

**CONSENT AGREEMENT  
BETWEEN  
ROBERT T. PORTNOW, D.P.M.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

This CONSENT AGREEMENT is entered into by and between ROBERT T. PORTNOW, D.P.M. and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

ROBERT T. PORTNOW, D.P.M. enters into this Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B) Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violations of Sections 4731.22(B)(10) and 4731.22(B)(26) of the Ohio Revised Code.
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the Notice of Immediate Suspension and Opportunity for Hearing dated March 9, 1994, a copy of which is attached hereto and incorporated herein, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.
- C. ROBERT T. PORTNOW, D.P.M. is licensed to practice podiatric medicine and surgery in the State of Ohio.
- D. ROBERT T. PORTNOW, D.P.M. ADMITS that he has a two (2) year history of chemical dependency. DOCTOR PORTNOW's chemical dependency included self-administering narcotic sample medications and writing false prescriptions to obtain

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ROBERT T. PORTNOW, D.P.M.  
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narcotic pain medications, including Vicodin and Lorcet. Further, DOCTOR PORTNOW abused cocaine, Valium and alcohol.

- E. Further, ROBERT T. PORTNOW, D.P.M., ADMITS that he completed inpatient treatment for that chemical dependency in April of 1993 at Laurelwood Hospital, a treatment provider approved by THE STATE MEDICAL BOARD OF OHIO.
- F. Further, ROBERT T. PORTNOW, D.P.M., ADMITS that on or about November 18, 1993, in the Cuyahoga County Court of Common Pleas he pleaded guilty to one felony count of Drug Abuse in violation of Section 2925.11, Ohio Revised Code, nine felony counts of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code, and one felony count of Theft in violation of Section 2913.02, Ohio Revised Code, and was subsequently granted Treatment in Lieu of Conviction on or about December 16, 1993, pursuant to Section 2951.041, Ohio Revised Code.
- G. Further, ROBERT T. PORTNOW, D.P.M. ADMITS that the acts, conduct, and/or omissions underlying the judicial finding of Treatment in Lieu of Conviction as mentioned in paragraph (F.) above constitute commission of acts "that constitute a felony in this State" as that clause is used in Section 4731.22(B)(10) of the Ohio Revised Code and "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as that clause is used in Section 4731.22(B)(26) of the Ohio Revised Code.
- H. Further, ROBERT T. PORTNOW, D.P.M. has been in compliance with his court ordered period of rehabilitation including aftercare.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, ROBERT T. PORTNOW, D.P.M. knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following probationary terms, conditions and limitations:

1. The suspension of DOCTOR PORTNOW'S certificate to practice podiatric medicine and surgery in the State of Ohio pursuant to Section 3719.121 of the Ohio Revised Code is terminated

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ROBERT T. PORTNOW, D.P.M.  
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effective upon ratification of this CONSENT AGREEMENT by the BOARD;

2. DOCTOR PORTNOW shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
3. DOCTOR PORTNOW shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this CONSENT AGREEMENT;
4. DOCTOR PORTNOW shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD;
5. In the event that DOCTOR PORTNOW should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR PORTNOW must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed;
6. In the event DOCTOR PORTNOW is found by the Secretary of the Board to have failed to comply with any provision of this agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under the CONSENT AGREEMENT;
7. DOCTOR PORTNOW shall immediately surrender his United States Drug Enforcement Administration Certificate. He shall be ineligible to hold, and shall not apply for, registration with the D.E.A. to prescribe, dispense or administer controlled substances without prior BOARD approval;
8. DOCTOR PORTNOW shall not prescribe, administer, dispense, order, write orders for, give verbal orders for, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by State or Federal law;

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ROBERT T. PORTNOW, D.P.M.

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9. DOCTOR PORTNOW shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of DOCTOR PORTNOW's history of chemical dependency;
10. DOCTOR PORTNOW shall abstain completely from the use of alcohol;
11. DOCTOR PORTNOW shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the BOARD. DOCTOR PORTNOW shall ensure that all screening reports are forwarded directly to the BOARD on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board;

Within thirty (30) days of the effective date of this Agreement, DOCTOR PORTNOW shall submit to the BOARD for its prior approval the name of a supervising physician to whom DOCTOR PORTNOW shall submit the required urine specimens. The supervising physician shall ensure that the urine specimens are obtained on a random basis, that the giving of the specimen is witnessed by a reliable person, and that appropriate control over the specimen is maintained. In addition, the supervising physician shall immediately inform the BOARD of any positive screening results;

DOCTOR PORTNOW shall ensure that the supervising physician provides quarterly reports to the BOARD, on forms approved or provided by the BOARD, verifying whether all urine screens have been conducted in compliance with this CONSENT AGREEMENT, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, DOCTOR PORTNOW must immediately notify the BOARD in writing, and make arrangements acceptable to the BOARD for another supervising physician as soon as practicable;

12. The BOARD retains the right to require, and DOCTOR PORTNOW agrees to submit, blood or urine specimens for analysis upon request and without prior notice;

13. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR PORTNOW shall submit for the BOARD's prior approval the name of a monitoring physician. The monitoring physician shall otherwise monitor DOCTOR PORTNOW and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR PORTNOW shall ensure that such reports are forwarded to the BOARD on a quarterly basis.

