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Bill Analysis
Legislative Service Commission

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(As Reported by S. Judiciary on Criminal Justice)

Sens. Carey, Zurz, Harris, Jacobson, Padgett, Clancy, Grendell, Fedor, Miller

BILL SUMMARY

- Provides specified minimum mandatory prison terms for the offense of "illegal manufacture of drugs" when the drug involved in the offense is 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.
- Enacts mandatory prison terms for the offense of "illegal assembly or possession of chemicals for manufacture of drugs" when the chemical or chemicals assembled or possessed in committing the offense may be used to manufacture 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.
- Enacts mandatory prison terms for the offense of "endangering children" when it is committed in violation of the existing prohibition relating to conduct involving the offense of "illegal manufacture of drugs," "illegal cultivation of marihuana," or "illegal assembly or possession of chemicals for the manufacture of drugs" and when the drug involved in the offense is 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.

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

- Prohibits an individual from knowingly purchasing, receiving, or acquiring more than nine grams of any pseudoephedrine product within a period of 30 consecutive days, unless dispensed by a pharmacist pursuant to a valid prescription, and provides an exception for persons who receive or accept more than that amount in a specified employment-related context.
- Prohibits an individual under 18 years of age from knowingly purchasing, receiving, or acquiring a pseudoephedrine product, unless dispensed by a pharmacist pursuant to a valid prescription, a parent or other authorized individual is involved in a specified manner, or the individual under 18 receives or accepts the product in a specified employment-related context.
- Prohibits an individual under 18 years of age from knowingly showing or giving false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or acquiring a pseudoephedrine product.
- Prohibits an individual who is a purchaser of a pseudoephedrine product from knowingly failing to sign and print the purchaser's name and address in the log book that must be maintained by the seller of the product or provide a government-issued identification card to the retailer or terminal distributor to verify the purchaser's identity.
- Prohibits a retailer or terminal distributor of dangerous drugs or an employee of either from knowingly selling, offering to sell, holding for sale, delivering, or providing to any individual within any period of 30 consecutive days an amount of pseudoephedrine product that is greater than nine grams, unless dispensed by a pharmacist pursuant to a valid prescription, and provides an exception for retailers, distributors, or employees who provide more than that amount to an individual in a specified employment-related context.
- Prohibits a retailer or terminal distributor of dangerous drugs or an employee of either from selling, offering to sell, holding for sale, delivering, or providing a pseudoephedrine product to an individual who is under 18 years of age, but the prohibition does not apply to a licensed health professional authorized to prescribe drugs or a pharmacist who dispenses, sells, or provides the product to the individual under 18, to a parent or guardian of the individual under 18 who provides the product to

the individual, to a person who, as authorized by the individual's parent or guardian, dispenses, sells, or provides the product to the individual under 18, or to a retailer's, distributor's, or employee's provision of the product to an individual under 18 in a specified employment-related context.

- Prohibits an employee of a retailer or terminal distributor of dangerous drugs who is under 18 years of age from selling, offering to sell, holding for sale, delivering, or providing any pseudoephedrine product to any individual, and provides an exception for employees under 18 who handle the product in a specified context.
- Prohibits a retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides a pseudoephedrine product to the public from failing to maintain a log book of all purchases of pseudoephedrine products or failing, as part of the log book requirement, to require each purchaser to sign an entry in the log book, determine whether the name signed in the entry in the log book corresponds with the name on a government-issued identification card, retain the log book for a minimum of one year after the date of the last purchase recorded in it; or post in a specified manner a specified statement regarding Ohio law and the purchase of pseudoephedrine.
- Makes a violation of any of the above prohibitions a criminal offense.
- Enacts provisions regarding the performance of transaction scans in relation to the sale of pseudoephedrine products, and provides that a seller or an agent or employee of a seller may not be found guilty of a charge under the bill's provisions relating to the sale of a pseudoephedrine product to a person under 18 years of age if the seller, agent, or employee proves as an affirmative defense that a card holder attempting to purchase or receive a pseudoephedrine product presented a driver's license or an identification card, that a transaction scan of the license or card that the card holder presented indicated that the license or card was valid, and that the pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.
- Requires a retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or provides a pseudoephedrine product to the public to do all of the following: (1) segregate such

products from other merchandise so that no member of the public may procure or purchase such products without the direct assistance of a pharmacist or other authorized employee, (2) determine, by examination of a valid proof of age document each time a pseudoephedrine product is sold or otherwise provided, that the purchaser or recipient is at least 18 years of age and make a reasonable attempt to ensure that no individual purchases or receives more than nine grams of pseudoephedrine products within a period of 30 consecutive days, and (3) maintain (in an electronic, tangible, or combination format) a log book of all purchases of pseudoephedrine products and require each purchaser to sign an entry in the log book, determine whether the name signed in the entry in the log book corresponds with the name on a government-issued identification card, retain the log book for a minimum of one year after the date of the last purchase recorded in the log book, and include in the log book in a specified manner or, in the alternative, post, in a conspicuous location, a specified statement regarding Ohio law and the purchase of pseudoephedrine.

- Related to the log book described in the preceding dot point, requires each purchaser of a pseudoephedrine product to sign and print the purchaser's name and address in the log book and provide a government-issued identification card to the retailer or terminal distributor to verify the purchaser's identity, makes a failure to do so a criminal offense as described above, and specifies that information contained in the log book may not be used or disclosed except in response to a court order or subpoena or in response to a request from a law enforcement official to be used for law enforcement purposes.
- Specifies that prescriptions, orders, and records maintained pursuant to the provisions described in the preceding two dot points and stocks of pseudoephedrine products are to be open for inspection to federal, state, county, and municipal officers and employees of the State Board of Pharmacy whose duty it is to enforce the laws of Ohio or of the United States relating to controlled substances and that such prescriptions, orders, records, and stocks are to be open for inspection by the State Medical Board and its employees for purposes of enforcing existing R.C. Chapter 4731.
- Requires each retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler that sells, offers to sell, holds for

sale, delivers, or otherwise provides any pseudoephedrine product and that discovers the theft or loss of any pseudoephedrine product, in an amount of more than nine grams per incident of theft or loss, to notify all of the following upon discovery of the theft or loss: (1) the State Board of Pharmacy, by telephone immediately upon discovery of the theft or loss and in writing within 30 days after the telephone report, and (2) law enforcement authorities (if the incident is a theft and the theft constitutes a felony, the theft must be reported to the law enforcement authorities in accordance with existing R.C. 2921.22, not in the bill).

