

CODIFIED ORDINANCES OF ROCKY RIVER

PART FIVE

GENERAL OFFENSES CODE

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PART FIVE - GENERAL OFFENSES CODE

CHAPTER 501
General Provisions and Penalty

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CROSS REFERENCES

See sectional histories for similar State law
 Limitation of prosecution for income tax violations - see Ohio R.C. 718.06
 Modification of sentence - see Ohio R.C. 2929.15(C), (D)
 Penalty considerations - see Ohio R.C. 2929.22
 Citation issuance for minor misdemeanors - see Ohio R.C. 2935.26 et seq.

501.01 DEFINITIONS.

As used in the Codified Ordinances:

(A) "Force" means any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.

(B) "Deadly force" means any force that carries a substantial risk that it will proximately result in the death of any person.

(C) "Physical harm to persons" means any injury, illness or other physiological impairment, regardless of its gravity or duration.

(D) "Physical harm to property" means any tangible damage to property which, in any degree, results in loss to its value or interferes with its use or enjoyment

"Physical harm to property" does not include wear and tear occasioned by normal use.

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(E) "Serious physical harm to persons" means any of the following:

- (1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (2) Any physical harm that carries a substantial risk of death;
- (3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (4) Any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement;
- (5) Any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

(F) "Serious physical harm to property" means any physical harm to property that does either of the following:

- (1) Results in substantial loss to the value of the property, or requires a substantial amount of time, effort or money to repair or replace;
- (2) Temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time.

(G) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(H) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(I) "Offense of violence" means any of the following:

- (1) A violation of Sections 509.01, 509.06, 537.03, 537.05, 537.06, 541.02 and 549.02 of this General Offenses Code, and a violation of Ohio R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2907.12, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.16 and 2923.161.

- (2) A violation of an existing or former municipal ordinance or law of this or any other State or the United States, substantially equivalent to any Section listed in Subsection (I)(1) hereof.
- (3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other State or the United States, committed, purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons.
- (4) A conspiracy or attempt to commit, or complicity in committing any offense under Subsection (I)(1), (2) or (3) hereof.
- (J) "Property" means any property, real or personal, tangible or intangible, and any interest or license in such property.
- (K) "Law enforcement officer" means any of the following:
 - (1) A sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal police officer or State highway patrolman.
 - (2) An officer, agent or employee of the State or any of its agencies, instrumentalities or political subdivisions, upon whom, by statute, Charter or ordinance, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of such statutory duty and authority.
 - (3) A mayor in the Mayor's capacity as chief conservator of the peace within his municipality.
 - (4) A member of an auxiliary police force organized by county, township or municipal law enforcement authorities, within the scope of such member's appointment or commission.
 - (5) A person lawfully called pursuant to Ohio R.C. 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when such person is called.
 - (6) A person appointed by a mayor pursuant to Ohio R.C. 737.01 as a special patrolman or officer during riot or emergency, for the purposes and during the time when such person is appointed.
 - (7) A member of the organized militia of this State or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence.

- (8) A prosecuting attorney, assistant prosecuting attorney, secret service officer or municipal prosecutor.
- (9) A member of a police force employed by a regional transit authority under O.R.C. 306.35(Y)

(L) "Privilege" means an immunity, license or right conferred by law, or bestowed by express or implied grant, or arising out of status, position, office or relationship, or growing out of necessity. (ORC 2901.01.) (Ord. 49-97. Passed 3-24-97.)

501.02 CLASSIFICATION OF OFFENSES.

As used in the Codified Ordinances:

- (A) Offenses include misdemeanors of the first, second, third and fourth degree, minor misdemeanors and offenses not specifically classified.
- (B) Regardless of the penalty that may be imposed, any offense specifically classified as a misdemeanor is a misdemeanor.
- (C) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one (1) year may be imposed as a penalty.
- (D) Any offense not specifically classified is a minor misdemeanor if the only penalty which may be imposed is a fine not exceeding One Hundred Dollars (\$100.00). (ORC 2901.02.) (Ord. 50-97. Passed 3-24-97.)

501.03 COMMON LAW OFFENSES ABROGATED.

- (A) No conduct constitutes a criminal offense against the Municipality unless it is defined as an offense in the Codified Ordinances or any other Municipal ordinance.
- (B) An offense is defined when one or more Sections of the Codified Ordinances state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.
- (C) This Section does not affect the power of a Court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment or decree. (ORC 2901.03.)

501.04 RULES OF CONSTRUCTION.

- (A) Sections of the Codified Ordinances defining offenses or penalties shall be strictly construed against the Municipality and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Ohio Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy and sure administration of justice. (ORC 2901.04.)

