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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Upchurch and Denson

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SUMMARY

- Allows for limited cultivation of marihuana by eliminating all existing criminal prohibitions and penalties for that conduct.
- Prohibits the cultivation of more than 12 marihuana plants.
- Prohibits the cultivation of marihuana on property not owned by the cultivator and without consent of the property owner, in a place that is open to public view, or in a place that is not secured against access by persons under age 21 or persons who do not have the cultivator's permission to access the place.
- Allows for limited possession of marihuana or hashish by eliminating all existing criminal prohibitions and penalties for that conduct.
- Prohibits obtaining or possessing more than 200 grams of marihuana or 20 grams of hashish.
- Allows for the expungement of records of conviction for any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a qualified marihuana offense.

DETAILED ANALYSIS

Cultivation of marihuana

Allows limited cultivation of marihuana

The bill allows for limited cultivation of marihuana by eliminating all existing criminal prohibitions and penalties for that conduct.

Illegal cultivation of marihuana – existing offense

The bill eliminates the current law offense of “illegal cultivation of marihuana” that prohibits a person from knowingly cultivating marihuana. The bill also eliminates the current law penalties for that offense as follows:¹

- Generally, a minor misdemeanor or, if the offense was committed in the vicinity of a school or juvenile, a fourth degree misdemeanor;
- If the amount of marihuana involved equals or exceeds 100 grams but is less than 200 grams, a fourth degree misdemeanor or, if the offense was committed in the vicinity of a school or juvenile, a third degree misdemeanor;
- If the amount of marihuana involved equals or exceeds 200 grams but is less than 1,000 grams, a fifth degree felony or, if the offense was committed in the vicinity of a school or juvenile, a fourth degree felony and the court may determine whether to impose a prison term on the offender;
- If the amount of marihuana involved equals or exceeds 1,000 grams but is less than 5,000 grams, a third degree felony or, if the offense was committed in the vicinity of a school or juvenile, a second degree felony and the court may determine whether to impose a prison term on the offender;
- If the amount of marihuana involved equals or exceeds 5,000 grams but is less than 20,000 grams, a third degree felony or, if the offense was committed in the vicinity of a school or juvenile, a second degree felony and a presumption for a prison term for the offender;
- If the amount of marihuana involved equals or exceeds 20,000 grams, a second degree felony and the court must impose as a mandatory prison term a maximum second degree felony mandatory prison term or, if the offense was committed in the vicinity of a school or juvenile, a first degree felony and the court must impose as a mandatory prison term a maximum first degree felony mandatory prison term.

The bill eliminates a current law affirmative defense related to the offense of “illegal cultivation of marihuana.” Under current law, it is an affirmative defense to a charge for a fifth degree felony for “illegal cultivation of marihuana” that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed or cultivated under any other circumstance that indicate that the marihuana was solely for personal use. Notwithstanding this provision, if a person who is charged with a violation of “illegal cultivation of marihuana” that is a fifth degree felony sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense, the person may be

¹ R.C. 2925.04(A), (B), and (C)(1) and (5).

prosecuted for and may be convicted of or plead guilty to a misdemeanor violation of “illegal cultivation of marihuana.”²

The bill eliminates a current law criminal record provision related to the offense of “illegal cultivation of marihuana.” Under current law, an arrest or conviction for a minor misdemeanor violation does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquires about the person’s criminal record, including any inquires contained in an application for employment, a license, or any other right or privilege or made in connection with the person’s appearance as a witness.³

Prohibits cultivation of marihuana

The bill prohibits the cultivation of marihuana by creating new criminal prohibitions and penalties for that conduct.

Illegal cultivation of marihuana – new offense

Cultivating more than 12 marihuana plants

The bill creates the new offense of “illegal cultivation of marihuana” that prohibits a person from knowingly cultivating more than 12 marihuana plants (defined as any plant of the genus cannabis that produces its own food through photosynthesis and has observable root formation or is in a growth material). The bill also creates new penalties for that offense as follows:⁴

- Generally, a second degree misdemeanor;
- If the offender has previously pleaded guilty or has been convicted of a violation of the offense, a fifth degree felony;
- If the offense involves more than 30 marihuana plants, a fourth degree felony;
- If the offense involves more than 50 marihuana plants, a third degree felony and the offender may be fined up to \$10,000;
- If the offense involves more than 100 marihuana plants, a first degree felony and the offender may be fined up to \$250,000.

Cultivating marihuana in prohibited places

The bill creates a new offense that prohibits a person from knowingly cultivating marihuana under any of the following circumstances: (1) on property not owned by the cultivator and without the written consent of the owner of the property, (2) in a place that is open to public view, or (3) in a place that is not secured against access by persons under 21 years of age or persons who do not have the cultivator’s permission to access the place. The

² R.C. 2925.04(F).

³ R.C. 2925.04(G).

⁴ R.C. 2925.042 and 2925.01(QQ).

bill also creates new penalties for that offense as follows: a minor misdemeanor and the offender may be fined up to \$100 for the first offense and up to \$200 for any subsequent offense.⁵

The bill reinstates a current law criminal record provision related to the offense of “illegal cultivation of marihuana.” Under the bill, an arrest or conviction for a minor misdemeanor violation does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquires about the person’s criminal record, including any inquires contained in an application for employment, a license, or any other right or privilege or made in connection with the person’s appearance as a witness.⁶

Possession of marihuana or hashish

Allows limited possession of marihuana or hashish

Allows for limited possession of marihuana or hashish by eliminating all existing criminal prohibitions and penalties for that conduct.