- Requires each law enforcement agency that, in any calendar year, arrests any person for an offense under the Revised Code prohibiting the manufacture of, or the assembly of chemicals sufficient to produce, methamphetamine or a methamphetamine product to prepare, and send to the Bureau of Criminal Identification and Investigation, an annual statistical report covering the calendar year that specifies the total number of such arrests made by the agency in that calendar year, the total number of illegal methamphetamine manufacturing laboratories at which any of those arrests occurred or that were discovered in that calendar year within the territory served by the agency but at which none of those arrests occurred, and the total number of dump sites and chemical caches related to illegal methamphetamine manufacturing discovered in that calendar year within the territory served by the agency; specifies that the reports cannot identify, or enable the identification of, any person who was arrested and whose arrest is included in the information contained in the report; and specifies that the reports in the possession of the Bureau are public records.
- Specifies that, if a law enforcement officer has probable cause to believe that particular premises are used for the illegal manufacture of methamphetamine, for the purpose of conducting a search of the premises without a warrant, the risk of explosion or fire from the illegal manufacture of methamphetamine causing injury to the public constitutes exigent circumstances and reasonable grounds to believe that there is an immediate need to protect the lives, or property, of the officer and other individuals in the vicinity of the illegal manufacture.

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CONTENT AND OPERATION

Background

Methamphetamine and amphetamine are Schedule II controlled substances. Methamphetamine is a stimulant that can be manufactured from the drugs ephedrine and pseudoephedrine. The drug amphetamine is a stimulant that can be manufactured from phenylpropanolamine; amphetamine is sometimes marketed as methamphetamine. Both phenylpropanolamine and pseudoephedrine have been included in common over-the-counter decongestant cold products and weight loss products, and ephedrine has been included in over-the-counter weight loss products. The federal Methamphetamine Anti-Proliferation Act, 21 U.S.C. 801 *et seq.*, limits the sale of pseudoephedrine and phenylpropanolamine drug products in specified circumstances to nine-gram single transactions, with the package size not to exceed three grams. (See **COMMENT 1(a)**.)

The U.S. Food and Drug Administration is taking steps to remove phenylpropanolamine (PPA) from all drug products and has requested that all drug companies discontinue marketing products containing PPA. In addition, it has issued a public health advisory concerning PPA. The drug is an ingredient that was used in many over-the-counter (OTC) and prescription cough and cold medications as a decongestant and in OTC weight loss products. In response to the request made by the Food and Drug Administration in November 2000, many companies have voluntarily reformulated and are continuing to reformulate their products to exclude PPA while the Administration proceeds with the regulatory process necessary to remove PPA from the market. (See **COMMENT 1(b)**.)

According to the U.S. Drug Enforcement Agency, "the diversion of over-the-counter pseudoephedrine products is one of the major contributing factors to the methamphetamine situation in the United States." The Agency has documented that much of the pseudoephedrine found in clandestine methamphetamine laboratories is acquired through retail purchase of large amounts of over-the-counter pseudoephedrine products. (See **COMMENT 1(c)**.)

Illegal manufacture of drugs

Existing law

Existing law prohibits a person from knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance. A violation of the prohibition is the offense of "illegal manufacture of drugs." The

penalty for the offense varies, depending upon the type of drug involved and certain circumstances surrounding the violation. Existing law contains a similar prohibition regarding the knowing cultivation of marihuana, and a violation of the prohibition is the offense of "illegal cultivation of marihuana." The law provides exceptions to the prohibitions for specified persons in specified circumstances (e.g., manufacturers, licensed health professionals, researchers, etc.).

Generally, if the drug involved in the violation is any compound, mixture, preparation, or substance included in Schedule I or II of the controlled substances schedules (methamphetamine is included in Schedule II), with the exception of marihuana, "illegal manufacture of drugs" is a second degree felony, and the court must impose a mandatory prison term from the range of terms available for felonies of the second degree. If the drug involved is a drug as specified in the preceding sentence and the offense was committed "in the vicinity of a juvenile" or "in the vicinity of a school" (see **COMMENT 2** for definitions), the offense is a felony of the first degree, and the court must impose a mandatory prison term from the range of terms available for felonies of the first 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 or any salt, isomer, or salt of an isomer of methamphetamine (methamphetamine and the related drugs are Schedule II drugs) and if the offense was committed on "public premises" (see **COMMENT 2** for definition), the offense is a felony of the first degree, and the court must impose a mandatory prison term from the range of terms available for felonies of the first degree. The law provides other penalties if the drug involved is included in Schedule III, IV, or V of the controlled substances schedules or is marihuana.

A person committing the offense of "illegal manufacture of drugs" generally is subject to a mandatory fine, a driver's license suspension, and, if the person is a professionally licensed person, potential sanctions regarding that professional license. The law provides special sentencing provisions for offenders who satisfy certain criteria and are determined to be "serious drug offenders," and the penalties described in the preceding paragraph are made subject to the serious drug offender provisions. (R.C. 2925.04.)

Operation of the bill

The bill revises the mandatory prison term sanctions for the offense of "illegal manufacture of drugs" when the drug involved in the offense is "methamphetamine" (see **COMMENT 3**), but it does not change the existing felony classification of the offense when the offense is committed in those circumstances (i.e., the offense remains a felony of the first or second degree, depending upon the location at which it was committed). The bill does not change the penalties for the offense when the drug involved is any other drug. Under the

bill, when the offense involves methamphetamine, subject to the existing "serious drug offender" special sentencing provisions, the penalty is determined as follows:

(1) Generally, the offense is a felony of the second degree, and the court must impose a mandatory prison term on the offender determined as specified in this paragraph. Except as otherwise described in this paragraph, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree *that cannot be less than three years*. If the offender previously has been convicted or pleaded guilty to "illegal manufacture of drugs," "illegal cultivation of marihuana," "endangering children" based on a specified type of conduct (i.e., allowing a child to be on property and within 100 feet of an act constituting illegal manufacture of drugs, illegal cultivation of marihuana, or "illegal assembly or possession of chemicals for the manufacture of drugs"), or "illegal assembly or possession of chemicals for the manufacture of drugs" (see **"Illegal assembly or possession of chemicals for the manufacture of drugs,"** below), the court must impose as a mandatory prison term one of the terms from the range of terms available for felonies of the second degree *that cannot be less than five years*.

(2) If the offense was committed "in the vicinity of a juvenile," "in the vicinity of a school," or on "public premises" (see **COMMENT 2**), the offense is a felony of the first degree, and the court must impose a mandatory prison term on the offender determined as specified in this paragraph. Except as otherwise described in this paragraph, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree *that cannot be less than four years*. If the offender previously has been convicted of or pleaded guilty to any of the prior offenses listed above in (1), the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree *that cannot be less than five years*. (R.C. 2925.01(JJ) and 2925.04(C).)

