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Bill Analysis

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Primary Sponsor: Sen. Gavarone

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SUMMARY

Penalty enhancement for drug offenses committed near treatment centers

- Enhances the penalties for most drug trafficking offenses when committed on the premises of a substance addiction services provider's facility, or within 1,000 feet of the premises of such a provider's facility, if the offender recklessly disregards whether the offense is being committed within that vicinity.
- Sets the new penalty enhancements at the same level as existing penalty enhancements for the same drug trafficking offenses when committed in the vicinity of a school or juvenile.

Defrauding an alcohol, drug, or urine screening test

- Enacts six prohibitions, under the new offense of "defrauding an alcohol, drug, or urine screening test," that pertain to specified conduct related to the use or likelihood of use of synthetic urine, a urine additive, or another person's urine to defraud such a test.
- Specifies that the offense and a related reporting requirement do not apply if the conduct involved urine or a urine additive and it was solely for a *bona fide* medical, scientific, educational, or law enforcement purpose.
- Creates a rebuttable presumption that a bulk manufacturer of synthetic urine does not know or have reasonable cause to believe that the synthetic urine will be used for an illegal purpose or to defraud an alcohol, drug, or urine screening test in violation of the bill.

Relapse Reduction Act

- Names its provisions the "Relapse Reduction Act."

DETAILED ANALYSIS

Penalty enhancement for drug offenses committed near treatment centers

The bill generally enhances the penalties for trafficking in any Schedule I or II controlled substance, with the exception of marihuana or, in limited circumstances, a fentanyl-related compound combined with marihuana, when the offense is "committed in the vicinity of a substance addiction services provider." The bill does not apply the enhancement to trafficking in a Schedule III, IV, or V controlled substance or trafficking in marihuana. The bill's penalty enhancements apply to the following drug trafficking offenses:[1]

- Aggravated trafficking in drugs (the drug involved in this offense is a Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance analog);
- Trafficking in cocaine;
- Trafficking in L.S.D.;
- Trafficking in heroin;
- Trafficking in hashish;
- Trafficking in a controlled substance analog;
- Trafficking in a fentanyl-related compound (unless the fentanyl-related compound is combined with marihuana and the offender does not know or have reason to know that the mixture contains a fentanyl-related compound, in which case the offense is treated as trafficking in marihuana).

The bill's penalty enhancements are equivalent to existing penalty enhancements for the same drug offenses when committed in the vicinity of a school or juvenile (but note that for some of the offenses, when a specified large amount of the drug is involved, the commission of the offense in the vicinity of a school, a juvenile, or a substance addiction services provider does not result in an enhanced penalty under current law or the bill). The specific penalties and enhancements vary according to the particular type of controlled substance and amount of the controlled substance involved.[2] For example, under current law, if the amount of the drug involved in the offense of aggravated trafficking in drugs is less than 20 grams (the bulk amount), the offense is generally a fourth degree felony, but becomes a third degree felony when committed in the vicinity of a school or juvenile. Under the bill, aggravated trafficking in

[1] R.C. 2925.03(C)(1) and (4) to (9).

[2] R.C. 2925.03(C)(1) and (4) to (9).

that amount is also a third degree felony when committed in the vicinity of a substance addiction services provider.[3]

For purposes of the bill, an offense is "committed in the vicinity of a substance addiction services provider" if:[4] (1) the offender commits the offense on the premises of a substance addiction services provider's facility, including a facility licensed to provide methadone treatment under the law in effect until June 29, 2019, or an opioid treatment program licensed under the law that will take effect on that date, or within 1,000 feet of the premises of a substance addiction services provider's facility, and (2) the offender recklessly disregards whether the offense is being committed within the vicinity described in clause (1).

Under the bill, relevant to the meaning of "committed in the vicinity of a substance addiction services provider:"[5]

"**Substance addiction services provider**" means an agency, association, corporation or other legal entity, individual, or program that provides one or more of the following at a facility: (1) either alcohol addiction services, or drug addiction services, or both such services that are certified by the Director of Mental Health and Addiction Services under a specified provision of existing law, or (2) recovery supports that are related to either alcohol addiction services, or drug addiction services, or both such services and paid for with federal, state, or local funds administered by the Department of Mental Health and Addiction Services or a board of alcohol, drug addiction, and mental health services.

