



**Sub. S.B. 58\***

125th General Assembly

(As Reported by S. Judiciary on Civil Justice)

**Sens. Jacobson, Stivers, Goodman, Armbruster, Harris, Carey, Brady, Fingerhut**

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**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.

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

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## 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 juvenile<sup>1</sup> or in the vicinity of a school.<sup>2</sup> 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

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<sup>1</sup> 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)).

<sup>2</sup> 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)).

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**HISTORY**

| ACTION                                     | DATE     | JOURNAL ENTRY |
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| Introduced                                 | 03-25-03 | p. 208        |
| Reported, S. Judiciary<br>on Civil Justice | ---      | ---           |

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