



H.B. 7

124th General Assembly
(As Introduced)

Rep. Manning

BILL SUMMARY

- Enacts a new offense called "illegal assembly of chemicals for the manufacture of drugs."
- Enhances the penalty for the offense of illegal manufacture of drugs if the drug involved in the violation is methamphetamine or any compound, mixture, preparation, or substance containing methamphetamine and if the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises.
- Adds the new offense of "illegal assembly of chemicals for the manufacture of drugs" to the definition of "drug abuse offense."
- Enacts a new prohibition called "unlawful possession of anhydrous ammonia."
- Directs the Director of Agriculture to adopt and enforce rules that establish minimum safety standards in the design and construction of portable containers used to transport or carry anhydrous ammonia and authorizes the Director to issue an order prohibiting the use of anhydrous ammonia equipment found not to comply with those rules.
- Expands the definition of "drug paraphernalia" relating to the drug paraphernalia offenses to specifically include any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine or any compound, mixture, preparation, or substance containing methamphetamine.
- Establishes that certain laboratory findings relating to a criminal prosecution for a violation of the Drug Laws or the Controlled Substances Laws that is based on the possession of chemicals sufficient

to produce a compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of the Controlled Substances Schedules is prima-facie evidence of the content, identity, and weight of the substances.

- Permits in certain circumstances the law enforcement agency that has custody of chemicals sufficient to produce methamphetamine or any compound, mixture, preparation, or substance containing methamphetamine to destroy the chemicals.
- Authorizes specified governmental entities that are required to engage in emergency action to protect the public health or safety or the environment as a result of a person operating an illegal methamphetamine manufacturing laboratory that has caused or poses a risk of causing environmental contamination to recover from the person the additional or extraordinary costs the entity incurs in investigating, mitigating, minimizing, removing, or abating the contamination, or potential contamination and specifically makes that person liable for those costs.
- Authorizes the use of forfeited contraband in certain circumstances to be used to pay the costs of emergency action described under the preceding dot point relative to the operation of an illegal methamphetamine laboratory if the forfeited property or money involved was that of a person responsible for the operation of the laboratory.
- Expands the definition of "hazardous waste" in the Solid and Hazardous Waste Laws to include any methamphetamine that is manufactured or produced in the commission of illegal manufacture of drugs, whether or not there has been a prior conviction of that offense, and any byproduct of the manufacture or production of methamphetamine that is manufactured or produced in the commission of that offense, whether or not there has been a prior conviction of that offense.

TABLE OF CONTENTS

Background.....	3
Illegal assembly of chemicals for the manufacture of drugs.....	4
Prohibition.....	4
Penalty.....	4
Definition of drug abuse offense.....	5

Illegal manufacture of drugs.....	5
Existing law.....	5
Operation of the bill.....	6
Anhydrous ammonia.....	7
Unlawful possession of anhydrous ammonia.....	7
Duties of the Director of Agriculture.....	7
Drug paraphernalia offenses.....	7
Factors to be used in determining if an object is drug paraphernalia.....	8
Evidence in Drug Law or Controlled Substance Law prosecutions regarding possession of methamphetamine ingredients.....	8
Destruction of chemical components of methamphetamine.....	9
Environmental hazards created by a methamphetamine laboratory.....	9
Emergency action under the Environmental Protection Law.....	9
Use of forfeited contraband to pay costs of emergency action under the Environmental Protection Law.....	11
Expansion of definition of "hazardous waste" in the Solid and Hazardous Wastes Laws.....	12
Definitions.....	13
"Committed in the vicinity of a juvenile".....	13
"Committed in the vicinity of a school".....	13
Contraband.....	14
Drug abuse offense.....	15
Public premises.....	16

CONTENT AND OPERATION

Background

Under existing law, unchanged by the bill, methamphetamine, its salts, its isomers, and salts of its isomers (hereafter "methamphetamine"), are Schedule II controlled substances (R.C. 3719.41). Anhydrous ammonia, which, while generally used as a liquid fertilizer, also is used in the manufacture of methamphetamine ("West, Midwest in Grip of Cheap, Easily Purchased Meth," State Legislatures Magazine (September 2000)). This chemical also is extremely irritating and corrosive to the eyes, skin, and respiratory tract (NIOSH Pocket Guide to Chemical Hazards, pp. 38-39 (1990); <http://www.hhmi.org/science/labsafe/lcss/lcss10.html>). In addition, the chemicals used to manufacture methamphetamine and the byproducts of the manufacturing process pose fire and environmental hazards ("Methamphetamine: An Update on an Emerging Problem," NIJ Journal, pp. 8-9 (October 2000)).