501.05 CRIMINAL LAW JURISDICTION.

(A) A person is subject to misdemeanor prosecution and punishment in this Municipality if any of the following occur:

- (1) He commits an offense under the laws of this Municipality, any element of which takes place in this Municipality.
- (2) While in this Municipality, he conspires or attempts to commit, or is guilty of complicity in the commission of an offense in another jurisdiction, which offense is an offense under both the laws of this Municipality and such other jurisdiction.
- (3) While out of this Municipality, he conspires or attempts to commit, or is guilty of complicity in the commission of an offense in this Municipality.
- (4) While out of this Municipality, he omits to perform a legal duty imposed by the laws of this Municipality, which omission affects a legitimate interest of the Municipality in protecting, governing or regulating any person, property, thing, transaction or activity in this Municipality.
- (5) While out of this Municipality, he unlawfully takes or retains property and subsequently brings any of such property into this Municipality.
- (6) While out of this Municipality, he unlawfully takes or entices another and subsequently brings such other person into this Municipality.

(B) In homicide, the element referred to in Subsection (a)(1) hereof is either the act which causes death, or the physical contact which causes death, or the death itself. If any part of the body of a homicide victim is found in this Municipality, the death is presumed to have occurred within this Municipality.

(C) This Municipality includes the land and water within its boundaries and the air space above such land and water, with respect to which this Municipality has either exclusive or concurrent legislative jurisdiction. Where the boundary between this Municipality and another jurisdiction is disputed, the disputed territory is conclusively presumed to be within this Municipality for purposes of this Section.

(D) When an offense is committed under the laws of this Municipality, and it appears beyond a reasonable doubt that the offense or any element thereof took place either in this Municipality or in another jurisdiction or jurisdictions, but it cannot reasonably be determined in which it took place, such offense or element is conclusively presumed to have taken place in this Municipality for purposes of this Section.(ORC 2901.11.)

501.06 LIMITATION OF CRIMINAL PROSECUTION.

(A) Except as otherwise provided in this Section, a prosecution shall be barred unless it is commenced within the following periods after an offense is committed:

- (1) For a misdemeanor other than a minor misdemeanor, two (2) years.
- (2) For a minor misdemeanor, six (6) months.

(B) If the period of limitation provided in Subsection (a) hereof has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one (1) year after discovery of the offense either by an aggrieved person, or by his legal representative who is not himself a party to the offense.

(C) If the period of limitation provided in Subsection (a) hereof has expired, prosecution shall be commenced for an offense involving misconduct in office by a public servant as defined in Section 525.01, at any time while the accused remains a public servant, or within two (2) years thereafter.

(D) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.

(E) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation or other process, unless reasonable diligence is exercised to execute the same.

(F) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.

(G) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused absented himself from this Municipality or concealed his identity or whereabouts is prima-facie evidence of his purpose to avoid prosecution.

(H) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this State, even though the indictment information or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal.

(I) This Section shall not apply to prosecutions commenced within the period of limitations set forth in Ohio R.C. 718.06(B) for violations of the Municipal income tax ordinance.

501.07 REQUIREMENTS FOR CRIMINAL LIABILITY.

(A) Except as provided in Subsection (b) hereof, a person is not guilty of an offense unless both of the following apply:

- (1) His liability is based on conduct which includes either a voluntary act, or an omission to perform an act or duty which he is capable of performing.
- (2) He has the requisite degree of culpability for each element as to which a culpable mental state is specified by the Section defining the offense.

(B) When the Section defining an offense does not specify any degree of culpability, and plainly indicates a purpose to impose strict criminal liability for the conduct described in such Section, then culpability is not required for a person to be guilty of the offense. When a Section neither specifies culpability nor plainly indicates a purpose to impose strict liability, recklessness is sufficient culpability to commit the offense.

(C) As used in this Section:

- (1) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have ended his possession.
- (2) Reflexes, convulsions, body movements during unconsciousness or sleep, and body movements that are not otherwise a product of the actor's violation, are involuntary acts.
- (3) "Culpability" means purpose, knowledge, recklessness or negligence, as defined in Section 501.08. (ORC 2901.21.)

501.08 CULPABLE MENTAL STATES.

(A) A person acts purposely when it is his specific intention to cause a certain result, or when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.

(B) A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.

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

(D) A person acts negligently when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that such circumstances may exist.

(E) When the Section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge or purpose is also sufficient culpability for such element. When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element. When knowledge suffices to establish an element of an offense, then purpose is also sufficient culpability for such element. (ORC 2901.22.)

501.09 ATTEMPT.

(A) No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct which, if successful, would constitute or result in the offense.

(B) It is no defense to a charge under this Section that, in retrospect, commission of the offense which was the object of the attempt was impossible under the circumstances.