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 Schedule I or II controlled substance with the intent to manufacture a Schedule I or II controlled substance in violation of the prohibition against manufacturing a controlled substance that is described above in **"Illegal manufacture of drugs."** In a prosecution for a violation of the prohibition, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture a controlled substance in Schedule I or II; rather, the assembly or possession of a single chemical that may be used in the manufacture of a controlled substance in Schedule I or II, with the intent to manufacture a controlled substance in either

Schedule, is sufficient to violate the prohibition. A violation of the prohibition is the offense of "illegal assembly or possession of chemicals for the manufacture of drugs."

Generally, "illegal assembly or possession of chemicals for the manufacture of drugs" is a felony of the third degree, and there is 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" (see **COMMENT 2**), the offense is a felony of the second degree, and there is no presumption for or against a prison term. An offender is also subject to a mandatory fine, a driver's license revocation or suspension, and professional license sanctions if the person is a professionally licensed person. (R.C. 2925.041.)

Operation of the bill

The bill enacts mandatory prison term sanctions for the offense of "illegal assembly or possession of chemicals for manufacture of drugs" when the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture "methamphetamine" (see **COMMENT 3**), but it does not change the existing felony classification of the offense when the offense is committed in those circumstances (i.e., the offense remains a felony of the second or third degree, depending upon the location at which it was committed). The bill does not change the penalties for the offense when the chemical or chemicals assembled or possessed in committing the violation cannot be used to manufacture methamphetamine. Under the bill, when the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, the court must impose a mandatory prison term on the offender as follows:

(1) If the violation is classified a felony of the third degree under existing law, as retained by the bill, and the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, except as otherwise described in this paragraph, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree *that cannot be less than two years*. If the violation is classified a felony of the third degree under existing law, as retained by the bill, if the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, and if the offender previously has been convicted or pleaded guilty to "illegal assembly or possession of chemicals for the manufacture of drugs," "endangering children" based on a specified type of conduct (i.e., allowing a child to be on property and within 100 feet of an act constituting illegal manufacture of drugs, illegal cultivation of marihuana, or "illegal assembly or possession of chemicals for the manufacture of drugs"), or "illegal manufacture of drugs" or "illegal cultivation of marihuana," the court must impose as a mandatory

prison term one of the terms from the range of terms available for felonies of the third degree *that cannot be less than five years*.

(2) If the violation is classified a felony of the second degree under existing law, as retained by the bill, and the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree *that cannot be less than three years*. If the violation is classified a felony of the second degree under existing law, as retained by the bill, if the chemical or chemicals assembled or possessed in committing the violation may be used to manufacture methamphetamine, and if the offender previously has been convicted of or pleaded guilty to any of the prior offenses listed above in (1), the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree *that cannot be less than five years*. (R.C. 2925.01(JJ) and 2925.041(C).)

Endangering children

Existing law

The existing offense of "endangering children" contains a number of different prohibitions, the penalties for which range from a first degree misdemeanor to a second degree felony depending on the prohibition violated and the circumstances surrounding the violation. One of the prohibitions prohibits any person from allowing a child under 18 years of age or a mentally or physically handicapped child under 21 years of age to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, any act in violation of the prohibition against "illegal manufacture of drugs," "illegal cultivator of marihuana," or "illegal assembly or possession of chemicals for the manufacture of drugs."

"Endangering children" committed in violation of the prohibition described in the preceding paragraph generally is a felony of the third degree. If the violation results in "serious physical harm" (see **COMMENT 4** for definition) to the child involved, or if the offender previously has been convicted of or pleaded guilty to "endangering children" or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, the offense committed in violation of the prohibition described in the preceding paragraph is a felony of the second degree. (R.C. 2919.22(B)(6) and (E)(3).)

Operation of the bill

The bill revises the mandatory prison term sanctions for the offense of "endangering children" when it is committed in violation of the existing prohibition relating to conduct involving the offense of "illegal manufacture of drugs," "illegal cultivation of marihuana," or "illegal assembly or possession of chemicals for the manufacture of drugs," as described above in Existing law," and the drug involved in the offense is "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 bill, by reference to the definition it enacts in R.C. 2925.01, defines "methamphetamine" as including, for purposes of the offense, all of these substances listed in the language in quotation marks--R.C. 2919.22(I)(3)), but it does not change the existing felony classification of the offense when the offense is committed in those circumstances (i.e., the offense remains a felony of the second or third degree, depending upon the circumstances present). The bill does not change the penalties for the offense when it is committed in violation of that prohibition and the drug involved in the offense is not methamphetamine. Under the bill, when the offense is committed in violation of that prohibition and involves methamphetamine, the court must impose a mandatory prison term on the offender as follows:

(1) If the offense is classified a felony of the third degree under existing law, as retained by the bill, and the drug involved is methamphetamine, except as otherwise described in this paragraph, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree *that cannot be less than two years*. If the offense is classified a felony of the third degree under existing law, as retained by the bill, if the drug involved is methamphetamine, and if the offender previously has been convicted or pleaded guilty to "endangering children" committed in violation of the existing prohibition discussed above, the offense of "illegal manufacture of drugs" or "illegal cultivation of marihuana," or the offense of "illegal assembly or possession of chemicals for the manufacture of drugs" (see Illegal assembly or possession of chemicals for the manufacture of drugs," above), the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree *that cannot be less than five years*.

(2) If the offense is classified a felony of the second degree under existing law, as retained by the bill, and the drug involved is methamphetamine, except as otherwise described in this paragraph, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree *that cannot be less than three years*. If the offense is classified a felony of the second degree under existing law, as retained by the bill, if the drug involved is

methamphetamine, and if the offender previously has been convicted of or pleaded guilty to any of the prior offenses listed above in (1), the court must impose as a mandatory prison term one of the terms from the range of terms available for felonies of the second degree *that cannot be less than five years.* (R.C. 2919.22(E)(3).)

Illegal transactions in a pseudoephedrine product--criminal prohibitions

The bill enacts eight new prohibitions that relate to specified types of transactions in a pseudoephedrine product (see **COMMENT 5**, regarding existing law provisions that pertain to ephedrine). Four of the new prohibitions relate to conduct of a purchaser of a pseudoephedrine product and four relate to conduct of a seller of a pseudoephedrine product.