It shall be DOCTOR PORTNOW's responsibility to ensure that the monitoring physician 's quarterly reports are submitted to the BOARD on a timely basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR PORTNOW must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable;

14. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR PORTNOW shall undertake and maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., or Caduceus, approved in advance by the BOARD specifically for DOCTOR PORTNOW, no less than three (3) times per week. Substitution of any specific program must receive prior BOARD approval. At his appearances before the BOARD or its designated representative, DOCTOR PORTNOW shall submit acceptable documentary evidence of continuing compliance with this program;
15. DOCTOR PORTNOW shall contact an appropriate impaired physicians committee, approved by the BOARD, to arrange for assistance in recovery or aftercare;
16. DOCTOR PORTNOW shall maintain continued compliance with the terms of the aftercare contract entered into with his treatment provider, provided, that where terms of the aftercare contract conflict with terms of this Agreement, the terms of this Agreement shall control;
17. DOCTOR PORTNOW shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the BOARD, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations; and

18. Within thirty (30) days of the effective date of this Agreement, DOCTOR PORTNOW shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide physician services or receive training; and the Chief of Staff at each hospital where he has, applies for, or obtains privileges or appointments.

The above described terms, conditions and limitations may be amended or terminated in writing at any time upon the agreement of both parties. However, this Agreement shall remain in force for a minimum of two (2) years prior to any request for termination of said Agreement.

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR PORTNOW appears to have violated or breached any terms or conditions of this Agreement, THE STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Agreement.

DOCTOR PORTNOW acknowledges that he has had an opportunity to ask questions concerning the terms of this Agreement and that all questions asked have been answered in a satisfactory manner.

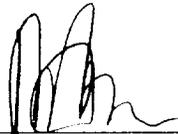
Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

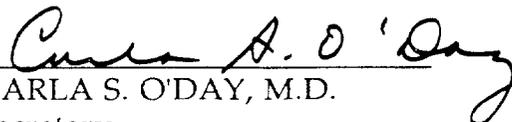
DOCTOR PORTNOW hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

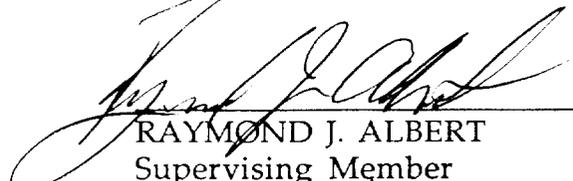
This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.

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Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

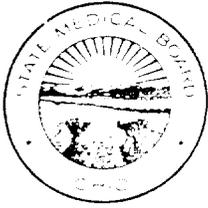
  
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ROBERT T. PORTNOW, D.P.M.  
3/9/94  
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DATE

  
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CARLA S. O'DAY, M.D.  
Secretary  
3/9/94  
\_\_\_\_\_  
DATE

  
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RAYMOND J. ALBERT  
Supervising Member  
3/9/94  
\_\_\_\_\_  
DATE

  
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ANNE C. BERRY, ESQ.  
Assistant Attorney General  
3/4/94  
\_\_\_\_\_  
DATE

3/10/94  
3/10/94



# STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

## NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

March 9, 1994

Robert T. Portnow, D.P.M.  
6509 Marsol Rd., Bldg. 5, Apt. 503  
Mayfield Heights, OH 44124

Dear Doctor Portnow:

In accordance with Sections 2929.17 and/or 3719.12(B), Ohio Revised Code, the Office of the Prosecuting Attorney of Cuyahoga County, Ohio reported that on or about November 18, 1993, the Cuyahoga County Court of Common Pleas found you Eligible for Treatment in Lieu of Conviction for violations of Section 2925.11, Ohio Revised Code, Drug Abuse, Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, and Section 2913.02, Ohio Revised Code, Theft, pursuant to Section 2951.041 of the Ohio Revised Code.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice podiatric medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Furthermore, in accordance with Chapter 119, Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice podiatric medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about November 18, 1993, in the Cuyahoga County Court of Common Pleas, you pleaded guilty to one felony count of Drug Abuse in violation of Section 2925.11, Ohio Revised Code, nine felony counts of Illegal Processing of Drug Documents in violation of Section 2925.23, Ohio Revised Code, and one felony count of Theft in violation of Section 2913.02, Ohio Revised Code, and were granted Treatment in Lieu of Conviction pursuant to Section 2951.041, Ohio Revised Code.
- (2) Moreover, in order to grant your request for Treatment in Lieu of Conviction, the Court was required by statute to find that your "drug dependence was a factor leading to the criminal activity with which (you were) charged, and rehabilitation through treatment would substantially reduce the likelihood of additional criminal activity."