Illegal assembly of chemicals for the manufacture of drugs

Prohibition

The bill enacts a new offense called "illegal assembly of chemicals for the manufacture of drugs." The bill prohibits a person, with the intent to commit the offense of illegal manufacture of drugs, from knowingly assembling chemicals sufficient to produce a compound, mixture, preparation, or substance included in Schedule I or II of the controlled substances schedule.

Penalty

Generally. Whoever violates this prohibition is guilty of illegal assembly of chemicals for the manufacture of drugs. Generally, the offense is a felony of the second degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises, the offense is a felony of the second degree, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. (R.C. 2925.041(A) and (B).)

Additional penalties. In addition to any other sanction imposed for the offense, the court must do all of the following (R.C. 2925.041(C) and R.C. 2925.38, 4507.16(D)(2), and 4507.169(A) and (C)):

(1) Impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense unless the court determines that the offender is indigent. The bill specifies where the clerk must pay the fine money. If the offender posts bail and forfeits the bail, the clerk must pay the forfeited bail as if the forfeited bail were a fine.

(2) Revoke or suspend the offender's driver's or commercial driver's license or permit in accordance with existing procedures that apply to persons convicted of drug trafficking offenses. If an offender's driver's or commercial driver's license or permit is revoked, the offender may request termination of, and the court may terminate, the revocation in specified circumstances in accordance with existing procedures applicable to persons convicted of drug trafficking offenses.

(3) Comply with specified professional licensing entity notification provisions if the offender is a professionally licensed person or a person who has been admitted to the bar by order of the Ohio Supreme Court.

Definition of drug abuse offense

The bill adds the new offense of "illegal assembly of chemicals for the manufacture of drugs" to the definition of "drug abuse offense" (R.C. 2925.01(G)).

The phrase "drug abuse offense" is used in numerous Revised Code sections, and the bill subjects a person suspected or convicted of "illegal assembly of chemicals for the manufacture of drugs" to the application of those sections. The effects of revising the definition of "drug abuse offense" include the following:

(1) A previous conviction of illegal assembly of chemicals for the manufacture of drugs enhances the penalty of a person who pleads guilty to or is convicted of certain drug offenses (see e.g., R.C. 2925.11--not in the bill).

(2) A person who pleads guilty to or is convicted of illegal assembly of chemicals for the manufacture of drugs may be subject to the criminal and civil forfeiture provisions in the Drug Offense Forfeiture Laws (R.C. 2925.42 and 2925.43--not in the bill).

(3) When there is reasonable ground to believe that illegal assembly of chemicals for the manufacture of drugs has been committed, specified peace officers may arrest and detain until a warrant can be obtained any person whom the peace officer has reasonable cause to believe is guilty of the violation (R.C. 2935.03--not in the bill).

(4) In some circumstances, a person convicted of illegal assembly of chemicals for the manufacture of drugs would be considered a repeat offender who is ineligible for a pre-trial diversion program (R.C. 2935.36--not in the bill).

Illegal manufacture of drugs

Existing law

Prohibition. Existing law prohibits a person from knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance (R.C. 2925.04(A)).¹

¹ This prohibition does not apply to any of the following (R.C. 2925.04(B) by reference to R.C. 2925.03(B)):

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with specified laws;

Penalty. Under existing law, whoever commits a violation of this prohibition that involves any drug other than marihuana is guilty of illegal manufacture of drugs. If the drug involved is any compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana, illegal manufacture of drugs is a felony of the second degree. Generally the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. (R.C. 2925.04(C).) In such a case, if the sentencing court finds that the offender as a result of the violation is a major drug offender and is guilty of a major drug offender specification, the court, in lieu of the prison term otherwise authorized or required, must impose upon the offender a mandatory ten-year prison term that cannot be reduced pursuant to section 2929.20 or Chapter 2967. or 5120. of the Revised Code. In the latter case, the court also may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court makes specified findings. (R.C. 2925.04(E) and 2929.14(D)(3).)

Other penalties. In addition to any other sanction imposed for the offense, the sentencing court must impose the additional penalties that are described above under "**Additional penalties**" under "**Illegal assembly of chemicals for the manufacture of drugs**" (R.C. 2925.04(D)).

Operation of the bill

Under the bill, if the drug involved in the violation is methamphetamine or any compound, mixture, preparation, or substance containing methamphetamine and if the offense was committed in the vicinity of a juvenile, in the vicinity of a school, or on public premises (any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort), illegal manufacture of drugs is a felony of the first degree, and, subject to the major drug offender provisions described above, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. All other existing penalties described above apply to the offender. (R.C. 2925.04(C)(2) and (D) and 2925.01(II).)