"**Premises of a substance addiction services provider's facility**" means the parcel of real property on which any substance addiction service provider's facility is situated.

"**Alcohol and drug addiction services**" means services, including intervention, for the treatment of alcoholics or persons who abuse drugs of abuse and for the prevention of alcoholism and drug addiction.

Defrauding an alcohol, drug, or urine screening test

Prohibitions

The bill enacts six prohibitions that pertain to specified conduct related to the use or likelihood of use of synthetic urine, a urine additive, or another person's urine to defraud an alcohol, drug, or urine screening test. The prohibitions prohibit a person from knowingly doing any of the following:[6]

1. Manufacturing, marketing, selling, distributing, or possessing "synthetic urine" (see "**Definitions**," below) knowing or having reasonable cause to believe that it is more

[3] R.C. 2925.03(C)(1)(a) and (b).

[4] R.C. 2925.01(QQ).

[5] R.C. 2925.01(RR) to (TT) and, by reference R.C. 5119.01, not in the bill.

[6] R.C. 2925.15(B).

likely than not that any other person will attempt to use the synthetic urine to defraud an alcohol, drug, or urine screening test.

2. Manufacturing, marketing, selling, distributing, or possessing a "urine additive" (see "**Definitions**," below) knowing or having reasonable cause to believe that it is more likely than not that any other person will attempt to use the urine additive to defraud an alcohol, drug, or urine screening test.
3. Using synthetic urine or a urine additive to defraud an alcohol, drug, or urine screening test.
4. Using the person's urine to defraud an alcohol, drug, or urine screening test if the person's urine was expelled or withdrawn before collection of the urine specimen for the test.
5. Using the urine of another person to defraud an alcohol, drug, or urine screening test.
6. Doing either of the following:
   a. Selling or distributing the person's urine knowing or having reasonable cause to believe that it is more likely than not that any other person will attempt to use the urine to defraud an alcohol, drug, or urine screening test.
   b. Selling or distributing the urine of another person knowing or having reasonable cause to believe that it is more likely than not that any other person will attempt to use the urine to defraud an alcohol, drug, or urine screening test.

Penalty

Under the bill, a violation of any of the prohibitions described above is the offense of "defrauding an alcohol, drug, or urine screening test." Except as otherwise described in this paragraph, the offense generally is a second degree misdemeanor, but it is a first degree misdemeanor on a second or subsequent offense. When the offense is a violation of the prohibition described above in paragraph (3), (4), or (5) under "**Prohibitions**," the offense is a third degree felony if it was committed by defrauding an alcohol, drug, or urine screening test administered as a condition of community control.[7]

Reporting requirement

The bill specifies that, except as prohibited by law, a person who collects urine specimens for alcohol, drug, or urine screening tests who knows that a person has used synthetic urine, a urine additive, or another person's urine to defraud an alcohol, drug, or urine screening test in violation of the bill's prohibition described above in paragraph (3) or (5) under "**Prohibitions**," must report that knowledge to law enforcement authorities. The bill does

[7] R.C. 2925.15(D).

not provide any penalty or sanction for failing to report that knowledge to law enforcement authorities in violation of the requirement.[8]

Exemption

The bill provides that the bill's prohibitions and reporting requirement described above do not apply if the manufacture, marketing, sale, distribution, use, or possession of the urine or urine additive is solely for a *bona fide* medical, scientific, educational, or law enforcement purpose.[9]

Bulk manufacturers of synthetic urine

The bill creates a rebuttable presumption that a bulk manufacturer of synthetic urine does not know or have reasonable cause to believe that the synthetic urine will be used for an illegal purpose or to defraud an alcohol, drug, or urine screening test in violation of the bill's "**Prohibitions**."[10]

Prosecutions under the bill's prohibitions or the offenses of "tampering with evidence" or "obstructing official business"

