

As Reported by the Senate Judiciary--Civil Justice Committee

125th General Assembly

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Sub. S. B. No. 58

**Senators Jacobson, Stivers, Goodman, Armbruster, Harris, Carey, Brady,
Fingerhut, Hottinger**

A B I L L

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

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

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

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

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

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

(2) Except as otherwise provided in this division, if the drug involved in the violation of division (A) of this section is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, illegal manufacture of drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, and if the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony 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 and if the offense was committed ~~in the vicinity of a juvenile, in the vicinity of a school, or~~ on public premises, illegal manufacture of drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

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

(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