(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," and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

Anhydrous ammonia

Unlawful possession of anhydrous ammonia

The bill enacts a new prohibition called "unlawful possession of anhydrous ammonia." The bill prohibits a person from knowingly acquiring, having, or using any amount of anhydrous ammonia. Whoever violates this prohibition is guilty of unlawful possession of anhydrous ammonia, a felony of the fifth degree.

The prohibition does not apply to any person who (1) acquires, has, or uses anhydrous ammonia in, or for the purpose of, routine agricultural operations or as a fertilizer or (2) acquires, has, or uses anhydrous ammonia for any lawful business, occupational, research, scientific, educational, or governmental purpose. (R.C. 2925.042.)

Duties of the Director of Agriculture

Existing law. Existing law authorizes the Director of Agriculture to promulgate, adopt, and enforce uniform rules for safety in the design, construction, location, installation, or operation of equipment for storing, handling, transporting, and utilizing anhydrous ammonia, aqueous ammonia, or other solutions for use as agricultural fertilizers. Existing law also authorizes the Director to issue an order prohibiting the use of anhydrous ammonia equipment found not to comply with those rules. Existing law prohibits a person from using the equipment until the Director issues a written release. (R.C. 905.40(B) and 905.461.)

Operation of the bill. The bill directs the Director of Agriculture to adopt and enforce rules that establish minimum safety standards in the design and construction of portable containers used to transport or carry anhydrous ammonia and authorizes the Director to issue an order prohibiting the use of anhydrous ammonia equipment found not to comply with those rules. The bill also prohibits a person from using the equipment until the Director issues a written release. (R.C. 905.40(B) and 905.461.)

Drug paraphernalia offenses

Prohibitions and penalties

Existing law contains three drug paraphernalia offenses relating to the use, possession, manufacture, sale, or advertisement for sale of drug paraphernalia. The penalties for the offenses range from a misdemeanor of the fourth degree to a misdemeanor of the second degree. (See **COMMENT 1** for a more detailed description of these prohibitions and penalties.)

Definition of "drug paraphernalia"

Existing law. Under existing law, "drug paraphernalia" means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of the Drug Laws. The definition explicitly specifies that "drug paraphernalia" includes, but is not limited to, certain equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in specified manners. (R.C. 2925.14(A).) (See **COMMENT 2** for a complete description of the specified equipment, products, or materials.)

Operation of the bill. The bill expands the definition of "drug paraphernalia" to specifically include any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine or any compound, mixture, preparation, or substance containing methamphetamine, such as a Pyrex or Corning dish, jug, bottle, funnel, blender, gas can, hot plate, strainer, or propane cylinder; coffee filters; rubber tubing; paper towels; rubber gloves; tape or clamps; or aluminum foil (R.C. 2925.14(A)(3)).

Factors to be used in determining if an object is drug paraphernalia

Under existing law, in determining if an object is drug paraphernalia, a court or law enforcement officer must consider, in addition to other relevant factors, the specified statutory factors relating to the "object" that may be drug paraphernalia. The bill replaces in the list of factors the term "object" with the phrase "equipment, product, or material." (R.C. 2925.14(B).)

Evidence in Drug Law or Controlled Substances Law prosecutions regarding possession of methamphetamine ingredients

Under existing law, in any criminal prosecution for a violation of the Drug Laws or the Controlled Substances Laws, a laboratory report from the Bureau of Criminal Identification and Investigation (hereafter BCII), a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an accredited institution of higher education that has its main campus in Ohio, primarily for the purpose of providing scientific services to law enforcement agencies and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the

substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima-facie evidence of the content, identity, and weight or the existence and number of unit dosages of the substance (R.C. 2925.51(A)).

Under the bill, in any criminal prosecution for a violation of the Drug Laws or the Controlled Substances Laws that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of the Controlled Substances Schedules, a laboratory report from BCII or from any laboratory that is operated or established as described in the preceding paragraph that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is prima-facie evidence of the content, identity, and weight of the substances (R.C. 2925.51(A)).

Destruction of chemical components of methamphetamine

Under the bill, if a person is charged with any violation of the Drug Laws or the Controlled Substances Laws that is based on the possession of chemicals sufficient to produce methamphetamine or any compound, mixture, preparation, or substance containing methamphetamine, the law enforcement agency that has custody of the chemicals may file a motion with the court in which the charges are pending requesting the court to order the chemicals destroyed. If a law enforcement agency files a motion of that type with a court, the court may issue an order that requires the containers in which the chemicals are contained be photographed, orders the chemicals forfeited, and requires that the chemicals be destroyed. The court also may include in the order a requirement that the chemicals be sampled prior to their destruction and that the samples be preserved. (R.C. 2925.52.)

