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(As Reported by S. Judiciary on Criminal Justice)

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BILL SUMMARY

- Enacts a new offense called "illegal assembly or possession of chemicals for the manufacture of drugs."
- Adds "illegal assembly or possession of chemicals for the manufacture of drugs" to the definition of "drug abuse offense."
- Enhances the penalty for the existing 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.
- 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.

** This analysis was prepared before the report of the Senate Judiciary Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- 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 that may be used to produce methamphetamine or any compound, mixture, preparation, or substance containing methamphetamine and the possession of which are the basis of a charged offense to obtain a court order requiring the destruction of 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 environmental contamination to recover from the person the additional or extraordinary costs the entity incurs in investigating, mitigating, minimizing, removing, or abating the contamination and specifically makes that person liable for those costs.
- Authorizes the use of the proceeds of a sale of forfeited property 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.

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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). 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 or possession of chemicals for the manufacture of drugs

Existing law prohibits a person from illegally manufacturing any controlled substance (see "Illegal manufacture of drugs," below) and from committing an attempt to illegally manufacture a controlled substance (see COMMENT 1). But it does not specifically prohibit any preliminary activities related to the accumulation or possession of the materials needed to illegally manufacture a controlled substance.

Prohibition

The bill enacts a new offense called "illegal assembly or possession of chemicals for the manufacture of drugs." The bill prohibits a person from knowingly assembling or possessing one or more chemicals that may be used to manufacture a controlled substance in Schedule I or II of the controlled substances schedule with the intent to manufacture a controlled substance included in

Schedule I or II in violation of the prohibition that constitutes the offense of illegal manufacture of drugs, as described below.

The bill states that, in a prosecution for a violation of this prohibition, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a Schedule I or II controlled substance. The assembly or possession of a single chemical that may be used in the manufacture of a Schedule I or II controlled substance, with the intent to manufacture a controlled substance in either schedule, is sufficient to violate the prohibition. (R.C. 2925.041(A) and (B).)

Penalty

Generally. A person who violates this prohibition is guilty of illegal assembly or possession of chemicals for the manufacture of drugs. The offense is a felony of the third degree, and under the felony sentencing law there is no preference for or against a prison term. (R.C. 2925.041(C).)

Additional penalties. In addition to any other sanction imposed for the offense, the court that sentences an offender for the offense must do all of the following (R.C. 2925.041(D) 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 third degree felonies (the maximum amount authorized for third degree felonies is \$10,000) unless the court determines that the offender is indigent. The bill specifies where the clerk must pay the fine money and how it must be used. The clerk must do so in accordance with existing procedures that apply to persons convicted of drug trafficking offenses. Generally, it must be paid to the law enforcement agencies that primarily were responsible for or involved in the offender's arrest or prosecution and must be used by the agencies to subsidize their law enforcement efforts that pertain to drug offenses. 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 license or permit is so revoked, the offender may request termination of, and the court may terminate, the revocation in specified circumstances in accordance with existing procedures.

(3) Comply with existing procedures regarding professional licensing entity notification 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 or possession of chemicals for the manufacture of drugs" to the existing 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's expansion of that phrase's definition subjects a person suspected or convicted of "illegal assembly or possession 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 person who pleads guilty to or is convicted of illegal assembly or possession 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).

(2) A previous conviction of illegal assembly or possession 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, drug possession offenses--not in the bill).

(3) When there is reasonable ground to believe that illegal assembly or possession 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 or possession 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), not in the bill):

Penalty. Under existing law, a person who commits a violation of this prohibition that involves any drug other than marihuana is guilty of "illegal manufacture of drugs." A person who commits a violation that involves marihuana is guilty of "illegal cultivation of marihuana." Regarding illegal manufacture of drugs, if the drug involved is any compound, mixture, preparation, or substance included in Schedule I or II (such as methamphetamine), 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).) But if the offense involved the sale, offer to sell, or possession of the controlled substance and 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 R.C. 2929.20 or Chapter 2967. or 5120. If it makes specified findings, it also may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years. (R.C. 2925.04(E), and R.C. 2929.14(D)(3)--not in the bill.)

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

Operation of the bill

The bill increases in specified circumstances the penalties for illegal manufacture of drugs involving methamphetamine. Under the bill, if the drug involved in the violation is methamphetamine, any salt, isomer, or salt of an

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

(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.

isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine and if the offense was committed in the "vicinity of a juvenile," "in the vicinity of a school," or on "public premises," 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 (see "Definitions," below). (R.C. 2925.04(C)(2) and (D) and 2925.01(II).)

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" (see below). The penalties for the offenses range from a misdemeanor of the fourth degree to a misdemeanor of the second degree. The bill does not change the prohibitions that constitute these offenses or the penalties for them. (R.C. 2925.14(C) to (G).) (See **COMMENT 2** 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 3** for a complete description of the specified equipment, products, or materials.)