March 9, 1994

The acts, conduct, and/or omissions underlying this judicial finding of Eligibility for Treatment in Lieu of Conviction for violations of Section 2925.11, Ohio Revised Code, Drug Abuse, Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, and Section 2913.02, Ohio Revised Code, Theft, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2925.11, Ohio Revised Code, Drug Abuse, Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, and Section 2913.02, Ohio Revised Code, Grand Theft.

The acts, conduct, and/or omissions underlying this judicial finding of Eligibility for Treatment in Lieu of Conviction for violations of Section 2925.11, Ohio Revised Code, Drug Abuse, Section 2925.23, Ohio Revised Code, Illegal Processing of Drug Documents, and Section 2913.02, Ohio Revised Code, Theft, as alleged in paragraphs (1) and (2) above, individually and/or collectively, constitute "impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

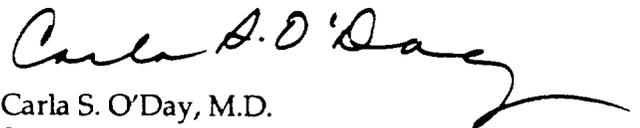
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice podiatric medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Carla S. O'Day, M.D.  
Secretary

CSO:jmb

Enclosures:

CERTIFIED MAIL #279 222 768  
RETURN RECEIPT REQUESTED

between a county prosecutor and the law enforcement agencies within his jurisdiction for the sharing of mandatory drug fines imposed and collected pursuant to RC § 2925.03, remains with such prosecutor and the law enforcement agencies within his jurisdiction. Any exercise of discretion must, however, be reasonable: OAG No.89-090.

75. (1992) Subject to the restrictions of RC § 131.11, county sheriffs and county prosecuting attorneys are empowered to deposit into interest-bearing accounts mandatory drug fine moneys received pursuant to RC § 2925.03(J)(1). Interest earned and paid on deposits of mandatory drug fine moneys received pursuant to RC § 2925.03(J)(1) must be added to the principal sum for expenditure pursuant to RC § 2925.03(J)(1): OAG No.92-030.

79. (1989) Mandatory drug fines collected under RC § 2925.03 are excluded from the disbursement provisions of RC § 3719.21: OAG No.89-090.

[DRUG ABUSE]

§ 2925.11 Drug abuse.

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

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

(1) Manufacturers, practitioners, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. of the Revised Code;

(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;

(4) 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 this section is guilty of drug abuse, and shall be sentenced as follows:

(1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, drug abuse is a felony of the fourth degree, and, if the offender previously has been convicted of a drug abuse offense, drug abuse is a felony of the third degree.

(2) If the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV, or V, with the exception of an anabolic steroid, drug abuse is a misdemeanor of the third degree, and if the offender previously has been convicted

of a drug abuse offense, drug abuse is a misdemeanor of the second degree.

(3) If the drug involved is marihuana, drug abuse is a misdemeanor of the fourth degree, unless the amount of marihuana involved is less than one hundred grams, the amount of marihuana resin, or extraction or preparation of such resin, is less than five grams, and the amount of such resin in a liquid concentrate, liquid extract, or liquid distillate form, is less than one gram, in which case drug abuse is a minor misdemeanor.

(4) If the drug involved is an anabolic steroid included in schedule III, drug abuse is a misdemeanor of the third degree and, in lieu of sentencing an offender to a definite or indefinite term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (G) of this section or division (H) of section 2951.02 of the Revised Code, unless the offender previously has been convicted of a drug abuse offense, in which case drug abuse is a misdemeanor of the second degree.

(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.

(E)(1) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.11, 2929.21, or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.14 or 2929.22 of the Revised Code, the court shall impose a mandatory fine of two thousand five hundred dollars if the violation of this section was a felony of the third degree, a mandatory fine of one thousand five hundred dollars if the violation of this section was a felony of the fourth degree, a mandatory fine of seven hundred fifty dollars if the violation of this section was a misdemeanor of the second degree, a mandatory fine of five hundred dollars if the violation of this section was a misdemeanor of the third degree, a mandatory fine of two hundred fifty dollars if the violation of this section was a misdemeanor of the fourth degree, and a mandatory fine of one hundred dollars if the violation of this section was a minor misdemeanor.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (E)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to section 2929.11, 2929.21, or 2929.31 of the Revised Code.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, fifty per cent of any mandatory fine imposed pursuant to division (E)(1) of this section shall be paid by the clerk of the court in accordance with and subject to the

requirements of, and shall be used as specified in, division (J) of section 2925.03 of the Revised Code, and fifty per cent shall be disbursed as provided in section 3719.21 of the Revised Code. Any additional fine imposed pursuant to division (E)(2) of this section shall be disbursed by the clerk of the court as otherwise provided by law.

(4) If a person is charged with any violation of this section and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (E)(3) of this section.

