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Reps. Jolivette, Aslanides, Schaffer, Widowfield

BILL SUMMARY

- Enhances the penalties for the offenses of corrupting another with drugs, drug trafficking offenses, illegal manufacture of drugs or cultivation of marihuana, illegal dispensing of drug samples, trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising, when the offense is committed within the boundaries of a Weed and Seed site.

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CONTENT AND OPERATION

Background--Weed and Seed sites and the United States Department of Justice Executive Office for Weed and Seed

As used in the bill, "Weed and Seed site" means any neighborhood, community, municipal corporation, or other site in Ohio that is officially recognized by the Executive Office for Weed and Seed of the United States Department of Justice as a Weed and Seed site (R.C. 2925.01(JJ)).

According to the Executive Office for Weed and Seed (www.ojp.gov/eows/nutshell.htm (April 25, 2003)):

Operation Weed and Seed is foremost a strategy-- rather than a grant program-- which aims to prevent, control, and reduce violent crime, drug abuse, and gang activity in targeted high-crime neighborhoods across the country. Weed and Seed sites range in size from several neighborhood blocks to 15 square miles.

The strategy involves a two-pronged approach: law enforcement agencies and prosecutors cooperate in "weeding out" criminals who participate in violent crime and drug abuse, attempting to prevent their

return to the targeted area; and "seeding" brings human services to the area, encompassing prevention, intervention, treatment, and neighborhood revitalization.

A community-orientated policing component bridges weeding and seeding strategies. Officers obtain helpful information from area residents for weeding efforts while they aid residents in obtaining information about community revitalization and seeding resources.

An entity that wishes to be recognized as a Weed and Seed site must apply to the Executive Office. According to the Executive Office, Ohio has Weed and Seed sites in Akron, Cincinnati, Columbus, Euclid, Hamilton, Lima, Toledo, and Youngstown (www.weedandseeddatacenter.org/ohio.html and www.ojp.gov/eows/map/oh.htm (April 25, 2003)).

Operation of the bill--overview

Under existing law, the penalties for the offenses of corrupting another with drugs, various trafficking offenses, illegal manufacture of drugs or cultivation of marihuana, illegal dispensing of drug samples, trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising are enhanced when the offense is committed in the vicinity of a school. The bill enhances the penalties for those offenses in a parallel manner when the offense is committed within the boundaries of a Weed and Seed site. (R.C. 2925.02(C), 2925.03(C), 2925.36(C), and 2925.37(H), (J), and (K).)

The following portions of the analysis describe in greater detail the prohibitions and penalties involved for the offenses listed in the preceding paragraph (see **COMMENT**).

Corrupting another with drugs

Prohibition

Under existing law, a person is guilty of corrupting another with drugs if the person knowingly does any of the following (R.C. 2925.02(A)):¹

¹ *The prohibitions described in paragraphs (1), (3), and (4) do not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741. (R.C. 2925.02(B)).*

(1) By force, threat, or deception, administers to another or induces or causes another to use a *controlled substance* (defined terms for which definitions may be found in "**Definitions**," below, are italicized the first time they are used in the analysis);

(2) By any means, administers or furnishes to another or induces or causes another to use a controlled substance with purpose to cause *serious physical harm* to the other person, or with purpose to cause the other person to become *drug dependent*;

(3) By any means, administers or furnishes to another or induces or causes another to use a controlled substance, and thereby cause serious physical harm to the other person, or cause the other person to become drug dependent;

(4) By any means, does any of the following: (a) furnishes or administers a controlled substance to a juvenile who is at least two years the offender's junior, when the offender knows the age of the juvenile or is reckless in that regard, (b) induces or causes a juvenile who is at least two years the offender's junior to use a controlled substance, when the offender knows the age of the juvenile or is reckless in that regard, (c) induces or causes a juvenile who is at least two years the offender's junior to commit a *felony drug abuse offense*, when the offender knows the age of the juvenile or is reckless in that regard, or (d) uses a juvenile, whether or not the offender knows the age of the juvenile, to perform any surveillance activity that is intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or to prevent the arrest of the offender or any other person for the commission of a felony drug abuse offense.