Environmental hazards created by a methamphetamine laboratory

Emergency action under the Environmental Protection Law

Similar to the law for when emergency action is required to protect the public health or safety or the environment from an unauthorized spill, release, or discharge of material into or upon the environment, when emergency action is required under the bill to protect the public health or safety or the environment, any person responsible for the operation of an illegal methamphetamine manufacturing laboratory that has caused or poses a risk of causing contamination of the environment is liable to the municipal corporation, county, township, countywide emergency management agency, regional authority for emergency management, or emergency management program established by a political

subdivision, having territorial jurisdiction, or responsibility for emergency management activities in the location of the contamination or potential contamination, for the necessary and reasonable, additional or extraordinary costs it incurs in investigating, mitigating, minimizing, removing, or abating the contamination, or potential contamination, in the course of its emergency action.² But, to the extent criteria and methods for response actions prescribed under 40 C.F.R. 300, as amended, may be applied to the type of material involved and the conditions of the contamination, or potential contamination, that person is liable for those costs only if the political subdivision, countywide agency, or regional authority employed those criteria and methods in its emergency action.

The officers of the political subdivision or entity performing the emergency action: (1) must keep a detailed record of the political subdivision's or entity's costs for investigating, mitigating, minimizing, removing, or abating the unauthorized contamination or potential contamination, (2) promptly after the completion of those measures, must certify those costs to the appropriate legal officer or counsel, and (3) may request that the legal officer or counsel bring a civil action for recovery of costs against the person responsible for the operation of the illegal methamphetamine manufacturing laboratory that caused or posed a risk of causing contamination of the environment. If the officers request that the legal officer or counsel bring such a civil action regarding emergency action taken in relation to the operation of an illegal methamphetamine manufacturing laboratory that has caused or poses a risk of causing contamination of the environment, the legal officer or counsel also may pursue a forfeiture proceeding against the responsible person under the Criminal Gang Activity Forfeiture Laws, the Drug Law Forfeiture Laws, or in any other manner authorized by law.

The legal officer or counsel must submit a written, itemized claim for the total certified costs incurred by the municipal corporation, county, township, countywide agency, or regional authority for the emergency action to the responsible party and a written demand that those costs be paid to the political subdivision, countywide agency, or regional authority. Not less than 30 days before bringing a civil action for recovery of those costs, the legal officer or counsel must mail written notice to the responsible party informing the responsible party that, unless the total certified costs are paid to the political subdivision, countywide agency, or regional authority within 30 days after the date of mailing of the notice, the legal officer or counsel will bring a civil action for that amount. Nothing in this provision prevents a political subdivision, countywide emergency

² *"Illegal methamphetamine manufacturing laboratory" means any laboratory or other premises that is used for the manufacture or production of methamphetamine in the commission of the offense of illegal manufacture of drugs, whether or not there has been a prior conviction of that offense (R.C. 3745.13(B)(2)).*

management agency, or regional authority for emergency management from entering into a settlement of a claim against a responsible party that compromises the amount of the claim. Moneys recovered must be credited to the appropriate funds of the political subdivision, countywide agency, or regional authority from which moneys were expended in performing the emergency action. (R.C. 3745.13.)

Use of forfeited contraband to pay costs of emergency action under the Environmental Protection Law

Existing law. R.C. 2933.42(A) prohibits a person from possessing, concealing, transporting, receiving, purchasing, selling, leasing, renting, or otherwise transferring any contraband. R.C. 2933.43(A)(1) generally authorizes a law enforcement officer to seize any contraband that has been, is being, or is intended to be used in violation of that prohibition. Existing law provides a procedure for the handling of contraband, including possible forfeiture of the contraband. (R.C. 2933.43(A)(2), (B), and (C).) Depending on the nature of the contraband, the contraband may be destroyed, given to specified entities, or sold, or used by the law enforcement agency that has possession of it (R.C. 2933.41(D) and 2933.43(D)(1)). If the contraband is sold, the proceeds of the sale and any forfeited moneys must be applied in the following order (R.C. 2933.43(D)(1)):

(1) First, to the payment of the costs incurred in connection with the seizure of, storage of, maintenance of, and provision of security for the contraband, the forfeiture proceeding, and, if any, the sale;

(2) Second, the remaining proceeds or forfeited moneys, to the payment of the balance due on specified security interests preserved on the contraband;

(3) Third, the remaining proceeds or forfeited moneys, as follows:

(a) If the forfeiture was ordered in a juvenile court, 10% to one or more certified alcohol and drug addiction treatment programs and that are specified in the order of forfeiture.³

