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ACT SUMMARY

- Increases the penalties for aggravated funding of drug trafficking and, in most cases, drug trafficking and drug possession, when the drug involved is a fentanyl-related compound.
- Defines "fentanyl-related compound" as including fentanyl and other related Schedule I and Schedule II narcotics-opiates.
- Provides that an offender is guilty of possession of marihuana or possession of drugs, and not of possession of a fentanyl-related compound, when:
 - The drug involved is a fentanyl-related compound mixed with marihuana or a Schedule III, IV, or V controlled substance; and
 - The offender does not know or have reason to know that the combination involved contains a fentanyl-related compound.
- Includes a similar provision regarding drug trafficking when the drug involved is a fentanyl-related compound mixed with marihuana.

- Requires an additional mandatory prison term for a drug trafficking, drug possession, or aggravated funding of drug trafficking conviction, when the drug involved is a fentanyl-related compound and the offender also is convicted of a major drug offender specification.
- Adds certain fentanyl-related compounds to the statutory controlled substance Schedule I under the category of narcotics-opiates.
- Revises the manner of determining the sentence for permitting drug abuse, when based on felony illegal manufacture of drugs, cultivating marihuana, or illegal assembly or possession of chemicals for the manufacture of drugs.
- Adds lisdexamfetamine to the list of Schedule II controlled substances.
- Specifies that a prison term imposed for involuntary manslaughter based on a drug trafficking or drug possession offense, or a funding of drug trafficking offense that does not involve marihuana, runs consecutively to any prison term imposed for the base offense.

TABLE OF CONTENTS

Penalties for drug offenses involving a fentanyl-related compound	2
Trafficking in a fentanyl-related compound	3
Operation of The act.....	3
Possession or use of fentanyl-related compound	5
The act.....	5
Former law	7
Aggravated funding of drug trafficking involving a fentanyl-related compound.....	8
Additional penalty under the major drug offender specification.....	9
Definition of fentanyl-related compound	10
Addition of certain fentanyl compounds as Schedule I narcotics-opiates.....	11
Permitting drug abuse penalty.....	11
Lisdexamfetamine as a Schedule II controlled substance	12
Involuntary manslaughter – consecutive prison term if based on specified drug offense.....	13
Definitions of sentencing terms	13

CONTENT AND OPERATION

Penalties for drug offenses involving a fentanyl-related compound

The act (1) defines the term "fentanyl-related compound" (see "**Definition of fentanyl-related compound**," below), (2) enacts special, exclusive penalties for drug trafficking and, in most cases, drug possession that involves a fentanyl-related compound, (3) names the offenses "trafficking in a fentanyl-related compound" or "possession of a fentanyl-related compound," and (4) modifies the elements and



penalties for "aggravated funding of drug trafficking" when the offense involves a fentanyl-related compound.¹ Relatedly, it modifies the provision that identifies the bulk amount of Schedule I, II, and III controlled substances to add a new method for determining the bulk amount when a fentanyl-related compound is mixed with another controlled substance.²

Under continuing law, fentanyl is a Schedule II controlled substance in the narcotics-opiates subcategory. Other compounds related to fentanyl also are in that subcategory, and a few related compounds are Schedule I narcotics-opiates.³

Prior law did not provide special penalties that applied exclusively to drug offenses involving fentanyl or any of the related compounds. Rather, the penalties for drug offenses involving fentanyl or one of the related compounds were those that apply to Schedule I or II narcotics-opiates controlled substances, and they generally were based on the amount of fentanyl or the related compound involved in the offense in relation to its specified bulk amount.

Some of the penalties refer to a "unit dose," a "presumption against prison term," "no presumption for or against prison term," a "presumption for prison term," a "mandatory prison term," "committed in vicinity of a school," or "committed in vicinity of a juvenile" – the meaning of those terms are described below in "**Definitions of sentencing terms.**"

Trafficking in a fentanyl-related compound

Operation of the act

Under the act, for violating a drug trafficking prohibition involving any fentanyl-related compound, or any compound, mixture, preparation, or substance containing a fentanyl-related compound, is the offense of "trafficking in a fentanyl-related compound." However, if the drug involved is a combination of a fentanyl-related compound and marihuana, the offender is guilty of "trafficking in marihuana," and not "trafficking in a fentanyl-related compound," unless the offender knows or has reason to know that the drug involved contains a fentanyl-related compound. If the offender knows or has reason to know that the combination contains a fentanyl-related compound, the offender is guilty of "trafficking in a fentanyl-related compound" and

¹ R.C. 2925.03, 2925.05, and 2925.11.