(5) No court shall impose a mandatory fine pursuant to division (E)(1) of this section upon an offender who alleges, in an affidavit filed with the court prior to his sentencing, that he is indigent and is unable to pay any mandatory fine imposed pursuant to that division, if the court determines the offender is an indigent person and is unable to pay the fine.

(F)(1) In addition to any other penalty imposed for a violation of this section, the court may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation of this section. Division (F)(1) of this section does not apply if the court is required to suspend a pregnant woman's sentence of imprisonment and place her on probation under the circumstances described in division (H) of this section, unless, at any time, the pregnant woman fails to comply with the condition of probation described in that division and her probation is revoked.

(2) If the offender is a professionally licensed person or 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 penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code. Division (F)(2) of this section does not apply if the court is required to suspend the sentence of imprisonment of, and to place on probation under the circumstances described in division (H) of this section, a pregnant woman who is a professionally licensed person or is a person who has been admitted to the bar by order of the supreme court, except that, if the pregnant woman at any time fails to comply with the condition of probation described in that division and if the court revokes her probation, the court then shall comply with section 2925.38 of the Revised Code.

(G)(1)(a) In lieu of sentencing an offender, who has pleaded guilty to a violation of this section prior to the commencement of the trial in the criminal action, to a definite or indefinite term of imprisonment in a detention facility, the court may place the offender on conditional probation under this division, with the terms of his probation including

the following requirements in addition to any terms of probation that can be imposed pursuant to section 2951.02 of the Revised Code:

(i) The offender shall enter into an alternative residential diversion program as described in division (G)(2) of this section and submit to drug abuse treatment and counseling in the program for the period specified by the court, which period shall be at least ninety days.

(ii) Upon his release from the alternative residential diversion program, the offender shall continue to submit for a period specified by the court, which period shall be at least nine months, to drug abuse outpatient treatment and counseling as specified by the court.

(b) If, at any time, the offender fails to comply with the conditions set forth in division (G)(1)(a) of this section and any other conditions of his probation imposed pursuant to section 2951.02 of the Revised Code, the offender shall be arrested pursuant to section 2951.08 of the Revised Code. The court immediately shall hold a hearing to determine if the offender has failed to comply with the conditions set forth in division (G)(1)(a) of this section and any other conditions of his probation imposed pursuant to section 2951.02 of the Revised Code. If the court determines that the offender has so failed, it immediately shall revoke the offender's conditional probation under this division, impose upon the offender any definite or indefinite term of imprisonment that the court previously could have imposed, and order the offender to commence serving that definite or indefinite term of imprisonment.

(c) If the offender complies with the conditions set forth in division (G)(1)(a) of this section and all other conditions of his probation imposed pursuant to section 2951.02 of the Revised Code, the court shall relieve the offender of the condition of drug abuse treatment and counseling and the other conditions of the probation, enter on its journal a dismissal of the charges against the offender, and discharge the offender.

(2) Each court of common pleas, by local rule, may provide for one or more alternative residential diversion programs that are designed to provide drug abuse treatment and counseling for adults and juveniles who commit violations of this section. The rule shall be consistent with divisions (G)(1) and (3) of this section and all of the following:

(a) The rule shall design the programs so as to reduce the number of future violations of this section in the county by rehabilitating persons who have committed violations of this section, to provide persons who have committed violations of this section and who are not dangerous offenders with residential treatment and counseling alternatives to incarceration in a detention facility, to reduce overcrowding conditions in detention facilities in the county and elsewhere in the state, and to provide, at the same time, for the safety of residents of this state during the period the persons who have com-

mitted violations of this section, to provide treatment and counseling of this section.

(b) The rule shall be used for qualified persons under this section and who have reason to believe that they or persons in danger are dangerous persons.

(c) The rule shall not permit violations of this section by persons, persons in danger because of their status, and persons receiving services from independent children, or persons who are referred by the department for the expense of and counseling the programs.

(3) Nothing in this section shall be construed as affecting the authority of this state to grant conditional probation under section 2951.04 of the Revised Code, or the authority of the court under [2951.04.1] of the Revised Code.

(4) As used in this section:

(a) "Dangerous offender" has the same meaning as in section 2929.04 of the Revised Code.

(b) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(c) "Drug dependent person" has the same meanings as in section 2921.01 of the Revised Code.

(H) If a person is charged with a violation of this section and pleads guilty to a violation of this section, or a pregnant woman who is charged with a violation of this section for the violation of this section, and she or he agrees both to receive a sentence of probation from the court and to participate in a rehabilitation program, the court may place the person on probation in a detention facility or place the person on probation under the conditions of section 2951.02 of the Revised Code in connection with the sentence of probation, then, in lieu of receiving a sentence of imprisonment under this section, the court may place the person on probation pursuant to section 2951.02 of the Revised Code, with at least one condition of probation being that the person shall participate in and complete a rehabilitation program as described in section 2951.04 of the Revised Code, and the use of any control device or electronic monitoring device under the supervision of the court.