³ *A juvenile court is prohibited from certifying an alcohol or drug addiction treatment program in the order of forfeiture unless the program is a certified alcohol and drug addiction treatment program and, generally, unless the program is located in the county in which the court that orders the forfeiture is located or in a contiguous county. But if no certified alcohol and drug addiction treatment program is located in any of those counties, the juvenile court may specify in the order a certified alcohol and drug addiction treatment program located anywhere within Ohio (R.C. 2933.43(D)(1)(c)(i)).*

(b) If the forfeiture was ordered in a juvenile court, 90%, and if the forfeiture was ordered in a court other than a juvenile court, 100% to the law enforcement trust fund of the prosecuting attorney and to a statutorily specified fund that relates to the law enforcement agency that made the seizure. The prosecuting attorney may decline to accept any of the remaining proceeds or forfeited moneys, and, if the prosecuting attorney so declines, the remaining proceeds or forfeited moneys must be applied to the fund that relates to the law enforcement agency that made the seizure.

Additionally, no proceeds or forfeited moneys may be allocated to or used by the law enforcement agency unless the law enforcement agency has adopted a written internal control policy that addresses the use of moneys received from funds.

Existing law limits the purposes for which money in these statutorily specified funds may be used. Money in the State Highway Patrol Contraband, Forfeiture, and Other Fund, the Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund, and a law enforcement trust fund must be expended only in accordance with the written internal control policy, and, generally, may be expended only to pay the costs of protracted or complex investigations or prosecutions, to provide reasonable technical training or expertise, to provide matching funds to obtain federal grants to aid law enforcement, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse, or for other law enforcement purposes that specified public officials determine to be appropriate. The Board of Pharmacy Drug Law Enforcement Fund must be expended only in accordance with the written internal control policy and only in accordance with the Pharmacy Laws. (R.C. 2933.43(D)(1).)

Operation of the bill. The bill expands the permissible expenditures from these funds to permit money to be expended to pay the costs of emergency action taken under R.C. 3745.13 relative to the operation of an illegal methamphetamine laboratory if the forfeited property or money involved was that of a person responsible for the operation of the laboratory (R.C. 2933.43(D)(1)).

Expansion of definition of "hazardous waste" in the Solid and Hazardous Waste Laws

The bill expands the definition of "hazardous waste" in the Solid and Hazardous Waste Laws to include any methamphetamine that is manufactured or produced in the commission of illegal manufacture of drugs, whether or not there has been a prior conviction of that offense, and any byproduct of the manufacture or production of methamphetamine that is manufactured or produced in the

commission of that offense, whether or not there has been a prior conviction of that offense (R.C. 3734.01(J)(1)(b)).

Under existing law, "hazardous waste" means any waste or combination of wastes in solid, liquid, semisolid, or contained gaseous form that in the determination of the Director of Environmental Protection, because of its quantity, concentration, or physical or chemical characteristics, may do either of the following (R.C. 3734.01(J)):

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness;

(2) Pose a substantial present or potential hazard to human health or safety or to the environment when improperly stored, treated, transported, disposed of, or otherwise managed.

"Hazardous waste" under existing law includes any substance identified by regulation as hazardous waste under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, as amended, and does not include any substance that is subject to the "Atomic Energy Act of 1954," 68 Stat. 919, 42 U.S.C.A. 2011, as amended (R.C. 3734.01(J)).

Numerous sections of the Revised Code refer to hazardous waste; see **COMMENT 3** for a brief description of some of the more significant provisions.

Definitions

"Committed in the vicinity of a juvenile"

Under existing law, an offense is "committed in the vicinity of a juvenile" if the offender commits the offense within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense (R.C. 2925.01(BB)).

"Committed in the vicinity of a school"

Under existing law, an offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises (R.C. 2925.01(P)).

"School" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards, whether or

not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed (R.C. 2925.01(Q)).

"School premises" means either of the following (R.C. 2925.01(R)):

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

"School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed (R.C. 2925.01(S)).

Contraband

As used in the Revised Code, "contraband" means any property described in the following categories (R.C. 2901.01(A)(13)--not in the bill):

(1) Property that in and of itself is unlawful for a person to acquire or possess;

(2) Property that is not in and of itself unlawful for a person to acquire or possess, but that has been determined by an Ohio court, in accordance with law, to be contraband because of its use in an unlawful activity or manner, of its nature, or of the circumstances of the person who acquires or possesses it;

(3) Property that is specifically stated to be contraband by a section of the Revised Code or by an ordinance, regulation, or resolution;

(4) Property that is forfeitable pursuant to a section of the Revised Code, or an ordinance, regulation, or resolution;