² R.C. 2925.01(D).

³ R.C. 3719.41, Schedule I(A) and Schedule II(B).



will be punished according to the penalties described below. Under the act, the penalty for trafficking in a fentanyl-related compound is determined as follows:⁴

Amount of drug involved	Degree of offense	Applicable sentencing rule
< 10 unit doses, or < one gram	Generally, F5, but if committed in vicinity of a school or juvenile, F4.	If F5, presumption against prison term. If F4, no presumption for or against prison term.
≥ 10 unit doses but < 50 unit doses, or ≥ 1 gram but < than 5 grams	Generally, F4, but if committed in vicinity of a school or juvenile, F3.	If F4, presumption against prison term. If F3, presumption for prison term.
≥ 50 unit doses but < 100 unit doses, or ≥ 5 grams but < than 10 grams	Generally, F3, but if committed in vicinity of a school or juvenile, F2.	If F3 or F2, presumption for prison term.
≥ 100 unit doses but < 200 unit doses, or ≥ 10 grams but < than 20 grams	Generally, F2, but if committed in vicinity of a school or juvenile, F1.	If F2, mandatory prison term from F2 range of terms. If F1, mandatory prison term from F1 range of terms.
≥ 200 unit doses but < 500 unit doses, or ≥ 20 grams but < than 50 grams	F1	Mandatory prison term from F1 range of terms.
≥ 500 unit doses but < 1,000 unit doses, or ≥ 50 grams but < than 100 grams	F1	Mandatory prison term of maximum prescribed for an F1.
≥ 1,000 unit doses, or ≥ 100 grams	F1	Offender is "major drug offender" and mandatory prison term is maximum term prescribed for F1.

Former law

Previously, for a violation of a drug trafficking prohibition involving fentanyl or any of the Schedule II compounds related to fentanyl, the violation was the offense of "aggravated trafficking in drugs" and the penalty was determined as follows (the penalties for the few Schedule I compounds related to fentanyl differ because of the different bulk amount):⁵

⁴ R.C. 2925.03(C)(9) and (10); also R.C. 2925.03(C)(1).

⁵ R.C. 2925.03(C)(1).



Amount of drug involved	Degree of offense	Applicable sentencing rule
< 20 grams or < 5 times the maximum daily dose in the usual dose range	Generally F4; but if committed in vicinity of a school or juvenile, F3.	No presumption for or against prison term.
≥ 20 grams and < 100 grams, or ≥ 5 times the maximum daily dose in the usual dose range and < 25 times that dose	Generally F3; but if committed in vicinity of a school or juvenile, F2.	If F3, presumption for prison term (but if offender has two or more prior felony drug abuse offense convictions, mandatory prison term from F3 range of terms). If F2, mandatory prison term from F2 range of terms.
≥ 100 grams and < 1,000 grams, or ≥ 25 times the maximum daily dose in the usual dose range and < 250 times that dose	Generally, F2; but if committed in vicinity of a school or juvenile, F1.	If F2, mandatory prison term from F2 range of terms. If F1, mandatory prison term from F1 range of terms.
≥ 1,000 grams and < 2,000 grams, or ≥ 250 times the maximum daily dose in the usual dose range and < 500 times that dose	F1	Mandatory prison term from F1 range of terms.
≥ 2,000 grams, or ≥ 500 times the maximum daily dose in the usual dose range	F1	Offender is "major drug offender" (and subject to specified additional penalties), and mandatory prison term is maximum term prescribed for F1.

