

CHAPTER 513
Drug Abuse Control

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CROSS REFERENCES

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2925.50, 3719.19
Analysis report and notarized statement as evidence - see
Ohio R.C. 2925.51
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Adulterating food with drug of abuse - see GEN. OFF. 537.13
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513.01 DEFINITIONS.

As used in this Chapter, certain terms are defined as follows:

(A) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion or any other means to a person or an animal.

(B) "Controlled substance" means a drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV or V.

(C) "Dispense" means sell, leave with, give away, dispose of or deliver.

(D) "Distribute" means to deal in, ship, transport or deliver but does not include administering or dispensing a drug.

(E) "Hypodermic" means a hypodermic syringe or needle, or other instrument or device for the subcutaneous injection of medication.

(F) "Manufacturer" means a person who plants, cultivates, harvests, processes, makes, prepares or otherwise engages in any part of the production of a controlled substance by propagation, compounding, conversion or processing, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or re-labeling of its container and other activities incident to production, except that this term does not include a pharmacist who prepares, compounds, packages or labels a controlled substance as an incident to dispensing a controlled substance in accordance with a prescription and in the usual course of professional practice.

(G) "Marihuana" means all parts of any plant of the genus cannabis, whether growing or not, the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Marihuana does not include hashish.

(H) "Noxious additive" means any element or compound designated by the State Board of Pharmacy for use as a safe and effective ingredient in any product containing the ingredient toluene, the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, which will discourage the intentional smelling or inhaling of the fumes of such product. A noxious additive shall not be added to such product if such addition would make the product unsuitable for its intended use or adversely affect the performance of the product. The addition of a noxious additive to such product is not required if the Board determines that the normal chemical composition of the product creates a level of noxiousness that is sufficient to discourage the intentional smelling or inhaling of the product's fumes.

(I) "Official written order" means an order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by Federal law.

(J) "Pharmacist" means a person registered with the State Board of Pharmacy as a compounder and dispenser of drugs.

(K) "Pharmacy" means any area, room, rooms, place of business, department or portion of any of the foregoing, where prescriptions are filled or where drugs, dangerous drugs or poisons are compounded, sold, offered, or displayed for sale, dispensed or distributed to the public.

(L) "Practitioner" means a person who is licensed pursuant to Ohio R.C. Chapter 4715, 4731 or 4741 and authorized by law to write prescriptions for drugs or dangerous drugs.

(M) "Prescription" means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a practitioner in the course of professional practice and in accordance with the regulations promulgated by the Director of the United States Drug Enforcement Administration, pursuant to the Federal drug abuse control laws.

(N) "Sale" includes delivery, barter, exchange, transfer or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

(O) "Schedule I", "Schedule II", "Schedule III", "Schedule IV" and "Schedule V" mean controlled substance Schedules I, II, III, IV, and V respectively, established pursuant to Ohio R.C. 3719.41, as amended pursuant to Ohio R.C. 3719.43 or 3719.44.

(P) "Wholesaler" means a person who, on official written orders other than prescriptions, supplies controlled substances that he himself has not manufactured, produced or prepared and includes "wholesale distributor of dangerous drugs" as this term is defined in Ohio R.C. 4729.02(O).

(Q) "Drug abuse" means any controlled substance as defined in Subsection (B) hereof, any harmful intoxicant as defined in Subsection (X) hereof and any dangerous drug as defined in Subsection (R) hereof. (ORC 3719.011.)

(R) "Dangerous drug" means:

- (1) Any drug which, under the "Federal Food, Drug and Cosmetic Act", Federal narcotic law, Ohio R.C. 3715.01 to 3715.72 or Chapter 3719, may be dispensed only upon a prescription.
- (2) Any drug which contains a Schedule V narcotic drug and which is exempt from Ohio R.C. Chapter 3719 or to which such Chapter does not apply.
- (3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body. (ORC 4729.02(D))