Operation of the bill. The bill expands the list of examples that are included within the definition of "drug paraphernalia" to specifically include any object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine, that is used by an offender, intended by an offender for use, or designed by an offender for use in the specified manner (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, a list of specified statutory factors relating to the "object" that may be drug paraphernalia. The bill conforms the language used in the list of factors to the language used in the definition of drug paraphernalia, by replacing 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 specified university laboratories 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. The person who is accused of the violation is entitled, upon written request made to the prosecuting attorney, to have a portion of the substance that is the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the accused person, or, if the person is indigent, by a qualified laboratory analyst appointed by the court. The portion must be a representative sample of the entire substance that is the basis of the alleged violation and must be of sufficient size, in the opinion of the court, to permit the accused's analyst to make a thorough scientific analysis concerning the identity of the substance. The law contains procedures regarding the provision of the sample to the accused and the testing. (R.C. 2925.51(A) and (E).)

The bill specifies that, in any criminal prosecution for a violation of the new offense of "illegal assembly or possession of chemicals for the manufacture of drugs" that it creates or 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 a specified university laboratory 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. The bill makes conforming changes in the existing

provisions that permit the person charged with the offense to have the substance in question tested. (R.C. 2925.51(A) and (E).)

Destruction of chemical components of methamphetamine

The bill specifies that, if a person is charged with committing the new offense of "illegal assembly or possession of chemicals for the manufacture of drugs" that it creates or with any violation of the Drug Laws or the Controlled Substances Laws that is based on the possession of chemicals sufficient to produce methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of 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

Under existing law, when emergency action is required to protect the public health or safety or the environment, a person responsible for causing or allowing an unauthorized spill, release, or discharge of material into or upon the environment may be liable to any political subdivision that experiences costs in locating, investigating, mitigating, minimizing, removing, or abating the spill, release, or discharge in the course of the emergency action. The law contains provisions regarding the manner of recovery of the costs. (R.C. 3745.13.)

Under the bill, similar to the above-described existing provisions, when emergency action is required 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 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, for the necessary and reasonable, additional or extraordinary costs it incurs in investigating, mitigating, minimizing, removing, or

abating the 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, 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, (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, the legal officer or counsel also may pursue a forfeiture proceeding against the responsible person under the existing Corrupt Activity Law, Criminal Gang Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, or Contraband Forfeiture Law, 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. Unlike civil actions for other types of emergency actions under existing law, in making the determination of an award for reimbursement, the responsible party's status as a taxpayer to the governmental entity is not required to be taken into consideration. Nothing in these provisions prevents a political subdivision, countywide emergency 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

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)).*

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 proceeds of sale of forfeited property 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" (see "**Definitions**" below). R.C. 2933.43(A)(1), part of the Contraband Seizure and Forfeiture Law, 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)). The proceeds of the sale of any contraband, 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

(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

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)).

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).)

Significantly, the provisions of the Contraband Seizure and Forfeiture Law that specify the manner in which proceeds of the sale of forfeited contraband, or forfeited cash, must be used also apply regarding the proceeds of the sale of property, and cash, forfeited under the Criminal Gang Activity Forfeiture Laws, the Felony Drug Abuse Offense Forfeiture Laws, and the Corrupt Activity Law (R.C. 2923.46(B)(7)(c), 2925.44(B)(8)(c)(ii), and 2923.35(D)(2)(c)--not in the bill).

Operation of the bill. The bill expands provisions of the Contraband Seizure and Forfeiture Law that specify the permissible expenditures from law enforcement trust funds and similar funds to also 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)).

This expansion of authorized expenditures also will apply regarding the proceeds of the sale of property, and cash, forfeited under the Criminal Gang Activity Forfeiture Laws, the Felony Drug Abuse Offense Forfeiture Laws, and the Corrupt Activity Law (by operation of cross-references to R.C. 2933.43(D)(1) that are made in R.C. 2923.46(B)(7)(c), 2925.44(B)(8)(c)(ii), and 2923.35(D)(2)(c)--not in the bill).

Definitions

"Committed in the vicinity of a juvenile"

Under existing law, unchanged by the bill, 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, unchanged by the bill, 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 in "*Illegal assembly or possession of chemicals for the manufacture of drugs.*"

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, not in the bill, prohibits a person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, from engaging in conduct that, if successful, would constitute or result in the offense. A violation of this prohibition is the offense of "attempt." The penalty for attempt varies, depending upon the offense that was attempted. Relevant to the bill, an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt; an attempt to commit a drug abuse offense in any other circumstances is an offense of the next lesser degree than the offense attempted.

It is no defense to a charge of a violation of this prohibition that, in retrospect, commission of the offense that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be. However, it is an affirmative defense to a charge of a violation of this prohibition that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose. (R.C. 2923.02.)

2. Existing law contains three drug paraphernalia offenses:

The first offense prohibits a person from knowingly using, or possessing with purpose to use, drug paraphernalia. A person who 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, a person who 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. A person who 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)).

3. 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, marihuana, 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 marihuana 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 93
Reported, H. Criminal Justice	03-21-01	pp. 248-249
Passed House (98-0)	03-27-01	pp. 261-262
Reported, S. Judiciary on Criminal Justice	---	---

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