Possession or use of fentanyl-related compound

The act

Under the act, for a violation of a drug possession or use prohibition involving any fentanyl-related compound, or any compound, mixture, preparation, or substance containing a fentanyl-related compound, the name of the offense and the penalty is based on whether the fentanyl-related compound is mixed with marihuana or a Schedule III, IV, or V controlled substance. The violation generally is the offense of "possession of a fentanyl-related compound," but, in limited circumstances involving a combination substance, it may be "possession of marihuana" or "possession of drugs." The name of the offense and the penalty is determined as follows:⁶

⁶ R.C. 2925.11(C)(9), (10), and (11); also R.C. 2925.11(C)(1).



(1) "Possession of marihuana." Under the act, if the drug involved in a violation of a drug possession or use prohibition is a combination of a fentanyl-related compound and marihuana, the offender is guilty of "possession of marihuana," and not "possession of a fentanyl-related compound," unless the offender knows or has reason to know that the drug involved contains a fentanyl-related compound. If the offender knows or has reason to know that the drug involved contains a fentanyl-related compound, the offender is guilty of "possession of a fentanyl-related compound" and will be punished according to the penalties described below for that offense.⁷

(2) "Possession of drugs." Similarly, if the drug involved is a combination of a fentanyl-related compound and a Schedule III, IV, or V controlled substance, the offender is guilty of "possession of drugs," and not "possession of a fentanyl-related compound," unless the offender knows or has reason to know that the drug involved contains a fentanyl-related compound. If the offender knows or has reason to know that the drug involved contains a fentanyl-related compound, the offender is guilty of "possession of a fentanyl-related compound" and will be punished according to the penalties described below for that offense.⁸

Related to this, the act modifies the definition of "bulk amount" as it applies to a Schedule III, IV, or V controlled substance that is mixed with a fentanyl-related compound. For purposes of the possession offense, if the offender did not know or have reason to know of the fentanyl-related compound, the bulk amount in those circumstances is the amount specified as the bulk amount of the Schedule III, IV, or V controlled substance that is mixed with the fentanyl-related compound.⁹

(3) "Possession of a fentanyl-related compound." If the drug involved is a fentanyl-related compound or a compound, mixture, preparation, or substance that contains a fentanyl-related compound and neither (1) nor (2) above applies, the offender is guilty of "possession of a fentanyl-related compound" and the penalty is determined as follows:¹⁰

Amount of drug involved	Degree of offense	Applicable sentencing rule
< 10 unit doses, or < 1gram	F5	Presumption against prison term.
≥ 10 unit doses but < 50 unit	F4	No presumption for or against

⁷ R.C. 2925.11(C)(9).

⁸ R.C. 2925.11(C)(10).

⁹ R.C. 2925.01(D)(1) and (6).

¹⁰ R.C. 2925.11(C)(11).



Amount of drug involved	Degree of offense	Applicable sentencing rule
doses, or ≥ 1 gram but $<$ than 5 grams		prison term.
≥ 50 unit doses but $<$ 100 unit doses, or ≥ 5 grams but $<$ than 10 grams	F3	Presumption for prison term.
≥ 100 unit doses but $<$ 200 unit doses, or ≥ 10 grams but $<$ than 20 grams	F2	Mandatory prison term from F2 range of terms.
≥ 200 unit doses but $<$ 500 unit doses, or ≥ 20 grams but $<$ than 50 grams	F1	Mandatory prison term from F1 range of terms.
≥ 500 unit doses but $<$ 1,000 unit doses, or ≥ 50 grams but $<$ than 100 grams	F1	Mandatory prison term of maximum prescribed for an F1.
$\geq 1,000$ unit doses, or ≥ 100 grams	F1	Offender is "major drug offender" and mandatory prison term is maximum term prescribed for F1.

Former law

Previously, a violation of the drug possession or use prohibition involving fentanyl or any of the Schedule II compounds related to fentanyl was the offense of "aggravated possession of drugs" and the penalty was determined as follows (the penalties for the few Schedule I compounds related to fentanyl differed because of the different bulk amount):¹¹

Amount of drug involved	Degree of offense	Applicable sentencing rule
< 20 grams or $<$ 5 times the maximum daily dose in the usual dose range	F5	Presumption against prison term.
≥ 20 grams and $<$ 100 grams, or ≥ 5 times the maximum daily dose in the usual dose range and $<$ 25 times that dose	F3	Presumption for prison term.