HISTORY: 138 v S 11-20-90; 144 v H 62

In addition to any terms prescribed pursuant to section 2925.11:

(a) An alternative residential program described in division (G)(1)(a) of this section shall be available for the period of the program for the period specified by the court.

(b) An alternative residential program shall continue to be available for the period of the program for the period specified by the court.

(c) If a person fails to comply with the conditions of his probation under section 2951.02 of the Revised Code, he shall be arrested pursuant to section 2929.01 of the Revised Code. The court shall determine if the conditions set forth in this section and any other conditions imposed pursuant to section 2929.01 of the Revised Code. If the court determines that the person has failed, it shall immediately revoke his conditional probation and impose upon the offender the term of imprisonment that would have been imposed had the person been sentenced to the term of imprisonment.

(d) If the conditions of this section and all other conditions imposed pursuant to section 2929.01 of the Revised Code, the court shall determine the condition of drug abuse and the other conditions of this section and shall file a journal of a dispositive order, and dis-

pose, by local rule, an alternative residential program to provide for adults and children under this section. The court shall file a journal of this section (C)(1) and (3) of this section.

(e) Programs so as to reduce the number of violations of this section by persons who are on probation, to provide alternatives to persons with drug alternatives to reduce overcrowding in the courts and to provide, for persons of this section who have com-

mitted violations of this section are receiving treatment and counseling as described in division (G)(1) of this section.

(b) The rule shall require that the programs be used for qualified persons who commit violations of this section and who the trial courts in the county have reason to believe are drug dependent persons or persons in danger of becoming drug dependent persons.

(c) The rule shall require that persons who commit violations of this section, other than indigent persons, persons in danger of becoming indigent persons because of their violations of this section, and persons receiving general assistance, aid to dependent children, or disability assistance administered by the department of human services, are liable for the expenses associated with the treatment and counseling that they receive pursuant to the programs.

(3) Nothing in this division affects, or shall be construed as affecting, the ability of the courts of this state to grant conditional probation under section 2951.04 of the Revised Code or to grant treatment in lieu of conviction under section 2951.041 [2951.04.1] of the Revised Code.

(4) As used in this division:

(a) "Dangerous offender" has the same meaning as in section 2929.01 of the Revised Code.

(b) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(c) "Drug dependent person" and "person in danger of becoming a drug dependent person" have the same meanings as in section 3719.011 [3719.01.1] of the Revised Code.

(H) If a person who has been convicted of or pleaded guilty to a violation of this section is a woman who is pregnant at the time of sentencing for the violation of this section, and if the offender agrees both to receive prenatal care as ordered by the court and to participate in and successfully complete rehabilitation at an appropriate drug treatment facility or program as described in division (B) of section 2951.04 of the Revised Code in connection with the use of any controlled substance, then, in lieu of requiring the offender to serve a term of imprisonment pursuant to division (C) of this section, the court shall suspend the offender's sentence of imprisonment and place her on probation pursuant to section 2951.02 of the Revised Code, with at least one of the conditions of her probation being that she receive prenatal care as ordered by the court until the birth of her child and participate in and successfully complete rehabilitation at an appropriate drug treatment facility or program as described in division (B) of section 2951.04 of the Revised Code in connection with the use of any controlled substance until she is rehabilitated and released from this requirement by an order of the court.

HISTORY: 138 v S 184, § 5 (Eff 6-20-84); 143 v S 258 (Eff 11-20-90); 144 v H 62 (Eff 5-21-91); 144 v H 298, Eff 7-26-91.

Analogous to former RC § 2925.11 (136 v H 300; 136 v S 184), repealed 138 v S 184, § 4, eff 6-20-84.

#### Cross-References to Related Sections

##### Penalties—

Felonies, for, RC § 2929.11.

Misdemeanors, for, RC § 2929.21.

Certain offenders disqualified from preschool employment, RC § 3301.54.

Convictions to be reported to professional licensing authorities, RC § 2925.38.

Definitions applicable to drug abuse offenses, RC § 3719.01.

Disposition of fines and forfeited bail, RC § 3719.21.

Drug abuse offense defined, RC § 2925.01.

Emergency paroles, RC § 2967.18.

Knowingly defined, RC § 2901.22.

Laboratory reports, RC § 2925.51.

Notification to state medical board of conviction of certified health practitioner, RC § 4731.22.3.

Possess defined, RC § 2925.01.

##### Prior conviction—

Pleading, RC § 2941.11.

Proof, RC § 2945.75.

Probation of drug dependent person, RC § 2951.04.

Suspension or revocation of license by trial judge, RC § 4507.16.

Unlawful discriminatory practices, RC § 4112.02.