(5) Any controlled substance, or any device, paraphernalia, money, or other means of exchange that has been, is being, or is intended to be used in an

attempt or conspiracy to violate, or in a violation of, the Drug Laws or the Controlled Substances Laws;

(6) Any gambling device, paraphernalia, money, or other means of exchange that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in the violation of, the Gambling Laws;

(7) Any equipment, machine, device, apparatus, vehicle, vessel, container, liquid, or substance that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in the violation of, any Ohio law relating to alcohol or tobacco;

(8) Any personal property that has been, is being, or is intended to be used in an attempt or conspiracy to commit, or in the commission of, any offense or in the transportation of the fruits of any offense;

(9) Any property that is acquired through the sale or other transfer of contraband or through the proceeds of contraband, other than by a court or a law enforcement agency acting within the scope of its duties;

(10) Any computer, computer system, computer network, computer software, or other telecommunications device that is used in a conspiracy to commit, an attempt to commit, or the commission of any offense, if the owner of the computer, computer system, computer network, computer software, or other telecommunications device is convicted of or pleads guilty to the offense in which it is used.

Drug abuse offense

Under existing law, "drug abuse offense" means any of the following (R.C. 2925.01(G)):

(1) Theft of drugs (R.C. 2913.02(A) in specified circumstances), corrupting another with drugs (R.C. 2925.02), trafficking offenses (R.C. 2925.03), illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04), funding of drug or marihuana trafficking (R.C. 2925.05), illegal administration or distribution of anabolic steroids (R.C. 2925.06), drug possession offenses (R.C. 2925.11), possessing drug abuse instruments (R.C. 2925.12), permitting drug abuse (R.C. 2925.13), deception to obtain a dangerous drug (R.C. 2925.22), illegal processing of drug documents (R.C. 2925.23), tampering with drugs (R.C. 2925.24), abusing harmful intoxicants (R.C. 2925.31), trafficking in harmful intoxicants (R.C. 2925.32), improperly dispensing or distributing nitrous oxide (R.C. 2925.32), illegal dispensing of drug samples (R.C. 2925.36), or possession of or trafficking in counterfeit controlled substances (R.C. 2925.37);

(2) A violation of an existing or former law of Ohio or any other state or of the United States that is substantially equivalent to any offense listed in paragraph (1), above;

(3) An offense under an existing or former law of Ohio 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 to commit, attempt to commit, or complicity in committing or attempting to commit any offense described in paragraphs (1), (2), and (3), above.

The bill expands the definition, as described above.

Public premises

As used in the bill, "public premises" means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort (R.C. 2925.01(II)).

COMMENT

1. Existing law contains three drug paraphernalia offenses:

The first offense prohibits a person from knowingly using, or possessing with purpose to use, drug paraphernalia. Whoever violates this prohibition is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree. (R.C. 2925.14(C)(1) and (F)(1).)

The second offense prohibits a person from knowingly selling, or possessing or manufacturing with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia. Generally, whoever violates this prohibition is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree. But if the offender violates the prohibition by selling drug paraphernalia to a juvenile, the offender is guilty of selling drug paraphernalia to juveniles, a misdemeanor of the first degree. (R.C. 2925.14(C)(2) and (F)(2) and (3).)

The third offense prohibits a person from placing an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within Ohio, if the person knows that the purpose of the

advertisement is to promote the illegal sale in Ohio of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia. Whoever violates this prohibition is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree. (R.C. 2925.14(C)(3) and (F)(4).)

For any of the offenses, in addition to any other sanction, the court must suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to the violation. 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 sanction imposed for a violation of this section, the court forthwith must comply with specified professional licensing entity notification provisions (R.C. 2925.14(G)).

2. Existing law explicitly specifies that "drug paraphernalia" includes, but is not limited to, any of the following equipment, product, or material that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners (R.C. 2925.14(A)):

(a) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(b) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(c) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(d) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance;

(e) A scale or balance for weighing or measuring a controlled substance;

(f) A diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance;

(g) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;

(h) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;

(i) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;

(j) A container or device for storing or concealing a controlled substance;

(k) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;

(l) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marijuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

3. By including methamphetamine and any byproduct of the manufacture or production of methamphetamine in the definition of "hazardous waste," the following provisions, not in the bill, among others, are affected:

(a) R.C. 2307.71(H), the definition of "hazardous or toxic substance" for the purposes of the Product Liability Law.

(b) R.C. 3734.02(E), which prohibits a person from establishing or operating a hazardous waste facility, or using a solid waste facility for the storage, treatment, or disposal of any hazardous waste, without a hazardous waste facility installation and operation permit. Whoever recklessly violates this prohibition is guilty of a felony, must for a first offense be fined at least \$10,000 but not more than \$25,000, imprisoned for at least two years but not more than four years, or both, and for a second or subsequent conviction, must be fined at least \$20,000 but not more than \$50,000 per day of violation, imprisoned for at least two years but not more than four years, or both. Each day of violation constitutes a separate offense.

