty trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds fifty grams, but is less than two hundred fifty grams, trafficking in hashish is a fourth degree felony.

(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than fifty grams, trafficking in hashish is a fifth degree felony.

(10) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(h) is guilty of petty trafficking in a controlled substance analog. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ten grams, but is less than twenty grams, petty trafficking in a controlled substance analog is a fourth degree felony.

(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than ten grams, trafficking in a controlled substance analog is a fifth degree felony.

(C) 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 R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;

(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.

(D) Notwithstanding division (B), a person violates division (A)(1) by gifting twenty grams or less of marijuana to another person shall be guilty only of a minor misdemeanor.

(E) If a person found guilty of a violation of this section is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall immediately comply with R.C. 2925.38.

## **2925.04 Unlawful Possession of Drugs**

(A)(1) Except as provided in division (B), no person shall knowingly obtain, possess, or use a controlled substance or controlled substance analog in an amount listed in division (A)(2).

(2) Division (A)(1) applies to conduct involving all of the following:

(a) Twenty-five one-thousandths of one gram or more, but less than five times the bulk amount of any compound, mixture, preparation, or substance included in schedule I or schedule II, other than marijuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, gamma hydroxybutyric acid, or a controlled substance analog;

(b) Twenty-five one-thousandths of one gram or more, but less than fifty times the bulk amount of any compound, mixture, preparation, or substance included in schedule III, IV, or V;

(c) Twenty-five one-thousandths of one gram or more, but less than twenty-seven grams of cocaine;

(d) One-fourth of one unit dose or more, but less than two hundred unit doses of L.S.D. in solid form or twenty-five one-thousandths of one gram or more, but less than twenty grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form;

(e) An amount of heroin equal to or exceeding twenty-five one-thousandths of one gram or one-fourth of one unit dose, but less than ten grams or fifty unit doses;

(f) An amount of a fentanyl-related compound equal to or exceeding twenty-five one-thousandths of one gram or one-fourth of one unit dose, but less than ten grams or one hundred unit doses;

(g) Twenty-five one-thousandths of one gram or more, but less than twenty grams of a controlled substance analog;

(B)(1) This section does not apply to any of the following:

(a) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;

(b) 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;

(c) 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;

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

(2)(a) Subject to division (B)(2)(e), a qualified individual shall not be arrested, charged, prosecuted, convicted, or penalized for a violation of this section or 2925.05 if all of the following apply:

(i) The evidence of the obtaining, possession, or use of the controlled substance that would be the basis of the offense was obtained as a result of the qualified individual seeking the medical assistance or experiencing an overdose and needing medical assistance.

(ii) Subject to division (B)(2)(f), within thirty days after seeking or obtaining the medical assistance, the qualified individual seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional.

(iii) Subject to division (B)(2)(f), the qualified individual who obtains a Sub. H. B. No. 110 13first G.A. 3 screening and receives a referral for treatment under division (B)(2)(a)(ii), upon the request of any prosecuting attorney, submits documentation to the prosecuting attorney that verifies that the qualified individual satisfied the requirements of that division. The documentation shall be limited to the date and time of the screening obtained and referral received.

(b) If a person is found to be in violation of any condition of probation and if the violation is a result of either of the following, the court shall first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty for the violation, after which the court has the discretion either to order the person's participation or continued participation in a drug treatment program or to impose the penalty:

(i) Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;

(ii) Experiencing a drug overdose and seeking medical assistance for that overdose or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(a).

(c) If a person is found to be in violation of any term or condition of parole and if the violation is a result of either 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 for the violation, 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:

(i) Seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose;

(ii) Experiencing a drug overdose and seeking medical assistance for that emergency or being the subject of another person seeking or obtaining medical assistance for that overdose as described in division (B)(2)(a).

(d) Nothing in division (B)(2)(a) shall be construed to do any of the following:

(i) Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regards to a defendant who does not qualify for the protections of division (B)(2)(a) or with regards to any crime other than a drug possession offense committed by a person who qualifies for protection under division (B)(2)(a) for a drug possession offense;

(ii) Limit any seizure of evidence or contraband otherwise permitted by law;

(iii) Limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in that division;

(iv) Limit, modify, or remove any immunity from liability available under law in effect prior to September 13, 2016 to any public agency or to an employee of any public agency.

(e) Division (B)(2)(a) does not apply to any person who twice previously has been granted an immunity under division (B)(2)(a). No person shall be granted an immunity under division (B)(2)(a) more than two times.

(f) Nothing in this section shall compel any qualified individual to disclose protected health information in a way that conflicts with the requirements of the "Health Insurance Portability and Accountability Act of 1996," 104 Pub. L. No. 191, 110 Stat. 2021, 42 U.S.C. 1320d et seq., as amended, and regulations promulgated by the United States department of health and human services to implement the act or the requirements of 42 C.F.R. Part 2.

(C)(1) Whoever violates division (A)(1) is guilty of possession of a controlled substance. Except as otherwise provided in this division, possession of a controlled substance is an unclassified misdemeanor. When the offense is an unclassified misdemeanor, the offender shall be sentenced pursuant to sections 2929.21 to 2929.28 of the Revised Code, except that the court may impose on the offender a jail term of not more than three hundred and sixty-four days; notwithstanding division (A)(2)(a) of section 2929.28 of the Revised Code, the offender may be fined up to one thousand dollars; and, notwithstanding section 2929.27 of the Revised Code, the offender may be ordered to serve a term of up to 6 months in a community based correctional facility.

If the accused has previously been convicted of or pleaded guilty to two or more violations of this section or of a substantially equivalent state or municipal ordinance in the three years immediately preceding the offense date, possession of a controlled substance is a felony of the fifth degree.

(2) If the controlled substance involved is gamma hydroxybutyric acid or a fentanyl-related compound, possession of a controlled substance is a felony of the fifth degree.

(D) If a person found guilty of a violation of this section is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. 2925.38.

## **2925.041 - Marijuana Possession**

(A) No person shall knowingly obtain, possess, or use marijuana in an amount that equals or exceeds twenty-five one-thousandths of a gram, but is less than five thousand grams.

(B) No person shall knowingly obtain, possess, or use hashish in an amount that equals or exceeds twenty-five one-thousandths of a gram, but is less than two thousand fifty grams.

(C) Whoever violates division (A) is guilty of possession of marijuana. The penalty for the offense shall be determined as follows:

(1) If the amount of marijuana involved equals or exceeds twenty-five one-thousandths of one gram, but is less than two hundred grams, possession of marijuana is a minor misdemeanor;

(2) If the amount of marijuana involved is at least two hundred grams, but is less than four hundred grams, possession of marijuana is a fourth degree misdemeanor;

(3) If the amount of marijuana involved is at least four hundred grams, but is less than one thousand grams, possession of marijuana is a misdemeanor of the first degree.

(4) If the amount of marijuana involved is at least one thousand grams, but is less than five thousand grams, possession of marijuana is a fourth degree felony.

(D) Whoever violates division (B) is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(1) If the amount of hashish involved is equals or exceeds twenty-five one-thousandths of one gram, but is less than ten grams, possession of hashish is a minor misdemeanor;

(2) If the amount of hashish involved is at least ten grams, but is less than twenty grams, possession of hashish is a fourth degree misdemeanor;

(3) If the amount of hashish involved is at least twenty grams, but is less than fifty grams, possession of hashish is a misdemeanor of the first degree.

(4) If the amount of hashish involved is at least fifty grams, but is less than two hundred fifty grams, possession of hashish is a fourth degree felony.

(E) If a person found guilty of a violation of this section is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately shall comply with R.C. 2925.38.

(F) Arrest or a 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 found guilty 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.

## **2925.05 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

(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.

(B) Division (A)(1) and (3) do 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 R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.

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

(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 marijuana, 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 second degree felony.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, corrupting another with drugs is a second degree felony.

(3) If the offense is a violation of division (A) and the drug involved is 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 fourth degree felony.

(4) If the drug involved in the violation is marijuana, corrupting another with drugs is a first degree misdemeanor.

(D) 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 R.C. 2925.38.

(E) Notwithstanding the prison term otherwise authorized or required for the offense under division (C) and R.C. 2929.13 and 2929.14, if the trier of fact determines that a violation of division (A) involves the sale, offer to sell, or possession of at least one hundred times the bulk amount of a schedule I or II controlled substance, with the exception of marijuana, 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 offense is a first degree felony and the court imposing sentence on the offender, in lieu of the prison term that otherwise is authorized or required, shall impose upon the offender as a mandatory prison term one of the stated minimum prison terms prescribed for a first degree felony.

## **2925.06 Illegal manufacture of drugs - illegal cultivation of marihuana - methamphetamine offenses**

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

(1) Cultivate marihuana;

(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 RC 2925.02 to the extent and under the circumstances described in those divisions.

(C) Notwithstanding anything to the contrary in R.C. 2941.25, a person who is found guilty of violating division (A)(2) shall not also be found guilty of violating R.C. 2925.041(A) if the both charges involve the same chemicals

(D)(1) Whoever commits a violation of division (A) that involves any drug other than marijuana is guilty of illegal manufacture of drugs, and whoever commits a violation of division (A) that involves marijuana is guilty of illegal cultivation of marihuana. The penalty shall be determined under divisions (D)(2) and (3), subject to division (F).

(2) If the drug involved in the violation of division (A)(2) is any compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V, with the exception marijuana, illegal manufacture of drugs is a third degree felony.

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

(a) Except as otherwise provided in division (D)(3)(b), (c), or (d), illegal cultivation of marihuana is a minor misdemeanor.

550 (b) If the amount of marihuana involved equals or exceeds two hundred grams but is  
551 less than four hundred grams, illegal cultivation of marijuana is a fourth degree  
552 misdemeanor.

553 (c) If the amount of marihuana involved equals or exceeds four hundred grams but is  
554 less than one thousand grams, illegal cultivation of marijuana is a fifth degree felony.

555 (d) If the amount of marihuana involved equals or exceeds one thousand grams, illegal  
556 cultivation of marihuana is a fourth degree felony.

557 (E) If the offender is a professionally licensed person, in addition to any other sanction imposed for a  
558 violation of this section, the court immediately shall comply with R.C. 2925.38.

559 (F) Notwithstanding the prison term otherwise authorized for the offense under division (C), if the trier  
560 of fact determines that the violation of division (A) involves the sale, offer to sell, or possession of at  
561 least one hundred times the bulk amount of any schedule I or II controlled substance, with the exception  
562 of marijuana, the court shall impose as a mandatory prison from the range of prison terms prescribed  
563 for a first degree felony.

564 (G) It is an affirmative defense, as provided in R.C. 2901.05, to a charge under this section for a fifth  
565 degree felony violation of illegal cultivation of marijuana that the marijuana that gave rise to the charge  
566 is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled  
567 substances in a manner, or is possessed or cultivated under any other circumstances that indicate that  
568 the marijuana was solely for personal use.

569 Notwithstanding any contrary provision of division (G), if, in accordance with R.C. 2901.05, a  
570 person who is charged with a violation of illegal cultivation of marijuana that is a fifth degree felony  
571 sustains the burden of going forward with evidence of and establishes by a preponderance of the  
572 evidence the affirmative defense described in this division, the person may be prosecuted for and may  
573 be found guilty of a misdemeanor violation of illegal cultivation of marijuana.

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

579

## 580 **2925.061 Illegal assembly or possession of chemicals for manufacture** 581 **of drugs**

582 (A) No person shall knowingly assemble or possess one or more chemicals that may be used to  
583 manufacture a controlled substance in schedule I or II with the purpose to manufacture a controlled  
584 substance in schedule I or II in violation of R.C. 2925.06.

585 (B) In a prosecution under this section, it is not necessary to allege or prove that the offender assembled  
586 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 purpose 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, a fifth degree felony. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court shall comply with R.C. 2925.38.

## **2925.07 Funding, aggravated funding of drug or marihuana trafficking**

(A) No person shall purposefully provide money or other items of value to another person to obtain any controlled substance for the purpose of violating R.C. 2925.06 or for the purpose of selling 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 marijuana, cocaine, L.S.D., heroin, a fentanyl-related compound, 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 marijuana, an amount of the marijuana 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 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 fifty unit doses if the L.S.D. is in a solid form or equals or exceeds 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 fentanyl-related compound, or a compound, mixture, preparation, or substance containing heroin or a fentanyl-related compound, an amount 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 fifty grams.

(B) This section does not apply to any person listed in division R.C. 2925.03(C) to the extent and under the circumstances described in that division.

(C)(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 marijuana, whoever violates division (A) is guilty of aggravated funding of drug trafficking, a third degree felony, subject to division (E).



(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) is guilty of funding of drug trafficking, a fourth degree felony, subject to division (E).

(3) If the drug involved in the violation is marihuana, whoever violates division (A) is guilty of funding of marijuana trafficking, a fourth degree felony, subject to division (E).

(D) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of division (A), the court that sentences an offender who is found guilty of a violation of division (A) immediately shall comply with R.C. 2925.38.

(E) Notwithstanding the prison term otherwise authorized for the offense under division (C) and R.C. 2929.13, if the violation of division (A) 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 marijuana or a fentanyl related compound, the offense is a first degree felony and the court, in lieu of the prison term otherwise authorized or required, shall impose upon the offender a mandatory prison from within the range of prison terms prescribed for a first degree felony. If the drug involved in the violation is a fentanyl- related compound, the offense 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.

## **2925.08 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 R.C. 2925.03(C) to the extent and under the circumstances described in that division.

(C) Whoever violates division (A) is guilty of illegal administration or distribution of anabolic steroids, a fourth degree felony.

(D) In addition to any prison term authorized by division (C) and R.C. Chapter 2929, the court that sentences an offender who is found guilty of a violation of division (A) shall, if the offender is a professionally licensed person, immediately comply with R.C. 2925.38.

## **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, under a prescription, compounds and dispenses two or more drugs as a single product for medical purposes.

(B)(1) Except as provided in division (B)(2), no person shall knowingly 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.

(2) Division (B)(1) 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 R.C. Chapters 3719., 4729., or 4741.

(C) Whoever violates division (A) or (B)(1) is guilty of a first degree misdemeanor

## **2925.10 – Fines**

(A) Notwithstanding any contrary provision of R.C. 3719.21 and except as otherwise provided in division (B)(1) or (2), the clerk of the court shall pay all of the following to the county, township, municipal corporation, park district, as created under R.C. 511.18 or 1545.04, 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:

(1) Any fine imposed on an offender under R.C. 2929.13 for a felony violation of R.C. 2925.02, 2925.021, 2925.03, 2925.04, 2925.05, 2925.06, 2925.07, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37;

(2) Any fine consisting of any bail that was posted for a first, second, or third degree felony violation of a section listed in division (A)(1) if the bail was forfeited.

(B)(1) The clerk shall not pay a fine imposed for a felony violation of 2925.02, 2925.021, 2925.03, 2925.04, 2925.05, 2925.06, 2925.07, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 to a law enforcement agency unless the agency has adopted a written internal control policy under division (B)(2) that addresses the use of the fine moneys that it receives. Each agency shall use

the fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy.

(2) Prior to receiving any fine moneys under division (A), 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 R.C. 149.43. Additionally, a written internal control policy adopted under this division is such a public record and the agency that adopted it shall comply with the policy.

## **2925.11 – Driving License Suspensions**

(A)(1) Except as otherwise provided in division (A)(2), the court that sentences an offender who is found guilty of any violation of any prohibition in R.C. Chapter 2925. may suspend the driver's or commercial driver's license or permit of the offender in accordance with division (B) if the violation of the prohibition in R.C. Chapter 2925. occurred under one of the following circumstances:

(a) The offender was operating a motor vehicle or motorcycle when the violation occurred.

(b) The offender was using a motor vehicle or motorcycle to facilitate the violation.

(2) If an offender is found guilty of both a violation of a prohibition in R.C. Chapter 2925. and a violation of R.C. 4511.19 or a substantially similar municipal ordinance or law of another state of another state or the United States, arising out of the same set of circumstances, the court may only suspend the offender's driver's or commercial's driver's license or permit in accordance with R.C. 4511.19 or with 4510.07 or 4510.17.

(B) If the sentencing court suspends the offender's driver's or commercial driver's license or permit under division (A)(1), the court shall suspend the license, by order, for not more than five years. If an offender's driver's or commercial driver's license or permit is suspended under this division and division (A)(1), 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.

(C) An offender who received a mandatory suspension of the offender's driver's or commercial driver's license or permit for a violation of R.C. Chapter 2925. that occurred prior to the effective date of this section may file a motion with the sentencing court requesting termination of the suspension. However,

an offender who was found guilty of a violation of R.C. 4511.19 or a substantially similar municipal ordinance or law of another state or the United States that arose out of the same set of circumstances as the violation for which the offender's license or permit was suspended under this section shall not file such a motion.

Upon the filing of a motion under division (C), the sentencing court, in its discretion, may terminate the suspension.

(D) Any person whose license or permit has been suspended under this section may file a petition in the municipal court or county court, or if the person is under age eighteen, the juvenile court, in whose jurisdiction the person resides, requesting limited driving privileges and agreeing to pay the cost of the proceedings. The court may grant the person limited driving privileges during the period during which the suspension otherwise would be imposed for any of the purposes set forth in R.C. 4510.021(A).

## **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 R.C. 4501.01(A), 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), permitting drug abuse is a first degree misdemeanor.

(3) Permitting drug abuse is a fifth degree felony if either of the following applies:

(a) The felony drug abuse offense in question is a violation of section 2925.02, 2925.021, 2925.03, 2929.05, 2925.06, 2925.07, 2925.071, 2925.08, 2925.09 of the Revised Code.

(b) The felony drug abuse offense in question is a violation of section 2925.071 of the Revised Code and the offender had actual knowledge, at the time the offender permitted the vehicle, premises, or real estate to be used as described in division (A) or (B) of this section, that the person who assembled or possessed the chemicals in question in violation of section 2925.071 of the Revised Code had assembled or possessed them with the intent to manufacture a controlled substance in schedule I or II in violation of section 2925.07 of the Revised Code.

(D) 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 R.C. 2925.38.

(E) Any premises or real estate that is permitted to be used in violation of division (B) constitutes a nuisance subject to abatement under R.C. Chapter 3767.

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

(A)(1) 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 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.

(B) 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 R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. This section shall not be construed to prohibit the possession or use of a hypodermic needle as authorized by R.C. 3719.172.

(C) Notwithstanding R.C. Chapter 2981., any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of this section shall be seized, after a finding of guilt of that violation shall be forfeited, and upon forfeiture shall be disposed of under R.C. 2981.12.

(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;

- 803 (8) National or local advertising concerning the use of the equipment, product, or material;
- 804 (9) The manner and circumstances in which the equipment, product, or material is displayed for  
805 sale;
- 806 (10) Direct or circumstantial evidence of the ratio of the sales of the equipment, product, or  
807 material to the total sales of the business enterprise;
- 808 (11) The existence and scope of legitimate uses of the equipment, product, or material in the  
809 community;
- 810 (12) Expert testimony concerning the use of the equipment, product, or material.
- 811 (E)(1) Except as otherwise provided in (D)(2) and (3), whoever violates division (A)(1) is guilty of illegal  
812 use or possession of drug paraphernalia, a fourth degree misdemeanor.
- 813 (2) If the drug paraphernalia involved is a hypodermic needle or syringe, whoever violates  
814 division (A)(1) is guilty of possessing drug abuse instruments, a second degree misdemeanor. If  
815 an offender has previously found guilty of a drug abuse offense, possessing drug abuse  
816 instruments is a first degree misdemeanor.
- 817 (3) If the drug paraphernalia involved is equipment, a product, or material of any kind that is  
818 used by the person, intended by the person for use, or designed for use in storing, containing,  
819 concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body  
820 marijuana, whoever violates division (A)(1) is guilty of illegal use or possession of marijuana drug  
821 paraphernalia, a minor misdemeanor.
- 822 (4) Whoever violates division (A)(2) is guilty of dealing in drug paraphernalia, a second degree  
823 misdemeanor.
- 824 (5) Whoever violates division (A)(3) is guilty of illegal advertising of drug paraphernalia, a second  
825 degree misdemeanor.
- 826

## 827 **2925.22 Deception to obtain a dangerous drug**

- 828 (A) No person, by deception, shall knowingly do any of the following:
- 829 (1) Procure the administration of, a prescription for, or the dispensing of, a dangerous drug;
- 830 (2) Possess an uncompleted preprinted prescription blank used for writing a prescription for a  
831 dangerous drug.
- 832 (B) Whoever violates this section is guilty of deception to obtain a dangerous drug. The penalty for the  
833 offense shall be determined as follows:
- 834 (1) If the person possesses an uncompleted preprinted prescription blank used for writing a  
835 prescription for a dangerous drug or if the drug involved is a dangerous drug, except as  
836 otherwise provided in division (B)(2) or (3), deception to obtain a dangerous drug is a first

degree misdemeanor. If the drug involved is a dangerous drug, except as otherwise provided in division (B)(2) or (3), deception to obtain a dangerous drug is a fifth degree felony.

(2) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marijuana, 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), it is a fourth degree felony .

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than fifty times the bulk amount, or if the amount of the drug involved that could be obtained under the prescription would equal or exceed the bulk amount but would be less than fifty times the bulk amount, it is a third degree felony.

(c) 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, or if the amount of the drug involved that could be obtained under the prescription would equal or exceed fifty times the bulk amount but would be less than one hundred times the bulk amount, it is a second degree felony.

(d) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, or if the amount of the drug involved that could be obtained under the prescription would equal or exceed one hundred times the bulk amount, it is a first degree felony.

(3) If the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marijuana, 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), it is a fifth degree felony.

(b) If the amount of the drug involved equals or exceeds the bulk amount but is less than fifty times the bulk amount, or if the amount of the drug involved that could be obtained under the prescription would equal or exceed the bulk amount but would be less than fifty times the bulk amount, it is a fourth degree felony.

(c) 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 under the prescription would equal or exceed fifty times the bulk amount, it is a second degree felony.

(C) 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 R.C. 2925.38.

## **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 R.C. Chapter 3719. or 4729.



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

876 (1) Prescription;

877 (2) Uncompleted preprinted prescription blank used for writing a prescription;

878 (3) Official written order;

879 (4) License for a terminal distributor of dangerous drugs as required in R.C. 4729.60;

880 (5) Registration certificate for a wholesale distributor of dangerous drugs as required in R.C.  
881 4729.60.

882 (C) No person, by theft as prohibited by R.C. 2913.02, shall purposefully acquire any of the following:

883 (1) A prescription;

884 (2) An uncompleted preprinted prescription blank used for writing a prescription;

885 (3) An official written order;

886 (4) A blank official written order;

887 (5) A license or blank license for a terminal distributor of dangerous drugs as required in R.C.  
888 4729.60;

889 (6) A registration certificate or blank registration certificate for a wholesale distributor of  
890 dangerous drugs as required in R.C. 4729.60.

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

893 (E) Divisions (A) and (D) do not apply to licensed health professionals authorized to prescribe drugs,  
894 pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C.  
895 Chapters 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741.

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

900 (1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I  
901 or II, with the exception of marijuana, illegal processing of drug documents is a fourth degree  
902 felony.

903 (2) If the drug involved is a dangerous drug or a compound, mixture, preparation, or substance  
904 included in schedule III, IV, or V or is marihuana, illegal processing of drug documents is a fifth  
905 degree felony.

(G) If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court that sentences the offender immediately shall comply with R.C. 2925.38.

## **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) 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 R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741.

(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 third degree felony. If the violation results in physical harm to any person, tampering with drugs is a second degree felony.

## **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 first degree misdemeanor.

(C) 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 R.C. 2925.38.

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

(A) Division (A) does not apply to the dispensing or distributing of nitrous oxide.

No person shall knowingly dispense or distribute a harmful intoxicant to a person if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of R.C. 2925.31.

940 (B)(1) No person shall knowingly dispense or distribute nitrous oxide to a person age twenty-one or  
941 older if the person who dispenses or distributes it knows or has reason to believe the nitrous  
942 oxide will be used in violation of R.C. 2925.31.

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

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

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

952 (a) The record-keeping requirements established under division (F);

953 (b) The labeling and transaction identification requirements established under division  
954 (G).

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

958 (D)(1) Whoever violates division (A) or division (B)(1), (2), or (3) is guilty of trafficking in harmful  
959 intoxicants, a fifth degree felony. If the offender previously has been found guilty of a drug  
960 abuse offense, trafficking in harmful intoxicants is a fourth degree felony. If the offender is a  
961 professionally licensed person, in addition to any other sanction imposed for trafficking in  
962 harmful intoxicants, the court immediately shall comply with R.C. 2925.38.

963 (2) Whoever violates division (B)(4)(a) or (b) is guilty of improperly dispensing or distributing  
964 nitrous oxide, a fourth degree misdemeanor.

965 (E) It is an affirmative defense to a charge of a violation of division (B)(2) that:

966 (1) An individual exhibited to the defendant or an officer or employee of the defendant, for  
967 purposes of establishing the individual's age, a driver's license or permit issued by this state, a  
968 commercial driver's license or permit issued by this state, an identification card issued under  
969 R.C. 4507.50, for another document that purports to be a license, permit, or identification card  
970 described in this division;

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

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

975 (F) A person who dispenses or distributes nitrous oxide shall record each transaction involving the  
976 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 R.C. Chapter 2925., 3719., or 4729. 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 fifth degree felony.

