



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 237

131st General Assembly
(As Introduced)

Sens. LaRose, Burke, Tavares, Bacon

BILL SUMMARY

- For purposes of the Drug Offenses Law:
 - (1) Reduces the bulk amount of fentanyl to five milligrams or more; and
 - (2) Reduces the bulk amount of a compound, mixture, preparation, or substance that contains fentanyl and that is not in a final dosage form manufactured by an authorized manufacturer to an amount equal to or exceeding one gram.
- Revises the manner of determining the sentence for the offense of 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.

CONTENT AND OPERATION

Introduction

The Drug Offenses Law¹ prohibits many types of conduct involving controlled substances, including trafficking, possession or use, and manufacture or cultivation. Some of the prohibitions, and some of the penalties provided for violations of the prohibitions, depend upon the amount of the controlled substance in relation to the "bulk amount" specified for that controlled substance (e.g., less than the bulk amount, at least the bulk amount but less than five times the bulk amount, at least 50 times the bulk amount, etc.). In other cases, they depend upon the type of controlled substance

¹ R.C. Chapter 2925., not in the bill except for R.C. 2925.01 and 2925.13.

involved in the violation (e.g., cocaine, heroin, marihuana, etc.), the "Schedule" in which the controlled substance is classified (i.e., Schedules I to V), or the location of the offense (e.g., in the vicinity of a school or juvenile). The Drug Offenses Law defines "Schedule I" through "Schedule V"² and "bulk amount"³ for its purposes.

Bulk amount of fentanyl

Operation of the bill

The bill changes the "bulk amount" of fentanyl for purposes of the Drug Offenses Law. Under the bill:⁴ (1) the bulk amount of a compound, mixture, preparation, or substance that contains any amount of fentanyl, that is not in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," and the "federal drug abuse control laws" (defined under R.C. Chapter 3719., but not for purposes of the bill⁵), is an amount equal to or exceeding one gram, and (2) the bulk amount of fentanyl is five milligrams or more.

Under existing law, unchanged by the bill, fentanyl is a Schedule II controlled substance, in the "narcotics-opiates" subcategory.⁶ Currently, the "bulk amount" of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative is an amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual.⁷ Thus, the bill reduces the amount of fentanyl that constitutes its bulk amount.

Prohibitions, offenses, and penalties affected by the change

Because fentanyl is classified as a Schedule II narcotic-opiate controlled substance, the prohibitions in the Drug Offenses Law, and the penalties for violation of prohibitions in that Law, that are affected by the bill's change in the bulk amount of fentanyl are those that apply when the drug involved in the offense is a Schedule II narcotic-opiate and that depend upon the amount of that drug in relation to the "bulk amount" specified for it. Those prohibitions, offenses, and penalties are:

² R.C. 2925.01, by reference to R.C. 3719.01 which is not in the bill.

³ R.C. 2925.01.

⁴ R.C. 2925.01(D)(1)(d) and (e), and (D)(6).

⁵ R.C. 3719.01, not in the bill.

⁶ R.C. 3719.41, not in the bill.

⁷ R.C. 2925.01(D)(1)(d).



Drug trafficking

For a violation of a drug trafficking prohibition involving any Schedule I or II controlled substance, other than marihuana, cocaine, L.S.D., heroin, hashish, or a controlled substance analog, the violation is the offense of "aggravated trafficking in drugs" and the penalty is determined as follows:⁸

Amount of drug involved	Degree of offense	Applicable sentencing rule
< bulk amount	Generally F4; but if committed in vicinity of school or juvenile, F3.	No presumption for or against prison term.
≥ bulk amount and < 5 times bulk amount	Generally F3; but if committed in vicinity of 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.
≥ 5 times bulk amount, and < 50 times bulk amount	Generally, F2; but if committed in vicinity of school or juvenile, F1.	If F2, mandatory prison term from F2 range of terms. If F1, mandatory prison term from F1 range of terms.
≥ 50 times bulk amount, and < 100 times bulk amount	F1	Mandatory prison term from F1 range of terms.
≥ 100 times bulk amount	F1	Offender is "major drug offender" (and subject to specified additional penalties), and mandatory prison term is maximum term prescribed for F1.

Funding drug trafficking

The prohibition against funding drug trafficking applies with respect to any Schedule I or II controlled substance, other than marihuana, cocaine, L.S.D., heroin, or hashish, when the offender knowingly provides money or other items of value to another with the purpose that the recipient use the money or items to obtain any controlled substance to: (1) commit the offense of "illegal manufacture of drugs" or "illegal cultivation of marihuana," or (2) sell or offer to sell the controlled substance in

⁸ R.C. 2925.03(C)(1), not in the bill.



an amount that equals or exceeds the drug's bulk amount. A violation of this prohibition is the offense of "aggravated funding of drug trafficking," a first degree felony, and the court must impose a mandatory prison term from the range of prison terms prescribed for a first degree felony.⁹