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- (S) "Bulk amount" of a controlled substance means any of the following:
- (1) For any compound, mixture, preparation or substance included in Schedule I or Schedule II, with the exception of marihuana, cocaine, L.S.D., heroin and hashish, whichever of the following is applicable:
 - a. An amount equal to or exceeding ten (10) grams or twenty-five unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I opiate or opium derivative;
 - b. An amount equal to or exceeding ten grams of a compound, mixture, preparation or substance that is or contains any amount of raw or gum opium;
 - c. An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide or a Schedule I stimulant or depressant;
 - d. An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II or Schedule III opiate or opium derivative;
 - e. An amount equal to or exceeding one gram or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of lysergic acid amide or tetrahydrocannabinol;
 - f. An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation or substance that is or contains any amount of phencyclidine;
 - g. An amount equal to or exceeding 120 grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug and Cosmetic Act and the Federal drug abuse control laws, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;
 - h. An amount equal to or exceeding three grams of a compound, mixture, preparation or substance that is or contains any amount of a schedule II

stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug and Cosmetic Act and the Federal drug abuse control laws;

- (2) An amount equal to or exceeding 120 grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;
 - (3) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation or substance that is or contains any amount of a amount of a Schedule V substance;
 - (4) An amount equal to or exceeding 200 solid dosage units, sixteen grams or sixteen milliliters of a compound, mixture, preparation or substance that is or contains any amount of a Schedule III anabolic steroid.
- (ORC 2925.01(d))

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

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

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

- (1) A violation of Sections 513.02 to 513.08 or 513.11 of this Chapter or Ohio R.C. 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.21, 2925.22, 2925.23, 2925.31, 2925.32, or 2925.36.
- (2) A violation of an existing or former law of this or any other State or of the United States, substantially equivalent to any Section listed in Subsection (V)(1) hereof.
- (3) An offense under an existing or former law of this or any other State, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing

another to use, administering to another, using or otherwise dealing with a controlled substance is an element.

- (4) A conspiracy or attempt to commit, or complicity in committing or attempting to commit any offense under Subsection (V)(1), (2) or (3) hereof.

(W) "Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of this State except in violation of Ohio R.C. 2925.11.

(X) "Harmful intoxicant" does not include beer or intoxicating liquor, but means any compound, mixture, preparation or substance the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, and includes without limitation any of the following:

- (1) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, and any other preparation containing a volatile organic solvent.
- (2) Any aerosol propellant.
- (3) Any fluorocarbon refrigerant.
- (4) Any anesthetic gas.

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

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

(AA) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a practitioner, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(BB) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of any of the following reference works:

- (1) "The National Formulary".
- (2) "The United States Pharmacopeia", prepared by authority of the United States Pharmacopeial Convention, Inc.
- (3) Such other standard references as approved by the State Board of Pharmacy. (ORC 2925.01 and 3719.01.).

(CC) "Cocaine" means any of the following:

- (1) A cocaine salt, isomer or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;
 - (2) Coca leaves or a salt, compound, derivative or preparation of coca leaves, including ecgonine, a salt, isomer or derivative of ecgonine, or a salt of any isomer or derivative of ecgonine.
 - (3) A salt, compound, derivative or preparation of a substance identified in paragraph (CC)(1) or (2) hereof that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves if the extractions do not contain cocaine or ecgonine. (ORC 2925.01(X))
- (Ord. 51-97. Passed 3-24-97.)

513.02 GIFT OF MARIHUANA.

(A) No person shall knowingly give or offer to make a gift of twenty (20) grams or less of marihuana.

(B) Whoever violates this Section is guilty of trafficking in marihuana, a minor misdemeanor for the first offense and a misdemeanor of the third degree for any subsequent offense. (ORC 2925.03.)

513.03 DRUG ABUSE; CONTROLLED SUBSTANCE POSSESSION OR USE.

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

(B) This Section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4731 and 4741. This Section does not apply to any person who obtained the controlled substance pursuant to a prescription issued by a practitioner, where the drug is in the original container in which it was dispensed to such person.