(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.

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

(A) Unless authorized under R.C. Chapter 3719., 4715., 4729., 4731., 4741., or 4765., 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.

(B) Whoever violates this section is guilty of possessing nitrous oxide in a motor vehicle, a fourth degree misdemeanor.

### **2925.34 Restriction against sale of or offer for sale of a pure caffeine product; misdemeanor**

- 1011 (A) Except as provided in division (B), no person shall knowingly sell or offer to sell a pure caffeine  
1012 product.
- 1013 (B) Division (A) does not prohibit a person from selling or offering for sale any product manufactured in  
1014 a unit-dose form such as a pill, tablet, or caplet, but only if each unit dose of the product contains not  
1015 more than two hundred fifty milligrams of caffeine.
- 1016 (C) Nothing in this section prohibits either of the following:
- 1017 (1) Possession of a product described in division (B);
- 1018 (2) Possession of a pure caffeine product by any of the following:
- 1019 (a) A food processing establishment, as defined in R.C. 3715.021;
- 1020 (b) A manufacturer of a drug that is available without a prescription;
- 1021 (c) A laboratory that holds a current, valid category III terminal distributor of dangerous  
1022 drugs license issued by the state board of pharmacy under R.C. 4729.54;
- 1023 (d) A laboratory, as defined in R.C. 3719.01;
- 1024 (e) A laboratory of any agency or department of this state that performs testing,  
1025 analysis, and other laboratory services on behalf of the state;
- 1026 (f) A postal or delivery service that transports or delivers a pure caffeine product to an  
1027 entity specified in divisions (C)(2)(a) to (e).
- 1028 (D) Whoever violates division (A) is guilty of illegal sale of pure caffeine, a minor misdemeanor on a first  
1029 offense and a third degree misdemeanor on each subsequent offense.

1030

## 1031 **2925.36 Illegal dispensing of drug samples**

- 1032 (A) No person shall knowingly furnish another a sample drug.
- 1033 (B) Division (A) does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies,  
1034 licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in  
1035 accordance with R.C. Chapters 3719., 4715., 4723., 4725., 4729., 4730., 4731., and 4741.
- 1036 (C)(1) Whoever violates this section is guilty of illegal dispensing of drug samples. The penalty for the  
1037 offense shall be punished as follows:
- 1038 (2) If the drug involved in the offense is a compound, mixture, preparation, or substance  
1039 included in schedule I or II, with the exception of marijuana, illegal dispensing of drug samples is  
1040 a fifth degree felony.
- 1041 (3) If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation,  
1042 or substance included in schedule III, IV, or V, or is marijuana, illegal dispensing of drug samples  
1043 is a second degree misdemeanor.

(D) 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 transmit a certified copy of the judgment entry of conviction in accordance with R.C. 2925.38.

(E) Notwithstanding the prison term authorized or required by division (C) and R.C. 2929.13, if the violation of division (A) 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 marijuana, the court shall impose on the offender a mandatory prison term from within the range of prison terms prescribed for a first degree felony.

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

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

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

(C) No person shall knowingly make, possess, 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 shall knowingly directly or indirectly falsely represent or advertise a counterfeit controlled substance as a controlled substance. (E) Whoever violates division (A) is guilty of possession of counterfeit controlled substances, a first degree misdemeanor.

(F) Whoever violates division (B) or (C) is guilty of trafficking in counterfeit controlled substances, a fifth degree felony.

(G) Whoever violates division (D) of this section is guilty of fraudulent drug advertising, a fifth degree felony.

(H) 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 R.C. 2925.38.

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

If a person who is found guilty of a violation of R.C. 2925.02, 2925.021, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.061, 2925.07, 2925.08, 2925.13, 2925.14, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 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 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 a finding of guilt to the secretary of the Board of Professional Conduct of the Supreme Court and to either the disciplinary counsel or the president, secretary, and chairperson of each certified grievance committee.

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

(A) If a person is found guilty of 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 R.C. 3719.21, all fines imposed under this section shall be paid by the clerk of the court to the county, municipal corporation, township, park district, as created under R.C. 511.18 or 1545.01, 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. The fines imposed and paid under this division shall be used by the law enforcement agencies to subsidize their efforts pertaining to drug offenses.

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

If a violation of any prohibition in this chapter is a violation of the federal drug abuse control laws, as defined in R.C. 3719.01, a finding of guilt or acquittal under the federal drug abuse control laws for the same act is a bar to prosecution in this state.

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

(A) In any criminal prosecution for a violation of a prohibition in this chapter or R.C. Chapter 3719 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 of the content, identity, and weight or the existence and number of unit doses of the substance if the report satisfies all of the following requirements:

- (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

1116 which is accredited by the association of American universities or the north central association  
1117 of colleges and secondary schools, primarily for the purpose of providing scientific services to  
1118 law enforcement agencies.

1119 (2) The report is signed by the person performing the analysis, stating that the substance that is  
1120 the basis of the alleged offense has been weighed and analyzed, stating the findings as to the  
1121 content, weight, and identity of the substance, and stating that it contains any amount of a  
1122 controlled substance and the number and description of unit dosage, is prima facie evidence of  
1123 the content, identity, and weight or the existence and number of unit dosages of the substance.

1124 (3) The report has attached to it a copy of a notarized statement by the signer of the report  
1125 demonstrating the name of the signer, that the signer is an employee of the laboratory issuing  
1126 the report, and that performing the analysis is a part of the signer's regular duties. The attached  
1127 report shall provide outline of the signer's education, training, and experience for performing an  
1128 analysis of materials included under this section. The signer shall attest that scientifically  
1129 accepted tests were performed with due caution, and that the evidence was handled in  
1130 accordance with established and accepted procedures while in the custody of the laboratory.

1131 (B) The prosecuting attorney shall serve a copy of the report on the attorney of record for the accused,  
1132 or on the accused if the accused has no attorney, prior to any proceeding in which the report is to be  
1133 used against the accused other than at a preliminary hearing or grand jury proceeding where the report  
1134 may be used without having been previously served upon the accused.

1135 (C) If the accused or the accused's attorney demands the testimony of the person signing the report, by  
1136 serving the demand upon the prosecuting attorney within seven days after the accused or the accused's  
1137 attorney's receives receipt of the report, the report shall not be prima facie evidence of the contents,  
1138 identity, and weight or the existence and number of unit dosages of the substance. The time may be  
1139 extended by a trial judge in the interests of justice.

1140 (D) Any report issued for use under this section shall contain notice of the right of the accused to  
1141 demand, and the manner in which the accused shall demand, the testimony of the person signing the  
1142 report.

1143 (E)(1) Any person who is accused of a violation of any prohibition of this chapter or of Chapter 3719. is  
1144 entitled, upon written request made to the prosecuting attorney, to have a portion of any  
1145 substance that is the basis of the alleged violation preserved for the benefit of independent  
1146 analysis performed by a laboratory analyst employed by the accused, or, if the accused is  
1147 indigent, by a qualified laboratory analyst appointed by the court.

1148 (2) Any portion preserved under (E)(1) shall be a representative sample of any substance that is  
1149 the basis of the alleged violation and shall be of sufficient size, in the opinion of the court, to  
1150 permit the accused's analyst to make a thorough scientific analysis concerning the identity of  
1151 the substance or substances.

1152 (3) The prosecuting attorney shall provide the accused's analyst with the sample portion at least  
1153 fourteen days prior to trial, unless the trial is to be held in a court not of record or unless the  
1154 accused is charged with a minor misdemeanor, in which case the prosecuting attorney shall  
1155 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 or the accused's 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 any substance that is 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.

(F) In addition to the rights provided under division (E), any person accused of a violation of any prohibition in this chapter or of R.C. Chapter 3719. that involves the bulk amount or more of a controlled substance, or who is accused of a violation of RC 2925.04 , other than a minor misdemeanor violation, that involves marijuana, is entitled, upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice. 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.

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

In addition to the financial sanctions authorized or required under R.C. Chapter 2929. and to any costs otherwise authorized or required under any provision of law, the court imposing sentence upon an offender who is 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 R.C. 2925.51 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.

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

(A) If a person is charged with a violation of R.C. 2925.061 or with any violation of this chapter or R.C. Chapter 3719. 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), the court may include in the order a requirement that a sample of the chemicals be taken prior to their destruction and that the samples be preserved.

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

(A) (1) Except as provided in division (B)(2), no individual shall knowingly purchase, receive, or otherwise acquire an amount of pseudoephedrine product or ephedrine product that contains an amount of base pseudoephedrine or base ephedrine that is greater than either of the following:

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

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

The maximum amounts specified in divisions (A)(1)(a) and (b) do not apply to the product's overall weight.

(2)(a) It is not a violation of division (A)(1) for an individual to receive or accept more than an amount of pseudoephedrine product or ephedrine product specified in division (A)(1) or (2) 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.

(b) It is not a violation of division (A)(1) for an individual to purchase, receive, or otherwise acquire an amount of pseudoephedrine product or ephedrine product that is greater than the maximum amounts specified in division (A)(1)(a) and (b) if the pseudoephedrine product or ephedrine product is dispensed by a pharmacist under a valid prescription issued by a licensed health professional authorized to prescribe drugs and the conduct of the pharmacist and the licensed health professional to prescribe drugs is in accordance with R.C. Chapter 3719., 4715., 4723., 4729., 4730., 4731., or 4741.

(B)(1) Except as otherwise provided in division (B)(2), no individual under age eighteen shall knowingly purchase, receive, or otherwise acquire a pseudoephedrine product or ephedrine product.

(2)(a) Division (B)(1) 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:

(i) A licensed health professional authorized to prescribe drugs or pharmacist who dispenses, sells, or otherwise provides the pseudoephedrine product or

1232 ephedrine product to that individual and whose conduct is in accordance with  
1233 Chapter RC 3719., 4715., 4723., 4729., 4730., 4731., or 4741.;

1234 (ii) A parent or guardian of that individual who provides the pseudoephedrine  
1235 product or ephedrine product to the individual;

1236 (iii) A person, as authorized by that individual's parent or guardian, who  
1237 dispenses, sells, or otherwise provides the pseudoephedrine product or  
1238 ephedrine product to the individual;

1239 (iv) A retailer or terminal distributor of dangerous drugs who provides the  
1240 pseudoephedrine product or ephedrine product to that individual if the  
1241 individual is an employee of the retailer or terminal distributor of dangerous  
1242 drugs and the individual receives or accepts from the retailer or terminal  
1243 distributor of dangerous drugs the pseudoephedrine product or ephedrine  
1244 product in a sealed container in connection with manufacturing, warehousing,  
1245 placement, stocking, bagging, loading, or unloading of the product.

1246 (b) Division (B)(1) does not apply to an individual under age eighteen who purchases,  
1247 receives, or otherwise acquires a pseudoephedrine product or ephedrine product if the  
1248 pseudoephedrine product or ephedrine product is dispensed by a pharmacist under a  
1249 valid prescription issued by a licensed health professional authorized to prescribe drugs  
1250 and the conduct of the pharmacist and the licensed health professional authorized to  
1251 prescribe drugs is in accordance with R.C. Chapter 3719., 4715., 4723., 4729., 4730., or  
1252 4741.

1253 (C) No individual under age eighteen shall knowingly show or give false information concerning the  
1254 individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise  
1255 acquiring a pseudoephedrine product or ephedrine product.

1256 (D) No individual shall knowingly fail to comply with the requirements of RC 3715.051(B).

1257 (E) Whoever violates division (A)(1) is guilty of unlawful purchase of a pseudoephedrine product or  
1258 ephedrine product, a first degree misdemeanor.

1259 (F) Whoever violates division (B)(1) is guilty of underage purchase of a pseudoephedrine product or  
1260 ephedrine product, a delinquent act that would be a fourth degree misdemeanor if it could be  
1261 committed by an adult.

1262 (G) Whoever violates division (C) is guilty of using false information to purchase a pseudoephedrine  
1263 product or ephedrine product, a delinquent act that would be a first degree misdemeanor if it could be  
1264 committed by an adult.

1265 (H) Whoever violates division (D) is guilty of improper purchase of a pseudoephedrine product or  
1266 ephedrine product, a fourth degree misdemeanor.

1267

1268 **2925.56 Unlawful sale of pseudoephedrine or ephedrine product**

1269 (A)(1) Except as provided in division (B), no retailer or terminal distributor of dangerous drugs or an  
1270 employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, hold for  
1271 sale, deliver, or otherwise provide to any individual an amount of pseudoephedrine product or  
1272 ephedrine product that is greater than either of the following:

1273 (a) Three and six tenths grams of base pseudoephedrine or base ephedrine in the  
1274 pseudoephedrine product or ephedrine product within a period of a single day;

1275 (b) Nine grams of base pseudoephedrine or base ephedrine in the pseudoephedrine  
1276 product or ephedrine product within a period of thirty consecutive days.

1277 The maximum amounts specified in divisions (A)(1) and (2) do not apply to the product's  
1278 overall weight.

1279 (2)(a) Division (A)(1) does not apply to any quantity of pseudoephedrine product or ephedrine  
1280 product dispensed by a pharmacist under a valid prescription issued by a licensed health  
1281 professional authorized to prescribe drugs if the conduct of the pharmacist and the licensed  
1282 health professional authorized to prescribe drugs is in accordance with R.C. Chapter 3719.,  
1283 4715., 4723., 4729., 4730., 4731., or 4741.

1284 (b) It is not a violation of division (A)(1) for a retailer, terminal distributor of dangerous  
1285 drugs, or employee of either to provide to an individual more than an amount of  
1286 pseudoephedrine product or ephedrine product specified in division (A)(1)(a) or (b)  
1287 under either of the following circumstances:

1288 (i) The individual is an employee of the retailer or terminal distributor of  
1289 dangerous drugs, and the employee receives or accepts from the retailer,  
1290 terminal distributor of dangerous drugs, or employee the pseudoephedrine  
1291 product or ephedrine product in a sealed container in connection with  
1292 manufacturing, warehousing, placement, stocking, bagging, loading, or  
1293 unloading of the product;

1294 (ii) A stop-sale alert is generated after the submission of information to the  
1295 national precursor log exchange under the conditions described in R.C.  
1296 3715.052(A)(2).

1297 (B)(1) Except as provided in division (B)(2), no retailer or terminal distributor of dangerous drugs or an  
1298 employee of a retailer or terminal distributor of dangerous drugs shall knowingly sell, hold for  
1299 sale, deliver, or otherwise provide a pseudoephedrine product or ephedrine product to an  
1300 individual who is under age eighteen.

1301 (2) Division (B)(1) does not apply to any of the following:

1302 (a) A licensed health professional authorized to prescribe drugs or pharmacist who  
1303 dispenses, sells, or otherwise provides a pseudoephedrine product or ephedrine  
1304 product to an individual under eighteen years of age and whose conduct is in  
1305 accordance with R.C. Chapter 3719., 4715., 4723., 4729., 4730., 4731., or 4741.;

1306 (b) A parent or guardian of an individual under eighteen years of age who provides a  
1307 pseudoephedrine product or ephedrine product to the individual;

1308 (c) A person who, as authorized by the individual's parent or guardian, dispenses, sells,  
1309 or otherwise provides a pseudoephedrine product or ephedrine product to an individual  
1310 under age eighteen;

1311 (d) The provision by a retailer, terminal distributor of dangerous drugs, or employee of  
1312 either of a pseudoephedrine product or ephedrine product in a sealed container to an  
1313 employee of the retailer or terminal distributor of dangerous drugs who is under  
1314 eighteen years of age in connection with manufacturing, warehousing, placement,  
1315 stocking, bagging, loading, or unloading of the product.

1316 (C) No retailer or terminal distributor of dangerous drugs shall knowingly fail to comply with the  
1317 requirements of R.C. 3715.051(A) or 3715.052(A)(2).

1318 (D) No retailer or terminal distributor of dangerous drugs shall fail to comply with the requirements of  
1319 R.C. 3715.052(A)(1) .

1320 (E) Whoever violates division (A)(1) is guilty of unlawfully selling a pseudoephedrine product or  
1321 ephedrine product, a first degree misdemeanor.

1322 (F) Whoever violates division (B)(1) is guilty of unlawfully selling a pseudoephedrine product or  
1323 ephedrine product to a minor, a fourth degree misdemeanor.

1324 (G) Whoever violates division (C) is guilty of improper sale of a pseudoephedrine product or ephedrine  
1325 product, a second degree misdemeanor.

1326 (H) Whoever violates division (D) is guilty of failing to submit information to the national precursor log  
1327 exchange, a misdemeanor for which the offender shall be fined not more than one thousand dollars per  
1328 violation.

1329 (I) It is an affirmative defense for a seller or an agent or employee of a seller where the age of the  
1330 purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation if the  
1331 seller, agent, or employee proves that all of the following occurred:

1332 (1) A card holder attempting to purchase or receive a pseudoephedrine product presented a  
1333 driver's or commercial driver's license or an identification card.

1334 (2) A transaction scan of the driver's or commercial driver's license or identification card that the  
1335 card holder presented indicated that the license or card was valid.

1336 (3) The pseudoephedrine product was sold, given away, or otherwise distributed to the card  
1337 holder in reasonable reliance upon the identification presented and the completed transaction  
1338 scan.

1339 (J) In determining whether a seller or an agent or employee of a seller has proven the affirmative  
1340 defense, the trier of fact in the action for the alleged violation shall consider any written policy that the  
1341 seller has adopted and implemented and that is intended to prevent violations of this section. For  
1342 purposes of division (I)(3), 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.

(K) In any criminal action in which the affirmative defense provided by division (I) is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under R.C. 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.

## **2925.57 Illegal pseudoephedrine or ephedrine product transaction scan**

(A)(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 (A)(1) 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 (A)(1) 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.

(B) Rules adopted by the registrar of motor vehicles under R.C. 4301.61(C) apply to the use of transaction scan devices for purposes of this section and R.C. 2925.56(I) to (K).

(C)(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;

1380 (b) The expiration date, identification number, and issuing agency of the driver's or  
1381 commercial driver's license or identification card presented by a card holder.

1382 (2) No seller or agent or employee of a seller shall knowingly use the information that is derived  
1383 from a transaction scan or that is permitted to be recorded and maintained under division (C)(1)  
1384 of this section except for purposes of R.C. 2925.56(I) to (K) or R.C. 3715.052(A)(1).

1385 (3) No seller or agent or employee of a seller shall knowingly use a transaction scan device for a  
1386 purpose other than the purpose specified in division (A)(1).

1387 (4) No seller or agent or employee of a seller shall knowingly sell or otherwise disseminate the  
1388 information derived from a transaction scan to any third party, including, but not limited to,  
1389 selling or otherwise disseminating that information for any marketing, advertising, or  
1390 promotional activities, but a seller or agent or employee of a seller may release that information  
1391 under a court order or as specifically authorized by R.C. 2925.56(I) to (K) or another R.C. section.

1392 (D) Nothing in this section or R.C. 2925.56(I) to (K) relieves a seller or an agent or employee of a seller of  
1393 any responsibility to comply with any other applicable state or federal laws or rules governing the sale,  
1394 giving away, or other distribution of pseudoephedrine products or ephedrine products.

1395 (E) Whoever violates division (B)(2) or (C) is guilty of engaging in an illegal pseudoephedrine product or  
1396 ephedrine product transaction scan, and the court may impose upon the offender a civil penalty of up to  
1397 one thousand dollars for each violation. The clerk of the court shall pay each collected civil penalty to  
1398 the county treasurer for deposit into the county treasury.

1399

## 1400 **2925.61 Lawful administration of naloxone**

1401 (A) A family member, friend, or other individual who is in a position to assist an individual who is  
1402 apparently experiencing or at risk of experiencing an opioid-related overdose, is not subject to criminal  
1403 prosecution for a violation of R.C. 4731.41 or criminal prosecution under this chapter if the individual,  
1404 acting in good faith, does all of the following:

1405 (1) Obtains naloxone under a prescription issued by a licensed health professional or obtains  
1406 naloxone from one of the following: a licensed health professional, an individual who is  
1407 authorized by a physician under R.C. 4731.941 to personally furnish naloxone, or a pharmacist  
1408 or pharmacy intern who is authorized by a physician or board of health under R.C. 4729.44 to  
1409 dispense naloxone without a prescription;

1410 (2) Administers the naloxone obtained as described in division (A)(1) to an individual who is  
1411 apparently experiencing an opioid-related overdose;

1412 (3) Attempts to summon emergency services as soon as practicable either before or after  
1413 administering the naloxone.

1414 (B) Division (A) does not apply to a peace officer or to an emergency medical technician-basic,  
1415 emergency medical technician-intermediate, or emergency medical technician-paramedic, as defined in  
1416 R.C. 4765.01.

(C) A peace officer employed by a law enforcement agency is not subject to administrative action, criminal prosecution for a violation of R.C. 4731.41, 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.

## **2945.71 Time for Trial**

- (A) Subject to division (D), a person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after the person's arrest or the service of summons.
- (B) (B) Subject to division (D), a person against whom a charge of misdemeanor, other than a minor misdemeanor, is pending in a court of record, shall be brought to trial as follows:
- (1) Within forty-five days after the person's arrest or the service of summons, if the offense charged is a third or fourth degree misdemeanor, or other misdemeanor for which the maximum penalty is imprisonment for not more than sixty days;
  - (2) Within ninety days after the person's arrest or the service of summons, if the offense charged is a first or second degree misdemeanor, or other misdemeanor for which the maximum penalty is imprisonment for more than sixty days.
  - (3) Within one hundred and eighty days after the persons arrest or the service of summons, if the offense charged is a misdemeanor violation of R.C. 2925.04.
- (C) A person against whom a charge of felony is pending:
- (1) Notwithstanding any provisions to the contrary in Criminal Rule 5(B), shall be accorded a preliminary hearing within fifteen consecutive days after the person's arrest if the accused is not held in jail in lieu of bail on the pending charge or within ten consecutive days after the person's arrest if the accused is held in jail in lieu of bail on the pending charge;
  - (2) Shall be brought to trial within two hundred seventy days after the person's arrest.
- (D) A person against whom one or more charges of different degrees, whether felonies, misdemeanors, or combinations of felonies and misdemeanors, all of which arose out of the same act or transaction, are pending shall be brought to trial on all of the charges within the time period required for the highest degree of offense charged, as determined under divisions (A), (B), and (C).
- (E) (E) For purposes of computing time under divisions (A), (B), (C)(2), and (D), each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. This division does not apply for purposes of computing time under division (C)(1).
- (F) This section shall not be construed to modify in any way R.C. 2941.401 or R.C. 2963.30 to 2963.3.



# RECODIFICATION PROPOSED DRUG THRESHOLDS<sup>1</sup>

## Aggravated Trafficking in Drugs

DRUG	RECOD THRESHOLD	LEVEL	CURRENT THRESHOLD
<b>Schedule I or II</b>	$\geq 50 \rightarrow < 100 \times \text{bulk}$	F-2 (mandatory within the range)	$\geq 5 \rightarrow < 50 \times \text{bulk}$
	$\geq 100 \times \text{bulk}$	F-1 (mandatory within the range)	$\geq 50 \rightarrow < 100 \times \text{bulk}$ $\geq 100 \times \text{bulk}$ (MDO)
<b>Marijuana</b>	$\geq 40 \text{ kg}$	F-2 (mandatory within the range)	
<b>Cocaine</b>	$\geq 50 \text{ g} \rightarrow < 100 \text{ g}$	F-2 (mandatory within the range)	$\geq 20 \text{ g} \rightarrow < 27 \text{ g}$
	$\geq 100 \text{ g} \rightarrow < 250 \text{ g}$	F-1 (mandatory within the range)	$\geq 27 \text{ g} \rightarrow < 100 \text{ g}$
	$\geq 250 \text{ g}$	F-1 (MDO – 10 or 11 year mandatory)	$\geq 100 \text{ g}$
<b>LSD: Solid</b>	$\geq 500 \text{ UD} \rightarrow < 5000 \text{ UD}$	F-2 (mandatory within the range)	$\geq 250 \text{ UD} \rightarrow < 1000 \text{ UD}$
	$\geq 5000 \text{ UD}$	F-1 (mandatory within the range)	$\geq 1000 \text{ UD} \rightarrow < 5000 \text{ UD}$ $\geq 5000 \text{ UD}$ (MDO)
<b>LSD: Liquid</b>	$\geq 50 \text{ g} \rightarrow < 500 \text{ g}$	F-2 (mandatory within the range)	$\geq 25 \text{ g} \rightarrow < 100 \text{ g}$
	$\geq 500 \text{ g}$	F-1 (mandatory within the range)	$\geq 100 \text{ g} \rightarrow < 500 \text{ g}$ $\geq 500 \text{ g}$ (MDO)
<b>Heroin</b>	$\geq 30 \text{ g} \rightarrow < 50 \text{ g}; \geq 300 \text{ UD} \rightarrow < 500 \text{ UD}$	F-2 (mandatory within the range)	$\geq 10 \text{ g} \rightarrow < 50 \text{ g};$ $\geq 100 \text{ UD} \rightarrow < 500 \text{ UD}$
	$\geq 50 \text{ g} \rightarrow < 100 \text{ g}; \geq 500 \text{ UD} \rightarrow < 1000 \text{ UD}$	F-1 (mandatory within the range)	$\geq 50 \text{ g} \rightarrow < 100 \text{ g};$ $\geq 500 \text{ UD} \rightarrow < 1000 \text{ UD}$
	$\geq 100 \text{ g}; \geq 1000 \text{ UD}$	F-1 (MDO – 10 or 11 year mandatory)	$\geq 100 \text{ g}; \geq 1000 \text{ UD}$
<b>Hashish</b>	$\geq 2 \text{ kg}$	F-2 (mandatory within the range)	$\geq 2 \text{ kg}$ (solid) $\geq 400 \text{ g}$ (liquid)
<b>Controlled Substance Analog</b>	$\geq 30 \text{ g} \rightarrow < 40 \text{ g}$	F-2 (mandatory within the range)	Same
	$\geq 40 \text{ g} \rightarrow < 50 \text{ g}$	F-1 (mandatory within the range)	Same
	$\geq 50 \text{ g}$	F-1 (MDO – 10 or 11 year mandatory minimum)	Same

<sup>1</sup> Chart does not include fentanyl-related compounds. Under the proposed draft, those amounts are taken straight from SB1.