#### Comparative Legislation

##### Drug abuse:

21 USC § 1101

CA—Health & S § 11350

FL—Stat Ann §§ 893.01, 893.13

IL—Ann Stat ch 56½ § 704

IN—Code § 35-48-4-6

KY—Rev Stat Ann §§ 218A.140, 218A.990

MI—Comp Laws Ann § 333.7403

NY—Penal Law §§ 220.03-220.25

PA—CSA tit 35 § 780.113

#### Text Discussion

Drug offense and drunk driving alternative sentences. Klein §§ 4.12, 4.13

#### Forms

Drug abuse. 4 OJI 525.11

#### Research Aids

##### Drug abuse:

O-Jur3d: Crim L §§ 2287-2289

Am-Jur2d: Drugs §§ 27.13-27.19

C.J.S.: Drugs & N § 150

##### West Key No. Reference

Drugs & N 72

#### ALR

Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana. 96 ALR3d 225.

Construction of provision of Uniform Narcotic Drug Act or similar statute dealing with obtaining or procuring the administration of a narcotic drug by fraud or deceit. 25 ALR3d 1118.

Conviction of possession of illicit drugs found in automobile of which defendant was not sole occupant. 57 ALR3d 1319.

murders a bank employee during a robbery there is no private cause of action against the officer based on the alleged violation of RC § 2925.22: *Burger v. U.S.*, 748 FSupp 1265 (S.D.).

2. (1983) Revised Code § 2317.02(B) does not make inadmissible the testimony of a physician regarding false statements made to said physician by a person seeking a prescription for an illegal drug where there is no evidence that the drug was obtained by said person for the treatment of any medical illness, disease or disorder: *State v. Garrett*, 8 OApp3d 244, 8 OBR 318, 456 NE2d 1319.

3. (1978) The possession of uncompleted preprinted blanks used for writing a prescription for a dangerous drug, prohibited by RC § 2925.22, involves more than the mere presence of an accused's proximity to such materials and his knowledge of their existence: *State v. Reese*, 56 OApp2d 278, 10 OO3d 255, 382 NE2d 1193.

4. (1989) Fines assessed and collected under prosecutions commenced for violations of RC Chapters 2925. and 3719. are excepted from the disbursement provisions of RC § 3375.52 and, pursuant to RC § 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of mandatory drug fines, which are disbursed pursuant to RC § 2925.03(J): OAG No.89-103.

### § 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 Chapter 3719. of the Revised Code.

(B) No person shall intentionally make, utter, or sell, or knowingly possess a false or forged:

- (1) Prescription;
- (2) Uncompleted preprinted prescription blank used for writing a prescription;
- (3) Official written order;
- (4) License for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(5) Registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(C) No person, by theft as defined in section 2913.02 of the Revised Code, shall acquire any of the following:

- (1) A prescription;
- (2) An uncompleted preprinted prescription blank used for writing a prescription;
- (3) An official written order;
- (4) A blank official written order;
- (5) A license or blank license for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;
- (6) A registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

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

(E) Divisions (A) and (D) of this section do not apply to practitioners, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4725., 4729., 4731., and 4741. of the Revised Code.

(F) Whoever violates this section is guilty of illegal processing of drug documents, a felony of the fourth degree. If the offender previously has been convicted of a felony drug abuse offense, illegal processing of drug documents is a felony of the third degree. If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II with the exception of marihuana, illegal processing of drug documents is a felony of the third degree. If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II with the exception of marihuana, and the offender previously has been convicted of a felony drug abuse offense, illegal processing of drug documents is a felony of the second degree.

(G)(1) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.14 of the Revised Code, the court shall impose a mandatory fine of three thousand five hundred dollars if the violation of this section was a felony of the second degree, a mandatory fine of two thousand five hundred dollars if the violation of this section was a felony of the third degree, and a mandatory fine of one thousand five hundred dollars if the violation of this section was a felony of the fourth degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (G)(1) of this section if the total of the additional and mandatory fines does not exceed the maximum fine that could be imposed pursuant to section 2929.11 or 2929.31 of the Revised Code.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, fifty per cent of any mandatory fine imposed pursuant to division (G)(1) of this section shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (J) of section 2925.03 of the Revised Code, and fifty per cent shall be disbursed as provided in section 3719.21 of the Revised Code. Any additional fine imposed pursuant to division (G)(2) of this section shall be disbursed by the clerk of the court as otherwise provided by law.

(4) If a person is charged with any violation of this section and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code or Criminal Rule 46, and if the person forfeits the bail, the forfeited bail shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (G)(3) of this section.

(5) No court shall impose a mandatory fine pursuant to division (G)(1) of this section upon an offender who alleges, in an affidavit filed with the

court prior to his and is unable to pay pursuant to that the offender is an pay the fine.

(H) In addition a violation of this up to five years the license of any per pleaded guilty to offender is a profes son who has been the supreme court and published rule alty imposed for a forthwith shall cor Revised Code.