(c) R.C. 3734.02(F), which prohibits a person from storing, treating, or disposing of hazardous waste, or transporting or causing to be transported any hazardous waste to any other premises, except at or to any of specified facilities. Whoever recklessly violates this prohibition is guilty of a felony, must be fined at least \$10,000 but not more than \$25,000, imprisoned for at least two years but not more than four years, or both, and for a second or subsequent conviction, must be fined at least \$20,000 but not more than \$50,000 per day of violation, imprisoned for at least two years but not more than four years, or both.

(d) R.C. 3734.02(I), which prohibits an owner or operator of a "hazardous waste facility," in the operation of the facility, from causing, permitting, or allowing the emission from the facility of any particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substance that, in the opinion of the Director of Environmental Protection, unreasonably interferes with the comfortable enjoyment of life or property by persons living or working in the vicinity of the facility, or that is injurious to public health. Any such action is a public nuisance. Whoever recklessly violates this prohibition is guilty of a felony, must be fined at least \$10,000 but not more than \$25,000, imprisoned for at least two years but not more than four years, or both, or for a second or subsequent conviction, must be fined at least \$20,000 but not more than \$50,000 per day of violation, imprisoned for at least two years but not more than four years, or both. Each day of violation constitutes a separate offense.

(e) R.C. 3734.02(J), which authorizes the Director of Environmental Protection, in the event the Director finds an imminent and substantial danger to public health or safety or the environment that creates an emergency situation requiring the immediate treatment, storage, or disposal of hazardous waste, to issue a temporary emergency permit to allow the treatment, storage, or disposal of the hazardous waste at a facility that is not otherwise authorized by a hazardous waste facility installation and operation permit to treat, store, or dispose of the waste.

(f) R.C. 3734.04, which requires the Director of Environmental Protection to provide for the inspection of hazardous waste facilities and of generators and transporters of hazardous waste and enforcement of the Solid and Hazardous Waste Laws and rules governing the storage, treatment, transportation, and disposal of hazardous waste.

(g) R.C. 3734.05(C), which requires a person who proposes to establish or operate a hazardous waste facility to apply for a hazardous waste facility installation and operation permit at least 180 days before the proposed beginning of operation of the facility.

(h) R.C. 3734.10, which authorizes the Director of Environmental Protection or any board of health, upon request or upon their own initiative, to investigate or make inquiries into any alleged violation or act of improper hazardous waste storage.

(i) R.C. 3734.101(A), which authorizes any person aggrieved or adversely affected by an alleged violation of the Solid or Hazardous Waste Laws or a rule, permit, license, variance, or order issued or adopted under those Laws to commence a civil action on the person's own behalf against any person, the state, or a political subdivision that is alleged to be in violation. Actions against the

state or a political subdivision may only relate to its activities involved in generating, transporting, storing, treating, or disposing of hazardous waste, infectious waste, or solid wastes, but may not relate to any such activities involved in the cleanup of a hazardous waste facility or to any regulatory activity.

(j) R.C. 3734.11(A), which prohibits a person from violating any section of the Solid and Hazardous Waste Laws, any rule adopted under it, or any order issued under R.C. 3734.13. Whoever recklessly violates this prohibition is guilty of a felony, must be fined at least \$10,000 but not more than \$25,000, imprisoned for at least two years but not more than four years, or both, and for a second or subsequent conviction, must be fined at least \$20,000 but not more than \$50,000 per day of violation, imprisoned for at least two years but not more than four years, or both. Each day of violation constitutes a separate offense.

(k) R.C. 3734.12(B), which requires the Director of Environmental Protection to adopt and amend, suspend, and rescind rules establishing standards for generators and transporters of hazardous waste, and owners and operators of hazardous waste facilities and prohibiting the disposal of specified hazardous wastes in Ohio if the Director has determined that the potential impacts on human health or safety or the environment are such that disposal of those wastes should not be allowed and that a technically feasible and environmentally sound alternative is reasonably available for treatment of those wastes.

R.C. 3734.16 provides that a generator of hazardous waste who violates either of these rules is liable for any damage or injury caused by the violation and for the costs of rectifying the violation and conditions caused by the violation in addition to any civil penalties or criminal fines imposed for the violation.

