



Diana C. Fox

Bill Analysis
Legislative Service Commission

Sub. S.B. 58

125th General Assembly
(As Reported by H. Criminal Justice)

Sens. Jacobson, Stivers, Goodman, Armbruster, Harris, Carey, Brady, Fingerhut, Hottinger, Austria, Carnes, Dann, Randy Gardner, Hagan, Miller, Mumper, Roberts, Zurz

Reps. Willamowski, Gilb, Brown, Latta, Callender, Grendell

BILL SUMMARY

- Increases the penalty for the illegal manufacture of drugs from a felony of the second degree to a felony of the first degree if the drug involved is any drug included in schedule I or II other than marihuana and the offense is committed in the vicinity of a juvenile or in the vicinity of a school and increases the penalty from a felony of the third degree to a felony of the second degree if the drug involved is included in schedule III, IV, or V and the offense is committed in the vicinity of a juvenile or in the vicinity of a school.
- Increases the penalty for illegal cultivation of marihuana one degree depending on the amount of marihuana involved if the offense is committed in the vicinity of a juvenile or in the vicinity of a school.
- Increases the penalty for illegal assembly or possession of chemicals for the manufacture of drugs from a felony of the third degree to a felony of the second degree if the offense was committed in the vicinity of a juvenile or in the vicinity of a school.
- Expands the offense of endangering children to also prohibit a person from allowing a child to be within 100 feet of or within the view of any activity involved in the commission of "illegal manufacture of drugs," "illegal cultivation of marihuana," or "illegal assembly or possession of chemicals for the manufacture of drugs."

CONTENT AND OPERATION

Illegal manufacture of drugs

Existing law

Existing law generally prohibits a person from knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance. Whoever violates this prohibition is guilty of illegal manufacture of drugs if the controlled substance involved is not marihuana. Generally, 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, 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 drug involved in the violation is methamphetamine, any salt, isomer, or salt of an isomer of 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, illegal manufacture of drugs is a felony of the first degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. (R.C. 2925.04(A) and (C)(1) and (2).) If the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V, illegal manufacture of drugs is a felony of the third degree. (R.C. 2925.04(C)(3).)

Operation of the bill

The bill increases the penalty for illegal manufacture of drugs from a felony of the second degree to a felony of the first degree if the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, and if the offense was committed in the vicinity of a juvenile¹ or in the vicinity of a school.² The court is also required to impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. The bill also removes the reference to

¹ 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 the view of the juvenile, or whether the juvenile actually views the commission of the offense (R.C. 2925.01(BB)).

² 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)).

"in the vicinity of a juvenile or in the vicinity of a school" if the violation involves methamphetamine or any of its components described above, because those controlled substances are in schedule I or II and covered by the bill's first degree penalty in those circumstances. Furthermore, the penalty increases from a felony of the third degree to a felony of the second degree if the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V and the offense was committed in the vicinity of a juvenile or in the vicinity of a school. (R.C. 2925.04(C)(3).)

Illegal cultivation of marihuana

Existing law

Existing law prohibits a person from knowingly cultivating marihuana. Whoever violates this prohibition is guilty of illegal cultivation of marihuana. The penalties are determined based on the amount of marihuana involved in the offense and are as follows (R.C. 2925.04(C)(4)):

- (1) Generally, a minor misdemeanor;
- (2) If the amount of marihuana involved equals or exceeds 100 grams but is less than 200 grams, a misdemeanor of the fourth degree;
- (3) If the amount of marihuana involved equals or exceeds 200 grams but is less than 1,000 grams, a felony of the fifth degree and there is no presumption for or against a prison term;
- (4) If the amount of marihuana involved equals or exceeds 1,000 grams but is less than 5,000 grams, a felony of the third degree and there is no presumption for or against a prison term;
- (5) If the amount of marihuana involved equals or exceeds 5,000 grams but is less than 20,000 grams, a felony of the third degree and there is a presumption for a prison term;
- (6) If the amount of marihuana involved equals or exceeds 20,000 grams, 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.

Operation of the bill

The bill increases the above-described penalties by one degree for illegal cultivation of marihuana if the offense is committed in the vicinity of a juvenile or in the vicinity of a school (R.C. 2925.04(C)(4)).

Illegal assembly or possession of chemicals for the manufacture of drugs

Existing law

Existing law 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 with the intent to manufacture a controlled substance in schedule I or II in violation of R.C. 2925.04 (the law regarding illegal manufacture of drugs). Whoever 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 no presumption for or against a prison term. (R.C. 2925.041(A), (B), and (C).)

Operation of the bill

The bill increases the penalty for illegal assembly or possession of chemicals for the manufacture of drugs to a felony of the second degree with no presumption for or against a prison term if the offense was committed in the vicinity of a juvenile or in the vicinity of a school (R.C. 2925.041(C)).

Endangering children

Current law

Current law generally prohibits a person who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age from creating a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support (R.C. 2919.22(A)). Current law also prohibits a person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age (R.C. 2919.22(B)):

- (1) Abusing the child;
- (2) Torturing or cruelly abusing the child;
- (3) Administering corporal punishment or other physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;
- (4) Repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter.

The penalties for these offenses range from misdemeanor of the first degree to a felony of the second degree, depending on the prohibition violated, whether or not the offender has been previously convicted of endangering children or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, and if the violation results in serious physical harm to the child (R.C. 2919.22(E)).

Operation of the bill

The bill expands the offense of "endangering children" by prohibiting a person from allowing a child under 18 years of age or a mentally or physically handicapped child under 21 years of age to be within 100 feet of or within the view of any activity involved in the commission of "illegal manufacture of drugs," "illegal cultivation of marihuana," or "illegal assembly or possession of chemicals for the manufacture of drugs." A violation of this new prohibition is generally a felony of the third degree. However, the offense is a felony of the second degree if it (1) results in serious physical harm to the child involved or (2) if the offender previously has been convicted of "endangering children" or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child. (R.C. 2919.22(B)(6) and (E)(3).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-25-03	p. 208
Reported, S. Judiciary on Civil Justice	10-15-03	p. 1097
Passed Senate (33-0)	10-15-03	pp. 1126-1127
Reported, H. Criminal Justice	02-04-04	p. 1604

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