

**As Passed by the Senate**

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**Sub. S. B. No. 58**

**Senators Jacobson, Stivers, Goodman, Armbruster, Harris, Carey, Brady,  
Fingerhut, Hottinger, Austria, Carnes, Dann, Randy Gardner, Hagan, Miller,  
Mumper, Roberts, Zurz**

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**A B I L L**

To amend sections 2925.04 and 2925.041 of the Revised 1  
Code to increase the penalties for certain drug 2  
offenses if the offense is committed in the 3  
vicinity of a school or in the vicinity of a 4  
juvenile. 5

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2925.04 and 2925.041 of the Revised 6  
Code be amended to read as follows: 7

**Sec. 2925.04.** (A) No person shall knowingly cultivate 8  
marihuana or knowingly manufacture or otherwise engage in any part 9  
of the production of a controlled substance. 10

(B) This section does not apply to any person listed in 11  
division (B)(1), (2), or (3) of section 2925.03 of the Revised 12  
Code to the extent and under the circumstances described in those 13  
divisions. 14

(C)(1) Whoever commits a violation of division (A) of this 15  
section that involves any drug other than marihuana is guilty of 16  
illegal manufacture of drugs, and whoever commits a violation of 17  
division (A) of this section that involves marihuana is guilty of 18

illegal cultivation of marihuana. 19

(2) Except as otherwise provided in this division, if the 20  
drug involved in the violation of division (A) of this section is 21  
any compound, mixture, preparation, or substance included in 22  
schedule I or II, with the exception of marihuana, illegal 23  
manufacture of drugs is a felony of the second degree, and, 24  
subject to division (E) of this section, the court shall impose as 25  
a mandatory prison term one of the prison terms prescribed for a 26  
felony of the second degree. If the drug involved in the violation 27  
is any compound, mixture, preparation, or substance included in 28  
schedule I or II, with the exception of marihuana, and if the 29  
offense was committed in the vicinity of a juvenile or in the 30  
vicinity of a school, illegal manufacture of drugs is a felony of 31  
the first degree, and, subject to division (E) of this section, 32  
the court shall impose as a mandatory prison term one of the 33  
prison terms prescribed for a felony of the first degree. If the 34  
drug involved in the violation is methamphetamine, any salt, 35  
isomer, or salt of an isomer of methamphetamine, or any compound, 36  
mixture, preparation, or substance containing methamphetamine or 37  
any salt, isomer, or salt of an isomer of methamphetamine and if 38  
the offense was committed ~~in the vicinity of a juvenile, in the~~ 39  
~~vicinity of a school, or~~ on public premises, illegal manufacture 40  
of drugs is a felony of the first degree, and, subject to division 41  
(E) of this section, the court shall impose as a mandatory prison 42  
term one of the prison terms prescribed for a felony of the first 43  
degree. 44

(3) If the drug involved in the violation of division (A) of 45  
this section is any compound, mixture, preparation, or substance 46  
included in schedule III, IV, or V, illegal manufacture of drugs 47  
is a felony of the third degree or, if the offense was committed 48  
in the vicinity of a school or in the vicinity of a juvenile, a 49  
felony of the second degree, and there is a presumption for a 50

prison term for the offense. 51

(4) If the drug involved in the violation is marihuana, the 52  
penalty for the offense shall be determined as follows: 53

(a) Except as otherwise provided in division (C)(4)(b), (c), 54  
(d), (e), or (f) of this section, illegal cultivation of marihuana 55  
is a minor misdemeanor or, if the offense was committed in the 56  
vicinity of a school or in the vicinity of a juvenile, a 57  
misdemeanor of the fourth degree. 58

(b) If the amount of marihuana involved equals or exceeds one 59  
hundred grams but is less than two hundred grams, illegal 60  
cultivation of marihuana is a misdemeanor of the fourth degree or, 61  
if the offense was committed in the vicinity of a school or in the 62  
vicinity of a juvenile, a misdemeanor of the third degree. 63

(c) If the amount of marihuana involved equals or exceeds two 64  
hundred grams but is less than one thousand grams, illegal 65  
cultivation of marihuana is a felony of the fifth degree or, if 66  
the offense was committed in the vicinity of a school or in the 67  
vicinity of a juvenile, a felony of the fourth degree, and 68  
division (B) of section 2929.13 of the Revised Code applies in 69  
determining whether to impose a prison term on the offender. 70