HISTORY: 136 v H 3 144 v S 110. Eff 5-19-9

Cross-References to Penalties for felonies Certain offenders c ment, RC § 33 Controlled substances Convictions to be rep ities, RC § 292 Definitions applica 3719.01. Disposition of fines Drug abuse offense Emergency paroles, False or forged pres Felony drug abuse c Knowingly defined, Notification to state fied health pra Possess defined, RC Prior conviction— Pleading, RC § 2 Proof, RC § 2945 Suspension or revoc 4507.16.

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#### Research Aids

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#### ALR

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(H) In addition to any other penalty imposed for a violation of this section, the court may suspend for up to five years the driver's or commercial driver's license of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or 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 penalty imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

HISTORY: 136 v H 300 (Eff 7-1-76); 143 v S 255 (Eff 11-20-90); 144 v S 110. Eff 5-19-92.

#### Cross-References to Related Sections

- Penalties for felonies, RC § 2929.11.
- Certain offenders disqualified from preschool employment, RC § 3301.54.
- Controlled substance schedules, RC § 3719.41.
- Convictions to be reported to professional licensing authorities, RC § 2925.38.
- Definitions applicable to drug abuse offenses, RC § 3719.01.
- Disposition of fines and forfeited bail, RC § 3719.21.
- Drug abuse offense defined, RC § 2925.01.
- Emergency paroles, RC § 2967.18.
- False or forged prescription, RC § 4729.61.
- Felony drug abuse offense defined, RC § 2925.01.
- Knowingly defined, RC § 2901.22.
- Notification to state medical board of conviction of certified health practitioner, RC § 4731.22.3.
- Possess defined, RC § 2925.01.
- Prior conviction—
  - Pleading, RC § 2941.11.
  - Proof, RC § 2945.75.
- Suspension or revocation of license by trial judge, RC § 4507.16.

#### Forms

Illegal processing of drug documents. 4 OJI 525.23

#### Research Aids

Illegal processing of drug documents:

- O-Jur3d: Crim L §§ 2297, 2298
- Am-Jur2d: Drugs § 27.13
- C.J.S.: Drugs&N § 152

West Key No. Reference  
Drugs & N 71

#### ALR

Construction of provision of Uniform Narcotic Drug Act or similar statute dealing with obtaining or procuring the administration of a narcotic drug by fraud or deceit. 25 ALR3d 1118.

#### CASE NOTES AND OAG

1. (1984) A physician who unlawfully issues a prescription for a controlled substance not in the course of the bona fide treatment of a patient is guilty of selling a controlled

substance in violation of RC § 2925.03: State v. Sway, 15 OS3d 112, 15 OBR 265, 472 NE2d 1065.

2. (1992) The defendant-physician did not violate RC § 2925.23(B)(2) by leaving pre-signed prescription blanks with his staff so his patients could receive maintenance medications: State v. Williams, 76 OApp3d 806, 603 NE2d 383.

3. (1991) Revised Code §§ 2925.03 and 2925.23 are not in all instances in conflict such that the latter statute controls. A pharmacist may be convicted for trafficking in drugs only where his conduct is so egregious that the dispensing of drugs is not in the course of bona fide treatment of a patient: State v. Friedman, 70 OApp3d 262, 590 NE2d 909.

4. (1984) Where defendant is charged with intentionally making, uttering, or selling false prescriptions which he contends were written in the course of his professional practice for a legitimate medical purpose, evidence concerning abuse potential, illegal use and street value of the drugs is relevant to both the issues of intent and the medical legitimacy of the prescriptions: State v. Gotsis, 13 OApp3d 282, 13 OBR 346, 469 NE2d 548.

5. (1990) Where there was no evidence as to who changed the date on the prescription and the circumstantial evidence supports a reasonable theory that defendant attempted to fill an authorized, albeit outdated, prescription, a conviction under RC § 2925.23 must be reversed: State v. McAdams, No. 89AP-1415 (10th Dist.).

6. (1989) Fines assessed and collected under prosecutions commenced for violations of RC Chapters 2925. and 3719. are excepted from the disbursement provisions of RC § 3375.52 and, pursuant to RC § 3719.21, are paid to the executive director of the State Board of Pharmacy and by him paid into the state treasury to the credit of the general revenue fund with the exception of mandatory drug fines, which are disbursed pursuant to RC § 2925.03(J): OAG No.89-103.

#### [HARMFUL INTOXICANTS]

### § 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 misdemeanor of the fourth degree. If the offender previously has been convicted of a drug abuse offense, abusing harmful intoxicants is a misdemeanor of the first degree.

(C)(1) Notwithstanding the fines otherwise required to be imposed pursuant to section 2929.21 or 2929.31 of the Revised Code for violations of this section and notwithstanding section 2929.22 of the Revised Code, the court shall impose a mandatory fine of one thousand dollars if the violation of this section was a misdemeanor of the first degree and a mandatory fine of two hundred fifty dollars if the violation of this section was a misdemeanor of the fourth degree.