¹¹ R.C. 2925.11(C)(1).

Amount of drug involved	Degree of offense	Applicable sentencing rule
≥ 100 grams and < 1,000 grams, or ≥ 25 times the maximum daily dose in the usual dose range and < 250 times that dose	F2	Mandatory prison term from F2 range of terms.
≥ 1,000 grams and < 2,000 grams, or ≥ 250 times the maximum daily dose in the usual dose range and < 500 times that dose	F1	Mandatory prison term from F1 range of terms.
≥ 2,000 grams, or ≥ 500 times the maximum daily dose in the usual dose range	F1	Offender is "major drug offender" (and subject to specified additional penalties), and mandatory prison term is maximum term prescribed for F1.

Aggravated funding of drug trafficking involving a fentanyl-related compound

The act reduces the amount of a fentanyl-related compound that must be involved in order for a person to commit "aggravated funding of drug trafficking," and changes the penalty for the offense when a fentanyl-related compound is the drug involved.

Under continuing law, a person commits "aggravated funding of drug trafficking" if the person knowingly provides money or other items of value to another person with the purpose that the recipient use the money or items to obtain a controlled substance for the purpose of committing the offense of "illegal manufacture of drugs" or for the purpose of selling or offering to sell the controlled substance. The penalty varies based on the type of controlled substance involved. Under the act, if the controlled substance is a fentanyl-related compound in an amount that equals or exceeds ten unit doses or one gram, aggravated funding of drug trafficking is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.¹²

Previously, if the controlled substance was a fentanyl-related compound in an amount that equaled or exceeded 20 grams or five times the maximum daily dose in the usual dose range, aggravated funding of drug trafficking was still a first degree felony, but the designation of the offender as a major drug offender was not mandatory, and

¹² R.C. 2925.05(A)(1), (A)(5), (C)(1), and (E)(1), 2929.14(B)(3), and 2929.1410(A).



the court was required to impose as a mandatory prison term one of the prison terms prescribed for a first degree felony (instead of the maximum, as under the act).¹³

Additional penalty under the major drug offender specification

The act provides for an additional mandatory prison term of 3, 4, 5, 6, 7, or 8 years for a felony drug trafficking conviction, an aggravated funding of drug trafficking conviction, or a drug possession conviction when the drug involved is a fentanyl-related compound and the offender also is convicted of a specification charging that the offender is a major drug offender. An additional term under this provision does not apply to a drug possession conviction when the drug involved is a fentanyl-related compound mixed with marihuana or a Schedule III, IV, or V controlled substance and the offender does not know or have reason to know that the combination drug includes a fentanyl-related compound. The additional prison term may not be reduced by judicial release, by earned credits, under the 80% release mechanism, or by any other form of early release. A court may not impose more than one prison term in connection with the specification for felonies committed as part of the same act.¹⁴

If a mandatory prison term is imposed under the act's major drug offender specification provision, the offender must serve the mandatory prison term consecutively to any other mandatory prison term imposed under that provision, consecutively to and prior to any prison term imposed for the underlying felony, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed. The term to be served is the aggregate of all the terms imposed.¹⁵

Related to these changes, the act expands the definition of "major drug offender" that applies to the Criminal Sentencing Law to include an offender who is convicted of the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that contains at least 1,000 unit doses or 100 grams of a fentanyl-related compound.¹⁶

The act makes conforming changes that provide special penalties to be imposed on offenders convicted of corrupting another with drugs, illegal manufacture of drugs, aggravated funding of drug trafficking, illegal dispensing of drug samples, certain violations of the Controlled Substances Law (R.C. Chapter 3719.), or certain violations

¹³ R.C. 2925.05(A)(1), (C)(1), and (E)(2).

¹⁴ R.C. 2929.14(A) and (B)(9) and 2941.1410(B); also R.C. 2929.01(X) and 2929.13(F)(20).