(C) No person who is convicted of committing a specific offense or of complicity in the commission of such offense, shall be convicted of an attempt to commit the same offense in violation of this Section.

(D) It is an affirmative defense to a charge under this Section that the actor abandoned his effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(E) Whoever violates this Section is guilty of an attempt to commit an offense. An attempt to commit any misdemeanor is a misdemeanor of the next lesser degree than the misdemeanor attempted. In the case of an attempt to commit an offense not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony under the Ohio Revised Code, and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. An attempt to commit a minor misdemeanor is not an offense under this Section.(ORC 2923.02.)

501.10 COMPLICITY.

(A) No person, acting with the kind of culpability required for the commission of an offense, shall do any of the following:

- (1) Solicit or procure another to commit the offense.
- (2) Aid or abet another in committing the offense.
- (3) Cause an innocent or irresponsible person to commit the offense.

(B) It is no defense to a charge under this Section that no person with whom the accused was in complicity has been convicted as a principal offender.

(C) No person shall be convicted of complicity under this Section unless an offense is actually committed, but a person may be convicted of complicity in an attempt to commit an offense in violation of Section 501.09.

(D) No person shall be convicted of complicity under this Section solely upon the testimony of an accomplice, unsupported by other evidence.

(E) It is an affirmative defense to a charge under this Section that, prior to the commission of or attempt to commit the offense, the actor terminated his complicity, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

(F) Whoever violates this Section is guilty of complicity in the commission of an offense, and shall be prosecuted and punished as if he were a principal offender. A charge of complicity may be stated in terms of this Section, or in terms of the principal offense.(ORC 2923.03.)

501.11 ORGANIZATIONAL CRIMINAL LIABILITY.

(A) An organization may be convicted of an offense under any of the following circumstances:

- (1) The offense is a minor misdemeanor committed by an officer, agent or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the Section defining the offense designates the officers, agents or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.
- (2) A purpose to impose organizational liability plainly appears in the Section defining the offense, and the offense is committed by an officer, agent or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the Section defining the offense designates the officers, agents or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, such provisions shall apply.
- (3) The offense consists of an omission to discharge a specific duty imposed by law on the organization.
- (4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated or performed by the board of directors, trustees, partners or by a high managerial officer, agent or employee acting in behalf of the organization and within the scope of his office or employment.

(B) When strict liability is imposed for the commission of an offense, a purpose to impose organizational liability shall be presumed, unless the contrary plainly appears.

(C) In a prosecution of an organization for an offense other than one for which strict liability is imposed, it is a defense that the high managerial officer, agent or employee having supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission. This defense is not available if it plainly appears inconsistent with the purpose of the Section defining the offense.

(D) As used in this Section, "organization" means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated association, estate, trust or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program.(ORC 2901.23.)

501.12 PERSONAL ACCOUNTABILITY FOR ORGANIZATIONAL CONDUCT.

(A) An officer, agent or employee of an organization as defined in Section 501.11 may be prosecuted for an offense committed by such organization, if he acts with the kind of culpability required for the commission of the offense, and any of the following apply:

- (1) In the name of the organization or in its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility.
- (2) He has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged.

(B) When a person is convicted of an offense by reason of this Section, he is subject to the same penalty as if he had acted in his own behalf.(ORC 2901.24.)

501.99 PENALTIES FOR MISDEMEANORS.

(A) Whoever is convicted of or pleads guilty to a misdemeanor shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the Court as provided in this Section:

Classification of Misdemeanor	Maximum Term of Imprisonment	Maximum Fine
First degree	6 months	\$1000.00
Second degree	90 days	750.00
Third degree	60 days	500.00
Fourth degree	30 days	250.00
Minor	No imprisonment	100.00

(ORC 2929.21.)

(B) Regardless of the penalties provided in Subsection (a) hereof, an organization convicted of an offense pursuant to Section 501.11 shall be fined, which fine shall be fixed by the Court as follows:

Type of Misdemeanor	Maximum Fine
First degree	\$5000.00
Second degree	4000.00
Third degree	3000.00
Fourth degree	2000.00
Minor	1000.00
Misdemeanor not specifically classified	2000.00
Minor misdemeanor not specifically classified	1000.00

- (1) When an organization is convicted of an offense not specifically classified, and the Section defining the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then such penalty shall be imposed in lieu of the penalty provided in this Subsection (b).
- (2) When an organization is convicted of an offense not specifically classified, and the penalty provided includes a higher fine than that provided in this Subsection (b), then the penalty imposed shall be pursuant to the penalty provided for violation of the Section defining the offense.
- (3) This Subsection (b) does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to Section 501.11, either in addition to or in lieu of a fine imposed pursuant to this Subsection (b).(ORC 2929.31.)