(l) R.C. 3734.17, which prohibits a person from accepting for transportation or for treatment, storage, or disposal any hazardous waste whose generator has violated any of the rules adopted by the Director. Whoever recklessly violates either prohibition is guilty of a felony, must be fined at least \$10,000 but not more than \$25,000, imprisoned for at least two years but not more than four years, or both, and for a subsequent conviction, must be fined at least \$20,000 but not more than \$50,000 per day of violation, imprisoned for at least two years but not more than four years, or both. Each day of violation constitutes a separate offense.

(m) R.C. 3734.13(C) and (E), which authorizes the Director of Environmental Protection to request the Attorney General to bring a civil action for a temporary restraining order, preliminary or permanent injunction, and civil penalties for a violation of the Solid and Hazardous Waste Laws or a rule adopted or order issued under those Laws. Subject to certain exceptions, the court may

impose upon the person a civil penalty of not more than \$10,000 for each day of each violation.

(n) R.C. 3734.19(A), which provides that, if the legislative or executive authority of a municipal corporation, county, or township has evidence to indicate that locations within its boundaries once served as hazardous waste facilities or that significant quantities of hazardous waste were disposed of in solid waste facilities within its boundaries, it may request the Director of Environmental Protection to survey the locations or facilities. The Director or his authorized representative may apply for, and any judge of a court of common pleas must issue, an appropriate search warrant.

(o) R.C. 3734.20, which provides that, if the Director of Environmental Protection has reason to believe that hazardous waste was treated, stored, or disposed of at any location within Ohio, the Director may conduct such investigations and make such inquiries as are reasonable or necessary to determine if conditions at a hazardous waste facility, solid waste facility, or other location where the Director has reason to believe hazardous waste was treated, stored, or disposed of constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination. The Director or the Director's authorized representative may apply for, and any judge of a court of common pleas must issue, an appropriate search warrant.

If the Director determines that conditions at the place where hazardous waste was treated, stored, or disposed of constitute a substantial threat to public health or safety or are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination, the Director must initiate appropriate action to abate the pollution or contamination or to protect public health or safety.

(p) R.C. 3734.21 and 3734.22, which authorize the Director of Environmental Protection to expend moneys credited to the Hazardous Waste Clean-up Fund to pay the cost of measures necessary for the proper closure of hazardous waste facilities or any solid waste facilities containing significant quantities of hazardous waste and to pay costs that are necessary to abate conditions thereon that are causing or contributing to or threatening to cause or contribute to air or water pollution or soil contamination or that constitute a substantial threat to public health or safety.

(q) R.C. 3734.25, which authorizes the Director of Environmental Protection to make grants of moneys from the Hazardous Waste Clean-up Fund to pay by up to two-thirds of the reasonable and necessary expenses incurred by a municipal corporation, county, or township for the proper closure of or abatement

of air or water pollution or soil contamination from a solid waste facility in which significant quantities of hazardous waste were disposed of and that the political subdivision owns and once operated.

(r) R.C. 3734.26, which permits the Director of Environmental Protection to make grants of moneys from the Hazardous Waste Clean-up Fund to the owner, other than a political subdivision, of a solid waste facility in which significant quantities of hazardous waste were disposed of or a hazardous waste facility for up to 50% of the cost of the reasonable and necessary expenses incurred for the proper closure of or abatement or prevention of air or water pollution or soil contamination from the facility and for developing the land on which it was located for use in industry, commerce, distribution, or research.

(s) R.C. 3734.28, which authorizes the Environmental Protection Agency to use the moneys in the Hazardous Waste Clean-up Fund for the purposes set forth in R.C. 3734.122(D), 3734.19, 3734.20, 3734.21, 3734.23, 3734.25, 3734.26, and 3734.27, and, through June 30, 2001, Chapter 3746. of the Revised Code and for any related enforcement expenses.

(t) R.C. 3745.08, which provides that persons may file a complaint with the Director of Environmental Protection alleging that another person has violated, is violating, or will violate any law, rule, standard, or order relating to hazardous waste. Upon receipt of the complaint, the Director must cause a prompt investigation to be conducted such as is reasonably necessary to determine whether a violation, as alleged, has occurred, is occurring, or will occur.

(u) R.C. 3734.121(A)(1) requires the Director of Environmental Protection to annually compile and make available a list of hazardous wastes generated within Ohio during the preceding calendar year by any person who is not exempt from regulation under the Solid and Hazardous Waste Laws and rules adopted under those Laws. The list must contain at least the name and address of each person generating hazardous waste, the waste description of each waste generated, and the quantity of waste generated during the reporting period.

(v) R.C. 3734.14 requires the Director of Environmental Protection to periodically determine the market potential and feasibility of the exchange, use, and recovery of resources from hazardous waste.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced H0007-I.124/kl	01-30-01	p. 93