Penalties

The following chart describes the penalties for corrupting another with drugs, with the changes made by the bill in italics (R.C. 2925.02(C)):

Type of controlled substance involved	Degree of offense	Presumption regarding prison term; mandatory prison term
Schedule I or II, other than marihuana	F2	Mandatory prison term
--in the vicinity of a school <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term

Type of controlled substance involved	Degree of offense	Presumption regarding prison term; mandatory prison term
Schedule III, IV, or V	F2	Presumption for prison term
--in the vicinity of a school <i>or within the boundaries of a Weed and Seed site</i>	F2	Mandatory prison term
Marihuana	F4	No presumption for or against prison term
--in the vicinity of a school <i>or within the boundaries of a Weed and Seed site</i>	F3	No presumption for or against prison term

In addition, existing law, unchanged by the bill, contains provisions for the imposition of mandatory fines, suspensions of the offender's driver's or commercial driver's license or permit, sanctions related to offenders who are professionally licensed persons, and the possibility of the offender being designated a *major drug offender* and receiving a major drug offender prison term (R.C. 2925.02(D) and (E)).

Trafficking offenses

Prohibition

R.C. 2925.03(A) prohibits a person from knowingly: (1) selling or offering to sell a controlled substance, or (2) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person. A person who violates either prohibition is guilty of a trafficking offense, but the precise offense and penalty depend on certain criteria, including the type and amount of the controlled substance involved, as described below under "**Penalties.**"

Exceptions

These prohibitions do not apply to any of the following (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 R.C. Chapters 3719., 4715., 4723., 4729., 4731., and 4741.;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

Penalties

Aggravated trafficking in drugs. If the drug involved in the violation is any compound, mixture, preparation, or substance included in *Schedule I* or *Schedule II*, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, the person is guilty of aggravated trafficking in drugs. The following chart describes the penalties for aggravated trafficking in drugs, with the changes made by the bill in italics (R.C. 2925.03(C)(1)):

Amount of controlled substance involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
Less than bulk amount	F4	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F3	No presumption for or against prison term
Equals or exceeds bulk amount but is less than 5 times bulk amount	F3	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Mandatory prison term
Equals or exceeds 5 times bulk amount but is less than 50 times bulk amount	F2	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term

Amount of controlled substance involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
Equals or exceeds 50 times bulk amount but is less than 100 times bulk amount	F1	Mandatory prison term
Equals or exceeds 100 times bulk amount	F1	Mandatory prison term and possible major drug offender term

Trafficking in drugs. If the drug involved in the violation is any compound, mixture, preparation, or substance included in *Schedule II, IV, or V*, the person is guilty of trafficking in drugs. The following chart describes the penalties for trafficking in drugs, with the changes made by the bill in italics (R.C. 2925.03(C)(2)):

Amount of controlled substance involved	Degree of offense	Presumption regarding prison term; mandatory prison term
Less than bulk amount	F5	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F4	No presumption for or against prison term
Equals or exceeds bulk amount but is less than 5 times bulk amount	F4	Presumption for prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F3	Presumption for prison term
Equals or exceeds 5 times bulk amount but is less than 50 times bulk amount	F3	Presumption prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Presumption prison term
Equals or exceeds 50 times bulk amount	F2	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term

Trafficking in marihuana. If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, the person is guilty of trafficking in marihuana. The following chart describes the penalties for trafficking in marihuana, with the changes made by the bill in italics (R.C. 2925.03(C)(3)):

Amount of marihuana involved	Degree of offense	Presumption regarding prison term; mandatory prison term
Gift of 20 grams or less	MM, M3 on subsequent offenses	n/a
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	M3	n/a
Less than 200 grams (but not gift of 20 grams or less)	F5	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F4	No presumption for or against prison term
Equals or exceeds 200 grams but is less than 1,000 grams	F4	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F3	No presumption for or against prison term
Equals or exceeds 1,000 grams but is less than 5,000 grams	F3	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Presumption prison term
Equals or exceeds 5,000 grams but is less than 20,000 grams	F3	Presumption for prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Presumption for prison term
Equals or exceeds 20,000 grams	F2	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term