First prohibition--unlawful purchase of a pseudoephedrine product

The first prohibition prohibits any individual from knowingly purchasing, receiving, or otherwise acquiring more than nine grams of any "pseudoephedrine product" within a period of 30 consecutive days, unless dispensed by a "pharmacist" pursuant to a valid "prescription" issued by a "licensed health care professional" authorized to prescribe drugs (see "**Definitions for pseudoephedrine provisions**," below, for definitions of the terms in quotation marks). The bill specifies that it is not a violation of this prohibition for an individual to receive or accept more than nine grams of any pseudoephedrine product within a period of 30 consecutive days if the individual is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor the pseudoephedrine product in a sealed container, in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product. A violation of this prohibition is the offense of "unlawful purchase of a pseudoephedrine product," a misdemeanor of the first degree. (R.C. 2927.30(B) and (F).)

Second prohibition--underage purchase of a pseudoephedrine product

The second prohibition prohibits an individual under 18 years of age from knowingly purchasing, receiving, or otherwise acquiring a "pseudoephedrine product," unless dispensed by a "pharmacist" pursuant to a valid "prescription" issued by a "licensed health care professional" authorized to prescribe drugs. The bill specifies that this prohibition does not apply under any of the following circumstances: (1) a licensed health professional authorized to prescribe drugs or a pharmacist dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under 18 years of age, (2) a parent or guardian of an individual under 18 years of age provides a pseudoephedrine product to the individual, (3) a person, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise

provides a pseudoephedrine product to an individual under 18 years of age, or (4) an individual under 18 years of age is an employee of a retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer or terminal distributor a pseudoephedrine product in a sealed container, in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product. A violation of this prohibition is the offense of "underage purchase of a pseudoephedrine product," a delinquent act that would be a misdemeanor of the fourth degree if it could be committed by an adult. (R.C. 2927.30(C) and (G), 2151.022(D), and 2152.02(F).)

Third prohibition--using false information to purchase a pseudoephedrine product

The third prohibition prohibits an individual under 18 years of age from knowingly showing or giving false information concerning the individual's name, age, or other identification for the purpose of purchasing, receiving, or otherwise acquiring a "pseudoephedrine product" (see "**Definitions for pseudoephedrine provisions**," below). A violation of this prohibition is the offense of "using false information to purchase a pseudoephedrine product," a delinquent act that would be a misdemeanor of the first degree if it could be committed by an adult. (R.C. 2927.30(D) and (H), 2151.022(D), and 2152.02(F).)

Fourth prohibition--improper purchase of a pseudoephedrine product

The fourth prohibition prohibits any individual who is a purchaser of a "pseudoephedrine product" (see "**Definitions for pseudoephedrine provisions**," below) from knowingly failing to do either of the following: (1) sign and print the purchaser's name and address in the log book that must be maintained by the retailer or terminal distributor of dangerous drugs that sells the pseudoephedrine product to the individual, or (2) provide a government-issued identification card to the retailer or terminal distributor to verify the purchaser's identity (see "**Restrictions on retailers and terminal distributors of dangerous drugs regarding pseudoephedrine products**," below regarding these requirements). A violation of this prohibition is the offense of "improper purchase of a pseudoephedrine product," a misdemeanor of the fourth degree. (R.C. 2927.30(E) and (I), and 3715.05(C)(3) by reference.)

Fifth prohibition--unlawfully selling a pseudoephedrine product

The fifth prohibition generally prohibits a "retailer" or "terminal distributor of dangerous drugs" or an employee of a retailer or terminal distributor of dangerous drugs from knowingly selling, offering to sell, holding for sale, delivering, or otherwise providing to any individual within any period of 30 consecutive days an amount of "pseudoephedrine product" that is greater than nine

grams. The bill specifies that this prohibition does not apply to any quantity of a "pseudoephedrine product" dispensed by a "pharmacist" pursuant to a valid "prescription" issued by a "licensed health care professional" authorized to prescribe drugs. The bill specifies that it is not a violation of this prohibition for a retailer, terminal distributor of dangerous drugs, or employee of either to provide to an individual more than nine grams of any pseudoephedrine product within a period of 30 consecutive days if the individual is an employee of the retailer or terminal distributor of dangerous drugs, and the employee receives or accepts from the retailer, terminal distributor, or employee the pseudoephedrine product in a sealed container, in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product. A violation of this prohibition is the offense of "unlawfully selling a pseudoephedrine product," a misdemeanor of the first degree. (R.C. 2927.31(A) and (E); see "Definitions for pseudoephedrine provisions," below, regarding the terms used in this paragraph that are in quotation marks.)

Sixth prohibition--unlawfully selling a pseudoephedrine product to a minor

The sixth prohibition generally prohibits a "retailer" or "terminal distributor of dangerous drugs" or an employee of a retailer or terminal distributor of dangerous drugs from selling, offering to sell, holding for sale, delivering, or otherwise providing a "pseudoephedrine product" to an individual who is under 18 years of age. The bill specifies that this prohibition does not apply to any of the following: (1) a "licensed health professional" authorized to prescribe drugs or a "pharmacist" who dispenses, sells, or otherwise provides a "pseudoephedrine product" to an individual under 18 years of age, (2) a parent or guardian of an individual under 18 years of age who provides a "pseudoephedrine product" to the individual, (3) a person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a "pseudoephedrine product" to an individual under 18 years of age, or (4) the provision, by a retailer, terminal distributor of dangerous drugs, or employee of either of a pseudoephedrine product in a sealed container to an employee of the retailer or terminal distributor who is under 18 years of age in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product. A violation of this prohibition is the offense of "unlawfully selling a pseudoephedrine product to a minor," a misdemeanor of the fourth degree. (R.C. 2927.31(B) and (F); see "Definitions for pseudoephedrine provisions," below, regarding the terms used in this paragraph that are in quotation marks.)

Seventh prohibition--unlawfully selling a pseudoephedrine product as a minor

The seventh prohibition generally prohibits an employee of a "retailer" or "terminal distributor of dangerous drugs" who is under 18 years of age from selling, offering to sell, holding for sale, delivering, or otherwise providing any pseudoephedrine product to any individual. The bill specifies that it is not a violation of this prohibition for an employee of a retailer or terminal distributor who is under 18 years of age to handle a pseudoephedrine product in a sealed container if the handling of the product is in connection with manufacturing, warehousing, placement, stocking, bagging, loading, or unloading of the product. A violation of this prohibition is the offense of "unlawful selling a pseudoephedrine product as a minor," a delinquent act that would be a misdemeanor of the fourth degree if it could be committed by an adult. (R.C. 2927.31(C) and (G), 2151.022(D), and 2152.02(F); see "**Definitions for pseudoephedrine provisions**," below, regarding the terms used in this paragraph that are in quotation marks.)