(C) Whoever violates subsection (A) hereof is guilty of the following, provided the drug involved is not cocaine or a compound, mixture, preparation or substance containing cocaine and provided the drug involved is not L.S.D. or heroin:

- (1) If the drug involved in the violation is a compound, mixture, preparation or substance included in Schedule III, IV or V, whoever violates subsection (A) hereof is guilty of possession of drugs, a misdemeanor of the third degree, provided the amount of the drug involved does not exceed the bulk amount and provided the offender previously has not been convicted of a drug abuse offense. If the offender previously has been convicted of a drug abuse offense, possession of drugs is a misdemeanor of the second degree. The penalty shall be as provided in Section 698.02. If the drug involved in the violation is an anabolic steroid included in Schedule III and if the offense is a misdemeanor of the third degree under this subsection, the court may, in lieu of sentencing the offender to a term of imprisonment in a detention facility, place the offender on conditional probation pursuant to Ohio R.C. 2925.11(F) or 2951.02(F).
- (2) If the drug involved in the violation is marihuana, whoever violates subsection (A) hereof is guilty of possession of marihuana, a minor misdemeanor, provided the amount of the drug involved is less than 100 grams. If the amount of the drug involved equals or exceeds 100 grams, but does not exceed 200 grams, possession of marihuana is a misdemeanor of the fourth degree. The penalty shall be as provided in Section 698.02.
- (3) If the drug involved in the violation is hashish, whoever violates subsection (A) hereof is guilty of possession of hashish, a minor misdemeanor, provided the amount of the drug involved is less than five grams in a solid form or less than two grams in a liquid concentrate, liquid extract or liquid distillate form. If the amount of the drug involved equals or exceeds five grams, but does not exceed ten grams, of hashish in a solid form, or equals or exceeds one gram, but does not exceed two grams, of hashish in a liquid concentrate, liquid extract or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree. The penalty shall be as provided in Section 698.02.

(D) Arrest or conviction for a minor misdemeanor violation of this Section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license or other right or privilege, or made in connection with the person's appearance as a witness. (ORC 2925.11.)
(Ord. 52-97. Passed 3-24-97.)

513.04 POSSESSING DRUG ABUSE INSTRUMENTS.

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

(B) This Section does not apply to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct was in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4731 or 4741 or Ohio R.C. 4723.56.

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

(ORC 2925.12.) (Ord. 53-97. Passed 3-10-97.)

513.05 PERMITTING DRUG ABUSE.

(A) No person, being the owner, operator or person in charge of a locomotive, watercraft, aircraft or other vehicles as defined in Ohio R.C. 4501.01(A), shall knowingly permit such vehicle to be used for commission of a felony drug abuse offense.

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

(C) Whoever violates this Section is guilty of permitting drug abuse, a misdemeanor of the first degree, provided the felony drug abuse offense in question is not a violation of Ohio R.C. 2925.02 or 2925.03 that was committed in the vicinity of a school or in the vicinity of a juvenile.

(D) Vehicles used in violation of Subsection (A) hereof shall be seized and forfeited to the Municipality, upon motion to the Common Pleas Court. Forfeiture shall not apply to common carriers or innocent owners, nor shall they affect the rights of a holder of a valid lien. (ORC 2925.13.) (Ord. 54-97. Passed 3-24-97.)

513.06 DECEPTION TO OBTAIN DANGEROUS DRUGS.

This Section repealed by Ordinance No. 87-92 passed 9-28-92.

513.07 POSSESSING OR USING 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 misdemeanor of the fourth degree. If the offender has previously been convicted of a drug abuse offense, abusing harmful intoxicants is a misdemeanor of the first degree. (ORC 2925.31.)

513.08 ILLEGALLY DISPENSING DRUG SAMPLES.

(A) No person shall knowingly furnish another a sample drug.

(B) Subsection (A) hereof does not apply to manufacturers, wholesalers, practitioners, pharmacists, owners of pharmacies and other persons whose conduct is in accordance with Ohio R.C. Chapters 3719, 4715, 4729, 4731 and 4741.

(C) Whoever violates this Section is guilty of illegal dispensing of drug samples, a misdemeanor of the second degree, provided the drug involved in the offense is a dangerous drug or a compound, mixture, preparation or substance included in Schedule III, IV or V, or is marihuana, and provided the offense was not committed in the vicinity of a school or in the vicinity of a juvenile. If the drug involved in the offense is a dangerous drug or a compound mixture, preparation or substance included in Schedule III, IV or V, or is marihuana, and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, illegal dispensing of drug samples is a misdemeanor of the first degree. The penalty shall be as provided in Section 2925.36. (Ord. 55-97. Passed 3-24-97.)