¹⁵ R.C. 2929.14(C)(1)(e) and (C)(7).

¹⁶ R.C. 2929.01(W).



of the Pharmacy Law (R.C. Chapter 4729.), when the offender also is convicted of a major drug offender specification.¹⁷

Definition of fentanyl-related compound

The act defines "fentanyl-related compound" for the Drug Offense Law and Sentencing Law as any of the following:¹⁸

- (1) Fentanyl;(2) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (3) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]l]-N-phenylpropanamide);
- (4) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny]l]-N-phenylpropanamide);
- (5) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]l]-N- phenylpropanamide);
- (6) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- (7) 3-methylthiofentanyl (N-[3-methyl-1-[2-(thienyl)ethyl]-4-piperidiny]l]-N-phenylpropanamide);
- (8) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny]l]propanamide);
- (9) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]l]-propanamide);
- (10) Alfentanil;
- (11) Carfentanil;
- (12) Remifentanil;
- (13) Sufentanil;

¹⁷ R.C. 2925.02(E), 2925.04(E), 2925.05(E)(2), 2925.36(E), 2929.14(B)(3), 2941.1410(A), 3719.99(D)(1), and 4729.99(E)(2).

¹⁸ R.C. 2925.01(LL) and 2929.01(C).

(14) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide); and

(15) A schedule I narcotic-opiate that meets the fentanyl pharmacophore requirements specified in R.C. 3719.41(A)(56), described immediately below, including acetylfentanyl, furanylfentanyl, valerylfentanyl, butyrylfentanyl, isobutyrylfentanyl, 4-methoxybutyrylfentanyl, para-fluorobutyrylfentanyl, acrylfentanyl, and ortho-fluorofentanyl.

Addition of certain fentanyl compounds as Schedule I narcotics-opiates

Prior to the act, the substances identified in (1) to (14), above were included in Ohio's statutory controlled substance schedules as Schedule I narcotics-opiates or Schedule II narcotics-opiates.¹⁹ The act adds as a statutory Schedule I narcotic-opiate certain fentanyl-related compounds. The compounds were already included as Schedule I controlled substances under the Administrative Code,²⁰ but they were not included in the statutory provision. The act adds as a statutory Schedule I narcotic-opiate any compound that meets all of the following fentanyl pharmacophore requirements to bind at the mu receptor, as identified by a report from an established forensic laboratory:²¹

(1) A chemical scaffold consisting of both: a five, six, or seven member ring structure containing a nitrogen, whether or not further substituted; and an attached nitrogen to the ring, whether or not that nitrogen is enclosed in a ring structure, including an attached aromatic ring or other lipophilic group to that nitrogen;

(2) A polar functional group attached to the chemical scaffold, including a hydroxyl, ketone, amide, or ester;

(3) An alkyl or aryl substitution off the ring nitrogen of the chemical scaffold; and

(4) The compound has not been approved for medical use by the U.S. Food and Drug Administration.

Permitting drug abuse penalty

The act increases the penalty for permitting drug abuse, when the felony drug abuse offense on which the offense is based is illegal manufacture of drugs, illegal

¹⁹ R.C. 3719.41, Schedule I(A) and Schedule II(B).

²⁰ O.A.C. 4729-11-02, not in the act.

²¹ R.C. 3719.41, Schedule I(A)(56).



cultivation of marihuana, or illegal assembly or possession of chemicals for the manufacture of drugs. Under the act, permitting drug abuse is a fifth degree felony, with no presumption for or against a prison term, when it is based on illegal manufacture of drugs or illegal cultivation of marihuana. Permitting drug abuse also is a fifth degree felony when it is based on illegal assembly or possession of chemicals for the manufacture of drugs and the offender had actual knowledge, at the time the offender permitted the vehicle, premises, or real estate in question to be used, that the person who assembled or possessed the drugs intended to illegally manufacture a Schedule I or II controlled substance. Previously, when permitting drug abuse was based on any of these three felony drug abuse offenses, it was a first degree misdemeanor.²²