# Trafficking in Drugs

DRUG	RECOD THRESHOLD	LEVEL	CURRENT THRESHOLD
<b>Schedule I or II</b>	$\geq 5 \text{ x bulk} \rightarrow < 50 \text{ x bulk}$	F-3	$\geq \text{bulk} \rightarrow < 5 \text{ x bulk}$
<b>Schedule III, IV, or V</b>	$\geq 50 \text{ x bulk}$	F-3	$\geq 5 \text{ x bulk} \rightarrow < 50 \text{ x bulk}$
<b>Marijuana</b>	$\geq 5 \text{ kg} \rightarrow < 40 \text{ kg}$	F-3	$\geq 1 \text{ kg} \rightarrow < 5 \text{ kg}$
<b>Cocaine:</b> Powder or Crack	$\geq 27 \text{ g} \rightarrow < 50 \text{ g}$	F-3	$\geq 10 \text{ g} \rightarrow < 20 \text{ g}$
<b>LSD:</b> Solid	$\geq 200 \text{ UD} \rightarrow < 500 \text{ UD}$	F-3	$\geq 50 \text{ UD} \rightarrow < 250 \text{ UD}$
<b>LSD:</b> Liquid	$\geq 20 \text{ g} \rightarrow < 50 \text{ g}$	F-3	$\geq 5 \text{ g} \rightarrow < 25 \text{ g}$
<b>Heroin</b>	$\geq 10 \text{ g} \rightarrow < 30 \text{ g};$ $\geq 100 \text{ UD} \rightarrow < 300 \text{ UD}$	F-3	$\geq 5 \text{ g} \rightarrow < 10 \text{ g};$ $\geq 50 \text{ UD} \rightarrow < 100 \text{ UD}$
<b>Hashish</b>	$\geq 200 \text{ g} \rightarrow < 2 \text{ kg}$	F-3	$\geq 250 \text{ g} \rightarrow < 1 \text{ kg (solid)}$ $\geq 50 \text{ g} \rightarrow < 200 \text{ g}$
<b>Controlled Substance Analog</b>	$\geq 20 \text{ g} \rightarrow < 30 \text{ g}$	F-3	$\geq 20 \text{ g} \rightarrow < 30 \text{ g}$

# Petty Trafficking in Drugs

DRUG	RECOD THRESHOLD	LEVEL	CURRENT THRESHOLD
Schedule I or II	$\geq 0.025\text{g} \rightarrow < \text{bulk}$	F-5	n/a
	$\geq x \text{ bulk} \rightarrow < 5 x \text{ bulk}$	F-4	$< \text{bulk}$
Schedule III, IV, or V	$\geq 0.025\text{g} \rightarrow < \text{bulk}$	F-5	$< \text{bulk}$
	$\geq \text{bulk} \rightarrow < 50 x \text{ bulk}$	F-4	$\geq \text{bulk} \rightarrow < 5 x \text{ bulk}$
Marijuana	Gift $\leq 20\text{g}$	Minor Misdemeanor	same
	$\geq 0.025\text{g} \rightarrow < 1 \text{ kg}$	F-5	$< 200 \text{ g}$
	$\geq 1 \text{ kg} \rightarrow < 5 \text{ kg}$	F-4	$\geq 200 \text{ g} \rightarrow < 1 \text{ kg}$
Cocaine: Powder or Crack	$\geq 0.025\text{g} \rightarrow < 10 \text{ g}$	F-5	$< 5 \text{ g}$
	$\geq 10 \text{ g} \rightarrow < 27 \text{ g}$	F-4	$\geq 5 \text{ g} \rightarrow < 10 \text{ g}$
LSD: Solid	$\geq 0.25 \text{ UD} \rightarrow < 50 \text{ UD}$	F-5	$< 10 \text{ UD}$
	$\geq 50 \text{ UD} \rightarrow < 200 \text{ UD}$	F-4	$\geq 10 \text{ UD} \rightarrow < 50 \text{ UD}$
LSD: Liquid	$\geq 0.025\text{g} \rightarrow < 5 \text{ g}$	F-5	$< 2 \text{ g}$
	$\geq 5 \text{ g} \rightarrow < 20 \text{ g}$	F-4	$\geq 2 \text{ g} \rightarrow < 10 \text{ g}$
Heroin	$\geq 0.025\text{g} \rightarrow < 1 \text{ g};$ $\geq 0.25 \text{ UD} \rightarrow < 10 \text{ UD}$	F-5	$< 1 \text{ g};$ $< 10 \text{ UD}$
	$\geq 1 \text{ g} \rightarrow < 10 \text{ g};$ $\geq 10 \text{ UD}$ $\rightarrow < 100 \text{ UD}$	F-4	$\geq 1 \text{ g} \rightarrow < 5 \text{ g};$ $\geq 10 \text{ UD} \rightarrow < 50 \text{ UD}$
Hashish	$\geq 0.025\text{g} \rightarrow < 50 \text{ g}$	F-5	$< 10 \text{ g (solid)}$ $< 2 \text{ g (liquid)}$
	$\geq 50 \text{ g} \rightarrow < 200 \text{ g}$	F-4	$\geq 10 \text{ g} \rightarrow < 50 \text{ g (solid)}$ $\geq 2 \text{ g} \rightarrow < 10 \text{ g (liquid)}$
Controlled Substance Analog	$\geq 0.025\text{g} \rightarrow < 10\text{g}$	F-5	$< 10 \text{ g}$
	$\geq 10 \text{ g} \rightarrow < 20 \text{ g}$	F-4	$\geq 10 \text{ g} \rightarrow < 20 \text{ g}$

# Unlawful Possession of Drugs

DRUG	RECOD THRESHOLD	LEVEL	CURRENT THRESHOLD
<b>Schedule I or II<sup>2</sup></b>	$\geq 0.025\text{g} \rightarrow < \text{bulk}$	F-5 (proposed UM)	$< \text{bulk}$
	$\geq x \text{ bulk} \rightarrow < 5 x \text{ bulk}$	F-4 (proposed UM)	n/a
<b>Schedule III, IV, or V</b>	$\geq 0.025\text{g} \rightarrow < 5 x \text{ bulk}$	F-5 (proposed UM)	n/a
	$\geq 5 x \text{ bulk} \rightarrow < 50 x \text{ bulk}$	F-4 (proposed UM)	$\geq x \text{ bulk} \rightarrow < 5 x \text{ bulk}$
<b>Cocaine: Powder or Crack</b>	$\geq 0.025\text{g} \rightarrow < 10 \text{ g}$	F-5 (proposed UM)	$< 5 \text{ g}$
	$\geq 10 \text{ g} \rightarrow < 27 \text{ g}$	F-4 (proposed UM)	$\geq 5 \text{ g} \rightarrow < 10 \text{ g}$
<b>LSD: Solid</b>	$\geq 0.25 \text{ UD} \rightarrow < 50 \text{ UD}$	F-5 (proposed UM)	$< 10 \text{ UD}$
	$\geq 50 \text{ UD} \rightarrow < 200 \text{ UD}$	F-4 (proposed UM)	$\geq 10 \text{ UD} \rightarrow < 50 \text{ UD}$
<b>LSD: Liquid</b>	$\geq 0.025\text{g} \rightarrow < 5 \text{ g}$	F-5 (proposed UM)	$< 1 \text{ g}$
	$\geq 5 \text{ g} \rightarrow < 20 \text{ g}$	F-4 (proposed UM)	$\geq 1 \text{ g} \rightarrow < 5 \text{ g}$
<b>Heroin</b>	$\geq 0.025\text{g} \rightarrow < 1 \text{ g}; \geq 0.25 \text{ UD} \rightarrow < 10 \text{ UD}$	F-5 (proposed UM)	$< 1 \text{ g}; < 10 \text{ UD}$
	$\geq 1 \text{ g} \rightarrow < 10 \text{ g}; \geq 10 \text{ UD} \rightarrow < 100 \text{ UD}$	F-4 (proposed UM)	$\geq 1\text{g} \rightarrow < 5 \text{ g}; \geq 10 \text{ UD} \rightarrow < 50 \text{ UD}$
<b>Controlled Substance Analog</b>	$\geq 0.025\text{g} \rightarrow < 10\text{g}$	F-5 (proposed UM)	$< 10\text{g}$
	$\geq 10 \text{ g} \rightarrow < 20 \text{ g}$	F-4 (proposed UM)	$\geq 10 \text{ g} \rightarrow < 20 \text{ g}$

<sup>2</sup> Exception created for the date rape drug GHB in proposed draft

## Possession of Marijuana

DRUG	RECOD THRESHOLD	LEVEL	CURRENT THRESHOLD
Marijuana	$\geq 0.025\text{g} \rightarrow < 200\text{ g}$	Minor Misdemeanor	$< 100\text{ g}$
	$200\text{ g} < 400\text{ g}$	M-4	$\geq 100\text{ g} \rightarrow < 200\text{ g}$
	$400\text{ g} < 1\text{ kg}$	F-5 (proposed M1)	$\geq 200\text{ g} < 1\text{ kg}$
	$1\text{ kg} < 5\text{ kg}$	F-4	N/A
Hashish	$\geq 0.025\text{g} \rightarrow < 10\text{ g}$	Minor Misdemeanor	$< 5\text{ g (solid)}$ $< 1\text{ g (liquid)}$
	$10\text{ g} < 20\text{ g}$	M-4	$\geq 5\text{ g} < 10\text{ g (solid)}$ $\geq 1\text{ g} < 2\text{ g (liquid)}$
	$20\text{ g} < 50\text{ g}$	F-5 (proposed M1)	$\geq 10\text{ g} < 50\text{ g (solid)}$ $\geq 2\text{ g} < 10\text{ g (liquid)}$
	$50\text{ g} < 250\text{ g}$	F-4	n/a



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**Committees:**

Ways and Means, *Chair*  
Finance  
Judiciary  
Public Utilities  
Rules and Reference  
Finance Sub-Committee:  
General Government

Senator John Eklund – Sponsor Testimony  
Senate Bill 341  
Senate Judiciary Committee  
December 5, 2018

Good Morning Chairman Bacon, Vice-Chair Dolan, Ranking Member Thomas, and members of the committee. Thank you for the opportunity to give sponsor testimony on Senate Bill 341 and to encourage your support on this legislation.

Why would we develop and enact legislation to reform Ohio's drug sentencing laws? To me, the fundamental reason lies in a concept that should be a bedrock principle of legislating, but sadly is not so much so. It is the concept of critical self-evaluation, a process by which one examines what they have done, or not done, and how in order to assess whether it is serving the intended purpose.

We often hear opponents to legislation repeat the mantra that the bill they oppose will have "unintended consequences." Rarely, in my view, can one predict a parade of horrors with the degree of certainty advocates sometimes profess. But, when we've already done something we very often do have at our disposal the tools necessary to determine, in retrospect, whether or not it was a good idea that works without adverse consequences.

In the area of criminal sentencing, particularly on drug crimes, we have lived the future results of past policy decisions and while it might be hyperbolic to say that it is dystopian, in many respects it's getting close to it.

You've heard many of the numbers and in the course of this exercise you'll hear them again. Intractably high prison and jail populations; 25% of people sent to prison are going to serve less than a year; the number one offense for which Ohioans go to prison is drug possession, almost \$2 billion budgeted to operate prisons in Ohio.

Too often our criminal sentencing scheme removes legitimate discretion from judges, and mandates ever-increasing prison terms for people who need treatment much more than they need punishment (notwithstanding that we now have analysis tools to identify who they are and new ways to treat them).

I applaud you all for your support of criminal justice reform efforts we have undertaken over the years. But while our efforts have been purposeful, at times they have been

intermittent while the flow of new bills that criminalize heretofore non-criminal behavior and enhance penalties continues, persistent and unabated.

What we need is sentencing reform that does what it is meant to do – punish those who are dangerous and treat those who we're simply mad at. It will take an effort informed by policies that recognize our primary obligation to protect Ohio's citizens, to promote the physical and mental well-being of everyone, to be fiscally responsible and to enhance opportunities for rehabilitation and redemption.

Our challenge will be to do so in a manner that maximizes freedom in a system of ordered liberty, and I know we can meet that challenge.

Thank you for the opportunity to provide testimony on SB 341, and I will be glad to answer any questions you may have.

**TESTIMONY OF CITY ATTORNEY ZACH KLEIN  
ON SUB. SB 341  
BEFORE THE OHIO SENATE JUDICIARY COMMITTEE**

Chair Kevin Bacon, Vice-Chair Matt Dolan, honorable members of the Senate Judiciary Committee, thank you for welcoming me here to provide proponent testimony in support of the criminal justice reforms envisioned in Substitute Senate Bill 341.

I'm Zach Klein, the Columbus City Attorney. My office is responsible for prosecuting all criminal misdemeanors in the City of Columbus. That's approximately 21,000 cases per year. I appreciate the opportunity to be here today to discuss our bipartisan effort to make critical and necessary changes to improve Ohio's drug laws.

Issue 1, while hotly debated throughout this past campaign cycle, was the catalyst for an extremely important conversation in our communities about the need to improve our criminal justice system.

This past summer, while the political debate over Issue 1 heated up, Franklin County Prosecutor Ron O'Brien and I met to discuss how the passage of the ballot initiative would impact both of our offices. During this meeting, we realized a shared vision for reforming our drug laws so that they are reflective of the need to treat addiction through treatment, not incarceration. Together, we drafted a pragmatic, alternative proposal which we believe addresses the important aspects of Issue 1, but removes the negative consequences that Issue 1 carried with it. I want to be clear: our draft proposal and thoughts surrounding pragmatic and effective reform is not Issue 1, in legislative form.

We believe real and substantive reform must include the following concepts:

- Reducing most fourth- and fifth-degree felony drug possession charges to a misdemeanor. Fentanyl, carfentanil and date rape drugs should remain felony offenses.
- Creating a presumption that those convicted of misdemeanor drug possession receive treatment and probation, but maintaining judicial discretion to rebut that presumption if the person struggling with addiction refuses treatment.
- Allowing those currently charged, on probation with an old F4/F5, or in prison for fourth- and fifth-degree drug possession convictions to reclassify their conviction to match the new misdemeanor.
- For those with previous F4/F5 convictions to, at a minimum, seal those convictions, or ideally petition the court to reclassify their conviction to match the newly downgraded misdemeanor offense.
- Eliminating mandatory prison sentences except for major drug offenders. There would be an exception for those convicted of the major drug offender specification – sometimes referred to as the drug kingpin law – for running a large-scale drug operation.

The concepts in this proposal address every single public criticism brought forth by the opponents of Issue 1. These are legislative changes as opposed to enshrining these concepts in Ohio's constitution; the proposal ensures that fentanyl remains a felony, along with date rape drugs; and it maintains judicial



discretion and integrity of drug courts. It also removes the possibility of “good time credit” for child pornographers and human traffickers, who do not need to get out of their prison sentence early.

The reality is the status quo is not working for anyone. Too many people are dying every single day as the number of daily overdoses continues to rise. Our prisons are overcrowded, and too many lives are being destroyed with excessive felony convictions.

The importance of making these changes to our criminal cannot be overstated. They maintain judicial discretion in ordering additional treatment or incarceration for repeat offenders, but also give people the opportunity to seal their records from felony convictions—which we know are enormous barriers for those seeking housing and employment.

It is important to recognize that drug and addiction issues are not new. In fact, addiction has plagued communities of color and rural America for decades and attention to this was largely ignored, with the exception of strengthening our laws to increase incarceration. To put plainly, the war on drugs has been an abysmal failure, and in order to move forward, we must face the fact these policies have been hurting communities around the state for many, many generations.

But now we have the opportunity to embark on a different path: one which enables us to come together as a state, and make our system more just and effective. These reforms will ultimately get more folks into addiction and mental health treatment that desperately need it.

Most of you know, Ron and I were former political opponents—he beat me in the County Prosecutor race just two years ago. I’m encouraged that the Senate leadership has also expressed the shared desire to set our political differences aside, come together to draft this drug reform policy, and accomplish real change for our criminal justice system. I encourage this committee to join us in this bipartisan effort, because the need for change in Ohio is frankly much too great. I truly believe that Ohio has an opportunity to be a national leader in criminal justice reform, and I look forward to supporting this work in any way that I can.

Thank you.

Zach Klein  
Columbus City Attorney



# Ohio Judicial Conference

The Voice of Ohio Judges

**Senate Judiciary Committee**

**Paul Pfeifer**

**Proponent Testimony on Senate Bill 341**

Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas, and members of the Senate Judiciary Committee:

I am pleased to be able to offer testimony on SB 341. This short bill conveys an extremely important goal for the coming General Assembly; a goal that is no small feat because of the complexity of our current drug laws, the vastness of the opioid crisis, and the multitude of factors that need to be considered at every turn.

Often, the public does not know everything its government does, and the rhetoric around Issue 1 proved that to be the case. Despite claims to the contrary, the legislature has repeatedly worked on important criminal justice reform. The work of the Criminal Recodification Committee, in particular, has not been shelved. Rather, it presents probably one of the best currently available frameworks from which to build a drug reform policy in Ohio.

I applaud the sponsors of this bill, Senator Eklund and Senate President Obhof for committing to drug reform and for doing it in a measured, thoughtful way. The judiciary strongly supports a system that helps rehabilitate people. The judiciary supports a thoughtful approach that considers harshness of a sentence, eligibility for diversion, access to evidence-based treatment, and ability to overcome collateral consequences.

Some of the perceived consensus objectives within the judiciary are:

- 1) To strengthen methods, tools and tactics to interrupt the flow of illegal and dangerous drugs of abuse into our communities.
- 2) To enhance the knowledge, science, training, capacity and quality of treatment for drug addiction across Ohio, especially in communities having limited local addiction services.
- 3) To expand the options for courts to guide addicts into appropriate recovery paths after professional assessment.
- 4) To lower the barriers to employment and housing for addicts that have demonstrated a commitment to winning their daily lifetime struggle to maintain abstinence.

I have included some data with my testimony – it helps underscore how thorny this issue is. Thank you for considering the input of the Ohio Judicial Conference.

FOR IMMEDIATE RELEASE

September 27, 2018

Contacts: ODH Office of Communications (614) 644-8562  
OhioMHAS Office of Communications (614) 728-5090

### **Annual Drug Overdose Report Shows Eight-Year Low in Prescription Opioid Deaths and Four-Year Low in Heroin Deaths in Ohio**

#### ***Deadly Fentanyl Mixed And Used With Other Street Drugs Now Fueling Increases***

COLUMBUS – Prescription opioid-related overdose deaths have reached an eight-year low and heroin-related overdose deaths are at a four-year low, according to a new report released by the Ohio Department of Health (ODH). Illegally produced fentanyl which is being mixed and used with other street drugs such as cocaine, heroin and psychostimulants like methamphetamine is now driving Ohio's unintentional overdose deaths – 4,854 in 2017.

The report also revealed that the number of overdose deaths declined during the second half of 2017 by 23 percent.

"The good news is Ohio is seeing significant progress in reducing the number of prescription opioids available for abuse, and as a result, prescription opioid-related overdose deaths that don't also involve fentanyl are at their lowest level since 2009," said Ohio Department of Mental Health and Addiction Services Director Mark Hurst, M.D. "This progress is significant because prescription opioid abuse is frequently a gateway to heroin and fentanyl use."

"While data shows us that Ohio's efforts to curb prescription opioid abuse are working, the driving force today in Ohio's ever-changing opioid epidemic is deadly fentanyl being used with other street drugs like cocaine and methamphetamine," said ODH Director Lance Himes.

In 2017, illegally produced fentanyl and related drugs like carfentanil, which are opioids, were involved in 71 percent of all unintentional overdose deaths. By comparison, fentanyl was involved in 58 percent of all overdose deaths in 2016, 38 percent in 2015, and 20 percent in 2014.

Ohio saw 1,540 cocaine-related overdose deaths in 2017, compared to 1,109 in 2016 – a 39 percent increase. Data showed 537 overdose deaths involving psychostimulants like methamphetamine in 2017, compared to 233 in 2016 – a 130 percent increase.

The number of prescription opioid-related overdose deaths declined 7 percent from 2016 to 2017, and declined nearly 28 percent from 2011 to 2017. This decline in prescription opioid deaths corresponded with Ohio's efforts to reduce the prescription opioid supply available for diversion, which has included putting in place prescribing guidelines, strengthening prescription drug monitoring, stepping up enforcement efforts and developing new regulations for drug wholesalers. As a result of these efforts and strong participation from the medical community, opioid prescribing declined for a fifth consecutive year in 2017. Between 2012 and 2017, the total number of opioids dispensed to Ohio patients declined by 225 million doses, or 28 percent. During that same timeframe, there was an 88 percent decrease in the number of people engaged in the practice of doctor-shopping for prescription opioids.

-more-

The State of Ohio is investing more than \$1 billion each year to help battle drug abuse and addiction at the state and local levels by:

- Sponsoring community rapid response teams to follow up with individuals who survive a drug overdose to seek to connect them to treatment
- Increasing the number of medical professionals qualified to prescribe medication-assisted treatment, the gold standard for treating opioid use disorder
- Expanding local prescription drug overdose prevention initiatives
- Pursuing scientific breakthroughs to battle drug abuse and addiction
- Expanding access to the opioid overdose reversal drug naloxone to save lives
- Implementing common sense reforms to prevent pain medication abuse
- Expanding data and tools available in Ohio's prescription drug reporting and monitoring program known as OARRS used by opioid prescribers and pharmacists to enhance patient safety
- Providing funding to support toxicology screenings during Ohio coroner drug overdose investigations
- Educating prescribers and patients on how to safely manage pain and prevent pain medication abuse

The complete ODH report on 2017 drug overdose deaths is available [here](#), along with details about Ohio's comprehensive efforts combating drug abuse and overdose deaths, key initiatives to combat prescription opioid abuse, and a timeline of 2011-2018 key initiatives.