Trafficking in cocaine. If the drug involved in the violation is any compound, mixture, preparation, or substance containing cocaine, the person is guilty of trafficking in cocaine. The following chart describes the penalties for trafficking in cocaine, with the changes made by the bill in italics (R.C. 2925.03(C)(4)):

Amount of cocaine involved	Degree of offense	Presumption regarding prison term; mandatory prison term; or major drug offender term
Less than 5 grams of cocaine ² or less than 1 gram of crack cocaine	F5	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F4	No presumption for or against prison term
Equals or exceeds 5 grams but is less than 10 grams of cocaine or equals or exceeds 1 gram but is less than 5 grams of crack cocaine	F4	Presumption for prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F3	Presumption for prison term
Equals or exceeds 10 grams but is less than 100 grams of cocaine or equals or exceeds 5 grams but is less than 10 grams of crack cocaine	F3	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Mandatory prison term
Equals or exceeds 100 grams but is less than 500 grams of cocaine or equals or exceeds 10 grams but is less than 25 grams of crack cocaine	F2	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term

² For the purposes of this chart "cocaine" means cocaine that is not crack cocaine.

Amount of cocaine involved	Degree of offense	Presumption regarding prison term; mandatory prison term; or major drug offender term
Equals or exceeds 500 grams but is less than 1,000 grams of cocaine or equals or exceeds 25 grams but is less than 100 grams of crack cocaine	F1	Mandatory prison term
Equals or exceeds 1,000 grams of cocaine or equals or exceeds 100 grams of crack cocaine	F1	Mandatory prison term and possible major drug offender term

Trafficking in LSD. If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., the person is guilty of trafficking in L.S.D. The following chart describes the penalties for trafficking in L.S.D., with the changes made by the bill in italics (R.C. 2925.03(C)(5)):

Amount of L.S.D. involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
Less than 10 unit doses in a solid form or less than 1 gram in a liquid form	F5	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F4	No presumption for or against prison term
Equals or exceeds 10 unit doses but is less than 50 unit doses in a solid form or equals or exceeds 1 gram but is less than 5 grams in a liquid form	F4	Presumption for prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F3	Presumption for prison term
Equals or exceeds 50 unit doses but is less than 250 unit doses in a solid form or equals or exceeds 5 grams but is less than 25 grams in a liquid form	F3	Mandatory prison term

Amount of L.S.D. involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Mandatory prison term
Equals or exceeds 250 unit doses but is less than 1,000 unit doses in a solid form or equals or exceeds 25 grams but is less than 100 grams in a liquid form	F2	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term
Equals or exceeds 1,000 unit doses but is less than 5,000 unit doses in a solid form or equals or exceeds 100 grams but is less than 500 grams in a liquid form	F1	Mandatory prison term
Equals or exceeds 5,000 unit doses in solid form or equals or exceeds 500 grams in liquid form	F1	Mandatory prison term and possible major drug offender term

Trafficking in heroin. If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, the person is guilty of trafficking in heroin. The following chart describes the penalties for trafficking in heroin, with the changes made by the bill in italics (R.C. 2925.03(C)(6)):

Amount of heroin involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
Less than 10 unit doses or less than 1 gram	F5	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F4	No presumption for or against prison term
Equals or exceeds 10 unit doses but is less than 50 unit doses or equals or exceeds 1 gram but is less than 5 grams	F4	Presumption for prison term

Amount of heroin involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F3	Presumption for prison term
Equals or exceeds 50 unit doses but is less than 100 unit doses or equals or exceeds 5 grams but is less than 10 grams	F3	Presumption for prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Presumption for prison term
Equals or exceeds 100 unit doses but is less than 500 unit doses or equals or exceeds 10 grams but is less than 50 grams	F2	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term
Equals or exceeds 500 unit doses but is less than 2,500 unit doses or equals or exceeds 50 grams but is less than 250 grams	F1	Mandatory prison term
Equals or exceeds 2,500 unit doses or equals or exceeds 250 grams	F1	Mandatory prison term and possible major drug offender term

Trafficking in hashish. If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, the person is guilty of trafficking in hashish. The following chart describes the penalties for trafficking in hashish, with the changes made by the bill in italics (R.C. 2925.03(C)(7)):