513.09 CONTROLLED SUBSTANCE OR PRESCRIPTION LABELS.

(A) No person shall alter, deface or remove any label affixed by a manufacturer, wholesaler, pharmacist or practitioner who dispenses a controlled substance in a package or container, as long as any of the original contents remain, except when lawfully filling a prescription.(ORC 3719.08.)

(B) Whoever violates this Section is guilty of a misdemeanor of the first degree, if the offender has not previously been convicted of a violation of this Section, Ohio R.C. 3719.07 or 3719.08 or a drug abuse offense.(ORC 3719.99(C).)

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513.10 HYPODERMIC POSSESSION, DISPLAY AND DISPENSING.

(A) Possession of a hypodermic is authorized for:

- (1) Any manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, and any authorized agent or employee of such manufacturer, distributor or dealer, in the regular course of business.
- (2) A hospital, owner of a pharmacy or pharmacist in the regular course of business.
- (3) Any practitioner, nurse or other person authorized to administer injections, in the regular course of his profession or employment.
- (4) Any person, when the hypodermic in his possession was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed by a practitioner for the treatment of disease.
- (5) Any person whose use of a hypodermic is for legal research, clinical or medicinal purposes.
- (6) Any farmer, for the lawful administration of a drug to an animal.
- (7) Any person whose use of a hypodermic is for lawful professional, mechanical, trade or craft purposes.

(B) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no owner of a pharmacy, or pharmacist, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to Subsection (a) hereof shall negligently fail to take reasonable precautions to prevent any hypodermic in his possession from theft or acquisition by any unauthorized person, or negligently discard a hypodermic without first having rendered it completely unusable for its original purpose.

(C) A pharmacist or person under the direct supervision of a pharmacist may furnish hypodermics to another without a prescription by a practitioner, but the pharmacist or person under his supervision shall require positive identification of each person to whom hypodermics are furnished, and shall keep a written record of each transaction, including the date, the type and quantity of the articles furnished, and the name, address and signature of the person to whom such articles are furnished. Such record shall be retained in the same manner as the exempt narcotics register. No pharmacist or person under his supervision shall fail to comply with this Subsection (c) in furnishing hypodermics.
(ORC 3719.172.)

(D) Whoever violates this Section is guilty of a misdemeanor of the third degree. If the offender has previously been convicted of a violation of this Section, Ohio R.C. 3719.05, 3719.06, 3719.13, 3719.172(B) or (E), or 3719.31 or a drug abuse offense, a violation is a misdemeanor of the first degree. (ORC 3719.99(D).)

513.11 TRAFFICKING IN HARMFUL INTOXICANTS.

(A) No person shall knowingly dispense or distribute any harmful intoxicant except gasoline to any person under eighteen (18) years of age, if the person who dispenses or distributes it knows or has reason to believe that the harmful intoxicant will be used in violation of Section 513.07, unless a written order from the parent or guardian is provided to the dispenser or distributor. Six (6) months after the State Board of Pharmacy has designated the noxious additive that is to be included in any product containing toluene, the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, no person shall dispense or distribute a product that is required to include a noxious additive unless such product includes the noxious additive in the amounts and proportions prescribed by the Board.

(B) Any product that is required by Subsection (a) hereof to include a noxious additive shall have such contents clearly stated on the label.

(C) The prohibitions of this Section shall not apply after a prescribed noxious additive has been added to the harmful intoxicant or upon determination by the Board that addition of a noxious additive is not required.

(D) Whoever violates this Section is guilty of trafficking in harmful intoxicants, a misdemeanor of the fourth degree. If the offender has previously been convicted of a drug abuse offense, trafficking in harmful intoxicants is a misdemeanor of the third degree.

(E) This Section does not apply to products used in making, fabricating, assembling, transporting or constructing a product or structure by manual labor or machinery for sale or lease to another person, or to the mining, refining or processing of natural deposits.(ORC 2925.32.)

513.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for penalties applicable to any misdemeanor classification.)

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