(d) If the amount of marihuana involved equals or exceeds one 71  
thousand grams but is less than five thousand grams, illegal 72  
cultivation of marihuana is a felony of the third degree or, if 73  
the offense was committed in the vicinity of a school or in the 74  
vicinity of a juvenile, a felony of the second degree, and 75  
division (C) of section 2929.13 of the Revised Code applies in 76  
determining whether to impose a prison term on the offender. 77

(e) If the amount of marihuana involved equals or exceeds 78  
five thousand grams but is less than twenty thousand grams, 79  
illegal cultivation of marihuana is a felony of the third degree 80  
or, if the offense was committed in the vicinity of a school or in 81

the vicinity of a juvenile, a felony of the second degree, and 82  
there is a presumption for a prison term for the offense. 83

(f) ~~If~~ Except as otherwise provided in this division, if the 84  
amount of marihuana involved equals or exceeds twenty thousand 85  
grams, illegal cultivation of marihuana is a felony of the second 86  
degree, and the court shall impose as a mandatory prison term the 87  
maximum prison term prescribed for a felony of the second degree. 88  
If the amount of the drug involved equals or exceeds twenty 89  
thousand grams and if the offense was committed in the vicinity of 90  
a school or in the vicinity of a juvenile, illegal cultivation of 91  
marihuana is a felony of the first degree, and the court shall 92  
impose as a mandatory prison term the maximum prison term 93  
prescribed for a felony of the first degree. 94

(D) In addition to any prison term authorized or required by 95  
division (C) or (E) of this section and sections 2929.13 and 96  
2929.14 of the Revised Code and in addition to any other sanction 97  
imposed for the offense under this section or sections 2929.11 to 98  
2929.18 of the Revised Code, the court that sentences an offender 99  
who is convicted of or pleads guilty to a violation of division 100  
(A) of this section shall do all of the following that are 101  
applicable regarding the offender: 102

(1) If the violation of division (A) of this section is a 103  
felony of the first, second, or third degree, the court shall 104  
impose upon the offender the mandatory fine specified for the 105  
offense under division (B)(1) of section 2929.18 of the Revised 106  
Code unless, as specified in that division, the court determines 107  
that the offender is indigent. The clerk of the court shall pay a 108  
mandatory fine or other fine imposed for a violation of this 109  
section pursuant to division (A) of section 2929.18 of the Revised 110  
Code in accordance with and subject to the requirements of 111  
division (F) of section 2925.03 of the Revised Code. The agency 112  
that receives the fine shall use the fine as specified in division 113

(F) of section 2925.03 of the Revised Code. If a person is charged 114  
with a violation of this section that is a felony of the first, 115  
second, or third degree, posts bail, and forfeits the bail, the 116  
clerk shall pay the forfeited bail as if the forfeited bail were a 117  
fine imposed for a violation of this section. 118

(2) The court shall suspend the offender's driver's or 119  
commercial driver's license or permit in accordance with division 120  
(G) of section 2925.03 of the Revised Code. If an offender's 121  
driver's or commercial driver's license or permit is suspended in 122  
accordance with that division, the offender may request 123  
termination of, and the court may terminate, the suspension in 124  
accordance with that division. 125

(3) If the offender is a professionally licensed person, the 126  
court immediately shall comply with section 2925.38 of the Revised 127  
Code. 128

(E) Notwithstanding the prison term otherwise authorized or 129  
required for the offense under division (C) of this section and 130  
sections 2929.13 and 2929.14 of the Revised Code, if the violation 131  
of division (A) of this section involves the sale, offer to sell, 132  
or possession of a schedule I or II controlled substance, with the 133  
exception of marihuana, and if the court imposing sentence upon 134  
the offender finds that the offender as a result of the violation 135  
is a major drug offender and is guilty of a specification of the 136  
type described in section 2941.1410 of the Revised Code, the 137  
court, in lieu of the prison term otherwise authorized or 138  
required, shall impose upon the offender the mandatory prison term 139  
specified in division (D)(3)(a) of section 2929.14 of the Revised 140  
Code and may impose an additional prison term under division 141  
(D)(3)(b) of that section. 142

(F) It is an affirmative defense, as provided in section 143  
2901.05 of the Revised Code, to a charge under this section for a 144  
fifth degree felony violation of illegal cultivation of marihuana 145

that the marihuana that gave rise to the charge is in an amount, 146  
is in a form, is prepared, compounded, or mixed with substances 147  
that are not controlled substances in a manner, or is possessed or 148  
cultivated under any other circumstances that indicate that the 149  
marihuana was solely for personal use. 150