Eighth prohibition--improper sale of a pseudoephedrine product

The eighth prohibition prohibits a "retailer" or "terminal distributor of dangerous drugs" that sells, offers to sell, holds for sale, delivers, or otherwise provides a "pseudoephedrine product" to the public from failing to maintain a log book of all purchases of pseudoephedrine products or failing, as part of the log book requirement, to do any of the following: (1) require each purchaser to sign an entry in the log book, (2) determine whether the name signed in the entry in the log book corresponds with the name on a government-issued identification card, (3) retain the log book for a minimum of one year after the date of the last purchase recorded in the log book, or (4) include in the log book or post, in a conspicuous location, the following statement: "Ohio law prohibits the over-the-counter purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient. If you purchase a consumer product in which pseudoephedrine is the only active ingredient, you are required to sign a log book that may be accessible to law enforcement officers and to provide a government-issued identification card to verify your identity. Except in limited circumstances, the purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient, and the purchase by any individual under 18 years of age of any consumer product in which pseudoephedrine is the only active ingredient, are subject to criminal prosecution or delinquency proceedings in accordance with Ohio law. Also, the provision of false information concerning an individual's name, age, or other identification for the purpose of acquiring any consumer product in which pseudoephedrine is the

only active ingredient is subject to criminal prosecution or delinquency proceedings in accordance with Ohio law." (See **Restrictions on retailers and terminal distributors of dangerous drugs regarding pseudoephedrine products,**" below regarding these requirements.) A violation of this prohibition is the offense of "improper sale of a pseudoephedrine product," a misdemeanor of the second degree. (R.C. 2927.31(D) and (H); see **Definitions for pseudoephedrine provisions,**" below, regarding the terms used in this paragraph that are in quotation marks.)

Transaction scan provision, regarding pseudoephedrine sales

Existing law contains provisions regarding the performance of transaction scans in relation to the sale of tobacco or alcohol products and prohibitions and protections related to the performance of such scans (R.C. 2927.021, 2927.022, 4301.61, and 4301.611, not in the bill).

In general. The bill enacts provisions regarding the performance of transaction scans in relation to the sale of pseudoephedrine products. It specifies that a "seller" or an agent or employee of a seller may perform a "transaction scan" by means of a "transaction scan device" to check the validity of a driver's or commercial driver's license or "identification card" presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder a pseudoephedrine product (see **Transaction scan definitions,**" below, for definitions of the terms in quotation marks). If the information deciphered by the transaction scan fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller may sell, give away, or otherwise distribute any pseudoephedrine product to the card holder. This provision does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing a pseudoephedrine product to the person presenting the document. The bill specifies that rules adopted by the Registrar of Motor Vehicles under R.C. 4301.61(C) apply to the use of transaction scan devices for purposes of this provision and the bill's R.C. 2927.33, as described below.

The bill prohibits all of the following regarding the use of transaction scan devices under its provisions:

(1) It prohibits a seller or agent or employee of a seller from electronically or mechanically recording or maintaining any information derived from a



transaction scan, except the name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder, and the expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(2) It prohibits a seller or agent or employee of a seller from using the information that is derived from a transaction scan or that is permitted to be recorded and maintained under the provision described in the preceding paragraph, except for purposes of the bill's R.C. 2927.33, as described below.

(3) It prohibits a seller or agent or employee of a seller from using a transaction scan device for a purpose other than the purpose specified above.

(4) It prohibits a seller or agent or employee of a seller from selling or otherwise disseminating the information derived from a transaction scan to any third party, including, but not limited to, selling or otherwise disseminating that information for any marketing, advertising, or promotional activities, but specifies that a seller or agent or employee of a seller may release that information pursuant to a court order or as specifically authorized by the bill's R.C. 2927.33 or another section of the Revised Code.

The bill specifies that a person who violates any of the prohibitions described above in (1) to (4), or the prohibition described above against a seller or an agent or employee of a seller selling, giving away, or otherwise distributing a pseudoephedrine product to a card holder if the transaction scan indicates that the information printed on the card holder's identification is false or fraudulent, is guilty of "engaging in an illegal pseudoephedrine product transaction scan," and the court may impose upon the offender a civil penalty of up to \$1,000 for each violation. The clerk of the court must pay each collected civil penalty to the county treasurer for deposit into the county treasury.

The bill specifies that nothing in the provisions described above or in its R.C. 2927.33, as described below, relieves a seller or an agent or employee of a seller of any responsibility to comply with any other applicable state or federal laws or rules governing the sale, giving away, or other distribution of pseudoephedrine products. (R.C. 2927.32(B) to (F).)

Affirmative defense. The bill provides that a "seller" or an agent or employee of a seller may not be found guilty of a charge of a violation of the bill's R.C. 2907.31 in which the age of the purchaser or other recipient of a pseudoephedrine product is an element of the alleged violation (see "**Sixth prohibition--unlawfully selling a pseudoephedrine product to a minor,**" above), if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred: (1) a card holder attempting to purchase or receive a

pseudoephedrine product presented a driver's or commercial driver's license or an "identification card," (2) a "transaction scan" of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid, and (3) the pseudoephedrine product was sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan (see "Transaction scan definitions," below, for definitions of the terms in quotation marks).

In determining whether a seller or an agent or employee of a seller has proven the affirmative defense described in the preceding paragraph, the trier of fact in the action for the alleged violation of R.C. 2927.31 must consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of that section. For purposes of the provision described in clause (3) of the preceding paragraph, the trier of fact must consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following: (1) whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes a pseudoephedrine product is 18 years of age or older, or (2) whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

The bill specifies that, in any criminal action in which the affirmative defense described above is raised, the Registrar of Motor Vehicles or a deputy registrar who issued an identification card under R.C. 4507.50 to 4507.52 is permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the Bureau of Motor Vehicles in the action. (R.C. 2907.33.)

Rules of the Registrar of Motor Vehicles. A provision of existing law specifies that the Registrar of Motor Vehicles, with the approval of the Liquor Control Commission, must adopt, and may amend or rescind, rules under the Administrative Procedure Act that govern the recording and maintenance of information under the existing transaction scan provisions relating to the sale of tobacco or alcohol products and that ensure quality control in the use of transaction scan devices under those existing provisions. The bill expands this existing provision so that it also specifies that the rules in question must govern the recording and maintenance of information under the bill's transaction scan provisions relating to pseudoephedrine sales and that ensure quality control in the use of transaction scan devices under those provisions. (R.C. 4301.61(C).)