Amount of hashish involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
Less than 10 grams in a solid form or less than 2 grams in a liquid form	F5	No presumption for or against prison term

Amount of hashish involved	Degree of offense	Presumption regarding prison term; mandatory prison term; major drug offender term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F4	No presumption for or against prison term
Equals or exceeds 10 grams but is less than 50 grams in a solid form or equals or exceeds 2 grams but is less than 10 grams in a liquid form	F4	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F3	No presumption for or against prison term
Equals or exceeds 50 grams but is less than 250 grams in a solid form or equals or exceeds 10 grams but is less than 50 grams in a liquid form	F3	No presumption for or against prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Presumption for prison term
Equals or exceeds 250 grams but is less than 1,000 grams in a solid form or equals or exceeds 50 grams but is less than 200 grams in a liquid form	F3	Presumption for prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F2	Presumption for prison term
Equals or exceeds 1,000 grams in a solid form or equals or exceeds 200 grams in a liquid form	F2	Mandatory prison term
--in the vicinity of a school or a juvenile <i>or within the boundaries of a Weed and Seed site</i>	F1	Mandatory prison term

Other penalties. In addition, existing law, unchanged by the bill, contains provisions for the imposition of mandatory fines, additional fines, suspensions of the offender's driver's or commercial driver's license or permit, and sanctions related to offenders who are professionally licensed persons (R.C. 2925.03(D), (G), and (H)).

Illegal manufacture of drugs and cultivation of marihuana

Prohibition

R.C. 2925.04(A) prohibits a person from knowingly cultivating marihuana or knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance. A person who violates this prohibition when the offense involves any drug other than marihuana is guilty of illegal manufacture of drugs; a person who violates this prohibition when the offense involves marihuana is guilty of illegal cultivation of marihuana. The precise penalty depends on various circumstances, including the type and amount of controlled substance involved. (R.C. 2925.04(C).)

Exceptions

The prohibition does not apply to any person described in "**Trafficking offenses--Exceptions**," above, to the extent and under the circumstances described in that provision (R.C. 2925.04(B)).

Affirmative defense

It is an affirmative defense to a charge of a fifth degree felony violation of illegal cultivation of marihuana that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstances that indicate that the marihuana was solely for personal use. But, if the person sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense, the person still may be prosecuted for and may be convicted of or plead guilty to a misdemeanor violation of illegal cultivation of marihuana. (R.C. 2925.04(F).)

Penalties

The following chart describes the penalties for illegal manufacture of drugs and illegal cultivation of marihuana, with the changes made by the bill in italics (R.C. 2925.04(C)):

Controlled substance involved	Degree of offense	Presumption regarding prison term; mandatory prison term
Schedule I or II, with the exception of marihuana	F2	Mandatory prison term
--Methamphetamine and offense was committed in the vicinity of a juvenile	F1	Mandatory prison term

Controlled substance involved	Degree of offense	Presumption regarding prison term; mandatory prison term
or a school, on public premises, or within the boundaries of a Weed and Seed site		
Schedule III, IV, or V	F3	Presumption for prison term
Marihuana		
--Less than 100 grams	MM	n/a
--Equals or exceeds 100 grams but is less than 200 grams	M4	n/a
--Equals or exceeds 200 grams but is less than 1,000 grams	F5	Presumption/preference against prison term
--Equals or exceeds 1,000 grams but is less than 5,000 grams	F3	No presumption for or against prison term
--Equals or exceeds 5,000 grams but is less than 20,000 grams	F3	Presumption for prison term
--Equals or exceeds 20,000 grams	F2	Mandatory prison term

Other penalties. In addition, existing law, unchanged by the bill, contains provisions for the imposition of mandatory fines, suspensions of the offender's driver's or commercial driver's license or permit, sanctions related to offenders who are professionally licensed persons, and the possibility of the offender being designated a major drug offender and receiving a major drug offender prison term (R.C. 2925.04(D) and (E)).