As before the enactment of this act, a court sentencing an offender for permitting drug abuse also must suspend the offender's driver's license for six months to five years and, if the offender is a professionally licensed person, must notify the licensing entity of the conviction.²³

Under continuing law, a person commits the offense of permitting drug abuse when the person: (1) being the owner, operator, or person in charge of a vehicle, knowingly permits it to be used for another person's commission of a felony drug abuse offense, or (2) being the owner, lessee, or occupant, or having custody, control, or supervision, of premises or real estate, including vacant land, knowingly permits it to be used for another's commission of a felony drug abuse offense.²⁴

Lisdexamfetamine as a Schedule II controlled substance

The act adds lisdexamfetamine, and its salts, isomers, and salts of its isomers, to the list of Schedule II controlled substances in the "stimulants" subcategory.²⁵ Lisdexamfetamine (prescription brand name Vyvanse) is a stimulant. It is approved for treating attention deficit hyperactivity disorder (ADHD). Isomers are molecules that share the same chemical composition but differ in structure.²⁶

²² R.C. 2925.13(C).

²³ R.C. 2925.13(D).

²⁴ R.C. 2925.13(A) and (B).

²⁵ R.C. 3719.41, Schedule II(C)(5).

²⁶ <https://drugabuse.com/library/vyvanse-abuse/#vyvanse-abuse>; <http://www.chemistrydictionary.com/definition/isomers.php>.



Federal law already had classified lisdexamfetamine as a Schedule II controlled substance.²⁷ Under Ohio's Controlled Substances Law, when the U.S. Attorney General includes a drug in any controlled substance schedule under federal law, that inclusion is automatically effected in the corresponding schedule in R.C. 3719.41, subject to amendment by the State Board of Pharmacy.²⁸

The effect of the act's express addition of lisdexamfetamine, and its salts, isomers, and salts of its isomers, to the Schedule II controlled substances is to clearly make every prohibition or other provision under the Drug Offenses Law, the Controlled Substances Law, or any other Revised Code section that applies with respect to a controlled substance apply to lisdexamfetamine and its salts, isomers, and salts of its isomers. Any provision, including the penalty for violating a prohibition, that specifies that it applies with respect to a Schedule II controlled substance clearly will apply to lisdexamfetamine and its salts, isomers, and salts of its isomers.

Involuntary manslaughter – consecutive prison term if based on specified drug offense

The act specifies that any prison term imposed for an involuntary manslaughter conviction that is based on drug trafficking, drug possession, aggravated funding of drug trafficking, or funding of drug trafficking runs consecutively to any prison term imposed for the base offense. The term to be served is the aggregate of all of the terms imposed.²⁹

The prohibitions under involuntary manslaughter prohibit a person from causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit any felony, misdemeanor, or regulatory offense.³⁰

Definitions of sentencing terms

The tables and descriptions of the sentences set forth above use the following terms, which have the following meanings:³¹

²⁷ <http://www.deadiversion.usdoj.gov/schedules/index.html>.

²⁸ R.C. 3719.43, not in the act.

²⁹ R.C. 2929.14(C)(6) and (7).

³⁰ R.C. 2903.04, not in the act.

³¹ R.C. 2925.01(E), (P), and (BB), 2925.03(C), and 2925.11(C); also R.C. 2929.13(B) to (D) and (E)(1).



- "Unit dose" – an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.
- "Presumption against prison term" – R.C. 2929.13(B) is used in determining whether to impose a prison term.
- "No presumption for or against prison term" – R.C. 2929.13(C) is used in determining whether to impose a prison term.
- "Presumption for prison term" – R.C. 2929.13(D) is used in determining whether to impose a prison term.
- "Mandatory prison term" – a prison term that generally cannot be reduced is required for the offense.
- "Committed in the vicinity of a school" – committed on school premises, in a school building, 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.
- "Committed in the vicinity of a juvenile" – committed within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the juvenile's age, 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.

HISTORY

ACTION	DATE
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House requested conference committee	06-07-18
Senate acceded to request for conference committee	06-11-18
Senate agreed to conference committee report (31-1)	06-27-18
House agreed to conference committee report (82-12)	06-27-18

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