###

JANUARY 2018 CENSUS OF ODRC INSTITUTIONAL POPULATION, DEMOGRAPHIC AND OFFENSE SUMMARY						
<b>MALE = 45,439 (91.8%) FEMALE = 4,073 (8.2%) TOTAL = 49,512</b>						
OHIO COUNTIES WITH THE HIGHEST NUMBER OF COMMITTED INMATES	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
Cuyahoga	7069	15.56	379	9.31	7,448	15.04
Franklin	4870	10.72	307	7.54	5,177	10.46
Hamilton	3994	8.79	250	6.14	4,244	8.57
Summit	2436	5.36	210	5.16	2,646	5.34
Montgomery	2178	4.79	155	3.81	2,333	4.71
Lucas	1927	4.24	99	2.43	2,026	4.09
All Others	22965	50.54	2673	65.63	25,638	51.78
<b>TOTAL</b>	<b>45,439</b>	<b>100.00</b>	<b>4,073</b>	<b>100.00</b>	<b>49,512</b>	<b>100.00</b>
RACE/ETHNICITY OF INCARCERATED OFFENDERS	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
Black	21338	46.96	1030	25.29	22,368	45.18
White	22409	49.32	2988	73.36	25,397	51.29
Hispanic	1,284	2.83	36	0.88	1,320	2.67
White Hispanic	271	0.60	16	0.39	287	0.58
Black Hispanic	46	0.10	1	0.02	47	0.09
Other Hispanic (Race Not Specified)	967	2.13	19	0.47	986	1.99
Native American	76	0.17	5	0.12	81	0.16
Asian	57	0.13	8	0.20	65	0.13
Other	275	0.61	6	0.15	281	0.57
<b>TOTAL</b>	<b>45,439</b>	<b>100.00</b>	<b>4,073</b>	<b>100.00</b>	<b>49,512</b>	<b>100.00</b>
AGE OF INCARCERATED OFFENDERS	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
15-19	513	1.13	16	0.39	529	1.07
20-24	5148	11.33	443	10.88	5,591	11.29
25-29	7927	17.45	869	21.34	8,796	17.77
30-34	7282	16.03	848	20.82	8,130	16.42
35-39	6698	14.74	725	17.80	7,423	14.99
40-44	4863	10.70	411	10.09	5,274	10.65
45-49	4155	9.14	309	7.59	4,464	9.02
50-54	3275	7.21	224	5.50	3,499	7.07
55-59	2514	5.53	126	3.09	2,640	5.33
60 And Over	3064	6.74	102	2.50	3,166	6.39
<b>TOTAL</b>	<b>45,439</b>	<b>100.00</b>	<b>4,073</b>	<b>100.00</b>	<b>49,512</b>	<b>100.00</b>
MEAN AGE	38.12		35.51		37.90	
MEDIAN AGE	36.00		34.00		36.00	
MOST SERIOUS COMMITMENT OFFENSE TYPE	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
Crimes Against Persons (Sex Offenses Not Included)	20191	44.44	1537	37.74	21,728	43.88
Sex Offenses	7685	16.91	140	3.44	7,825	15.80
Drug Offenses	6290	13.84	1080	26.52	7,370	14.89
Burglary Offenses	5331	11.73	436	10.70	5,767	11.65
Against Justice/Public Administration	1913	4.21	372	9.13	2,285	4.62
Property Offenses	1363	3.00	304	7.46	1,667	3.37
Firearm Offenses	1586	3.49	43	1.06	1,629	3.29
Fraud Offenses	661	1.45	131	3.22	792	1.60
Motor Vehicle Offenses	411	0.90	29	0.71	440	0.89
Miscellaneous	8	0.02	1	0.02	9	0.02
<b>TOTAL</b>	<b>45,439</b>	<b>100.00</b>	<b>4,073</b>	<b>100.00</b>	<b>49,512</b>	<b>100.00</b>

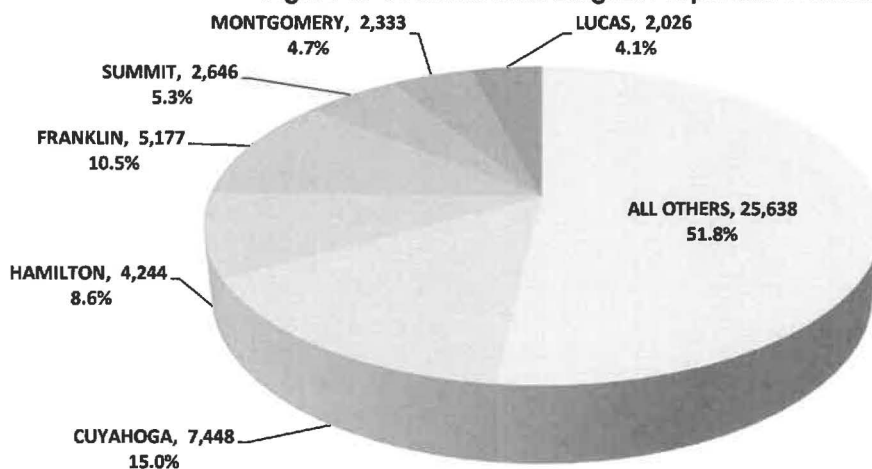
**OHIO DEPARTMENT OF REHABILITATION AND CORRECTION  
JANUARY 2018 INSTITUTIONAL CENSUS**

INCARCERATED OFFENDER'S COUNTY OF COMMITMENT BY GENDER AND RACE - JANUARY 2018												
OHIO COUNTY	MALE		FEMALE		BLACK		WHITE		OTHER*		COUNTY TOTAL	PERCENT OF TOTAL
	N	%	N	%	N	%	N	%	N	%		
ADAMS	144	0.29	25	0.05	8	0.02	161	0.33	0	0.00	169	0.34
ALLEN	502	1.01	42	0.08	300	0.61	230	0.46	14	0.03	544	1.10
ASHLAND	181	0.37	19	0.04	15	0.03	181	0.37	4	0.01	200	0.40
ASHTABULA	415	0.84	47	0.09	96	0.19	344	0.69	22	0.04	462	0.93
ATHENS	268	0.54	34	0.07	31	0.06	266	0.54	5	0.01	302	0.61
AUGLAIZE	132	0.27	27	0.05	10	0.02	147	0.30	2	0.00	159	0.32
BELMONT	235	0.47	27	0.05	57	0.12	200	0.40	5	0.01	262	0.53
BROWN	251	0.51	55	0.11	13	0.03	291	0.59	2	0.00	306	0.62
BUTLER	1271	2.57	126	0.25	437	0.88	887	1.79	73	0.15	1,397	2.82
CARROLL	50	0.10	5	0.01	1	0.00	53	0.11	1	0.00	55	0.11
CHAMPAIGN	176	0.36	31	0.06	18	0.04	185	0.37	4	0.01	207	0.42
CLARK	737	1.49	66	0.13	327	0.66	459	0.93	17	0.03	803	1.62
CLERMONT	694	1.40	89	0.18	66	0.13	705	1.42	12	0.02	783	1.58
CLINTON	148	0.30	17	0.03	18	0.04	142	0.29	5	0.01	165	0.33
COLUMBIANA	256	0.52	42	0.08	59	0.12	236	0.48	3	0.01	298	0.60
COSHOCTON	175	0.35	24	0.05	19	0.04	178	0.36	2	0.00	199	0.40
CRAWFORD	246	0.50	64	0.13	31	0.06	272	0.55	7	0.01	310	0.63
CUYAHOGA	7069	14.28	379	0.77	5527	11.16	1520	3.07	401	0.81	7,448	15.04
DARKE	102	0.21	5	0.01	8	0.02	97	0.20	2	0.00	107	0.22
DEFIANCE	214	0.43	33	0.07	30	0.06	184	0.37	33	0.07	247	0.50
DELAWARE	269	0.54	23	0.05	82	0.17	198	0.40	12	0.02	292	0.59
ERIE	352	0.71	34	0.07	186	0.38	190	0.38	10	0.02	386	0.78
FAIRFIELD	311	0.63	45	0.09	45	0.09	301	0.61	10	0.02	356	0.72
FAYETTE	207	0.42	31	0.06	39	0.08	195	0.39	4	0.01	238	0.48
FRANKLIN	4870	9.84	307	0.62	3096	6.25	1858	3.75	223	0.45	5,177	10.46
FULTON	58	0.12	5	0.01	4	0.01	51	0.10	8	0.02	63	0.13
GALLIA	144	0.29	26	0.05	37	0.07	130	0.26	3	0.01	170	0.34
GEAUGA	96	0.19	19	0.04	20	0.04	92	0.19	3	0.01	115	0.23
GREENE	426	0.86	39	0.08	150	0.30	289	0.58	26	0.05	465	0.94
GUERNSEY	205	0.41	34	0.07	43	0.09	193	0.39	3	0.01	239	0.48
HAMILTON	3994	8.07	250	0.50	3116	6.29	1051	2.12	77	0.16	4,244	8.57
HANCOCK	205	0.41	16	0.03	44	0.09	163	0.33	14	0.03	221	0.45
HARDIN	169	0.34	33	0.07	9	0.02	191	0.39	2	0.00	202	0.41
HARRISON	37	0.07	6	0.01	2	0.00	41	0.08	0	0.00	43	0.09
HENRY	82	0.17	4	0.01	2	0.00	72	0.15	12	0.02	86	0.17
HIGHLAND	197	0.40	28	0.06	10	0.02	213	0.43	2	0.00	225	0.45
HOCKING	117	0.24	21	0.04	5	0.01	133	0.27	0	0.00	138	0.28
HOLMES	53	0.11	6	0.01	2	0.00	57	0.12	0	0.00	59	0.12
HURON	124	0.25	14	0.03	10	0.02	119	0.24	9	0.02	138	0.28
JACKSON	130	0.26	45	0.09	20	0.04	154	0.31	1	0.00	175	0.35
JEFFERSON	258	0.52	18	0.04	141	0.28	133	0.27	2	0.00	276	0.56
KNOX	135	0.27	14	0.03	8	0.02	139	0.28	2	0.00	149	0.30
LAKE	689	1.39	70	0.14	257	0.52	480	0.97	22	0.04	759	1.53
LAWRENCE	318	0.64	45	0.09	42	0.08	318	0.64	3	0.01	363	0.73
LICKING	715	1.44	72	0.15	127	0.26	648	1.31	12	0.02	787	1.59
LOGAN	170	0.34	25	0.05	32	0.06	157	0.32	6	0.01	195	0.39
LORAIN	855	1.73	38	0.08	425	0.86	348	0.70	120	0.24	893	1.80
LUCAS	1927	3.89	99	0.20	1212	2.45	697	1.41	117	0.24	2,026	4.09
MADISON	123	0.25	15	0.03	20	0.04	110	0.22	8	0.02	138	0.28
MAHONING	1058	2.14	67	0.14	734	1.48	352	0.71	39	0.08	1,125	2.27
MARION	322	0.65	25	0.05	97	0.20	236	0.48	14	0.03	347	0.70
MEDINA	283	0.57	27	0.05	53	0.11	248	0.50	9	0.02	310	0.63
MEIGS	141	0.28	37	0.07	10	0.02	167	0.34	1	0.00	178	0.36



INCARCERATED OFFENDER'S COUNTY OF COMMITMENT BY GENDER AND RACE - JANUARY 2018												
(continued)												
OHIO COUNTY	MALE		FEMALE		BLACK		WHITE		OTHER*		COUNTY TOTAL	PERCENT OF TOTAL
	N	%	N	%	N	%	N	%	N	%		
MERCER	82	0.17	10	0.02	4	0.01	84	0.17	4	0.01	92	0.19
MIAMI	276	0.56	26	0.05	42	0.08	253	0.51	7	0.01	302	0.61
MONROE	47	0.09	6	0.01	2	0.00	51	0.10	0	0.00	53	0.11
MONTGOMERY	2178	4.40	155	0.31	1405	2.84	879	1.78	49	0.10	2,333	4.71
MORGAN	50	0.10	5	0.01	5	0.01	49	0.10	1	0.00	55	0.11
MORROW	72	0.15	16	0.03	2	0.00	85	0.17	1	0.00	88	0.18
MUSKINGUM	541	1.09	67	0.14	146	0.29	451	0.91	11	0.02	608	1.23
NOBLE	39	0.08	8	0.02	4	0.01	42	0.08	1	0.00	47	0.09
OTTAWA	77	0.16	6	0.01	8	0.02	69	0.14	6	0.01	83	0.17
PAULDING	56	0.11	6	0.01	3	0.01	58	0.12	1	0.00	62	0.13
PERRY	91	0.18	19	0.04	2	0.00	106	0.21	2	0.00	110	0.22
PICKAWAY	207	0.42	44	0.09	35	0.07	215	0.43	1	0.00	251	0.51
PIKE	63	0.13	5	0.01	1	0.00	67	0.14	0	0.00	68	0.14
PORTAGE	442	0.89	45	0.09	120	0.24	360	0.73	7	0.01	487	0.98
PREBLE	145	0.29	15	0.03	9	0.02	140	0.28	11	0.02	160	0.32
PUTNAM	77	0.16	7	0.01	6	0.01	67	0.14	11	0.02	84	0.17
RICHLAND	667	1.35	76	0.15	287	0.58	442	0.89	14	0.03	743	1.50
ROSS	303	0.61	43	0.09	85	0.17	258	0.52	3	0.01	346	0.70
SANDUSKY	239	0.48	27	0.05	77	0.16	165	0.33	24	0.05	266	0.54
SCIOTO	672	1.36	153	0.31	214	0.43	607	1.23	4	0.01	825	1.67
SENECA	206	0.42	20	0.04	55	0.11	153	0.31	18	0.04	226	0.46
SHELBY	173	0.35	22	0.04	40	0.08	150	0.30	5	0.01	195	0.39
STARK	1496	3.02	122	0.25	725	1.46	875	1.77	18	0.04	1,618	3.27
SUMMIT	2436	4.92	210	0.42	1355	2.74	1241	2.51	50	0.10	2,646	5.34
TRUMBULL	681	1.38	55	0.11	302	0.61	425	0.86	9	0.02	736	1.49
TUSCARAWAS	158	0.32	20	0.04	21	0.04	148	0.30	9	0.02	178	0.36
UNION	176	0.36	28	0.06	16	0.03	180	0.36	8	0.02	204	0.41
VAN WERT	76	0.15	7	0.01	7	0.01	74	0.15	2	0.00	83	0.17
VINTON	60	0.12	14	0.03	1	0.00	73	0.15	0	0.00	74	0.15
WARREN	415	0.84	47	0.09	81	0.16	366	0.74	15	0.03	462	0.93
WASHINGTON	139	0.28	13	0.03	18	0.04	130	0.26	4	0.01	152	0.31
WAYNE	230	0.46	19	0.04	48	0.10	191	0.39	10	0.02	249	0.50
WILLIAMS	131	0.26	13	0.03	4	0.01	132	0.27	8	0.02	144	0.29
WOOD	323	0.65	38	0.08	77	0.16	240	0.48	44	0.09	361	0.73
WYANDOT	104	0.21	11	0.02	9	0.02	105	0.21	1	0.00	115	0.23
OUT-OF-STATE	5	0.01	0	0.00	1	0.00	4	0.01	0	0.00	5	0.01
<b>TOTAL</b>	<b>45,439</b>	<b>91.77</b>	<b>4,073</b>	<b>8.23</b>	<b>22,368</b>	<b>45.18</b>	<b>25,397</b>	<b>51.29</b>	<b>1,747</b>	<b>3.53</b>	<b>49,512</b>	<b>100.00</b>

Figure 1. Counties With Largest Proportion of Inmates

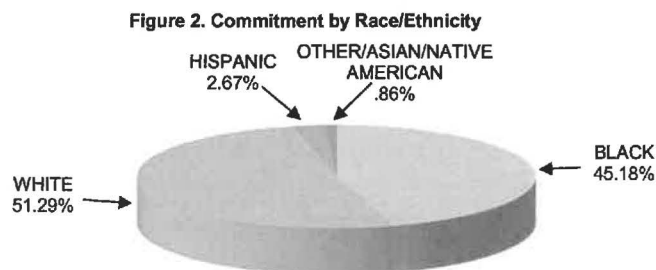


\* 'OTHER' includes Hispanic, Asian, and Native American.

Note: The percentage for each cell is a portion of the entire inmate population. For example, the 0.29% for the 144 males in prison from Adams county is 0.29% of the total 49,512 population.

SOURCE: BUREAU OF RESEARCH AND EVALUATION /COMPILED BY: R. Craig Bennie, Senior Researcher  
/EDITED BY: Steve Van Dine, Senior Researcher

NUMBER OF INCARCERATED OFFENDERS BY RACE/ETHNICITY AND GENDER - JANUARY 2018						
RACE/ETHNICITY OF INCARCERATED OFFENDERS	MALE		FEMALE		GROUP TOTAL	PERCENT OF TOTAL
	N	% of males	N	% of females		
Black	21338	46.96	1030	25.29	22,368	45.18
White	22409	49.32	2988	73.36	25,397	51.29
Hispanic	1,284	2.83	36	0.88	1,320	2.67
White Hispanic	271	0.60	16	0.39	287	0.58
Black Hispanic	46	0.10	1	0.02	47	0.09
Other Hispanic (Race Not Specified)	967	2.13	19	0.47	986	1.99
Native American	76	0.17	5	0.12	81	0.16
Asian	57	0.13	8	0.20	65	0.13
Other	275	0.61	6	0.15	281	0.57
<b>TOTAL</b>	<b>45,439</b>	<b>100.00</b>	<b>4,073</b>	<b>100.00</b>	<b>49,512</b>	<b>100.00</b>



NUMBER OF INCARCERATED OFFENDERS BY AGE AND GENDER - JANUARY 2018						
INMATE AGE	MALE		FEMALE		AGE TOTAL	PERCENT OF TOTAL
	N	% of males	N	% of females		
16	5	0.01	0	0.00	5	0.01
17	26	0.06	1	0.02	27	0.05
18	110	0.24	3	0.07	113	0.23
19	372	0.82	12	0.29	384	0.78
20	650	1.43	52	1.28	702	1.42
21 - 24	4498	9.90	391	9.60	4,889	9.87
25 - 29	7927	17.45	869	21.34	8,796	17.77
30 - 34	7282	16.03	848	20.82	8,130	16.42
35 - 39	6698	14.74	725	17.80	7,423	14.99
40 - 44	4863	10.70	411	10.09	5,274	10.65
45 - 49	4155	9.14	309	7.59	4,464	9.02
50 - 54	3275	7.21	224	5.50	3,499	7.07
55 - 59	2514	5.53	126	3.09	2,640	5.33
60 - 64	1572	3.46	66	1.62	1,638	3.31
65 - 69	820	1.80	21	0.52	841	1.70
70 - 74	425	0.94	7	0.17	432	0.87
75 - 79	166	0.37	5	0.12	171	0.35
80 AND OVER	81	0.18	3	0.07	84	0.17
<b>TOTAL</b>	<b>45,439</b>	<b>100.00</b>	<b>4,073</b>	<b>100.00</b>	<b>49,512</b>	<b>100.00</b>
MEAN	<b>38.12</b>		<b>35.51</b>		<b>37.90</b>	
MEDIAN	<b>36.00</b>		<b>34.00</b>		<b>36.00</b>	
50 AND OVER	8,853	19.48	452	11.10	9,305	18.79
17 AND UNDER	31	0.07	1	0.02	32	0.06
18 AND OVER	45,408	99.93	4,072	99.98	49,480	99.94

SOURCE: BUREAU OF RESEARCH AND EVALUATION /COMPILED BY: R. Craig Bennie, Senior Researcher  
/EDITED BY: Steve Van Dine, Senior Researcher



AGE OF INCARCERATED OFFENDERS BY GENDER AND RACE - JANUARY 2018												
INMATE AGE	MALE		FEMALE		BLACK		WHITE		OTHER		AGE TOTAL	PERCENT OF TOTAL
	N	%	N	%	N	%	N	%	N	%		
16	5	0.01	0	0.00	4	0.02	0	0.00	1	0.06	5	0.01
17	26	0.06	1	0.02	24	0.11	3	0.01	0	0.00	27	0.05
18	110	0.24	3	0.07	87	0.39	23	0.09	3	0.17	113	0.23
19	372	0.82	12	0.29	274	1.22	95	0.37	15	0.86	384	0.78
20	650	1.43	52	1.28	467	2.09	219	0.86	16	0.92	702	1.42
21	852	1.88	71	1.74	590	2.64	302	1.19	31	1.77	923	1.86
22	1086	2.39	92	2.26	709	3.17	423	1.67	46	2.63	1,178	2.38
23	1178	2.59	110	2.70	776	3.47	469	1.85	43	2.46	1,288	2.60
24	1382	3.04	118	2.90	883	3.95	577	2.27	40	2.29	1,500	3.03
25	1504	3.31	156	3.83	931	4.16	678	2.67	51	2.92	1,660	3.35
26	1605	3.53	169	4.15	987	4.41	732	2.88	55	3.15	1,774	3.58
27	1627	3.58	189	4.64	903	4.04	845	3.33	68	3.89	1,816	3.67
28	1639	3.61	189	4.64	910	4.07	850	3.35	68	3.89	1,828	3.69
29	1552	3.42	166	4.08	833	3.72	819	3.22	66	3.78	1,718	3.47
30	1577	3.47	179	4.39	807	3.61	882	3.47	67	3.84	1,756	3.55
31	1459	3.21	172	4.22	678	3.03	899	3.54	54	3.09	1,631	3.29
32	1461	3.22	163	4.00	649	2.90	910	3.58	65	3.72	1,624	3.28
33	1378	3.03	177	4.35	627	2.80	870	3.43	58	3.32	1,555	3.14
34	1407	3.10	157	3.85	626	2.80	873	3.44	65	3.72	1,564	3.16
35	1379	3.03	152	3.73	621	2.78	867	3.41	43	2.46	1,531	3.09
36	1379	3.03	166	4.08	623	2.79	872	3.43	50	2.86	1,545	3.12
37	1365	3.00	129	3.17	586	2.62	846	3.33	62	3.55	1,494	3.02
38	1316	2.90	146	3.58	590	2.64	815	3.21	57	3.26	1,462	2.95
39	1259	2.77	132	3.24	582	2.60	762	3.00	47	2.69	1,391	2.81
40	1149	2.53	96	2.36	543	2.43	647	2.55	55	3.15	1,245	2.51
41	986	2.17	71	1.74	437	1.95	569	2.24	51	2.92	1,057	2.13
42	1004	2.21	82	2.01	453	2.03	594	2.34	39	2.23	1,086	2.19
43	874	1.92	93	2.28	405	1.81	525	2.07	37	2.12	967	1.95
44	850	1.87	69	1.69	377	1.69	511	2.01	31	1.77	919	1.86
45	869	1.91	75	1.84	391	1.75	522	2.06	31	1.77	944	1.91
46	944	2.08	77	1.89	416	1.86	557	2.19	48	2.75	1,021	2.06
47	886	1.95	60	1.47	392	1.75	527	2.08	27	1.55	946	1.91
48	759	1.67	48	1.18	300	1.34	464	1.83	43	2.46	807	1.63
49	697	1.53	49	1.20	311	1.39	416	1.64	19	1.09	746	1.51
50	671	1.48	36	0.88	262	1.17	420	1.65	25	1.43	707	1.43
51	684	1.51	61	1.50	293	1.31	427	1.68	25	1.43	745	1.50
52	656	1.44	36	0.88	277	1.24	401	1.58	14	0.80	692	1.40
53	623	1.37	51	1.25	241	1.08	416	1.64	17	0.97	674	1.36
54	641	1.41	40	0.98	268	1.20	389	1.53	24	1.37	681	1.38
55	574	1.26	30	0.74	240	1.07	337	1.33	27	1.55	604	1.22
56	525	1.16	26	0.64	216	0.97	314	1.24	21	1.20	551	1.11
57	507	1.12	25	0.61	224	1.00	294	1.16	14	0.80	532	1.07
58	463	1.02	31	0.76	199	0.89	279	1.10	16	0.92	494	1.00
59	445	0.98	14	0.34	191	0.85	248	0.98	20	1.14	459	0.93
60	405	0.89	25	0.61	178	0.80	241	0.95	11	0.63	430	0.87
61	367	0.81	18	0.44	158	0.71	214	0.84	13	0.74	385	0.78
62	286	0.63	8	0.20	130	0.58	155	0.61	9	0.52	294	0.59
63	252	0.55	8	0.20	103	0.46	152	0.60	5	0.29	260	0.53
64	262	0.58	7	0.17	116	0.52	144	0.57	9	0.52	269	0.54
65	207	0.46	5	0.12	87	0.39	119	0.47	6	0.34	212	0.43
66	166	0.37	5	0.12	73	0.33	93	0.37	5	0.29	171	0.35
67	157	0.35	5	0.12	58	0.26	101	0.40	3	0.17	162	0.33
68	153	0.34	3	0.07	57	0.25	95	0.37	4	0.23	156	0.32
69	137	0.30	3	0.07	33	0.15	103	0.41	4	0.23	140	0.28
70 AND OVER	672	1.48	15	0.37	172	0.77	492	1.94	23	1.32	687	1.39
TOTAL	45,439	100.00	4,073	100.00	22,368	100.00	25,397	100.00	1,747	100.00	49,512	100.00
MEAN	38.12		35.51		36.17		39.44		37.78		37.90	
MEDIAN	36.00		34.00		34.00		37.00		36.00		36.00	

SOURCE: BUREAU OF RESEARCH AND EVALUATION /COMPILED BY: R. Craig Bennie, Senior Researcher  
/EDITED BY: Steve Van Dine, Senior Researcher

NUMBER OF INCARCERATED SENATE BILL 2 (SB2) OFFENDERS, BY FELONY LEVEL OF MOST SERIOUS CONVICTION OFFENSE, GENDER AND LENGTH OF AGGREGATE SENTENCE, January 2018												
FELONY/SENTENCE CATEGORY	MALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)			FEMALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)			TOTAL*	
	N	%	MIN	AVG	MAX	N	%	MIN	AVG	MAX	N	%
DEATH	64	0.53	N/A	N/A	N/A	1	0.16	N/A	N/A	N/A	65	0.51
LIFE	3395	28.15	N/A	N/A	N/A	203	32.74	N/A	N/A	N/A	3,598	28.38
FIRST	5778	47.91	18.00	196.08	3096.00	228	36.77	36.00	163.08	780.00	6,006	47.37
SECOND	1627	13.49	8.00	137.76	1320.00	92	14.84	24.00	118.25	612.00	1,719	13.56
THIRD	909	7.54	6.00	112.15	528.00	60	9.68	9.00	72.02	300.00	969	7.64
FOURTH	161	1.34	6.00	87.15	695.00	19	3.06	6.00	53.22	126.00	180	1.42
FIFTH	125	1.04	3.00	74.65	300.00	17	2.74	3.00	34.36	95.00	142	1.12
<b>TOTAL SENATE BILL 2</b>	<b>12,059</b>	<b>100.00</b>				<b>620</b>	<b>100.00</b>				<b>12,679</b>	<b>100.00</b>
<b>% OF TOTAL INCARCERATED</b>		<b>24.36</b>					<b>1.25</b>					<b>25.61</b>

\* INCLUDES 'HYBRID' COMMITMENTS WITH BOTH PRE-SB2 AND SB2 OFFENSES AND SENTENCE STRUCTURE. BASED ON AGGREGATE MINIMUM TERMS FOR CASES WITH COMBINED INDETERMINATE SENTENCES.