Drug possession or use

For a violation of the drug possession or use prohibition involving any Schedule I or II controlled substance, other than marihuana, cocaine, L.S.D., heroin, hashish, or a controlled substance analog, the violation is the offense of "aggravated possession of drugs" and the penalty is determined as follows:¹⁰

Amount of drug involved	Degree of offense	Applicable sentencing rule
< bulk amount	F5	Presumption against prison term.
≥ bulk amount and < 5 times bulk amount	F3	Presumption for prison term.
≥ 5 times bulk amount, and < 50 times bulk amount	F2	Mandatory prison term from F2 range of terms.
≥ 50 times bulk amount, and < 100 times bulk amount	F1	Mandatory prison term from F1 range of terms.
≥ 100 times bulk amount	F1	Offender is "major drug offender" (and subject to specified additional penalties), and mandatory prison term is maximum term prescribed for F1.

Deception to obtain a dangerous drug

For a violation of the prohibitions against using deception to obtain a dangerous drug involving any Schedule I or II controlled substance, other than marihuana, the violation is the offense of "deception to obtain a dangerous drug" and the penalty is determined as follows:¹¹

⁹ R.C. 2925.05(A)(1) and (C)(1), not in the bill.

¹⁰ R.C. 2925.11(C)(1), not in the bill.

¹¹ R.C. 2925.22(B)(2), not in the bill.



Amount of drug involved, or amount that could be obtained pursuant to illegal prescription	Degree of offense	Applicable sentencing rule
< bulk amount	F4	No presumption for or against prison term.
≥ bulk amount, and < 5 times bulk amount	F3	Presumption for prison term.
≥ 5 times bulk amount, and < 50 times bulk amount	F2	Presumption for prison term.
≥ 50 times bulk amount	F1	Presumption for prison term.

Measurement or weighing of substance

The bill's change in the bulk amount of fentanyl also affects an existing provision regarding the measurement or weighing of a substance that is the basis of a drug offense charge. Under that provision, unchanged by the bill, a person accused of a violation of the Drug Offenses Law or the Controlled Substances Law (R.C. Chapter 3719., not in the bill) that involves a bulk amount of a controlled substance, or any multiple thereof, is entitled, upon written request made to the prosecutor, to have a laboratory analyst of the accused's choice, or, if the accused is indigent, a qualified laboratory analyst appointed by the court, present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is entitled, upon further written request, to receive copies of all recorded scientific data resulting from the measurement or weighing that an analyst can use in arriving at conclusions, findings, or opinions concerning the weight, volume, or number of unit doses of that substance subject.¹²

Permitting drug abuse penalty

The bill revises the manner of determining the sentence for the offense of "permitting drug abuse," when the felony drug abuse offense upon which the offense is based is illegal manufacture of drugs, illegal cultivation of marijuana, or illegal assembly or possession of chemicals for the manufacture of drugs. Under the bill, when permitting drug abuse is based upon any of those three offenses (or, as under existing law, upon felony corrupting another with drugs or a felony drug trafficking offense), permitting drug abuse is a fifth degree felony and there is no presumption for or against

¹² R.C. 2925.51, not in the bill.

a prison term. Currently, when permitting drug abuse is based upon any of the three felony drug abuse offenses the bill adds, it is a first degree misdemeanor.¹³

Unchanged from existing law, 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.¹⁴

Under existing law, unchanged by the bill, a person commits permitting drug abuse when the person: (1) being the owner, operator, or person in charge of a locomotive, watercraft, aircraft, or other vehicle, knowingly permits the vehicle to be used for the 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 the premises or real estate to be used for the commission of a felony drug abuse offense by another person.

Lisdexamfetamine as a Schedule II controlled substance

The bill adds lisdexamfetamine, and it salts, isomers, and salts of its isomers, to the list of Schedule II controlled substances, in the "stimulants" subcategory.¹⁵

Currently, federal law classifies lisdexamfetamine as a Schedule II controlled substance.¹⁶ Under Ohio's Controlled Substances Law, when pursuant to the federal drug abuse control laws the U.S. Attorney General includes a drug in any controlled substance schedule under federal law, then that inclusion is automatically effected in the corresponding schedule in R.C. 3719.41, subject to amendment by the State Board of Pharmacy under a specified provision of that Law.¹⁷

The effect of the bill's express addition of lisdexamfetamine, and it salts, isomers, and salts of its isomers, to the list of 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 with respect to lisdexamfetamine, and it salts, isomers, and salts of its isomers. Any portion of any such prohibition or provision, including the

¹³ R.C. 2925.13(C).

¹⁴ R.C. 2925.13(D).

¹⁵ R.C. 3719.41, Schedule II(C)(5).

¹⁶ <http://www.deadiversion.usdoj.gov/schedules/index.html>.

¹⁷ R.C. 3719.43, not in the bill.

penalty for a violation of a prohibition, that specifies that it applies with respect to a Schedule II controlled substance clearly will apply with respect to lisdexamfetamine, and its salts, isomers, and salts of its isomers.

HISTORY

ACTION	DATE
Introduced	10-29-15

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