(2) The court may impose a fine in addition to a mandatory fine imposed pursuant to division (C)(1)



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of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat.

(B) Whoever violates this section is guilty of theft.

If the value of the property or services stolen is less than three hundred dollars, a violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is three hundred dollars or more and is less than five thousand dollars, or if the property stolen is any of the property listed in section 2913.71 of the Revised Code, or if the offender previously has been convicted of a theft offense, a violation of this section is theft, a felony of the fourth degree. If the value of the property or services stolen is five thousand dollars or more and is less than one hundred thousand dollars, or if the offender previously has been convicted of two or more theft offenses, a violation of this section is grand theft, a felony of the third degree. If the property stolen is a motor vehicle, as defined in section 4501.01 of the Revised Code, a violation of this section is grand theft of a motor vehicle, a felony of the third degree. If the value of the property or services stolen is one hundred thousand dollars or more, a violation of this section is aggravated theft, a felony of the second degree. If the property stolen is any dangerous drug, as defined in section 4729.02 of the Revised Code, a violation of this section is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, as defined in section 2925.01 of the Revised Code, a felony of the third degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 135 v S 191 (Eff 6-20-80); 139 v S 199 (Eff 1-1-83); 140 v H 632 (Eff 3-28-85); 141 v H 49 (Eff 6-20-86); 143 v H 347 (Eff 7-18-90); 143 v S 258, Eff 11-20-90.

Not analogous to former RC § 2913.02 (RS § 7092; 71 v 3: CC § 13054, Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 15 of SB 258.

The provisions of § 4(D) of SB 258 (143 v —) read in part as follows:

Section 2913.02 of the Revised Code is amended by this act and also by Sub. H.B. 347 of the 118th General Assembly (effective July 18, 1990). The amendments of Sub. H.B. 347 are included in this act in lower case to confirm the intention to retain them, but are not intended to be effective until July 18, 1990.

#### Committee Comment to H 511

This section covers a plethora of former offenses of which the gist was larceny, embezzlement, conversion, fraud or false pretense. In addition, the section includes a "minor league" species of robbery, insofar as a threat may be an element of the offense.

Theft of services and real property, as well as theft of personal property, are within the purview of the section. At common law, only personal property could be the subject of larceny, although an older Ohio statute (Section 1.03 of the Revised Code) expands this to include money, goods, chattels, commercial paper, receipts, choses in action, severed crops and real property fixtures, and other things of value.

The section expands upon the common law requirement that the taking of property must occur simultaneously with a purpose to deprive the owner of the property. Formerly, a wrongful conversion or embezzlement could not constitute larceny, since the intent to deprive was formed after the property came into the offender's possession. *Berry v. State*, 31 Ohio St. 219, 27 Am. Rep. 506 (1877); *Porter v. State*, 8 Ohio App. 231 (Scioto Co. App., 1917). Under the new section, the basic elements of the offense must still coincide, but conversion or embezzlement now constitutes theft, since the section defines theft as exerting control (as opposed to initially gaining control over property or services) beyond the scope of the owner's consent, and with purpose to deprive the owner of the same.

The section also includes theft by deception, formerly the subject of section 2907.21, larceny by trick, as well as a long list of former statutes of which some variety of fraud or false pretense was an element.

In addition, the section defines theft by threat, which may be a lesser included offense to robbery. The threat involved in theft is not restricted to the threat of personal harm, which is one of the distinguishing characteristics of robbery.

This section increases from \$60 to \$150 the point at which petty theft becomes grand theft, because in the twenty years or so since \$60 was adopted as the breaking point, inflation rendered the former amount unrealistic. \$150 is chosen because, statistically, there is less likelihood that whether the offender is liable to a relatively short spell in jail or a long sojourn in the penitentiary will turn on the difference of a penny in the value of stolen property. Also, a substantial number of thefts which formerly had to be tried in common pleas court may not be disposed of in lower courts.

The new section also makes stealing certain items grand theft, regardless of their value, because they are particularly subject to organized criminal activity, and because of the high risk that the ultimate harm flowing from their unlawful acquisition may far exceed the harm intrinsic in the theft itself. These items are listed in new section 2913.71, and in part in new section 2923.11 of the Revised Code.

Finally under the section, theft is grand theft (regardless of what is stolen or its worth) when the offender has previously been convicted of a theft offense.

Petty theft, which is the theft of property or services worth less than \$150, is a misdemeanor of the first degree. Grand theft is a felony of the fourth degree, and any of the following constitutes grand theft: theft of property or services worth \$150 or more; theft of any of the property listed in new section 2913.71 of the Revised Code; and theft, regardless of the nature of the property or services or their value, when the offender has previously been convicted of a theft offense.

#### Cross-References to Related Sections

##### Penalties—

Felonies, for, RC § 2929.11.

Misdemeanors, for, RC § 2929.21.

Auto theft offenses, venue, RC § 4549.31.

Compounding a crime, RC § 2921.21.