Notwithstanding any contrary provision of division (F) of 151  
this section, if, in accordance with section 2901.05 of the 152  
Revised Code, a person who is charged with a violation of illegal 153  
cultivation of marihuana that is a felony of the fifth degree 154  
sustains the burden of going forward with evidence of and 155  
establishes by a preponderance of the evidence the affirmative 156  
defense described in this division, the person may be prosecuted 157  
for and may be convicted of or plead guilty to a misdemeanor 158  
violation of illegal cultivation of marihuana. 159

(G) Arrest or conviction for a minor misdemeanor violation of 160  
this section does not constitute a criminal record and need not be 161  
reported by the person so arrested or convicted in response to any 162  
inquiries about the person's criminal record, including any 163  
inquiries contained in an application for employment, a license, 164  
or any other right or privilege or made in connection with the 165  
person's appearance as a witness. 166

**Sec. 2925.041.** (A) No person shall knowingly assemble or 167  
possess one or more chemicals that may be used to manufacture a 168  
controlled substance in schedule I or II with the intent to 169  
manufacture a controlled substance in schedule I or II in 170  
violation of section 2925.04 of the Revised Code. 171

(B) In a prosecution under this section, it is not necessary 172  
to allege or prove that the offender assembled or possessed all 173  
chemicals necessary to manufacture a controlled substance in 174  
schedule I or II. The assembly or possession of a single chemical 175  
that may be used in the manufacture of a controlled substance in 176

schedule I or II, with the intent to manufacture a controlled 177  
substance in either schedule, is sufficient to violate this 178  
section. 179

(C) Whoever violates this section is guilty of illegal 180  
assembly or possession of chemicals for the manufacture of drugs. 181  
~~illegal~~ Except as otherwise provided in this division, illegal 182  
assembly or possession of chemicals for the manufacture of drugs 183  
is a felony of the third degree, and division (C) of section 184  
2929.13 of the Revised Code applies in determining whether to 185  
impose a prison term on the offender. If the offense was committed 186  
in the vicinity of a juvenile or in the vicinity of a school, 187  
illegal assembly or possession of chemicals for the manufacture of 188  
drugs is a felony of the second degree, and division (C) of 189  
section 2929.13 of the Revised Code applies in determining whether 190  
to impose a prison term on the offender. 191

(D) In addition to any prison term authorized by division (C) 192  
of this section and sections 2929.13 and 2929.14 of the Revised 193  
Code and in addition to any other sanction imposed for the offense 194  
under this section or sections 2929.11 to 2929.18 of the Revised 195  
Code, the court that sentences an offender who is convicted of or 196  
pleads guilty to a violation of this section shall do all of the 197  
following that are applicable regarding the offender: 198

(1) The court shall impose upon the offender the mandatory 199  
fine specified for the offense under division (B)(1) of section 200  
2929.18 of the Revised Code unless, as specified in that division, 201  
the court determines that the offender is indigent. The clerk of 202  
the court shall pay a mandatory fine or other fine imposed for a 203  
violation of this section under division (A) of section 2929.18 of 204  
the Revised Code in accordance with and subject to the 205  
requirements of division (F) of section 2925.03 of the Revised 206  
Code. The agency that receives the fine shall use the fine as 207  
specified in division (F) of section 2925.03 of the Revised Code. 208

If a person charged with a violation of this section posts bail 209  
and forfeits the bail, the clerk shall pay the forfeited bail as 210  
if the forfeited bail were a fine imposed for a violation of this 211  
section. 212

(2) The court shall revoke or suspend the offender's driver's 213  
or commercial driver's license or permit in accordance with 214  
division (G) of section 2925.03 of the Revised Code. If an 215  
offender's driver's or commercial driver's license or permit is 216  
revoked in accordance with that division, the offender may request 217  
termination of, and the court may terminate, the revocation in 218  
accordance with that division. 219

(3) If the offender is a professionally licensed person or a 220  
person who has been admitted to the bar by order of the supreme 221  
court in compliance with its prescribed and published rules, the 222  
court shall comply with section 2925.38 of the Revised Code. 223

**Section 2.** That existing sections 2925.04 and 2925.041 of the 224  
Revised Code are hereby repealed. 225

**Section 3.** Sections 1 and 2 of this act shall take effect 226  
January 1, 2004, or the earliest date permitted by law, whichever 227  
is later. 228