Illegal dispensing of drug samples

Prohibition and exception

A person is guilty of illegal dispensing of drug samples if the person knowingly furnishes another a *sample drug*. This prohibition does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4725., 4729., 4731., and 4741. (R.C. 2925.36(A) and (B).)

Penalties

If the drug involved in the offense is a compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana, illegal

dispensing of drug samples generally is a felony of the fifth degree, and there is no presumption for or against imposing a prison term on the offender. But, if the offense was committed in the vicinity of a school or a juvenile *or within the boundaries of a Weed and Seed site* (italicized language is added by the bill), illegal dispensing of drug samples is a felony of the fourth degree, and there is no presumption for or against imposing a prison term on the offender.

If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV, or V, or is marihuana, illegal dispensing of drug samples generally is a misdemeanor of the second degree. But, if the offense was committed in the vicinity of a school or a juvenile, *or within the boundaries of a Weed and Seed site* (italicized language is added by the bill), illegal dispensing of drug samples is a misdemeanor of the first degree. (R.C. 2925.36(C).)

In addition, existing law, unchanged by the bill, contains provisions for suspensions of the offender's driver's or commercial driver's license or permit, sanctions related to offenders who are professionally licensed persons, and the possibility of the offender being designated a major drug offender and receiving a major drug offender prison term (R.C. 2925.36(D) and (E)).

Counterfeit controlled substance offenses

The bill also amends the following counterfeit controlled substances offenses.

Trafficking in counterfeit controlled substances

A person is guilty of trafficking in counterfeit controlled substances if the person does either of the following:

(1) Knowingly makes, sells, offers to sell, or delivers any substance that the person knows is a *counterfeit controlled substance*;

(2) Makes, possesses, sells, offers to sell, or delivers any punch, die, plate, stone, or other device knowing or having reason to know that it will be used to print or reproduce a trademark, trade name, or other identifying mark upon a counterfeit controlled substance.

Generally, trafficking in counterfeit controlled substances is a felony of the fifth degree, and there is no presumption for or against imposing a prison term on the offender. If the offense was committed in the vicinity of a school or a juvenile *or within the boundaries of a Weed and Seed site*, trafficking in counterfeit controlled substances is a felony of the fourth degree, and there is no presumption

for or against imposing a prison term on the offender. (Language added by the bill is italicized.) (R.C. 2925.37(B), (C), and (H).)

Promoting and encouraging drug abuse

A person is guilty of promoting and encouraging drug abuse if the person directly or indirectly represents a counterfeit controlled substance as a controlled substance by describing its effects as the physical or psychological effects associated with use of a controlled substance. Generally, promoting and encouraging drug abuse is a felony of the fifth degree, and there is no presumption for or against imposing a prison term on the offender. If the offense was committed in the vicinity of a school or a juvenile, *or within the boundaries of a Weed and Seed site*, promoting and encouraging drug abuse is a felony of the fourth degree, and there is no presumption for or against imposing a prison term on the offender. (Language added by the bill is italicized.) (R.C. 2925.37(E) and (J).)

Fraudulent drug advertising

A person is guilty of fraudulent drug advertising if the person directly or indirectly falsely represents or advertises a counterfeit controlled substance as a controlled substance. Generally, fraudulent drug advertising is a felony of the fifth degree, and there is no presumption for or against imposing a prison term on the offender. If the offense was committed in the vicinity of a school or a juvenile, *or within the boundaries of a Weed and Seed site*, fraudulent drug advertising is a felony of the fourth degree, and there is no presumption for or against imposing a prison term on the offender. (Language added by the bill is italicized.) (R.C. 2925.37(F) and (K).)

Other penalties

In addition, existing law, unchanged by the bill, contains provisions for additional penalties for a person who pleads guilty to or is convicted of trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, or fraudulent drug advertising: suspensions of the offender's driver's or commercial driver's license or permit and sanctions related to offenders who are professionally licensed persons (R.C. 2925.37(L)).

Definitions

Existing law contains the following definitions, unchanged by the bill, that apply to the provisions included in the bill:

Advertise

"Advertise" means engaging in "advertisement," as defined in R.C. 3715.01. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. (R.C. 2925.37(F), by reference to R.C. 3715.01(A)(9), not in the bill.)