NUMBER OF INCARCERATED PRE-SB2 OFFENDERS, BY FELONY LEVEL OF MOST SERIOUS CONVICTION OFFENSE, GENDER AND LENGTH OF AGGREGATE SENTENCE,												
FELONY/SENTENCE CATEGORY	MALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)**			FEMALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)**			TOTAL	
	N	%	MIN	AVG	MAX	N	%	MIN	AVG	MAX	N	%
DEATH	62	1.62	N/A	N/A	N/A	0	0.00	N/A	N/A	N/A	62	1.58
LIFE	2168	56.62	N/A	N/A	N/A	80	76.92	N/A	N/A	N/A	2,248	57.16
FIRST	1463	38.21	24.00	209.28	3876.00	22	21.15	60.00	156.32	840.00	1,485	37.76
SECOND	102	2.66	24.00	130.69	504.00	2	1.92	24.00	90.00	156.00	104	2.64
THIRD INDETERMINATE	4	0.10	42.00	145.50	180.00	0	0.00	N/A	N/A	N/A	4	0.10
THIRD DETERMINATE	21	0.55	18.00	149.43	360.00	0	0.00	N/A	N/A	N/A	21	0.53
FOURTH INDETERMINATE	5	0.13	24.00	46.80	90.00	0	0.00	N/A	N/A	N/A	5	0.13
FOURTH DETERMINATE	4	0.10	22.00	90.99	192.00	0	0.00	N/A	N/A	N/A	4	0.10
<b>TOTAL PRE-SB2</b>	<b>3,829</b>	<b>100.00</b>				<b>104</b>	<b>100.00</b>				<b>3,933</b>	<b>100.00</b>
<b>% OF TOTAL INCARCERATED</b>		<b>7.73</b>					<b>0.21</b>					<b>7.94</b>

\*\* FOR INDEFINITE SENTENCE TERMS, THE MINIMUM, AVERAGE AND MAXIMUM VALUES REFER TO THE DISTRIBUTION OF THE AGGREGATE MINIMUM SENTENCE.

NUMBER OF INCARCERATED HB86 OFFENDERS, BY FELONY LEVEL OF MOST SERIOUS CONVICTION OFFENSE, GENDER AND LENGTH OF AGGREGATE SENTENCE,												
FELONY/SENTENCE CATEGORY	MALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)			FEMALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)			TOTAL***	
	N	%	MIN	AVG	MAX	N	%	MIN	AVG	MAX	N	%
DEATH	11	0.04	N/A	N/A	N/A	0	0.00	N/A	N/A	N/A	11	0.03
LIFE	1274	4.31	N/A	N/A	N/A	70	2.09	N/A	N/A	N/A	1,344	4.09
FIRST	6996	23.67	12.00	107.81	1932.00	546	16.30	36.00	83.47	492.00	7,542	22.92
SECOND	8981	30.39	9.00	63.30	672.00	882	26.34	24.00	58.62	780.00	9,863	29.98
THIRD	7850	26.56	2.00	38.74	360.00	1006	30.04	2.00	33.70	216.00	8,856	26.92
FOURTH	2741	9.28	5.00	23.14	276.00	410	12.24	2.00	21.88	104.00	3,151	9.58
FIFTH	1698	5.75	2.00	18.21	192.00	435	12.99	3.00	17.91	120.00	2,133	6.48
<b>TOTAL HB86</b>	<b>29,551</b>	<b>100.00</b>				<b>3,349</b>	<b>100.00</b>				<b>32,900</b>	<b>100.00</b>
<b>% OF TOTAL INCARCERATED</b>		<b>59.68</b>					<b>6.76</b>					<b>66.45</b>

\*\*\* INCLUDES 'HYBRID' COMMITMENTS WITH BOTH PRE-HB86 AND HB86 OFFENSES AND SENTENCE STRUCTURE.

ALL INCARCERATED OFFENDERS BY FELONY LEVEL OF MOST SERIOUS CONVICTION OFFENSE, GENDER AND LENGTH OF AGGREGATE SENTENCE												
FELONY/SENTENCE CATEGORY	MALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)			FEMALE		MINIMUM, AVERAGE AND MAXIMUM SENTENCE TERM (IN MONTHS)			TOTAL	
	N	%	MIN	AVG	MAX	N	%	MIN	AVG	MAX	N	%
LIFE/DEATH	6974	15.35	N/A	N/A	N/A	354	8.69	N/A	N/A	N/A	7,328	14.80
FIRST	14237	31.33	12.00	154.06	3876.00	796	19.54	36.00	108.29	840.00	15,033	30.36
SECOND	10710	23.57	8.00	75.25	1320.00	976	23.96	24.00	64.30	780.00	11,686	23.60
THIRD	8784	19.33	2.00	46.60	528.00	1066	26.17	2.00	35.86	300.00	9,850	19.89
FOURTH	2911	6.41	5.00	26.76	695.00	429	10.53	2.00	23.27	126.00	3,340	6.75
FIFTH	1823	4.01	2.00	22.08	300.00	452	11.10	3.00	18.53	120.00	2,275	4.59
<b>TOTAL POPULATION</b>	<b>45,439</b>	<b>100.00</b>				<b>4,073</b>	<b>100.00</b>				<b>49,512</b>	<b>100.00</b>

JANUARY 2018 NUMBER OF INCARCERATED OFFENDERS BY MOST SERIOUS COMMITMENT OFFENSE Sorted by Gender and Sentencing Code										
MOST SERIOUS OFFENSE*	**	Ohio Revised Code (O.R.C.)	PRE-SB2 MALE	SB2 MALE	HB66 MALE	PRE-SB2 FEMALE	SB2 FEMALE	HB66 FEMALE	DEPT. TOTAL	% OF TOTAL
<b>CRIMES AGAINST PERSONS (EXCLUDING SEX OFFENSES)</b>			2,531	6,636	11,022	88	428	1,021	21,726	43.88
ABDUCTION	V	2905.02	1	16	123	0	0	0	140	.28
ATT ABDUCTION	V		1	1	15	0	0	1	18	.04
AGGRAVATED ARSON	V	2909.02	7	43	163	2	5	29	249	.50
ATT AGGRAVATED ARSON	V		2	1	16	0	1	8	28	.06
AGGRAVATED ASSAULT	V	2903.12	3	4	173	0	0	25	205	.41
AGGRAVATED MENACING	V	2903.21/211	0	0	23	0	0	2	25	.05
AGGRAVATED MURDER	V	2903.01	1228	1147	406	44	87	29	2,941	5.94
ATT AGGRAVATED MURDER	V		69	48	17	0	2	1	137	.28
AGGRAVATED MURDER ORC2	V	2929.03	2	0	0	0	0	0	2	.00
AGGRAVATED RIOT	V	2917.02	0	1	4	0	0	0	5	.01
AGGRAVATED VEHICULAR ASSAULT		2903.08	0	22	171	0	3	39	235	.47
AGGRAVATED VEHICULAR HOMICIDE		2903.06	3	74	211	0	21	53	362	.73
ASSAULT	V	2903.13	0	4	106	0	0	21	131	.26
CHILD ENDANGERMENT	V***	2919.22	1	27	205	1	10	93	337	.68
CHILD STEALING	V	2901.33	1	0	0	0	0	0	1	.00
CONTAMINATING SUBSTANCE FOR HUMAN CONSUMPTION		2927.24	0	0	0	0	1	0	1	.00
DOMESTIC VIOLENCE	V	2919.25	0	16	657	0	0	16	689	1.39
EXTORTION	V	2906.11	0	1	12	0	0	0	13	.03
FAILURE TO PROVIDE FOR IMPAIRED PERSON		2903.16	0	0	1	0	0	1	2	.00
FELONIOUS ASSAULT	V	2903.11	35	568	2279	1	22	153	3,058	6.18
ATT FELONIOUS ASSAULT	V		3	16	270	0	1	27	317	.64
FIRST DEGREE MURDER ORC1	V	2901.01	27	0	0	0	0	0	27	.05
INVOLUNTARY MANSLAUGHTER	V	2903.04	84	534	664	8	63	124	1,477	2.98
KIDNAPPING	V	2905.01	107	326	331	0	10	21	795	1.61
MAKING TERRORISTIC THREATS		2909.23	0	0	2	0	0	0	2	.00
MURDER	V	2903.02	663	1458	543	30	114	35	2,843	5.74
ATT MURDER	V		38	240	170	0	13	7	468	.95
MURDER ORC1	V	2901.05	12	0	0	0	0	0	12	.02
MURDER ORC2	V	2929.04	3	0	0	0	0	0	3	.01
MURDER OF PEACE OFFICER	V	2901.04	4	0	0	0	0	0	4	.01
NONSUPPORT DEPENDENTS		2919.21	0	43	66	0	2	9	120	.24
PATIENT ABUSE OR NEGLECT	V	2903.34	0	0	0	0	1	0	1	.00
PERMIT CHILD ABUSE	V	2903.15	0	0	2	0	1	3	6	.01
TRAFFICKING IN PERSONS	V	2905.32	0	0	18	0	0	6	24	.05
VOLUNTARY MANSLAUGHTER	V	2903.03	30	265	167	1	16	17	496	1.00
ATT VOLUNTARY MANSLAUGHTER	V		2	5	2	0	0	0	9	.02
<b>ROBBERY OFFENSES</b>			205	1,776	4,205	1	55	301	6,543	13.21
AGGRAVATED ROBBERY	V	2911.01	170	1491	2149	1	45	97	3,953	7.98
ATTEMPTED AGGRAVATED ROBBERY	V		6	13	44	0	0	1	64	.13
ARMED ROBBERY ORC1	V	2901.13	8	0	0	0	0	0	8	.02
ROBBERY ('ATTEMPTS' INCLUDED)			21	272	2,012	0	10	203	2,518	5.09
2nd Degree Felony	V	2911.02	20	229	1465	0	9	119	1,842	3.72
3rd Degree Felony	V	2911.02	0	40	509	0	1	76	626	1.26
4th Degree Felony	V***	2911.02	0	3	38	0	0	8	49	.10
UNARMED ROBBERY ORC1	V	2901.12	1	0	0	0	0	0	1	.00
<b>SEX OFFENSES</b>			1,093	3,303	3,291	16	42	82	7,827	15.81
ABDUCTION FOR IMMORAL PURPOSES	V	2901.31	2	0	0	0	0	0	2	.00
COMPEL PROSTITUTION		2907.21	0	3	11	0	0	3	17	.03
DISSEMINATING MATTER HARMFUL TO JUVENILES		2907.31	0	0	3	0	0	0	3	.01
FAILURE NOTIFY CHANGE ADDRESS - SEX OFFENDER		2950.05	0	30	319	0	0	7	356	.72
FAILURE TO REGISTER SEX OFFENSE		2950.04	0	9	40	0	0	1	50	.10
FAILURE TO VERIFY ADDRESS - SEX OFFENDER		2950.06	0	6	75	0	0	1	82	.17
FELONIOUS SEXUAL PENETRATION	V	2907.12	122	2	0	2	0	0	126	.25
ATT FELONIOUS SEXUAL PENETRATION	V		3	0	0	0	0	0	3	.01
GROSS SEXUAL IMPOSITION	V	2907.05	8	231	396	0	3	7	645	1.30
IMPORTUNING		2907.07	0	3	32	0	0	0	35	.07
PANDERING OBSCENITY		2907.32	3	131	347	0	0	8	489	.99
PROMOTING PROSTITUTION		2907.22	0	0	8	0	0	1	9	.02
PUBLIC INDECENCY		2907.09	1	0	3	0	0	0	4	.01
RAPE	V	2907.02	900	2523	1348	14	31	28	4,844	9.78
ATT RAPE	V		49	106	118	0	1	4	278	.56
SEXUAL BATTERY	V	2907.03	4	172	317	0	4	6	503	1.02
ATT SEXUAL BATTERY	V		0	2	6	0	0	0	8	.02
SEX OFFENDER REGISTRATION PENALTIES		2950.99	0	0	4	0	0	0	4	.01
SOLICITING YOUTH /SOLICIT WITH HIV		2907.24	0	0	3	0	0	2	5	.01
UNLAWFUL SEXUAL CONDUCT WITH MINOR		2907.04	1	82	249	0	3	13	348	.70
ATT UNLAWFUL SEXUAL CONDUCT WITH MINOR			0	2	11	0	0	1	14	.03
VOYEURISM		2907.08	0	1	1	0	0	0	2	.00
<b>BURGLARY OFFENSES</b>			180	1,045	4,106	0	38	398	5,767	11.65
AGGRAVATED BURGLARY	V	2911.11	148	530	815	0	11	43	1,547	3.12
ATTEMPTED AGGRAVATED BURGLARY	V		14	19	28	0	0	0	61	.12
BURGLARY ('ATTEMPTS' INCLUDED)			18	496	3,263	0	27	355	4,159	8.40
2nd Degree Felony	V	2911.12	17	358	2080	0	19	193	2,667	5.39
3rd Degree Felony	V	2911.12	1	127	1001	0	7	125	1,261	2.55
4th Degree Felony	V***	2911.12	0	11	174	0	1	37	223	.45
5th Degree Felony		2911.12	0	0	8	0	0	0	8	.02

\* FOR SOME CRIMES AGAINST PERSONS, SEX OFFENSES AND AGGRAVATED BURGLARY, ATTEMPTED OFFENSES ARE REPORTED SEPARATELY. FOR OTHER CRIMES, ATTEMPTED OFFENSES ARE INCLUDED IN THE PRIMARY CATEGORIES.

\*\* 'V' SIGNIFIES A CRIME OF VIOLENCE IN ACCORDANCE WITH O.R.C. 2901.01 (A)(9)(a).

\*\*\* ONLY SOME ARE VIOLENT.

**JANUARY 2018**  
**NUMBER OF INCARCERATED OFFENDERS BY MOST SERIOUS COMMITMENT OFFENSE**

Sorted by Gender and Sentencing Code

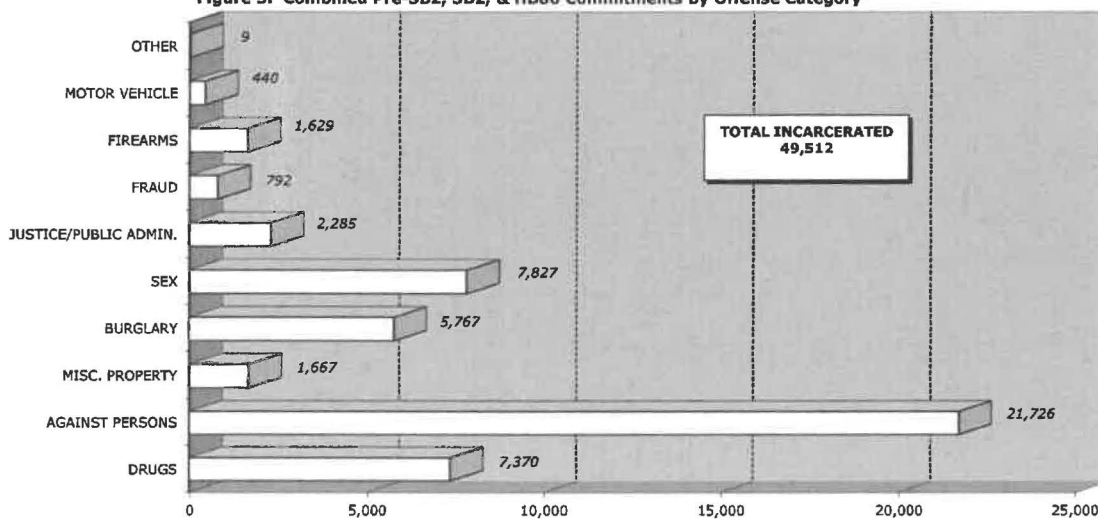
MOST SERIOUS OFFENSE*	**	Ohio Revised Code (O.R.C.)	PRE-SB2 MALE	SB2 MALE	HB86 MALE	PRE-SB2 FEMALE	SB2 FEMALE	HB86 FEMALE	DEPT. TOTAL	% OF TOTAL
<b>PROPERTY OFFENSES</b>										
ARSON	V	2909.03	4	110	1,249	0	23	281	1,667	3.37
BREAKING AND ENTERING		2911.13	1	1	22	0	0	1	25	.06
RECEIVING STOLEN PROPERTY		2913.51	0	16	171	0	0	11	188	.40
SAFECRACKING		2913.51	2	19	323	0	1	48	393	.79
TAMPERING WITH COIN MACHINE		2911.31	0	5	22	0	0	3	30	.06
THEFT (FELONY)		2911.32	0	0	4	0	0	0	4	.01
UNAUTHORIZED USE OF TELECOMM IT PROPERTY		2913.02	1	65	667	0	21	214	968	1.96
UNAUTHORIZED USE OF VEHICLE		2913.04	0	0	1	0	0	1	2	.00
VANDALISM		2913.03	0	0	6	0	0	1	7	.01
VEHICULAR VANDALISM		2909.05	0	4	32	0	1	2	39	.08
		2909.09	0	0	1	0	0	0	1	.00
<b>DRUG OFFENSES</b>										
ABUSING HARMFUL INTOXICANTS		2925.31	7	586	5,697	0	60	1,020	7,370	14.89
CORRUPTION OF ANOTHER WITH DRUGS		2925.02	0	0	1	0	0	2	3	.01
COUNTERFEIT CONTROLLED SUBSTANCE OFFENSE		2925.37	1	6	104	0	0	35	146	.29
DECEPTION TO OBTAIN DRUG		2925.22	0	3	4	0	0	3	10	.02
DRUG LAW PHARMACY VIOLATION		2925.22	0	4	13	0	3	17	37	.07
DRUG POSSESSION		4729.51	0	0	3	0	0	3	6	.01
FUNDING DRUG TRAFFICKING		2925.11	0	200	2060	0	20	408	2,688	5.43
ILLEGAL MANUFACTURE OF DRUGS		2925.05	0	1	2	0	0	4	7	.01
ILLEGAL PROCESSING OF DRUG DOCUMENT		2925.04	0	39	1080	0	6	232	1,357	2.74
PERMIT DRUG ABUSE		2925.23	0	1	3	0	1	3	8	.02
TAMPERING WITH DRUGS		2925.13	0	0	3	0	1	3	7	.01
THEFT OF DRUGS		2925.24	0	0	3	0	0	1	4	.01
TRAFFICKING IN DRUGS		2925.21	1	0	0	0	0	0	1	.00
		2925.03	5	332	2421	0	29	309	3,096	6.25
<b>MOTOR VEHICLE OFFENSES</b>										
DRIVING UNDER LIFETIME SUSPENSION		4510.18	0	20	391	0	0	29	440	.89
FAILURE TO STOP MV AFTER ACCIDENT		4549.02	0	0	1	0	0	0	1	.00
OPERATING VEHICLE UNDER INFLUENCE		4511.19	0	0	13	0	0	3	16	.03
			0	20	377	0	0	26	423	.85
<b>FRAUD OFFENSES</b>										
CRIMINAL SIMULATION		2913.32	8	137	518	0	12	119	792	1.60
DEFRAUD CREDITOR		2913.45	0	0	1	0	0	0	1	.00
ENGAGING IN CRIMINAL ACTIVITY		2923.32	5	119	385	0	9	72	590	1.19
FORGERY		2913.31	1	12	85	0	2	33	133	.27
ILLEGAL USE OF FOOD STAMPS		2913.46	0	0	4	0	0	0	4	.01
MEDICAID FRAUD		2913.40	1	0	0	0	0	1	2	.00
MISUSE OF CREDIT CARD		2913.21	0	0	10	0	0	11	21	.04
MONEY LAUNDERING		1315.55	0	0	5	0	0	0	5	.01
PASSING BAD CHECKS		2913.11	1	3	12	0	0	0	16	.03
SECURE WRITINGS BY DECEPTION		2913.43	0	0	0	0	1	0	1	.00
SECURITIES FRAUD		1707.44	0	3	4	0	0	0	7	.01
TELECOMMUNICATION FRAUD		2913.05	0	0	9	0	0	2	11	.02
<b>FIREARM AND RELATED OFFENSES</b>										
CARRY CONCEALED WEAPON		2923.12	3	71	1,512	0	1	42	1,629	3.29
FIREARMS SPECIFICATION		2941.14	1	3	93	0	0	4	101	.20
HAVING WEAPON WHILE UNDER DISABILITY		2923.13	0	0	12	0	0	0	12	.02
POSSESSION OF CRIMINAL TOOLS		2923.24	2	42	1,125	0	1	17	1,187	2.40
UNLAWFUL POSSESSION /HANDLE /DISCHARGE /OF FIREARM	V***	2923.16/161	0	2	14	0	0	3	19	.04
UNLAWFUL POSSESSION OF ORDNANCE		2923.17	0	23	265	0	0	17	305	.62
			0	1	3	0	0	1	5	.01
<b>OFFENSES AGAINST JUSTICE/PUBLIC ADMINISTRATION</b>										
ARSON REGISTRATION OFFENSE		2909.15	2	147	1,784	0	16	358	2,285	4.62
BRIBERY		2921.02	0	0	1	0	0	0	1	.00
CASINO GAMING OFFENSE		3772.96	0	2	6	0	0	0	8	.02
DISRUPTING PUBLIC SERVICE		2909.04	0	0	2	0	0	0	2	.00
ESCAPE	V	2921.34	0	2	10	0	0	1	13	.03
HARRASSMENT BY INMATE		2921.38	2	55	268	0	1	49	375	.78
ILLEGAL WEAPONS IN CORRECTION FACILITY		2921.38	0	1	11	0	0	8	20	.04
IMPERSONATING OFFICER		2921.51	0	4	178	0	3	82	267	.54
			0	1	2	0	0	0	3	.01

**JANUARY 2018  
NUMBER OF INCARCERATED OFFENDERS BY MOST SERIOUS COMMITMENT OFFENSE**

Sorted by Gender and Sentencing Code

MOST SERIOUS OFFENSE*	**	Ohio Revised Code (O.R.C.)	PRE-SB2 MALE	SB2 MALE	HB86 MALE	PRE-SB2 FEMALE	SB2 FEMALE	HB86 FEMALE	DEPT. TOTAL	% OF TOTAL
<b>OFFENSES AGAINST JUSTICE/PUBLIC ADMINISTRATION - CONT'D</b>										
INCITING TO VIOLENCE	V	2917.01	0	0	0	0	0	1	1	.00
INDUCING PANIC	V	2917.31	0	0	12	0	0	0	12	.02
INTERFERE WITH CUSTODY		2919.23	0	0	1	0	0	0	1	.00
INTIMIDATION	V	2921.03	0	2	17	0	0	2	21	.04
INTIMIDATION OF CRIME VICTIM OR WITNESS	V	2921.04	0	4	22	0	0	5	31	.08
OBSTRUCTING JUSTICE		2921.32	0	1	18	0	1	7	27	.05
OBSTRUCTING OFFICIAL BUSINESS		2921.31	0	0	14	0	0	0	14	.03
OPEN BURNING OR DUMPING		3734.03	0	0	1	0	0	0	1	.00
PARTICIPATING IN CRIMINAL GANG		2923.42	0	5	71	0	0	1	77	.16
PERJURY		2921.11	0	0	1	0	0	2	3	.01
RECOGNIZANCE VIOLATION		2937.29/99	0	4	78	0	0	22	104	.21
RESISTING ARREST /FAILURE TO COMPLY		2921.33/331	0	30	608	0	1	43	682	1.38
RETALIATION		2921.05	0	4	21	0	0	4	29	.08
TAKING IDENTITY OF ANOTHER		2913.49	0	6	30	0	2	26	64	.13
TAMPERING WITH EVIDENCE		2921.12	0	20	290	0	4	88	402	.81
TAMPERING WITH RECORDS		2913.42	0	3	31	0	1	10	45	.09
TELECOMMUNICATIONS HARRASSMENT		2917.21	0	0	3	0	0	0	3	.01
THEFT IN OFFICE		2921.41	0	1	0	0	3	1	5	.01
VIOLATION OF PROTECT ORDER		2919.27	0	1	68	0	0	4	73	.15
VIOLATION OF VENDOR TAX PAYMENT		5739.12	0	1	0	0	0	0	1	.00
<b>OTHER FELONY OFFENSES</b>			1	4	3	0	0	1	9	.02
ABUSE OF CORPSE		2927.01	0	0	0	0	0	1	1	.00
COMPLICITY		2923.03	0	1	0	0	0	0	1	.00
CONSPIRACY		2923.01	1	2	0	0	0	0	3	.01
ILLEGAL HAZARD WASTE DISPOSAL		3734.02	0	0	1	0	0	0	1	.00
ILLEGAL TRANSPORTATION OF SCRAP TIRES		3734.83	0	0	2	0	0	0	2	.00
PROHIBITIONS CONCERNING COMPANION ANIMALS		959.131	0	1	0	0	0	0	1	.00
<b>TOTAL FELONY OFFENSES</b>			<b>3,829</b>	<b>12,059</b>	<b>29,551</b>	<b>104</b>	<b>620</b>	<b>3,349</b>	<b>49,512</b>	<b>100.00</b>

**Figure 3. Combined Pre-SB2, SB2, & HB86 Commitments by Offense Category\***





**COMPARISON OF CENSUS YEARS 2018, 2017, 2016, 2013, & 2009**

<b>CENSUS DATE</b>	<b>1/1/2018</b>	<b>1/1/2017</b>	<b>1/1/2016</b>	<b>1/1/2013</b>	<b>1/1/2009</b>
<b>OHIO COUNTIES WITH THE HIGHEST NUMBER OF COMMITTED INMATES</b>	<b>n=49,512</b>	<b>n=50,362</b>	<b>n=50,515</b>	<b>n=49,820</b>	<b>n=50,655</b>
Cuyahoga	15.04	15.08	15.44	17.48	18.34
Franklin	10.46	10.24	10.42	10.54	9.70
Hamilton	8.57	8.62	8.64	9.82	10.05
Summit	5.34	5.62	5.68	5.53	5.01
Montgomery	4.71	4.81	4.73	5.06	5.55
Lucas	4.09	4.20	3.97	3.90	4.30
All Others	51.78	51.44	51.10	47.68	47.05
<b>TOTAL*</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>
<b>RACE/ETHNICITY OF INCARCERATED OFFENDERS</b>					
Black	45.18	44.43	44.33	46.13	48.08
White	51.29	52.32	52.59	50.60	49.37
Hispanic	2.67	2.52	2.45	2.61	1.86
White Hispanic	0.58	0.72	0.74	1.29	1.51
Black Hispanic	0.09	0.12	0.11	0.15	0.06
Other Hispanic (Race Not Specified)	1.99	1.68	1.60	1.17	0.30
Native American	0.16	0.13	0.12	0.13	0.12
Asian	0.13	0.14	0.15	0.16	0.16
Other	0.57	0.45	0.36	0.37	0.41
<b>TOTAL*</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>
<b>AGE OF INCARCERATED OFFENDERS</b>					
15-19	1.07	0.95	1.10	1.61	2.27
20-24	11.29	12.06	13.33	15.76	16.10
25-29	17.77	18.03	17.86	17.66	18.93
30-34	16.42	16.43	16.25	16.37	15.65
35-39	14.99	14.68	14.00	12.78	13.37
40-44	10.65	10.59	10.88	10.98	11.22
45-49	9.02	8.95	8.96	9.10	9.64
50-54	7.07	7.10	6.98	7.18	6.30
55-59	5.33	5.33	5.20	4.29	3.42
60 And Over	6.39	5.89	5.43	4.28	3.11
<b>TOTAL*</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>
MEAN AGE	<b>37.90</b>	<b>37.63</b>	<b>37.28</b>	<b>36.35</b>	<b>35.50</b>
MEDIAN AGE	<b>36.00</b>	<b>35.00</b>	<b>35.00</b>	<b>34.00</b>	<b>33.00</b>
<b>MOST SERIOUS COMMITMENT OFFENSE TYPE</b>					
Crimes Against Persons (Sex Offenses Not Included)	43.88	42.79	43.03	43.51	41.07
Sex Offenses	15.80	15.70	15.59	14.88	14.64
Drug Offenses	14.89	15.64	15.40	14.25	16.81
Burglary Offenses	11.65	12.09	12.16	12.34	9.85
Against Justice/Public Administration	4.62	4.35	4.15	4.49	5.75
Property Offenses	3.37	3.83	4.23	4.84	5.98
Firearm Offenses	3.29	3.07	3.93	3.96	3.63
Fraud Offenses	1.60	1.69	0.60	0.62	1.05
Motor Vehicle Offenses	0.89	0.81	0.88	1.03	1.15
Miscellaneous	0.02	0.03	0.03	0.07	0.07
<b>TOTAL*</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>

\* There is minor rounding error in some of the calculations

## **Fresh Start Proposal**

### **Giving the 88 Counties Options.**

Over 50 Counties use the State's Adult Parole Authority (APA) to supervise probationers from the Court of Common Pleas. Any reform needs to recognize that Municipal Courts, in some jurisdictions, are not equipped to provide services for an increased case load. Whatever the eventual reform looks like should allow for concurrent jurisdiction between Common Pleas and Municipal/County Court for 2925 crimes and require the APA to supervise offenders in Counties that use their services and prosecute them in the Common Pleas court.