Transaction scan definitions. The bill provides the following definitions that apply to its pseudoephedrine transaction scan provisions (R.C. 2907.32(A)):

(1) "Card holder" means any person who presents a driver's or commercial driver's license or an identification card to a seller, or an agent or employee of a seller, to purchase or receive any pseudoephedrine product from the seller, agent, or employee.

(2) "Identification card" and "transaction scan device" have the same meanings as in existing R.C. 2927.021, not in the bill.

(3) "Seller" means a retailer or terminal distributor of dangerous drugs.

(4) "Transaction scan" means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving any pseudoephedrine product.

Definitions for pseudoephedrine provisions

The bill defines the following terms, for use in the eight prohibitions and transaction scan provisions described above that it enacts (R.C. 2927.30(A)):

(1) "Consumer product" means any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans.

(2) "Drug," "licensed health professional authorized to prescribe drugs," "prescription," and "terminal distributor of dangerous drugs" have the same meanings as in existing R.C. 4729.01, not in the bill.

(3) "Pharmacist" means a person licensed under existing R.C. Chapter 4729., not in the bill, to engage in the practice of pharmacy.

(4) "Pseudoephedrine" means any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers.

(5) "Pseudoephedrine product" means a "consumer product" (see (1), above) consisting of a "single-ingredient preparation" (see (7), below) of pseudoephedrine in which pseudoephedrine is the active ingredient. "Pseudoephedrine product" does not include either of the following: (a) a consumer product containing pseudoephedrine that is in a liquid, liquid capsule, or gel capsule form, or (b) a consumer product primarily intended for administration to children under 12 years of age, according to the label instructions, in solid

dosage form, including chewable tablets, when individual dosage units do not exceed 15 milligrams of pseudoephedrine.

(6) "Retailer" means a place of business that offers consumer products for sale to the general public.

(7) "Single-ingredient preparation" means a compound, mixture, preparation, or substance that contains a single active ingredient.

Restrictions on retailers, terminal distributors of dangerous drugs, etc., regarding pseudoephedrine products

The bill enacts a series of restrictions that apply to retailers, terminal distributors of dangerous drugs, pharmacies, prescribers, and wholesalers that sell, offer to sell, hold for sale, deliver, or otherwise provide pseudoephedrine products to the public (see COMMENT 5, regarding existing law provisions that pertain to ephedrine).

Segregation of product, and determination of legality of sale

The bill requires a "retailer" or "terminal distributor of dangerous drugs" that sells, offers to sell, holds for sale, delivers, or otherwise provides a "pseudoephedrine product" to the public to do all of the following: (1) segregate pseudoephedrine products from other merchandise so that no member of the public may procure or purchase such products without the direct assistance of a "pharmacist" or other authorized employee of the retailer or terminal distributor, and (2) with regard to each time a pseudoephedrine product is sold or otherwise provided, determine, by examination of a valid "proof of age," that the purchaser or recipient is at least 18 years of age and make a reasonable attempt to ensure that no individual purchases or receives more than nine grams of pseudoephedrine products within a period of 30 consecutive days, and (3) maintain a log book of pseudoephedrine product purchases, in accordance with the requirement described in the next part of this analysis (R.C. 3715.05(B); see "**Definitions for provisions regarding retailers, distributors, etc.**," below, for definitions of the terms in quotation marks).

Maintenance of log book

The bill requires a "retailer" or "terminal distributor of dangerous drugs" that sells, offers to sell, holds for sale, delivers, or otherwise provides a "pseudoephedrine product" to the public to maintain a log book of all purchases of pseudoephedrine products. The log book may be maintained in a tangible format, in an electronic format, or in both a tangible format and an electronic format. As part of this requirement, the retailer or terminal distributor must do all of the

following: (1) require each purchaser to sign an entry in the log book that is maintained in the electronic or tangible format, (2) determine whether the name signed in the entry in the log book corresponds with the name on a government-issued identification card, (3) retain the log book in a tangible, electronic, or combination format for a minimum of one year after the date of the last purchase recorded in the log book, and (4) include in the log book in the manner described below or, in the alternative, post, in a conspicuous location, the following statement: "Ohio law prohibits the over-the-counter purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient. If you purchase a consumer product in which pseudoephedrine is the only active ingredient, you are required to sign a log book that may be accessible to law enforcement officers and to provide a government-issued identification card to verify your identity. Except in limited circumstances, the purchase within any period of 30 consecutive days of more than nine grams of any consumer product in which pseudoephedrine is the only active ingredient, and the purchase by any individual under 18 years of age of any consumer product in which pseudoephedrine is the only active ingredient, are subject to criminal prosecution or delinquency proceedings in accordance with Ohio law. Also, the provision of false information concerning an individual's name, age, or other identification for the purpose of acquiring any consumer product in which pseudoephedrine is the only active ingredient is subject to criminal prosecution or delinquency proceedings in accordance with Ohio law."

Related to the log book requirement, the bill requires each purchaser of a pseudoephedrine product to sign and print the purchaser's name and address in the log book and to provide a government-issued identification card to the retailer or terminal distributor to verify the purchaser's identity. Information contained in the log book may not be used or disclosed except in response to a court order or subpoena or in response to a request from a "law enforcement official" to be used for law enforcement purposes. (R.C. 3715.05(C)(2), (3), and (4); see "**Definitions for provisions regarding retailers, distributors, etc.**," below.)

If a retailer or terminal distributor of dangerous drugs chooses to include the statement set forth in clause (4) of the third preceding paragraph in the log book it is required to maintain under the bill, the statement must be set forth in the following manner: (1) if the log book is maintained in an electronic format, the statement must be set forth in such a manner that it is presented on the viewing screen to each purchaser who is signing an entry in the log book before the purchaser may sign the entry, and (2) if the log book is maintained in a tangible format, the statement must be set forth on the cover of the log book and on each page of the log book (R.C. 3715.05(C)(5)).

Inspection of prescriptions, orders, and records maintained regarding pseudoephedrine products and stocks of pseudoephedrine products

The bill specifies that "prescriptions," orders, and records maintained pursuant to the provisions described above in "**Segregation or product, and determination of legality of sale**" and "**Maintenance of log book**" and stocks of "pseudoephedrine products" are to be open for inspection to federal, state, county, and municipal officers and employees of the State Board of Pharmacy whose duty it is to enforce the laws of Ohio or of the United States relating to controlled substances. Such prescriptions, orders, records, and stocks also are to be open for inspection by the State Medical Board and its employees for purposes of enforcing existing R.C. Chapter 4731., not in the bill. (R.C. 3715.05(D); see "**Definitions for provisions regarding retailers, distributors, etc.**," below.)