Bulk amount

"Bulk amount" of a controlled substance means any of the following (R.C. 2925.01(D)):

(1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II, or Schedule III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in paragraphs (2) or (5), whichever of the following is applicable:

(a) An amount equal to or exceeding 10 grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative;

(b) An amount equal to or exceeding 10 grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding 30 grams or 10 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a Schedule I stimulant or depressant;

(d) An amount equal to or exceeding 20 grams or 5 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative;

(e) An amount equal to or exceeding 5 grams or 10 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the federal drug abuse control laws that

is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

(g) An amount equal to or exceeding 3 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws.

(2) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

(3) An amount equal to or exceeding 20 grams or 5 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III opiate or opium derivative;

(4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance;

(5) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

Committed in the vicinity of a school

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)).

Committed in the vicinity of a juvenile

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)).

Controlled substance

"Controlled substance" means a drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V of the Schedule of controlled substances (R.C. 2925.01(A), by reference to R.C. 3719.01(C), not in the bill).

Counterfeit controlled substance

"Counterfeit controlled substance" means any of the following (R.C. 2925.01(O)):

(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to that trademark, trade name, or identifying mark;

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance;

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

Drug abuse offense

"Drug abuse offense" means any of the following (R.C. 2925.01(G)):

(1) A violation of R.C. 2913.02(A) that constitutes theft of drugs, or a violation of R.C. 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.24, 2925.31, 2925.32, 2925.36, or 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 section listed in paragraph (1);

(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 under paragraph (1), (2), or (3).

Drug dependent person

"Drug dependent person" means any person who, by reason of the use of any drug of abuse, is physically, psychologically, or physically and psychologically dependent upon the use of such drug, to the detriment of the person's health or welfare (R.C. 2925.01(B), by reference to R.C. 3719.011(B), not in the bill).

Felony drug abuse offense

"Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of Ohio, any other state, or the United States (R.C. 2925.01(H)).

Major drug offender

"Major drug offender" means an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains at least 1,000 grams of hashish; at least 100 grams of crack cocaine; at least 1,000 grams of cocaine that is not crack cocaine; at least 2,500 unit doses or 250 grams of heroin; at least 5,000 unit doses of L.S.D. or 500 grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or at least 100 times the amount of any other Schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to R.C. 2925.03, 2925.04, 2925.05, or 2925.11 that is based on the possession of, sale of, or offer to sell the controlled substance (R.C. 2925.01(DD), by reference to R.C. 2929.01(X), not in the bill).

For some offenses, an offender automatically receives the enhanced major drug offender penalties by reason of the amount and type of controlled substance involved in the offense; for other offenses, the offender receives the enhanced penalties if the offender pleads guilty to or is convicted of a major drug offender specification. These enhanced penalties consist of a ten year mandatory prison term that cannot be reduced and can include an additional term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years. (R.C. 2929.14(D)(3).)

Presumption for a prison term

"Presumption for a prison term" means a presumption, as described in R.C. 2929.13(D), that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of felony sentencing (R.C. 2925.01(CC)).

Sample drug

"Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer (R.C. 2925.01(L)).

Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V

"Schedule I," "Schedule II," "Schedule III," "Schedule IV," and "Schedule V" mean Controlled Substance Schedules I, II, III, IV, and V, respectively, established pursuant to R.C. 3719.41, as amended by revision to the federal controlled substance schedules by the United States Attorney General pursuant to R.C. 3719.43, and by rule of the State Board of Pharmacy pursuant to R.C. 3719.44. (R.C. 2925.01(A), by reference to R.C. 3719.01(BB), 3719.41, 3719.43, and 3719.44, not in the bill.)

Serious physical harm to persons

"Serious physical harm to persons" means any of the following (R.C. 2901.01(A)(5), not in the bill):

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

Unit dose

"Unit dose" means an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual (R.C. 2925.01(E)).

COMMENT

The bill contains two versions of each section, one that is currently effective, and one version that is scheduled to take effect January 1, 2004. For simplicity's sake, this analysis merely discusses the version of the section that is scheduled to take effect January 1, 2004.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-03-03	p. 326

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