By allowing concurrent jurisdiction, we allow counties like Cuyahoga, Franklin, Hocking, and Montgomery to use the established drug courts and programs that exist, while understanding that other counties either have effective Common Pleas programs or a lack of resources to handle these at the village or city level.

### **Why Ohio's Fresh Start differs from other proposals.**

Ohio's Fresh Start deals with low level trafficking crimes which are also crimes of addiction.

Ohio's Fresh Start increases the ability of Drug Courts, diversion programs, and other alternative dispositions to help those addicted without terminating them from the program.

Ohio's Fresh Start creates an unclassified felony that reduces the collateral consequences to those involved in the system and creates an expedited expungement/sealing process.

Ohio Fresh Start deals with judicial release of individuals serving over 5 years.

Ohio's Fresh Start allows the unclassified felony to be handled in County/Municipal Court or Common Pleas.

Ohio's Fresh Start eliminated driver's license suspensions for these low-level offenders.

Ohio Fresh Start allows for the use of Community Based Correctional Facilities by the court in alternative disposition cases.

Ohio Fresh Start creates an offense to protect children.

Ohio Fresh Start creates an offense to deal with interstate trafficking.

Ohio Fresh Start allows DRC to release offenders to CBCF's in their transitional control period.

### **Proposal**

1. Amend 2925.03
  - (A) Add the words "obtain, possess, ..." over F4 amounts.
  - (B) Add "cause to be transported".
2. Add an affirmative defense to 2925.03 that will allow a Defendant, if they can prove the drugs were for personal use, that the charge shall be amended to 2925.11.
3. Establish possession as a lesser included offense of trafficking.
4. Create an unclassified felony for certain drug trafficking or possession up to a certain quantity.
  - a. Protects public from Fentanyl and GHB;
  - b. Third felony drug conviction within six (6) years makes the unclassified felony a F4.
5. Reduce marihuana under 500 grams to a misdemeanor.
6. Create M1 Endangering Children for using in the presence of juvenile(s) as a guardian/custodian, subsequent convictions a Felony 5.
7. Judicial release at 50% of original sentence over five (5) years, plus mandatory time.
8. At the Court's discretion, cases that the Court deems were caused by drug addiction can be sealed after three years, except F1/F2 crimes of violence and sex offenses.
9. Amend 2929.14 to make F3 Drug Trafficking based on weight a 1-5 year Felony 3





**The Opioid Epidemic: A State and Local Prosecutor Response**

**October 12<sup>th</sup>, 2018**

## **To the Readers:**

On behalf of the National District Attorneys Association (NDAA), I am pleased to present the first national Working Paper from state and local prosecutors on the opioid epidemic. This document is the work product of 33 prosecutors from 30 states over eight months.

As the chair of the Working Group, I am grateful for the many hours of research, writing and conference calls among committee members that culminated in this document. Most of all, I am thankful for the tireless work of NDAA Executive Director Nelson Bunn, who was the glue that brought all these different ideas together from a large group of prosecutors representing the unique diversity of our great nation.

Our recommendations may surprise those who mistakenly see prosecutors as an arm of law enforcement solely concerned with convicting and punishing. One of the top goals for every prosecutor is to ensure safe communities, and that means understanding that we can't arrest our way out of an unprecedented opioid epidemic. Thus, in addition to law enforcement proposals, we have dedicated a large portion of this document to two other areas that are crucial to addressing this crisis: prevention and rehabilitation.

As this document demonstrates, our Working Group recognizes that harm reduction policies will play an important role in any government response to the opioid epidemic.

Although not included in the Working Group recommendations, Syringe Exchange Programs (SEPs) deserve recognition. Once highly controversial, SEPs now exist in 39 states and hundreds of local jurisdictions. These are community-based programs that provide sterile needles and syringes for free, along with the disposal of used needles and syringes. Such programs typically offer educational materials, drug treatment referrals, along with counseling and testing for HIV and Hepatitis C. A majority of our committee preferred deferring to states and local governments on whether SEPs should be used within their communities.

This Working Paper is designed to recommend proposals and best practices for prosecutors, law enforcement and policymakers at the local, state and federal levels. We hope these recommendations will lead to policy changes or, at the very least, spur much-needed conversations about how to address a growing national epidemic that now claims 136 lives per day.

Sincerely,

Dave Aronberg  
State Attorney, Palm Beach County (Florida)

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**Disclaimer: The Opioid Epidemic: A State and Local Prosecutor Response represents the National District Attorneys Association's stance on the issue as a whole and *does not* reflect the policy views of the individual members in the Opioids Working Group.**

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## **I. Summary**

In the United States, more people die from drug overdoses than from car accidents and homicides.<sup>1</sup> Reaching across the nation, this drug epidemic is forcing prosecutors to face challenging questions regarding their role in reducing its fatal consequences. The National District Attorneys Association (NDAA) created an Opioids Working Group to research and propose effective policy for prosecuting and diverting overdose related cases. The NDAA supports further research in this area and proposes the following to help combat these issues.

## **II. Enforcement**

### **A. Expand Drug Courts**

Drug Courts are far more effective than incarceration for reducing crime and promoting recovery. National research finds that 60 to 80 percent of people imprisoned for property or drug crimes will recidivate within two years of release, and up to 95 percent will begin using addictive substances again.<sup>2</sup> A study completed by the National Drug Court Institute over a 15-year period concluded that an effective drug court program teamed with treatment is six times more likely to keep individuals in treatment than voluntary treatment programs.<sup>3</sup>

Moreover, drug courts are cost-effective. National studies show that for every \$1 invested in a drug court, \$3.36 are saved elsewhere in criminal justice costs alone. When factoring in decreased victimization and reduced healthcare utilization, the savings increase to \$27 for every \$1 invested.<sup>4</sup>

NDAA endorses the use of drug courts as an evidence-based solution that saves lives and money while reducing recidivism. NDAA endorses the implementation of evidence-based best practices in the implementation of drug courts, including the Key Components published in the scientific literature made available via the National Drug Court Institute.

### **B. Forge Alliances with Federal Partners**

State prosecutors engaged in the battle against opioid overdose deaths should strongly consider forging strategic alliances with federal partners. Federal drug laws provide a potent tool for the ongoing battle when distribution of an opioid is established as the but-for cause of an overdose death. In November 2017, the Attorney General of the United States ordered each of the 94

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<sup>1</sup> Police Executive Research Forum. *The Unprecedented Opioid Epidemic: as overdoses become a leading cause of death, police, sheriffs, and health agencies must step up their response.* (2017): 5-6.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

United States Attorney's Offices to designate an opioid coordinator to oversee the district's opioid response. Under 18 U.S.C. § 841(a)(1), federal drug laws prohibit, among other things, the manufacture, distribution, or possession with intent to distribute listed drugs, including Fentanyl. In the context of opioid deaths, federal law provides that the defendant, "if death or serious bodily injury results from the use of such substance, shall be sentenced to a term of imprisonment of not less than twenty years or more than life." 18 U.S.C. § 841(b)(1)(C). Equally important, "[i]f any person commits such a violation after a prior conviction for a felony drug offense has become final, such person . . . if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment." *Id.*

Prosecution of drug offenses in the federal system typically enhances cooperation by charged defendants, usually provides better tools for rewarding cooperation, may result in fewer discovery obligations and discovery practice, and often results in quicker resolutions. The easiest way to do this is to form or participate in a federal task force, under which state investigators become federal task force officers.

With regard to tackling the international aspects of the illegal distribution of opioids like Fentanyl, valuable partnerships can be formed with sometimes overlooked federal agencies in the fight against illegal opioids, including Homeland Security Investigations, Customs and Border Patrol, and the United States Postal Inspection Service. These agencies can conduct border searches of questionable packages coming into the country from opioid-origin countries.

Federal agencies can also provide meaningful assistance with complex financial and computer investigations that involve the dark web. J-CODE is the Joint Criminal Opioid Darknet Enforcement team that was established by the Attorney General in January 2018, bringing together DEA, Safe Streets task forces, drug trafficking task forces, Health Care Fraud Special Agents, and other assets, to double the FBI's investment in the fight against online drug trafficking. It dedicates dozens more Special Agents, Intelligence Analysts and professional staff to focus solely on opioid sales online. By partnering and fostering relationships with federal partners, state and local prosecutors can determine the best path forward to seek appropriate penalties for those distributing opioids, while tapping into other federal resources and best practices in an effort to stem the tide of dangerous drugs.

### **C. Address the Obstacle of Smartphone Encryption**

With the advancement of smartphones, drug dealers have moved increasingly from the streets to the digital realm, setting up sales and conducting other illegal business behind a shield of encrypted data. Passcode protected smartphones are often difficult or impossible for law enforcement to access, which means prosecutors cannot retrieve evidence believed to be key to criminal investigations. Because criminals know this to be true, they have been emboldened to continue their illegal enterprises as the public and victims of crime are left to suffer.

Recent decisions by Apple and Google to employ what is referred to as “full-disc encryption” has made retrieving data on their devices completely inaccessible without a passcode, even with a judicially-issued search warrant. As it stands now, the only options available to prosecutors to deal with this problem involve time-consuming and costly workarounds that are not sustainable in the long-term.

Prosecutors will only continue to be hamstrung by this issue unless immediate legislative action is taken by Congress. Our leaders in government must work to enact a national solution that strikes the appropriate balance between privacy and public safety.

The most viable solution is to pass laws that require smartphone providers to comply with decryption orders issued by state and federal courts. Only then will law enforcement be guaranteed to have the much-needed tools to quickly solve cases and prevent crime before it happens.

### **What Lawmakers Can Do:**

- Update the Communications Assistance for Law Enforcement Act (CALEA) of 1994.
  - Currently, CALEA states that no law enforcement agency or officer shall be able to instruct a telecommunications company, such as Apple or Google, on what features, including encryption of data, it is permitted to install on its devices. This has led companies to encrypt the data collected on their devices so even they are unable to access it.
  - This provision should be amended so that upon the order of a Court, the technology company that produced the device in question must provide the requesting Court, agency, or officer of the law with access to the relevant data as it exists as evidence in a criminal proceeding.
- Call on technology companies and other tech experts to answer questions about these policies and to provide information on the specific security and technological concerns.
- Mandate a reasonable response time following a judicially authorized search warrant, with fines for noncompliance that cannot be passed along to the consumer.
- Prohibit the sale of digital devices that cannot be accessed pursuant to court orders.
- Examine financial disincentives for noncompliance, such as revoking or eliminating tax credits and government contracts.

### **What Law Enforcement Can Do:**

- Track cases and generate statistics to help demonstrate the threat posed to the law enforcement community and, consequently, everyday Americans.
- Consider using available software such as “GrayKey” that allows for computer forensic technicians to bypass the encryption of cell phones. “GrayKey” can get around Apple encryption, but time is crucial. If the phone shuts off, it takes much longer to bypass the



encryption and access to data is limited. (Note that the devices can still be wiped clean from remote locations if they are not stored in a Faraday Box.)

- Provide case examples that can be used to show the impact these decisions and policies are having for the safety of your constituents.
- Write op-eds or open letters to your local media.
- Discuss this issue with your elected officials and community leaders.

## **D. Increase the Prosecution of Drug Delivery Cases Resulting in Death**

One shift in many jurisdictions around the country to address the opioid crisis has been to target dealers of opioids and other drugs through what is known as drug delivery in death statutes. Successful prosecutions under these statutes begin by having law enforcement and prosecutors place an emphasis on pursuing these types of cases. The potential of being charged with homicide also provides an added incentive for a dealer to cooperate with law enforcement and provide other actionable intelligence for broader distribution networks.

Law enforcement agencies and prosecutors should treat every overdose death as a homicide and assign homicide detectives to respond to these scenes. These cases should also be included in internal homicide review meetings for the given agency. Of particular importance in the homicide investigation of a fatal overdose is the individual's cell phone. In many instances, a user will engage in a series of calls and/or texts with the drug dealer shortly before death to arrange the purchase of the fatal dose of product. It's important as part of the investigative process to seek the proper legal process to obtain subscriber information that can provide valuable intelligence to pursue a case. Obtaining phone records can take time and are sometimes difficult to pursue, but it can be one of the most critical parts of an investigation and can hold key evidence to successfully pursue a drug delivery in death statute case.

One key partnership that can also prove helpful is with the coroner's office. Coroners may be able to perform a quick verbal assessment of causation based on the evidence at the scene. Many jurisdictions may not do full autopsies when the circumstances and case history support the opioid overdose death. Furthermore, prosecutors can encourage the coroner to establish a partnership with local hospitals so that all overdose results in an admission blood draw are preserved for the coroner in case the victim later dies as a result of the overdose.

Lawmakers should consider legislation that increases penalties for distribution of fentanyl, makes every person in the chain of delivery criminally liable for an overdose death, and requires hospitals to report overdoses to law enforcement. Prosecutors can be assigned to work these cases from investigation through prosecution, potentially through a task force model that could include federal partners. Family members of the victims and support groups can work with local media to educate the public on the benefit of these prosecutions and limit bias against the victim. Prosecutors may also need to develop proposed jury instructions to address any potential victim bias issue.

Although pursuing drug delivery in death statutes may not work for all jurisdictions, it can be a helpful tool in identifying and prosecuting dealers and distributors in an effort to create a deterrent and turn the tide of opioids flowing through communities.

## **E. Clarify the Bona Fide Employee Exception to Federal Anti-Kickback Law**

The federal Anti-Kickback Statute (AKS), 42 U.S.C. § 1320a-7b(b) (2018), was designed to protect patients from being bought and sold like commodities. The buying and selling of per-head patient referrals could not be more antithetical to this goal. Those who wish to buy per-head patient referrals, however, are currently able to do so in plain sight by simply hiring patient brokers as “bona fide employees.”

The “bona fide employee” safe harbor (BFE)<sup>5</sup> is based on the premise that because employers are liable for the acts of their employees, employers will assert appropriate control over the actions of their employees.<sup>6</sup> But in reality, an employer’s control over employees does nothing to prevent the outright buying and selling of per-head patient referrals for the benefit of the employer. The BFE will continue to stand as the largest, inexplicable loophole to the AKS unless the same common-sense standards found in other exceptions<sup>7</sup> are added. These include a requirement that the aggregate compensation paid to the employee over the term of the employment is:

1. **set in advance**,
2. consistent with **fair market value** in arms-length transactions, and
3. not determined in a manner that takes into account the **volume or value** of any referrals or business otherwise generated between the parties.

In other words, marketers of health care services should not be paid commissions or given bonuses based on the volume or value of patients they bring in. The three standards above should equally apply to BFE marketers for the same reasons these standards apply to independent marketers and most of the other financial arrangements found in the safe harbors. Healthcare employers should always be able to pay in-house marketers a reasonable salary, but they should not be allowed to avoid the core purpose of the AKS to simply buy and sell per-head patient referrals from the marketers they employ. The payment standards above would serve to keep the BFE a workable exception to the rule rather than a loophole that defeats its purpose.

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<sup>5</sup> 42 U.S.C. § 1320a-7b(b)(3)(B); 42 C.F.R. § 1001.952(i) (2017).

<sup>6</sup> *Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions*, 56 Fed. Reg. 35,952, 35,981 (July 29, 1991).

<sup>7</sup> 42 C.F.R. §§ 1001.952(a)(Investment interests); (b) (Space rental); (c) (Equipment rental); (d) (Personal services and management contracts); (f) (Referral services); (n) (Practitioner recruitment); (o) (Obstetrical malpractice insurance subsidies); (r) (Ambulatory surgical centers); (v) (Ambulance replenishing); (w) (Health centers); (x) (Electronic prescribing); (y) (Electronic health records); (bb) (Local Transportation).

Adding these standards would also resolve the conflict between state and federal courts over the issue of whether the BFE allows employers to pay unlimited commissions and bonuses to employees for per-head patient referrals. There should be a clear national prohibition on payments for per-head patient referrals no matter how much control the employer has over the employee, since these payment practices impede patient freedom of choice, diminish competition among health care providers, and embody the very essence of utilizing financial incentives to influence provider decision-making regarding referrals.

## **F. Expand Anti-Kickback Laws to Private Treatment**

The federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) only applies to healthcare kickbacks to and from federally-assisted treatment programs. Thus, federal law enforcement agencies only have jurisdiction to investigate and prosecute healthcare kickbacks related to federally-assisted treatment.

But the purpose behind the AKS equally applies to *privately*-funded treatment programs.<sup>8</sup> In fact, the Office of the Inspector General’s commentary acknowledged: “[T]he law does not make increased cost to the government the sole criterion of corruption. ...[K]ickback schemes can freeze competing suppliers from the system, can mask the possibility of government price reductions, can misdirect program funds, and, when proportional, can erect strong temptations to order more drugs and supplies than needed.”<sup>9</sup>

Patients should be protected from the dangers of healthcare kickbacks regardless of whether the treatment is publicly funded or not. After all, when healthcare kickbacks harm private insurance we all lose through higher premiums and an overall higher cost of healthcare. Likewise, all states should adopt anti-kickback laws that apply to private treatment so that local state agencies can have jurisdiction to help combat the fight against patient brokering and protect the millions of patients receiving private treatment.

Senators Marco Rubio (R-FL) and Amy Klobuchar (D-MN) have introduced legislation, S. 3254, in the U.S. Senate to expand the DOJ’s jurisdiction to prosecute patient brokering kickbacks involving private sector interstate commerce. We strongly support this legislation, entitled the Eliminating Kickbacks in Recovery Act, which would allow our federal partners to help stop the flow of cash for those involved in illegal paid referrals.

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<sup>8</sup> See *United States v. Patel*, 778 F. 3d 607, 612 (7th Cir. 2015) (AKS enacted to prevent fraud and “abusive practices resulting from provider decisions that are based on self-interest rather than cost, quality of care or necessity of services.”).

<sup>9</sup> *Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions*, 56 Fed.Reg. 35,952, 35,954 (July 29, 1991).

## **G. Target Marketing Fraud Related to the Opioid Crisis**

Many patient brokers induce patients with free flights and free or reduced rent. For years, many of these brokers (and some of the healthcare lawyers who advise them) have been under the impression that having the patient sign an IOU or promissory note for whatever benefit they offer up front sanitizes the benefit from being a kickback. Giving a free line of credit to someone with little or no credit for expensive airfare or rent can certainly be a kickback or bribe under the most basic sense of these words. This is especially true in the common circumstance where the debt is rarely ever attempted to be collected. This practice should be expressly prohibited by including the phrase “any line of credit” in the federal definition of remuneration in the Anti-Kickback Statute (AKS) under 42 U.S.C. § 1320a-7b(b).

In addition, the federal government can better target marketing fraud by excluding inherently coercive relationships from safe harbor provisions within the AKS. The AKS currently contains an exemption for “personal services and management contracts,” which allows payment made by a principal to an agent as compensation for the services of the agent, as long as seven standards are met. *See* 42 CFR 1001.952(d). Although these standards provide some structure and transparency to the independent contractor relationship, none of these standards prevents inherently coercive relationships such as those between a sober home resident and the owner of the sober home.

Sober home residents pay week to week and can be kicked out at any time. Because of this power over the residents (who are typically from out-of-state with little to no resources), many sober home owners double as “marketers” for a substance abuse treatment center where they refer their residents for treatment. This unique relationship between a patient and a sober home owner is easily abused and has been for years. Thus, the exemption under the AKS for personal services and management contracts should expressly exclude this kind of relationship, which puts patients in an even more vulnerable situation.

## **H. Utilize Law Enforcement Assisted Diversion (LEAD)**

Given the rise in opioid use and overdose deaths, law enforcement should utilize evidence-based criminal justice programs that will reduce the prison population while connecting people to much-needed public health programs.

One such program that has received a lot of attention over the last few years is LEAD – Law Enforcement Assisted Diversion. The program operates with the collaboration of law enforcement, public defenders, prosecutors, social workers and treatment experts. It is designed to provide an alternative to incarceration for those addicted to drugs who cycle in and out of the criminal justice system. In this program, when a law enforcement officer encounters an addict with drugs or committing a minor offense, rather than arrest that person, the officer can refer him

or her to the LEAD program. A case worker can respond to the location or the officer may take the person to the non-profit providing support. An assessment will be done of the individual's needs such as treatment, housing, and overdose prevention education. Whatever the need, the LEAD team is there to offer a solution that avoids jail and enables the person to get his or her life back on track.

The program began in Seattle in 2011, and now operates in over thirty states. It has a proven record of success. A University of Washington report found that participants were 58% less likely than people in the control group to be arrested for another offense.<sup>10</sup>

The framework of a LEAD program includes the following:

- 1) It is guided by harm reduction principles in which participation is voluntary and there is no required abstinence from drugs or alcohol. Service is provided without judgment, and there are no punitive measures if substance use continues.
- 2) LEAD is systems change-oriented because it builds on any existing law enforcement diversion programs and adds a new coordination component among all stakeholder agencies for a completely integrated approach to include a dedicated LEAD prosecutor.
- 3) It will utilize a psycho-social, public health approach – not a punitive approach. By creating a partnership among law enforcement, mental health clinicians and case management providers, the primary focus of LEAD is to meet the clients where they are and focus on meeting their immediate needs such as housing, employment and health.

A primary goal is to reduce overdose deaths and develop pragmatic solutions rather than retributive ones. Through the LEAD program, a local community will contract with one or more service providers to serve as many clients as possible. Offenders will have case managers who will help them get treatment and support services. While the program is not exclusively a prosecution program, the prosecutor's office plays a large role in assisting with intake and supporting the program.