The bill specifies that, notwithstanding R.C. 1.51 (see the next paragraph), the prosecution of a person for a violation of any of the bill's prohibitions described above does not preclude prosecution of that person under the offense of "tampering with evidence"[11] or the offense of "obstructing official business"[12] (see "**Offenses of "tampering with evidence" and "obstructing official business,"**" below). An act that can be prosecuted under any of the bill's prohibitions described above, or under tampering with evidence or obstructing official business, may be prosecuted under the bill's prohibition, under tampering with evidence or obstructing official business, or under both the bill's prohibition and tampering with evidence or obstructing official business. However, if the charges are based on the same conduct and involve the same victim, the indictment or information may contain counts for all such offenses, but the person may be "convicted" of only one (see the second succeeding paragraph).[13]

Existing R.C. 1.51, unchanged by the bill, specifies that: (1) if a general provision conflicts with a special or local provision, they must be construed, if possible, so that effect is given to both, and (2) if the conflict between the provisions is irreconcilable, the special or local

[8] R.C. 2925.15(E).

[9] R.C. 2925.15(C).

[10] R.C. 2925.15(F).

[11] R.C. 2921.12, not in the bill.

[12] R.C. 2921.31, not in the bill.

[13] R.C. 2925.15(G).

provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.[14]

Another existing provision, R.C. 2941.25, relates to R.C. 1.51. Under R.C. 2941.25, unchanged by the bill: (1) where the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be "convicted" of only one, and (2) where a defendant's conduct constitutes two or more offenses of dissimilar import, or where his or her conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be "convicted" of all of them.[15] The Ohio Supreme Court has held that, as used in this section, a "conviction" consists of a guilty verdict and the imposition of a sentence or penalty.[16] In all likelihood, this holding also would apply to the term "convicted" as used in the bill's provision described in the second preceding paragraph.

Definitions

As used in the bill:[17]

"**Synthetic urine**" means any substance that is designed to simulate the composition, chemical properties, physical appearance, or physical properties of human urine.

"**Urine additive**" means any substance that is designed to be added to human urine to mask the presence of alcohol or drugs in the urine.

"**Bulk manufacturer of synthetic urine**" means a business that manufactures or causes the manufacture of at least 15,000 gallons of synthetic urine on an annual basis.

Offenses of "tampering with evidence" and "obstructing official business"

Tampering with evidence

Existing law, unchanged by the bill, prohibits a person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, from doing any of the following: (1) altering, destroying, concealing, or removing any record, document, or thing, with purpose to impair its value or availability as evidence in the proceeding or investigation, or (2) making, presenting, or using any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in the proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or

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[14] R.C. 1.51, not in the bill.

[15] R.C. 2941.25, not in the bill.

[16] See, e.g., *State v. Rogers* (2015), 143 Ohio St.3d 385; *State v. Whitfield* (2010), 124 Ohio St.3d 319.

[17] R.C. 2925.15(A).

investigation. A violation of the prohibition is the offense of "tampering with evidence," a third degree felony.[18]

As used in the prohibition, an "official proceeding" is any proceeding before a legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, and includes any proceeding before a referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with an official proceeding.[19]

Obstructing official business

Existing law, unchanged by the bill, prohibits a person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the official's official capacity, from doing any act that hampers or impedes a public official in the performance of the official's lawful duties. A violation of the prohibition is the offense of "obstructing official business." The offense generally is a second degree misdemeanor, but it is a fifth degree felony if the violation creates a risk of physical harm to any person.[20]

As used in the offense, a "public official" is any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, including, but not limited to, legislators, judges, and law enforcement officers; it does not include any JobsOhio personnel.[21]

Relapse Reduction Act

The bill specifies that its provisions are to be known as the "Relapse Reduction Act."[22]

HISTORY

Action	Date
Introduced	01-26-21

S0025-I-134/ts

[18] R.C. 2921.12, not in the bill.

[19] R.C. 2921.01, not in the bill.

[20] R.C. 2921.31, not in the bill.

[21] R.C. 2921.01, not in the bill.

[22] Section 3.