Notice to State Board of Pharmacy and law enforcement authorities if theft or loss of pseudoephedrine product in excess of nine grams per incident

The bill requires each "retailer," "terminal distributor of dangerous drugs," "pharmacy," "prescriber," or "wholesaler" (see "**Definitions for provisions regarding retailer, distributor, etc.**," below) that sells, offers to sell, holds for sale, delivers, or otherwise provides any pseudoephedrine product and that discovers the theft or loss of any pseudoephedrine product, in an amount of more than nine grams per incident of theft or loss, to notify all of the following upon discovery of the theft or loss: (1) the State Board of Pharmacy, by telephone immediately upon discovery of the theft or loss, and (2) law enforcement authorities (if the incident is a theft and the theft constitutes a felony, the retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler is required to report the theft to the law enforcement authorities in accordance with existing R.C. 2921.22, not in the bill, which generally prohibits a person who knows that a felony has been or is being committed from knowingly failing to report that information to law enforcement authorities). Within 30 days after making the report by telephone to the State Board of Pharmacy, the retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler must send a written report to the Board. The reports required under this provision must identify the product that was stolen or lost, the amount of the product stolen or lost, and the date and time of discovery of the theft or loss. (R.C. 3715.06.)

Definitions for provisions regarding retailers, distributors, etc.

The bill defines the following terms, for use in the restrictions on retailers and terminal distributors of dangerous drugs that it enacts regarding pseudoephedrine products (R.C. 3715.05(A) and (C)(1)):

(1) "Consumer product," "drug," "licensed health professional authorized to prescribe drugs," "prescription," "terminal distributor of dangerous drugs," "pharmacist," "pseudoephedrine," "pseudoephedrine product," "retailer," and "single-ingredient preparation" have the same meanings as described above in "Definitions for pseudoephedrine provisions" under "Illegal transactions in a pseudoephedrine product--criminal prohibitions."

(2) "Proof of age" means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under existing R.C. 4507.50 to 4507.52, not in the bill, that shows a person is 18 years of age or older.

(3) "Law enforcement official" means an officer or employee of any agency or authority of the United States, a state, a territory, a political division of a state or territory, or an Indian tribe, who is empowered by the law to investigate or conduct an official inquiry into a potential violation of law or prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(4) "Pharmacy" and "prescriber" have the same meanings as in existing R.C. 4729.01, not in the bill.

(5) "Wholesaler" has the same meaning as in existing R.C. 3719.01, not in the bill.

Law enforcement agencies--annual statistical report to Bureau of Criminal Identification and Investigation specifying arrests made in a calendar year based on manufacture of, or assembly of chemicals sufficient to produce, methamphetamine and number of illegal methamphetamine manufacturing laboratories

Existing law

Existing law provides for reports to the Bureau of Criminal Identification and Investigation of the Attorney General's Office (BCII) by law enforcement and corrections officials regarding arrests made and persons in custody for felonies or other specified offenses or conduct and by court officials regarding convictions for felonies or other specified offenses. The reports provide specified information regarding each such arrest, custody, or conviction but do not provide cumulative totals for the reporting official's agency or court. (R.C. 109.57, 109.60(A), and 109.61.)

Operation of the bill

The bill requires each law enforcement agency that, in any calendar year, "arrests any person" (see below) for the offense of "illegal manufacture of drugs" (R.C. 2925.04) when based on the manufacture of "methamphetamine or a methamphetamine product" (see below), the offense of "illegal assembly or possession of chemicals for the manufacture of drugs" (R.C. 2925.041) when based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, or a violation of any other provision of R.C. Chapter 2925. or 3719. that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product to prepare an annual report covering the calendar year that contains specified information (see below) relative to all such arrests during that calendar year and relative to illegal methamphetamine manufacturing laboratories, dump sites, and chemical caches as described below. The law enforcement agency must send the annual report, not later than March 1 in the calendar year following the calendar year covered by the report, to BCII.

The annual report must be on standard forms furnished by BCII's Superintendent pursuant to the bill (see below). The bill specifies that the annual report must be a statistical report, that nothing in the report or in the information it contains can identify, or enable the identification of, any person who was arrested and whose arrest is included in the information in the report, and that the report in the possession of BCII and the information it contains are public records under the existing Public Records Law (R.C. 149.43, not in the bill). The bill also specifies that the annual report is separate from, and in addition to, any report, materials, or information required under R.C. 109.60(A) or under any other provision of R.C. 109.57 to 109.62.

The annual report prepared and filed by a law enforcement agency under the provisions described in the preceding paragraphs must contain all of the following information for the calendar year it covers: (1) the total number of arrests made by the agency in that calendar year for the offense of "illegal manufacture of drugs" when based on the manufacture of methamphetamine or a methamphetamine product, the offense of "illegal assembly or possession of chemicals for the manufacture of drugs" when based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, or a violation of any other provision of R.C. Chapter 2925. or 3719. that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, (2) the total number of "illegal methamphetamine manufacturing laboratories" (see below) at which one or more of the arrests reported under clause (1) of this paragraph occurred, or that were discovered in that calendar year within the territory served by the agency but at which none of

those arrests occurred, and (3) the total number of dump sites and chemical caches that are, or that are reasonably believed to be, related to illegal methamphetamine manufacturing and that were discovered in that calendar year within the territory served by the agency.

The bill requires BCII's Superintendent to prepare and furnish to each Ohio law enforcement agency standard forms for making the annual reports required under the reporting provisions described above. The standard forms may be in a tangible format, in an electronic format, or in both a tangible format and an electronic format. (R.C. 109.60(C)(2) to (5).)

The bill specifies that, for purposes of the reporting provisions described above, a law enforcement agency is considered to have arrested a person if any law enforcement officer employed by, appointed by, or serving that agency arrests the person. It specifies that, as used in those provisions: (1) "illegal methamphetamine manufacturing laboratory" means any laboratory or other premises that is used for the manufacture or production of methamphetamine in violation of R.C. 2925.04 (the offense of "illegal manufacture of drugs"), whether or not there has been a prior conviction of that violation, and (2) "methamphetamine or a methamphetamine product" means 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. (R.C. 109.60(A) and, by reference, existing R.C. 3745.13, which is not in the bill.)

Methamphetamine laboratory--constitutes exigent circumstances regarding authorization for a warrantless search

The bill enacts a provision that specifies that, if a law enforcement officer has probable cause to believe that particular premises are used for the illegal manufacture of "methamphetamine" (the definition of that term set forth in **COMMENT 3** applies to this provision), for the purpose of conducting a search of the premises without a warrant, the risk of explosion or fire from the illegal manufacture of methamphetamine causing injury to the public constitutes exigent circumstances and reasonable grounds to believe that there is an immediate need to protect the lives, or property, of the officer and other individuals in the vicinity of the illegal manufacture. (R.C. 2933.33.)