### **III. Prevention**

#### **A. Increase Prescription Drug Take-Backs**

The expanded use of opioids and other prescription medications has created disposal issues throughout the nation. The increased number of prescriptions left in homes and increased quantities of prescriptions due to overprescribing creates a temptation for abuse, as well as a strain on disposal systems. Although the United States Drug Enforcement Administration (DEA)

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<sup>10</sup> University of Washington. *Innovative Law Enforcement Assisted Diversion (LEAD) Program Is Showing Success*. <https://depts.washington.edu/harrtlab/wordpress/wp-content/uploads/2015/04/2015-04-08-LEAD-Press-Release-and-Evaluation-Summary.pdf>.

conducts Prescription Take Back Days twice a year, it's simply not enough to keep up with the volume of unused prescriptions, creating burdens for communities looking to address the opioid crisis. To address the issue, communities need to establish innovative ways to encourage citizens to properly dispose of their prescriptions throughout the year.

One approach, which incorporates a wide range of stakeholders in the community, is being executed in Onondaga County, New York. A partnership between the medical community, law enforcement and the resource recovery agency called Sharps Needles and Drug Disposal (SNADD) was created in 2016, with over 5,000 pounds of collected medications being incinerated to date.

Local prosecutors are in an advantageous position to bring various stakeholders to the table to discuss innovative approaches to address this issue. By thinking outside the box, criminal justice leaders can create new mechanisms to dispose of excess medication as one positive step toward addressing the opioid crisis. The SNADD program has worked in Onondaga County because the organizations involved have been willing to go outside their comfort zones for the betterment of the community.

Collecting unused prescriptions without a proper disposal facility is a hurdle for all communities based on DEA regulations. The Opioids Working Group recommends expanding the number of prescriptions take back days through the DEA, while also looking at innovative ways to collect and dispose of excess medications in communities, including making sure that proper disposal facilities are available and any barriers to disposal are addressed.

## **B. Limit the Number of Days a Doctor Can Prescribe Opioids**

The opioid epidemic is fueled by the economic principles of supply and demand. Typically, someone enters into opioid usage as a result of some medical necessity (i.e. acute injury, chronic pain), and is prescribed an opioid, such as oxycodone or hydrocodone. It is after this initial encounter that the individual too often develops an “addiction” to the opioid and seeks out supplemental pills. The supply component is fueled primarily by refill prescription opioids with few standard guidelines and no limitations. As the demands continue to rise throughout the country, addicts are constantly searching for supplies that are easily accessible. In response to the opioid epidemic, the Center for Disease Control (CDC) in 2016 set forth guidelines for prescribing opioids for chronic pain.<sup>11</sup> (*See* Attachment “A” for CDC’s factsheet on the guidelines). The CDC Guidelines offers primary care providers a set of voluntary, evidence-based recommendations for prescribing opioids to patients 18 years or older in primary care settings.

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<sup>11</sup> <https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm>.

This working group recommends that the CDC’s guidelines or a similar evidence-based guideline be adopted that would be standard around the country. Prosecutors should familiarize themselves with the CDC standards and advocate for their legislatures to adopt them in their respective states. Further, the working group recommends setting a limit of up to a seven-day supply for initial (first-time) opioid prescriptions and between a three and seven-day limit for the subsequent follow up re-fill (with the understanding that certain exceptions would be granted, (i.e. cancer, hospice care).

## **C. Call for a National Database of Prescription Monitoring Programs**

Prescription Drug Monitoring Programs (PDMP) and Prescription Monitoring Programs (PMP) track the prescribing of controlled dangerous substances. These programs are widely utilized to prevent overprescribing, inform clinical practices, and protect patients from overuse of addictive substances. These monitoring programs are widely used to advance both law enforcement objectives and public health objectives. At present, the effort to monitor prescriptions is led by the individual states with no mandate for interstate data sharing.

Because PDMPs and PMPs are enacted at the state-level, each program may have differences from one another. Most require health care providers to check the database before issuing a prescription for certain controlled substances. Methods of use, software integration, rules of interstate cooperation and protocols vary from jurisdiction to jurisdiction.

Because different jurisdictions do not consistently share data, the existing framework does not meet the needs of our interconnected communities. Without a national database of prescription monitoring programs, we fail to take the affirmative steps necessary to adequately make data available to all interested stakeholders.

Some states have already opted into a voluntary national network of data sharing run by the National Boards of Pharmacy. The benefits of joining this network are mutually beneficial for all jurisdictions, but the scope of this effort is limited until there is a complete national network of participants.

In announcing his initiative to stop opioid abuse and reduce drug supply and demand, President Trump prioritized the need to reduce the over-prescription of opioids, emphasizing the need to transition to a nationally interoperable Prescription Drug Monitoring Program network. On March 22, 2018, the National Association of the Boards of Pharmacy echoed the White House’s call for a national PDMP database.

The NDAA supports efforts to implement a national database for interstate data sharing of the prescribing of controlled dangerous substances, including opioids. These programs are highly

effective in individual states, and a national database will close gaps in the existing framework, while simultaneously advancing the underlying goals of these important programs.

#### **D. Expand the Use of Real-Time Overdose Data**

There is no uniform or consistent tracking mechanism to determine where overdoses are occurring, how frequently they are occurring and what potential trends could be emerging from the overdose data. Without accurate and timely data, prosecutors, law enforcement and public health officials are unable to identify appropriate and effective responses in their communities.

To address the lack of real-time data and information sharing related to the opioid crisis, the Washington/Baltimore High Intensity Drug Trafficking Area (HIDTA) developed the Overdose Detection Mapping Application Program (ODMAP), which allows real-time data on overdoses to be compiled and shared across a platform to a variety of stakeholders. In the Baltimore HIDTA's case, it is able to populate data from Washington, DC, Virginia, Maryland and parts of West Virginia. (More information can be found at <http://www.hidta.org/odmap/>)

The NDAA Opioids Working Group recommends replicating and expanding the use of the ODMAP model through the 27 other HIDTAs across the country as a step toward providing the most accurate, real-time data available to all stakeholders addressing the opioid crisis. Particular attention must be paid to the input of the data to ensure its accuracy and timeliness.

### **IV. Treatment**

#### **A. Support Community-Based Medication-Assisted Treatment Programs**

Many jurisdictions have adopted drug courts to address the opioid problem. Drug courts, however, are limited because they are only able to assist defendants with current criminal charges and generally are a one-chance opportunity. A community-based medication-assisted treatment program, such as a Vivitrol (naltrexone) program is more flexible and takes into consideration that there are multiple ways to treat offenders.<sup>12</sup> This program allows for coordination within the judicial system, treating first-time offenders, repeat offenders, and offenders on parole. Community-based Vivitrol programs provide a great alternative for prosecutors as they look to refer potential victims, defendants or witnesses in a particular case. These could be run by local non-profits or other county government entities. In some

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<sup>12</sup> Vivitrol (naltrexone) is one of three Medication Assisted Treatment (MAT) drugs currently available to treat opioid use disorder. The other two are buprenorphine and methadone. Both buprenorphine and methadone contain opioids and are known as partial opioid agonists. However, Vivitrol is an opioid antagonist, meaning it contains no opioid.



jurisdictions, the local prosecutor is able to develop and administer a Vivitrol program, which could have some benefits.<sup>13</sup>

One example is in Athens County, Ohio, where the prosecutor-based Vivitrol program helps identify detox facilities, finds inpatient centers for those with dual-diagnoses or a need for additional stability, support, or local outpatient services. More importantly, a program based out of a prosecutor's office allows for treatment of witnesses, unindicted parties, parents working with child protective services, and the community at large. There are essentially no limitations as to whom the office can assist.<sup>14</sup>

In addition, participants in the prosecutor-based Vivitrol program are treated the same whether they participate voluntarily or by court order. The individual meets with a coordinator to review the program's conditions and expectations. A date is then set for assessment of treatment, blood work, and an initial Vivitrol shot, anticipating that he or she will be able to move forward as planned.

The program coordinator ensures each participant is attending group meetings, individual counseling, and medical appointments. Further, the coordinator works with participants on developing other life skills as necessary, including education and employment.

Some participants have had success in as few as nine months while others have exceeded two years of treatment. The use of Vivitrol is merely the vehicle that helps reduce opioid use while counseling is used to develop the skills to overcome the addiction.

Implementing a prosecutorial-based Vivitrol program relies on building relationships with local treatment providers and program referral sources. Successful drug treatment also often relies on funding from the Affordable Care Act and Medicaid expansion; forfeiture funds can also be used to help establish the program.

The Vivitrol Program should receive referrals through courts, probation services, child protective services, and the public. After successful completion of the program, there is a graduation ceremony where friends and family can recognize the journey and hard work completed.

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<sup>13</sup> When determining a proper governmental office, agency or non-profit organization to administer the program, a prosecutor must first ensure that the legislative framework within the jurisdiction permits the prosecutor to actively participate without creating potential civil liability.

<sup>14</sup> Limiting prospective patients to Vivitrol will reduce the pool of patients who can enter the program. For example, Vivitrol requires that a patient be completely detoxed before first use. Once appropriately initiated, studies have shown both buprenorphine and Vivitrol to be equally safe and effective. *Comparative effectiveness of extended-released naltrexone versus buprenorphine-naloxone for opioid relapse prevention (X:BOT): a multicenter, open-label, randomized controlled trial*, Lee, Nunez, Jr., et. al., National Institute of Drug Abuse (NIDA), November 14, 2017.

We have taken different approaches in dealing with people with substance use disorder and there will be continued debate about what works best. While some local prosecutor offices are able to administer Vivitrol programs from within their own offices, at a minimum, there should be a community-based Vivitrol program to provide an additional opportunity for prosecutors to divert individuals to get the treatment they need. These programs give users, their families, and our communities an excellent opportunity to address these serious problems in a comprehensive, workable manner.

## **B. Use Peer Recovery Specialists**

The use of Certified Peer Recovery Specialists<sup>15</sup> is an essential component to combatting the heroin and opiate epidemic. Certified Peer Recovery Specialists (CPRS) are individuals in long-term substance abuse recovery who have received training to mentor individuals suffering from addiction with the goal of navigating the individual to a path of recovery. The CPRS training focuses on advocacy, ethics, mentoring, and recovery wellness support. Jurisdictions that use Peers have seen successful interventions where addicted individuals, because of the role the Peer plays, seek treatment and escape the constraints of addiction.<sup>16</sup>

Peers are often successful in accomplishing an intervention with an active drug user because of their shared life experiences. The Peer has a natural ability to build trust and develop a rapport with an individual who is actively using opiates because the Peer has previously made the journey from sickness to sobriety. After a successful intervention, the Peer can act as a navigator to assist the patient in accessing appropriate care. Successful Peer-centered interventions break the cycle of addiction to save lives and reduce associated crime in jurisdictions.

Peer Recovery Specialists work in partnership with prosecutors and local law enforcement to serve the community in different ways. One successful way is dispatching a Peer after law enforcement or emergency medical services (EMS) administration of life-saving naloxone. The Peers respond to the emergency department of the treating hospital and meet with the patient who just received a second chance at life. The Peers initiate a conversation with the patient, using their training and common experience, and steers the patient into treatment. This method represents a partnership

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<sup>15</sup> A Certified Peer Recovery Specialist (CPRS) is credentialed after attending a 46-hour course, 500 hours of field work and passing a comprehensive exam for international reciprocity. The CPRS training provides people in long-term recovery with skills and knowledge needed to guide, mentor and support anyone who would like to enter into or sustain long-term recovery from substances. The CPRS is not a clinical practice credential but prepares participants to act as a skilled Peer Recovery Specialist in a wide variety of settings including treatment centers, hospitals, recovery centers, and faith-based organizations. A CPRS does not work independently but rather under the supervision of a community-based recovery center like CARES-NJ, (CARES.NJ.ORG).

<sup>16</sup> In the first six (6) months of utilizing Peers in Morris County, New Jersey, 73% of patients approached by a Peer agreed to meet with a Peer and of that treated number, 42% entered substance abuse treatment and 58% agreed to work with a CPRS on a recovery path.

among law enforcement, hospitals, and a community-based recovery center that provides the CPRS.

Peers can also be deployed directly to police departments and fire departments when individuals suffering from a substance abuse disorder seek assistance at these locations. In these instances, the participating agency will request that a Peer respond to the agency to initiate a recovery plan with the patient. This type of program facilitates medical intervention, access to treatment, and recovery support for those most at need in the community.

Certified Peer Recovery Specialists need to be available to every community in our country. Appropriate funding, through grants and other appropriations, are essential to train and fund Peer response in our communities.

### **C. Address Abuses in the Sober Home Industry by Clarifying the ADA and FHA**

Sober homes (also known as “recovery residences”) are a communal living space where residents usually attend outpatient rehab at a nearby facility. The best of these homes are the ones you never even notice are amongst you. The worst degenerate into flophouses, where unscrupulous landlords exploit people with substance use disorder for money or sex and encourage relapse over recovery.

The Americans with Disabilities Act of 1990 (ADA) requires state and local governments, including Homeowner Associations, to provide “reasonable accommodations” to individuals with disabilities, including recovering addicts who are not currently using drugs. In recent years, the cities of Newport Beach, California, and Boca Raton, Florida had to pay millions of dollars to sober home owners after city ordinances improperly regulated them in violation of the ADA.

Fearful of a similar fate, state and local governments have been reluctant to regulate sober homes, which means no mandatory registrations, certifications, or inspections.

Thus, the well-appointed recovery residence that’s owned by a humanitarian to help individuals recovering from a substance use disorder transition back into society is protected by the ADA. But so is the con artist’s co-ed dorm that stuffs nine individuals into three bedrooms without any standards or supervision, while receiving kickbacks from corrupt treatment providers.

That’s why Congress should urge the U.S. Department of Justice (DOJ) and the U.S. Department of Housing and Urban Development (HUD) to issue a new Joint Statement on the ADA and the Fair Housing Act (FHA) to allow local governments to uphold national standards and best practices in sober homes for the protection of residents in recovery. The DOJ and HUD issued

such a clarification back in November 2016, but their joint statement was weak and ambiguous, and only added to the confusion.

In addition, Congress should pass H.R. 5100, the Recovery Home Certification Act of 2018, sponsored by Rep. Steve Knight (R-CA) and Rep. Anna Eshoo (D-CA), which would establish quality standards for sober homes.

### **D. Promote Aftercare and Follow-Up Services after an Overdose**

Individuals recovering from substance abuse are at the highest risk of relapse for the first three to six months after completing a treatment program.<sup>17</sup> This is often because residential or full-time treatment programs make it difficult to acquire substances and reduce the temptations to use, but once out of the program, availability and temptation return. It is therefore unsurprising that relapse is less likely to occur when individuals receive aftercare, particularly when they receive follow-up contacts from trained counselors, nurses, and/or case managers.

While there are increased costs associated with providing follow-up services, programs that integrate aftercare are substantially more cost effective.<sup>18</sup> Studies have shown that a more effective approach is to provide longer, decelerated care: a recovery over 12 months has proven cheaper and more successful than an unending series of intensive short-term inpatient stays followed by brief, intensive outpatient treatment.<sup>19</sup>

Accordingly, to reduce the likelihood of recidivism and to raise the cost-effectiveness of treatment programs, we recommend treatment programs include 12 months of follow up in which trained personnel contact participants to check on progress, probe for potential relapse, offer advice and encouragement, and recommend further treatment if necessary.<sup>20</sup>

### **E. Amend the ACA to Fix Insurance Abuses that Plague the Treatment Industry**

Today, big money in the drug treatment industry often comes through failure. Together, the Affordable Care Act (ACA) and the Mental Health Parity and Addiction Equity Act of 2008 ensure that drug relapse is always covered as an essential health benefit and cannot be excluded due to a pre-existing condition, and that children remain on their parents' policies

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<sup>17</sup> J.R. McKay, *Is there a case for extended interventions for alcohol and drug use disorders?* 100 ADDICTION 1594 (2005); G.A. Marlatt, *Relapse prevention: Theoretical rationale and overview of the model*, in RELAPSE PREVENTION 3–70 (G.A. Marlatt & J.R. Gordon, Eds., 1985).

<sup>18</sup> S.M. Carey *et al.*, *What works? The 10 key components of Drug Court: Research-based best practices*, 8 *Drug Ct. Rev.* 6 (2012).

<sup>19</sup><https://www.ncbi.nlm.nih.gov/pubmed/20669601/>; [https://www.drugabuse.gov/sites/default/files/podat\\_1.pdf](https://www.drugabuse.gov/sites/default/files/podat_1.pdf)

<sup>20</sup> J.R. McKay, *Continuing care research: What we have learned and where we are going*, 36 *J. Substance Abuse Treatment* 131 (2009).

until age 26. This has provided a financial incentive for rogue providers to keep patients of all ages in a cruel cycle of relapse. Meanwhile, good providers who always seek sobriety grow frustrated as patients are poached away by unethical and ineffective programs with promises of free rent and other illegal gifts.

The ACA should replace its current fee-for-service reimbursement model for private drug rehabilitation to an outcome-based reimbursement model, similar to the current ACA reimbursement model for Medicare services at hospitals. An outcome-based reimbursement model would incentivize recovery rather than relapse; encourage success rather than failure. The best recovery centers would be rewarded while shuttering rogue operators who give false promises and illicit benefits to patients, then siphon precious resources into treating and then encouraging repeated relapses.

Working with insurance companies to reform the current fee-for-service model would improve patient outcomes. Substance use disorder is often a chronic and persistent illness, yet private insurance traditionally pays for unlimited cycles of short-term, acute rehab with only about a 10 percent success rate.<sup>21</sup> Studies have shown that a more effective approach is to provide longer, decelerated care: a recovery over 12 months has proven cheaper and more successful than an unending series of intensive 7- to 21-day inpatient stays followed by intensive outpatient treatment for four to six weeks, all marked by over-testing and overbilling.<sup>22</sup>

## **V. Conclusion**

With the opioid epidemic now responsible for approximately 136 deaths per day,<sup>23</sup> significant action must be taken to address this unprecedented epidemic. The mission of prosecutors is to protect the communities we serve, and therefore implementing the proposed aspects of this document will help us achieve this goal. NDAA takes the position that changes need to be made to the ways in which prosecutors try overdose related cases through a greater focus on prevention and treatment and alterations to existing enforcement policies.

This document provides a roadmap for prosecutors throughout the country and important proposals for local, state and federal policymakers. The NDAA stands ready to assist our partners in all levels and roles of government, today and always.

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<sup>21</sup> <https://www.centeronaddiction.org/addiction-research/reports/addiction-medicine-closing-gap-between-science-and-practice>.

<sup>22</sup> <https://www.ncbi.nlm.nih.gov/m/pubmed/20669601/>; [https://www.drugabuse.gov/sites/default/files/podat\\_1.pdf](https://www.drugabuse.gov/sites/default/files/podat_1.pdf).

<sup>23</sup> <https://opioidinstitute.org/opioid-overdose-statistics/>.



# Ohio State Highway Patrol

## Office of Planning & Finance – Statistical Analysis Unit



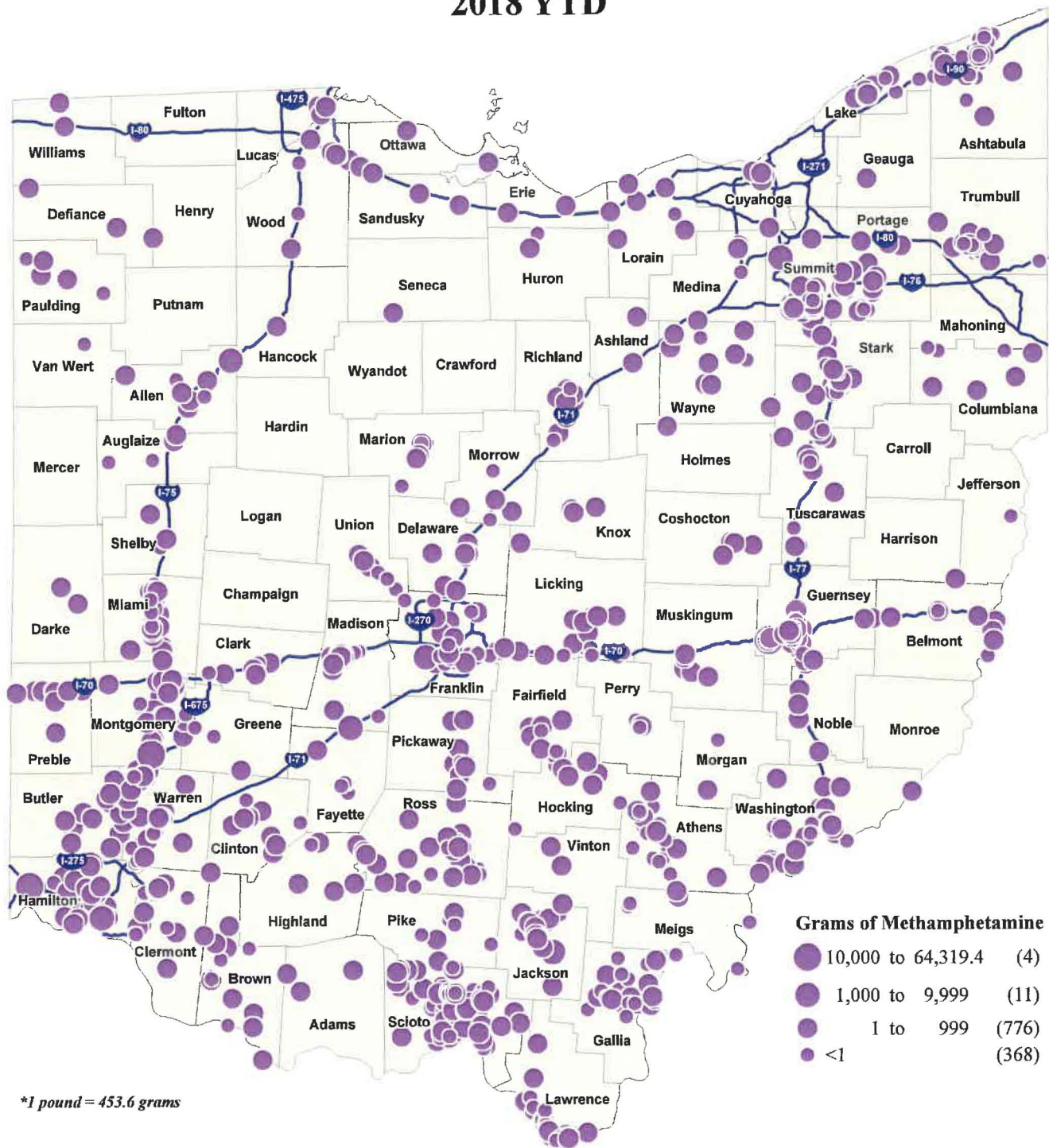
### OSHP Contraband Seizures, 2010 – 2018 YTD

Contraband		2010	2011	2012	2013	2014	2015	2016	2017	2018 YTD	Total
Marijuana		1,993	2,840	6,476	1,966	5,817	2,925	3,616	5,455	4,551	35,641
Methamphetamine		14.8	0.2	7.8	23.8	11.9	7.1	94.0	145.0	457.9	763
Heroin		18	35	77	101	31	41	173	166	264	905
Fentanyl		---	---	---	0.02	0.5	0.2	7.1	72.4	108.9	189
Cocaine		109	568	122	227	56	324	550	262	465	2,682
Crack		5.1	3.8	5.0	4.5	3.8	4.3	5.1	6.5	4.2	42
Prescription Pills	Opiates	28,260	38,089	39,943	54,257	37,930	34,236	64,462	31,122	18,936	347,235
	Stimulants	1,998	1,998	5,820	4,305	4,596	2,491	2,799	3,110	4,438	31,555
	Depressants	7,105	9,199	8,752	9,796	10,312	8,835	13,824	11,117	6,353	85,292
	Hallucinogens	566	1,153	465	3,754	262	199	149	10,069	587	17,202
	Other Pills	4,612	5,747	7,948	3,801	5,040	6,028	6,516	8,311	5,876	53,879
OSHP Drug Violations		5,665	6,164	7,644	9,630	11,156	12,392	13,341	16,663	15,647	98,302
OSHP Weapons Violations		332	362	395	572	494	556	727	970	983	5,391

Sources: OSHP Case Management System; SAU Pill Seizure Database; OSHP Computer-Aided Dispatch (CAD) System; OSHP PremierOne System. Year-to-date through November 25. Contraband data is provisional as of 11/26/2018. All narcotic weights are in **pounds**, except for prescription pills (dosage units). "Marijuana" includes marijuana plants that have been converted to 448 grams based on average domestic plant yields reported by the Drug Enforcement Administration (June 1992). "Opiates" includes Oxycodone/Oxycontin, Hydrocodone, Opana, Vicodin, Percocet, Suboxone, etc.; "Stimulants" includes Pseudoephedrine, Adderall, Amphetamines, etc.; "Depressants" includes Alprazolam, Xanax, Clonazepam, Diazepam, Valium, Carisoprodol, etc.; "Hallucinogens" includes Ecstasy, etc. "Other Pills" includes all other scheduled and non-scheduled prescription as well as over-the-counter pills. Weight conversions and rounding may cause minor discrepancies in the data. Totals for contraband seized reflect only the major drug categories included in this report. There are additional (non-pill) drug types captured in the OSHP Case Management System. Only one drug category per substance is reported in the case management system. Substances may contain drugs from multiple categories. Prior to 2013, fentanyl was not a separate drug category in the case management system.