COMMENT

1. The information in the Introduction was obtained from the following sources:

(a) www.deadiversion.usdoj.gov; www.usdoj.gov/dea; ods.od.nih.gov; www.kci.org; and www.fayettecountysheriff.co;

(b) www.fda.gov/cder;

(c) www.nlm.nih.gov; and www.deadiversion.usdoj.gov.

2. Existing R.C. 2925.01 defines many terms for use in R.C. Chapter 2925. Among the definitions are the following, which are relevant to the bill (R.C. 2925.01(P), (Q), (R), (S), (BB), and (II), unchanged by the bill):

(a) 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.

(b) An offense is "committed in the vicinity of a school" if the offender commits the offense on "school premises" (see (2)(f), below), in a "school building" (see (2)(e), below), or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

(c) "Public premises" means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

(d) "School" means any school operated by a board of education, any community school established under R.C. Chapter 3314., or any nonpublic school for which the State Board of Education prescribes minimum standards under R.C. 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

(e) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a "school" (see (2)(d), above) 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.

(f) "School premises" means either of the following: (i) the parcel of real property on which any "school" (see (2)(d), above) 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, or (ii) any

other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under R.C. Chapter 3314., or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 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.

3. The bill defines "methamphetamine," for purposes of R.C. Chapter 2925., as 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 (R.C. 2925.01(JJ)). The bill replaces references to "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" that are contained in existing R.C. 2925.04, 2925.14, and 2925.52 with references to the defined term "methamphetamine." This change has no substantive effect. (R.C. 2925.04, 2925.14, and 2925.52.)

4. Existing R.C. 2901.01, not in the bill, specifies that, as used in the Revised Code:

(a) "Serious physical harm to persons" means any of the following: (i) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (ii) any "physical harm" (see (4)(b), below) that carries a substantial risk of death, (iii) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (iv) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (v) 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.

(b) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

5. Two existing law provisions pertain to ephedrine:

(a) Existing R.C. 3719.41, not in the bill, sets forth controlled substance Schedules I through V. In the portion that identifies Schedule V controlled substances, it specifies that, unless specifically exempted or excluded under federal drug abuse control laws or unless listed in another Schedule, any material, compound, mixture, or preparation that contains any quantity of the following

substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers, are Schedule (V) Stimulants: (i) *ephedrine*, except as provided in R.C. 3719.44(K); and (ii) pyrovalerone.

(b) Existing R.C. 3719.44(K), not in the bill, provides that *a drug product containing ephedrine* that is known as one of the following and is in the form specified is not considered a Schedule V controlled substance: (i) Amesec capsules, (ii) Bronitin tablets, (iii) Bronkotabs, (iv) Bronkolixir, (v) Bronkaid tablets, (vi) Efedron nasal jelly, (vii) Guiaphed elixir, (viii) Haysma, (ix) Pazo hemorrhoid ointment and suppositories, (x) Primatene "M" formula tablets, (xi) Primatene "P" formula tablets, (xii) Tedrigen tablets, (xiii) Tedral tablets, suspension and elixir, (xiv) T.E.P., and (xv) Vatronol nose drops.

It also specifies that *a product containing ephedrine* is not considered a controlled substance if the product is a "food product" (see below) or "dietary supplement" (see below) that meets all of the following criteria: (i) it contains, per dosage unit or serving, not more than the lesser of 25 milligrams of "ephedrine alkaloids" (see below) or the maximum amount of ephedrine alkaloids provided in applicable regulations adopted by the U.S. Food and Drug Administration, and no other controlled substance, (ii) it contains no hydrochloride or sulfate salts of ephedrine alkaloids, and (iii) it is packaged with a prominent label securely affixed to each package that states all of the following: the amount in milligrams of ephedrine in a serving or dosage unit; the amount of the food product or dietary supplement that constitutes a serving or dosage unit; that the maximum recommended dosage of ephedrine for a healthy adult human is the lesser of 100 milligrams in a 24-hour period for not more than 12 weeks or the maximum recommended dosage or period of use provided in applicable regulations adopted by the U.S. Food and Drug Administration; and that improper use of the product may be hazardous to a person's health.

It prohibits a person, subject to the exception described in the next sentence, from dispensing, selling, or otherwise giving a product described in the preceding paragraph section to any individual under 18 years of age (under R.C. 3719.99(H), a violation of this prohibition is a felony of the fifth degree). The prohibition described in the preceding sentence does not apply to a physician or pharmacist who dispenses, sells, or gives a product described in that paragraph to an individual under 18 years of age, to a parent or guardian of an individual under 18 years of age who dispenses, sells, or gives a product of that nature to the individual under 18 years of age, or to a person who, as authorized by the individual's parent or legal guardian, dispenses, sells, or otherwise gives a product of that nature to an individual under 18 years of age. It also prohibits a person in the course of selling, offering for sale, or otherwise distributing a product described in the preceding paragraph from advertising or representing in any

manner that the product causes euphoria, ecstasy, a "buzz" or "high," or an altered mental state; heightens sexual performance; or, because it contains ephedrine alkaloids, increased muscle mass (under R.C. 3719.99(I), a violation of this prohibition is a misdemeanor of the second degree).

The division specifies that *a drug product that contains the isomer pseudoephedrine, or any of its salts, optical isomers, or salts of optical isomers*, is not considered a controlled substance if the drug product is labeled in a manner consistent with federal law or with the product's over-the-counter tentative final monograph or final monograph issued by the U.S. Food and Drug Administration.

At the request of any person, the State Board of Pharmacy may except *any product containing ephedrine* not described in the first or second paragraphs under **COMMENT 5(b)** or *any class of products containing ephedrine* from being included as a Schedule V controlled substance if it determines that the product or class of products does not contain any other controlled substance. The Board must make the determination in accordance with R.C. 3719.44 and by rule adopted in accordance with the Administrative Procedure Act.

R.C. 3719.44(L) provides that, as used in R.C. 3719.44, (i) "food" has the same meaning as in existing R.C. 3715.01, not in the bill, (ii) "dietary supplement" has the same meaning as in the "Federal Food, Drug, and Cosmetic Act," 108 Stat. 4327 (1994), 21 USCA 321(ff), as amended, and (iii) "ephedrine alkaloids" means ephedrine, pseudoephedrine, norephedrine, norpseudoephedrine, methylephedrine, and methylpseudoephedrine.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-09-05	p. 161
Reported, S. Judiciary on Criminal Justice	---	---

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