# Ohio State Highway Patrol Seized Methamphetamine in Grams 2018 YTD



**TROOPER  
SHIELD**  
Strength Character

Data Source: OSHP Case Management System;  
OSHP Computer-Aided Dispatch (CAD) System  
Map Design and Layout: OSHP Statistical Analysis Unit  
Ohio State Highway Patrol  
November 27, 2018



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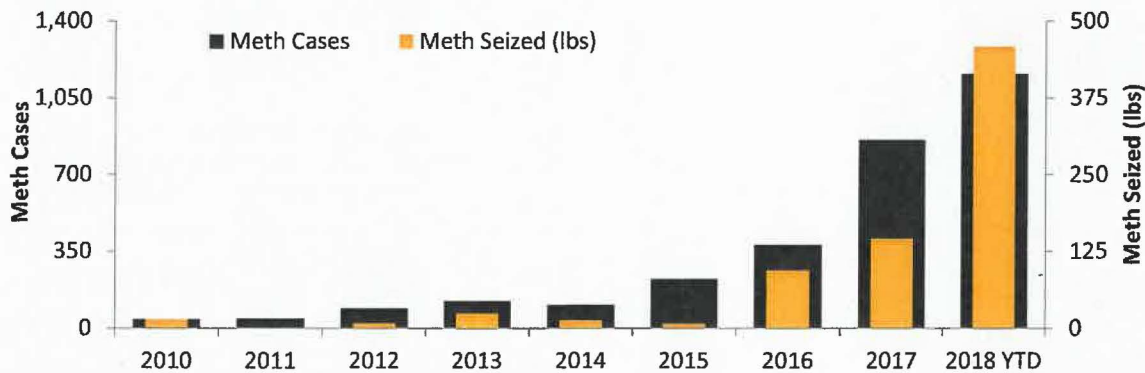
# Ohio State Highway Patrol

## Office of Planning & Finance – Statistical Analysis Unit



### OSHP Methamphetamine Overview

OSHP Methamphetamine Seizures, 2010-2018 YTD



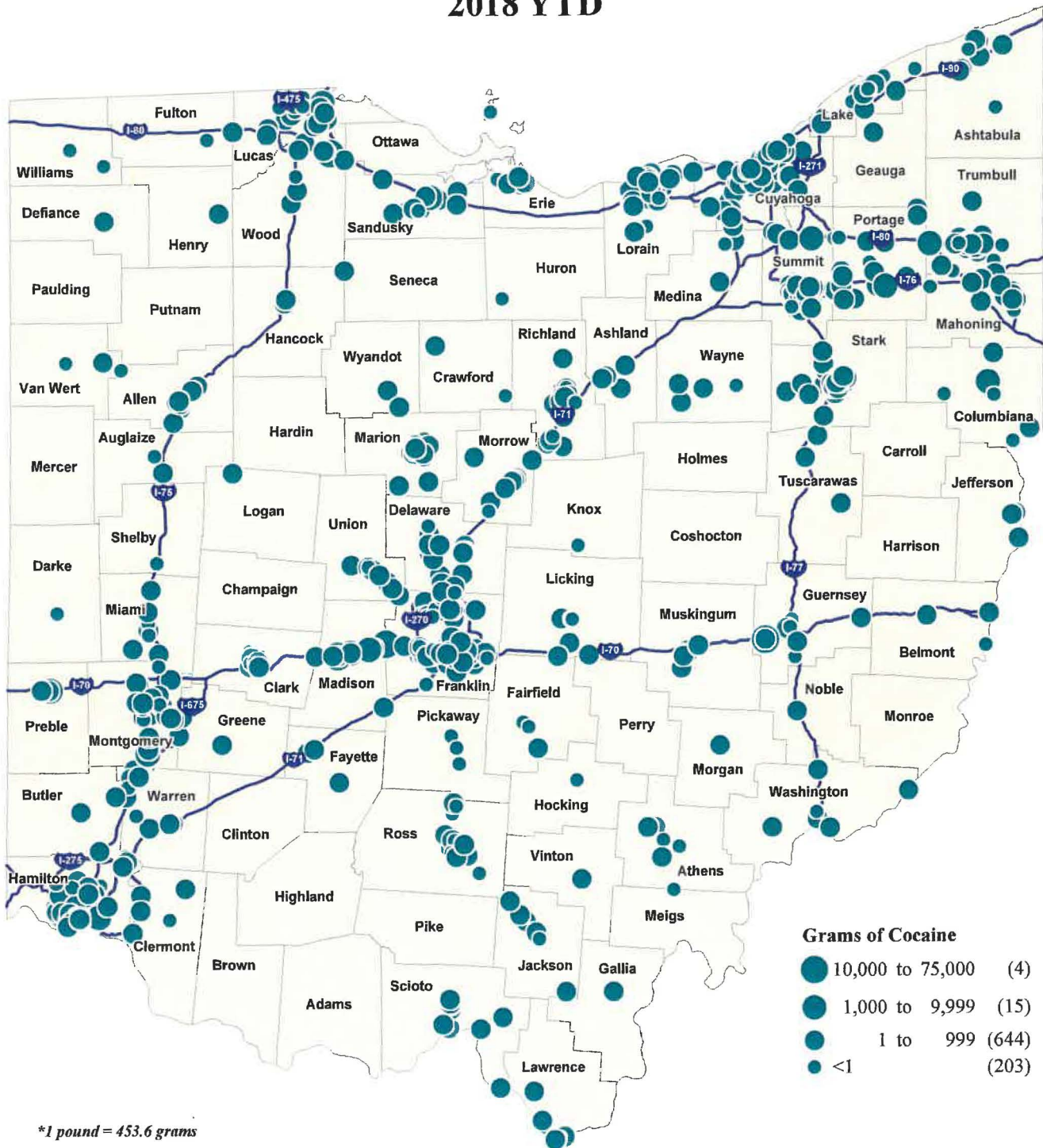
Methamphetamine	2010	2011	2012	2013	2014	2015	2016	2017	2018 YTD
Cases	42	45	91	124	107	225	380	858	1,159
Amount (lbs)	14.8	0.2	7.8	23.8	11.9	7.1	94.0	145.0	457.9

Source: OSHP Case Management System. Year-to-date through November 25. Data is provisional as of 11/26/2018. Rounding may cause minor discrepancies in the data.

- In 2018 YTD, OSHP initiated 1,159 methamphetamine cases. This is a 49% increase from 2017 YTD (780 cases) and a 166% increase from the previous three year-to-date average (2015 YTD – 2017 YTD; avg. 436 methamphetamine cases). The number of methamphetamine cases increased each year since 2014.
- From 2010 to 2018 YTD, OSHP seized 763 pounds of methamphetamine. In 2018 YTD, troopers seized 458 pounds of methamphetamine, a 222% increase from 2017 YTD (142 pounds).
- From 2010 to 2018 YTD, Montgomery (196 pounds) and Hamilton Counties (170 pounds) led the state in amount of methamphetamine seized by OSHP officers (48%; 367 pounds). Scioto (262), Summit (196), and Warren Counties (147) had the highest number of methamphetamine cases during this time.



# Ohio State Highway Patrol Seized Cocaine in Grams 2018 YTD



Data Source: OSHP Case Management System;  
OSHP Computer-Aided Dispatch (CAD) System  
Map Design and Layout: OSHP Statistical Analysis Unit  
Ohio State Highway Patrol  
November 27, 2018





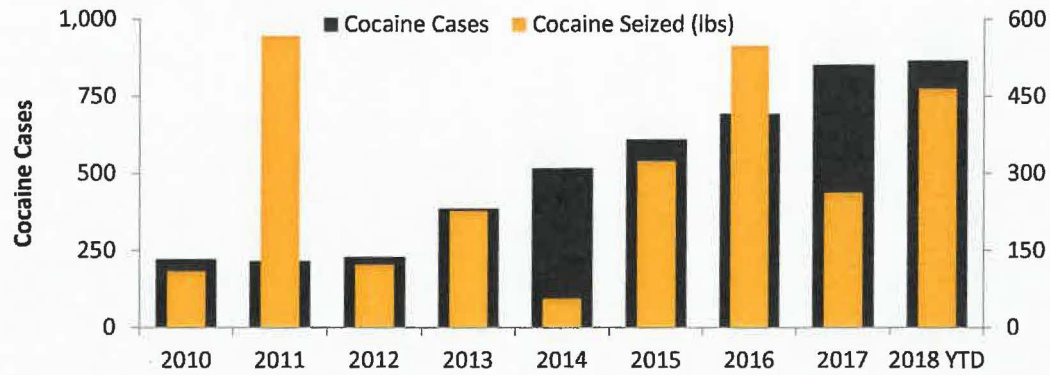
# Ohio State Highway Patrol

## Office of Planning & Finance – Statistical Analysis Unit



### OSHP Cocaine Overview

OSHP Cocaine Seizures, 2010-2018 YTD



Cocaine	2010	2011	2012	2013	2014	2015	2016	2017	2018 YTD
Cases	223	216	230	386	518	611	694	853	866
Amount (lbs)	109	568	122	227	56	324	550	262	465

Source: OSHP Case Management System. Year-to-date through November 25. Data is provisional as of 11/26/2018. Rounding may cause minor discrepancies in the data.

- In 2018 YTD, OSHP initiated 866 cocaine cases. This is a 10% increase from 2017 YTD (785 cases) and a 31% increase from the previous three year-to-date average (2015 YTD – 2017 YTD; avg. 662 cocaine cases). The number of cocaine cases increased each year since 2012.
- From 2010 to 2018 YTD, OSHP seized 2,682 pounds of cocaine. In 2018 YTD, troopers seized 465 pounds of cocaine, an 80% increase from 2017 YTD (258 pounds).
- From 2010 to 2018 YTD, Lucas (557 pounds), Wood (366 pounds) and Cuyahoga Counties (263 pounds) led the state in amount of cocaine seized by OSHP officers (44%; 1,185 pounds). Franklin (428), Cuyahoga (352), and Stark Counties (232) had the highest number of cocaine cases during this time.

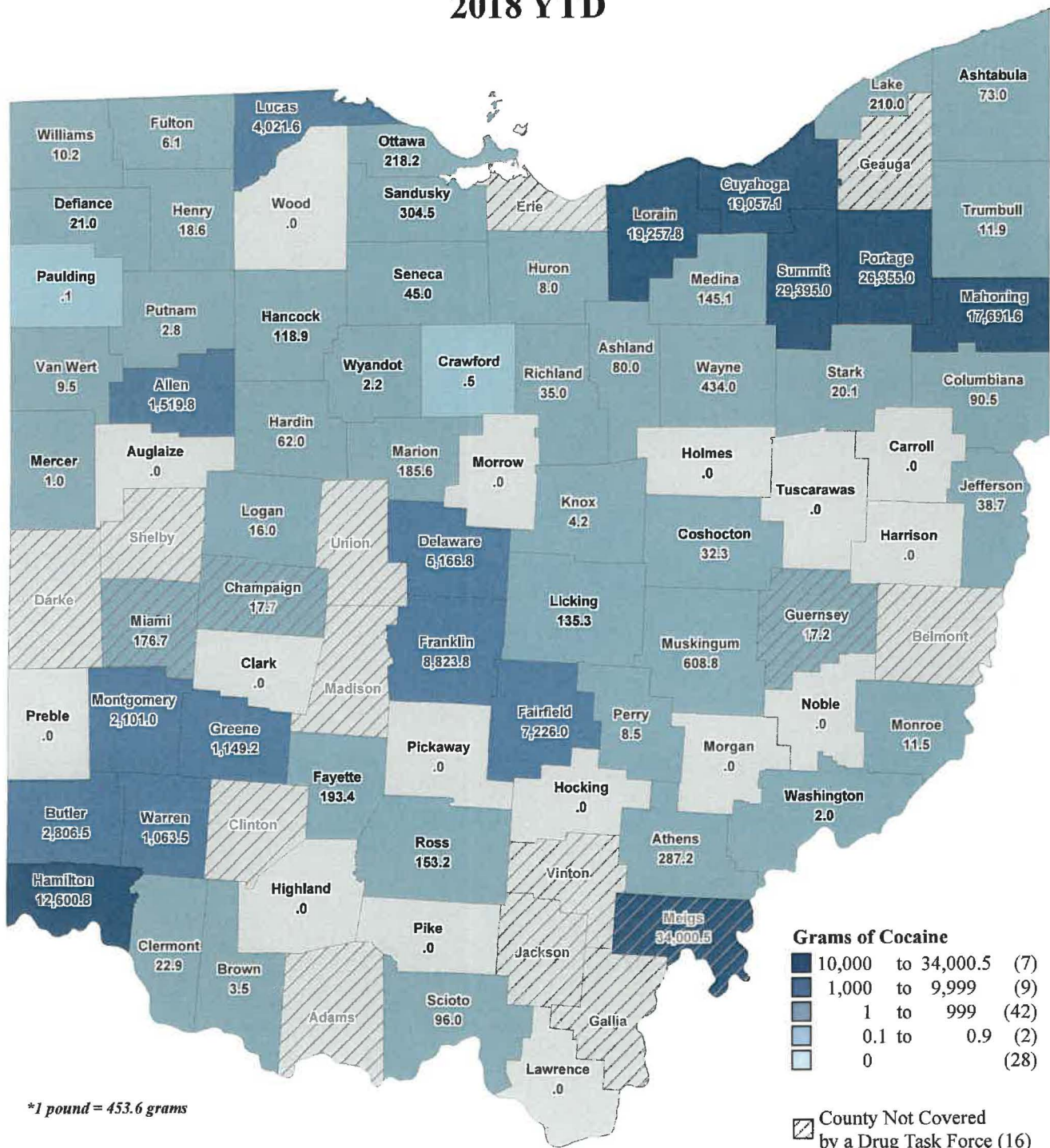
# Ohio Drug Task Force Activity Summary

**January 1, 2018 – November 27, 2018**

<b>New Cases</b>	<b>7,637</b>
<b>Search Warrants</b>	<b>3,013</b>
<b>Federal Indictments</b>	<b>224</b>
<b>Non Federal Indictments</b>	<b>4,619</b>
<b>Total People Indicted</b>	<b>5,589</b>
<b>Total Clan Labs</b>	<b>128</b>
<b>Rx Cases</b>	<b>412</b>
<b>Times Naloxone Administered</b>	<b>537</b>
<b>Naloxone Survival Count</b>	<b>515</b>
<b>Non-Rx Confiscated Drugs</b>	
<b>Cocaine</b>	<b>432 Pounds</b>
<b>Crack</b>	<b>83 Pounds</b>
<b>Ecstasy</b>	<b>29 Pounds</b>
<b>Fentanyl/Mix/Analog</b>	<b>112 Pounds</b>
<b>Heroin</b>	<b>117 Pounds</b>
<b>Marijuana Plants</b>	<b>12,668 Plants</b>
<b>Marijuana</b>	<b>3,419 Pounds</b>
<b>Methamphetamine</b>	<b>941 Pounds</b>

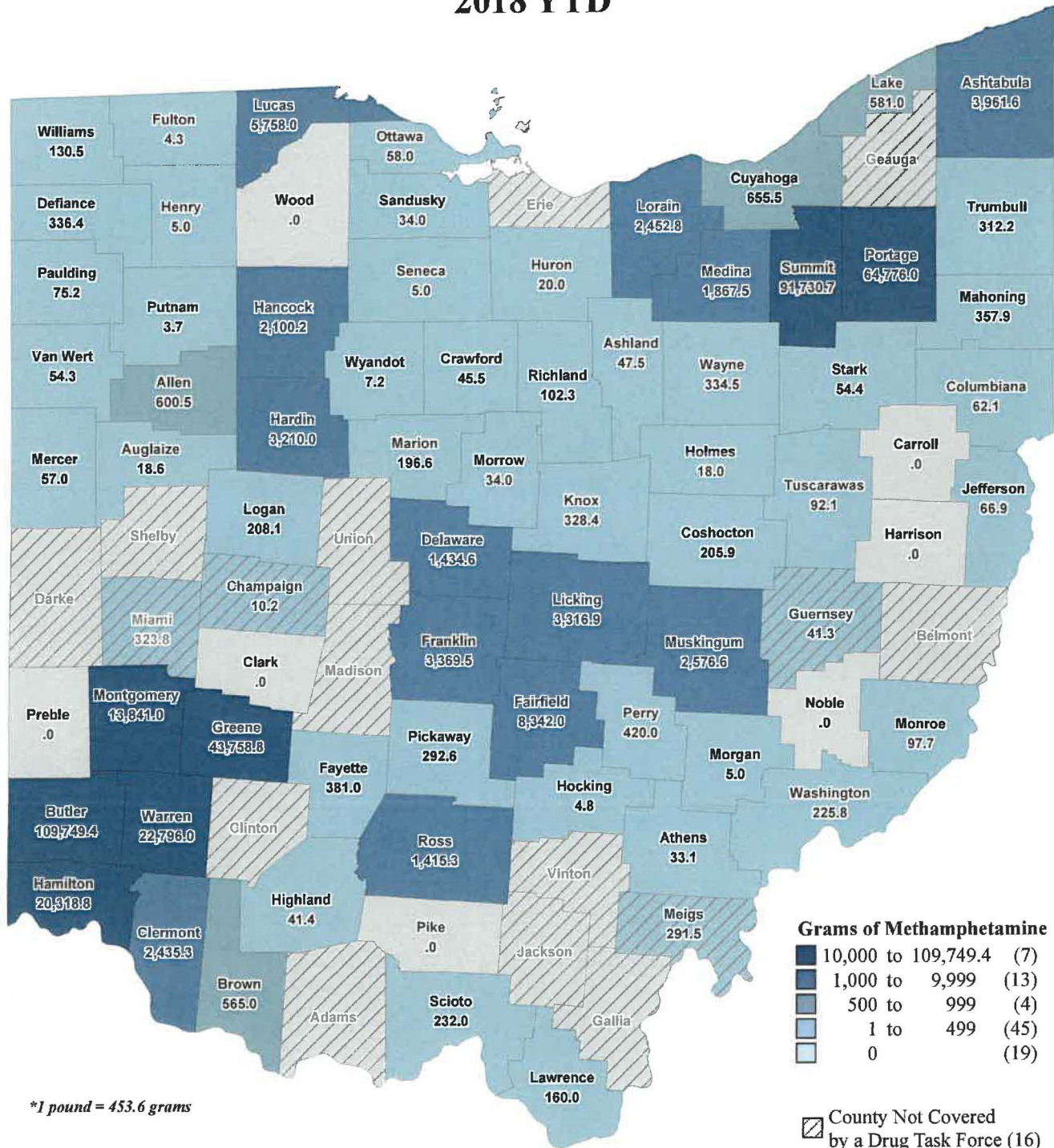


# Ohio Drug Task Forces Seized Cocaine in Grams 2018 YTD





# Ohio Drug Task Forces Seized Methamphetamine in Grams 2018 YTD



\*1 pound = 453.6 grams



Data Source: Ohio Drug Task Forces; EPIC Data  
Map Design and Layout: OSHP Statistical Analysis Unit  
Ohio Department of Public Safety  
November 7, 2018



0 25 50  
Miles



# Office of the Ohio Public Defender

Timothy Young, State Public Defender

## The Numbers:

- 3000 individuals are in Ohio prisons for strictly drug possession<sup>1</sup>
- 14% of prison commitments in 2018 stemmed from drug possession<sup>2</sup>
- Ohioans are imprisoned for drug offenses more than any other type of crime<sup>3</sup>
- 40% of all DRC commitments are felonies of the fourth and fifth degree<sup>4</sup>
- Ohio's prison population is 15<sup>th</sup> highest in nation<sup>5</sup>
- 13 people die in Ohio every day from an overdose<sup>6</sup>

## What Doesn't Work:

- "We're not going to enforce or prosecute or incarcerate our way out of this problem" – Chuck Rosenberg, Acting Administrator of the DEA on August 2, 2017
- 2015 Pew Research Survey found that harsher federal sentencing laws for drug offenses did not lead to reductions in drug use
- 2014 research by Peter Reuter at the University of Maryland and Harold Pollack at the University of Chicago found that heavy police enforcement and extended prison sentences do not effectively stop the flow of drugs and drug use
- Economists at Columbia and the University of Michigan found that the threat of longer prison sentences does not reduce crime
- The National Institute of Justice found that "severity of punishment does little to deter crime"
- Targeting just the supply of drugs is ineffective "because of the demand and the money that can be made, other people will step in." – Leo Beletsky, Drug Policy Expert and Northeastern University Law Professor

## What Works:

- Treating addiction as a public health crisis<sup>7</sup>
- Community based treatment works, incarceration does not<sup>8</sup>
- Treatment is cheaper than incarceration<sup>9</sup>

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<sup>1</sup> Council on State Government's Justice Reinvestment 2.0

<sup>2</sup> Schladen, Marty, *Ohio's Issues 1 Diagnosed A Prison Problem, But Solutions Complicated*, The Columbus Dispatch, December 3, 2018, citing Ohio Department of Rehabilitation and Corrections data

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Hancock, Laura, *Republican Ohio Lawmakers Open to Drug Crime Reform After Issue 1's Failure*, Cleveland.com, December 4, 2018

<sup>6</sup> Id.

<sup>7</sup> Chuck Rosenberg, Acting Administrator of the DEA on August 2, 2017; Gringrich, Newt, Nolan, Pat, *Opioid Deaths are a Health Crisis – Treatment, not Jail, is the Cure*, Fox News, <https://www.foxnews.com/opinion/newt-gingrich-opioid-deaths-are-a-health-crisis-treatment-not-jail-is-the-cure>

<sup>8</sup> *More Imprisonment Does Not Reduce State Drug Problems*, Pew Trusts, March 8, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>; see also McVay, Doug, Schiraldi, Vincent, Ziedenberg, *Treatment or Incarceration*, Justice Policy Institute, January 2004; *Drugs and Crime*, National Council on Alcoholism and Drug Dependence, April 29, 2014, <https://www.ncadd.org/about-addiction/addiction-update/alcohol-drugs-and-crime?highlight=WyJkcVncylslmRydWdzJylslmNyaW1lll0=>

<sup>9</sup> *Drug Rehab Instead of Prison Could Save Billions*, Foundations for Recovery Network, <https://www.dualdiagnosis.org/drug-rehab-instead-of-prison-could-save-billions-says-report-2/>; citing Zarkin, G., Cowell, A., Hicks, K., et.al. *Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders from State Prison*, Sage Journals, August 1, 2015; see also *Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Cost*, RTI International, Newswise, January 9, 2013



## **Substance Use Disorder Primer with focus on stimulants/methamphetamine**

Justin Trevino, MD- OhioMHAS Medical Director

Meeting of the Full Sentencing Commission

December 13, 2018

Rhodes State Office Tower- Room 2925

- Drug use patterns develop due to:
  - Substance availability
  - Perceived dangerousness/safety of substance
- All drugs of abuse work on our endogenous neurotransmitter systems
- All drugs of abuse have effects in our biological reward centers
- Dopamine is the primary neurotransmitter signaling reward
- Drugs of abuse affect neurons at a cellular level- electrical activity of neurons, energy utilization
- Some drugs have more localized brain affect (stimulants), some more widespread (cannabis)
- Over time, all drugs of abuse affect: cognitive functions (memory, problem-solving, planning), motivation, organizational abilities, judgment. The priority becomes obtaining the drug and avoiding negative states (drug withdrawal).
- Substance Use Disorders are Brain Disorders
- Positive reinforcement initially from substance use; as use proceeds lessened positive reinforcement and predominance of negative reinforcement
- Not everyone who uses a substance becomes addicted- genetics has a very significant effect, social environment, early life trauma, mental illness, drug potency
- Substance use disorders have specific diagnostic features:
  - Craving
  - Inability to control use
  - Urge to re-administer
  - Spending large amounts of time procuring the drug, using or recovering from the effects of the drug
  - Continuing to use despite problems related to use
  - Tolerance
  - Withdrawal
- Stimulants- Cocaine and Methamphetamine (Methamphetamine is a more potent, long-acting stimulant), prescription stimulants (methylphenidate- Ritalin), synthetic cathinones ("bath salts")
  - Increase the speed/intensity of physiologic processes (heart rate, blood pressure, alertness, motor activity)- heart attack and stroke are risks of use
  - Euphoria ("high")- rapid onset with a negative state ("crash") as drug effects subside

- Loss of inhibitions
- Physical aggression
- Paranoia/delusions, hallucinations
- Methamphetamine focus
  - Methamphetamine use in U.S.- prevalence data (2008-2014): about 600,000 regular users
  - Users report of route of administration: smoked (about 70%), snorted (about 30%), injected (about 10%), orally ingested (less than 5%)
  - Methamphetamine- related mortality in the U.S. doubled between 2010 and 2014. Mortality is primarily related to cardiovascular effects.
  - Treatment: Psychosocial treatment has proven effectiveness. Medication assisted treatment- may be helpful for some treatment- resistant patients in combination with continued psychosocial treatment.
  - Matrix Intensive Outpatient Treatment- well-studied treatment for stimulant dependent individuals, shown to be clinically and cost-effective. Sixteen-week treatment.
    - Components
      - ✓ Individual counseling/sessions with family present
      - ✓ Recovery skills group
      - ✓ Family education group
      - ✓ Social support group
      - ✓ Relapse prevention group
- Use of multiple substances is often seen in the those who present for treatment in the community
- Alcohol use remains quite prevalent and has significant medical and psychiatric implications, including significant associated mortality.
- Substance use treatment has basic tenets regardless of the substances being used: psychosocial treatment, cognitive and motivational approaches, medication assisted treatment (primarily for opioids, alcohol, and nicotine dependence)