Possession of marihuana – existing offense

Current law prohibits a person from knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog. If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, the offense is “possession of marihuana.” The bill eliminates the current law offense of “possession of marihuana.” The bill also eliminates the current law penalties for that offense as follows:⁷

- Generally, a minor misdemeanor;
- If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams, a fourth degree misdemeanor;
- If the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams, a fifth degree felony and the court may determine whether to impose a prison term on the offender;
- If the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams, a third degree felony and the court may determine whether to impose a prison term on the offender;
- If the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams, a third degree felony and a presumption for a prison term for the offender;

⁵ R.C. 2925.043(A) and (B).

⁶ R.C. 2925.04(C).

⁷ R.C. 2925.01(D)(6), 2925.11(A), (B)(1)(e), and (C)(3), and 2929.14(B)(11).

- If the amount of the drug involved equals or exceeds 20,000 grams but is less than 40,000 grams, a second degree felony and the court must impose as a mandatory prison term a second degree felony mandatory prison term of five, six, seven, or eight years;
- If the amount of the drug involved equals or exceeds 40,000 grams, a second degree felony and the court must impose as a mandatory prison term a maximum second degree felony mandatory prison term.

Possession of hashish – existing offense

Current law prohibits a person from knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog. If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, the offense is “possession of hashish.” The bill eliminates the current law offense of “possession of hashish.” The bill also eliminates the current law penalties for that offense as follows:⁸

- Generally, a minor misdemeanor;
- If the amount of the drug involved equals or exceeds five grams but is less than ten grams of hashish in a solid form or equals or exceeds one gram but is less than two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, a fourth degree misdemeanor;
- If the amount of the drug involved equals or exceeds ten grams but is less than 50 grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, a fifth degree felony and the court may determine whether to impose a prison term on the offender;
- If the amount of the drug involved equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form or equals or exceeds ten grams but is less than 50 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, a third degree felony and the court may determine whether to impose a prison term on the offender;
- If the amount of the drug involved equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, a third degree felony and a presumption for a prison term for the offender;
- If the amount of the drug involved equals or exceeds 1,000 grams but is less than 2,000 grams of hashish in a solid form or equals or exceeds 200 grams but is less than 400 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, a second degree felony and the court must impose as a mandatory prison term a second degree felony mandatory prison term of five, six, seven, or eight years.

⁸ R.C. 2925.01(D)(6), 2925.11(A) and (C)(7), and 2929.14(B)(11).

- If the amount of the drug involved equals or exceeds 2,000 grams of hashish in a solid form or equals or exceeds 400 grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, a second degree felony and the court must impose as a mandatory prison term a maximum second degree felony mandatory prison term.

Possession of fentanyl-related compound and marihuana – existing offense

Current law prohibits a person from knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog. If the drug involved in the violation is a compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and marihuana, one of the following applies: (1) the offender is guilty of possession of marihuana and must be punished for possession of marihuana, the offender is not guilty of possession of a fentanyl-related compound and must not be charged with, convicted of, or punished for possession of a fentanyl-related compound, or (2) if the offender knows or has reason to know that the compound, mixture, preparation, or substance that is the drug involved contains a fentanyl-related compound, the offender is guilty of possession of a fentanyl-related compound and must be punished for possession of a fentanyl-related compound. The bill eliminates the current law penalties in (1) as follows: “the offender is guilty of possession of marihuana and must be punished for possession of marihuana.”⁹

Possession of drugs

The bill modifies a current law criminal record provision related to the drug possession offenses. Under current law, an arrest or conviction for a minor misdemeanor violation does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquires about the person’s criminal record, including any inquires contained in an application for employment, a license, or any other right or privilege or made in connection with the person’s appearance as a witness. The bill adds that an arrest or conviction for a minor misdemeanor violation “as it existed prior to the effective date of the bill” does not constitute a criminal record.¹⁰

Prohibits possession of marihuana or hashish

The bill prohibits possession of marihuana or hashish by creating new criminal prohibitions and penalties for that conduct.

Possession of marihuana or hashish – new offense

The bill creates the offense of “possession of marihuana or hashish” that prohibits a person from knowingly obtaining or possessing more than 200 grams of marihuana or 20 grams of hashish. The bill also creates penalties for that offense as follows:¹¹

⁹ R.C. 2925.01(D)(6), 2925.11(A) and (C)(7), and 2929.14(B)(11).

¹⁰ R.C. 2925.11(D).

¹¹ R.C. 2925.111(A) to (E).

- Generally, a third degree misdemeanor;
- If the offense involves more than 1,000 grams of marihuana or more than 50 grams of hashish, a fourth degree felony;
- If the offense involves more than 5,000 grams of marihuana or more than 1,500 grams of hashish, a third degree felony and the offender may be fined up to \$10,000;
- If the offense involves more than 20,000 grams of marihuana, a first degree felony and the offender may be fined up to \$250,000.

The bill provides that amounts cultivated, harvested, and stored in accordance with the illegal cultivation of marihuana offenses must not be used for purposes of determining the amount of marihuana or hashish involved in a violation of this offense.¹²

Expungement

Application for expungement

The bill allows any person who is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a qualified marihuana offense to file an application for the expungement of the record of conviction. The person may file the application at any time on or after the effective date of the bill. The application must do all of the following:¹³

- Identify the applicant, the offense for which the expungement is sought, the date of the conviction or plea of guilty to that offense, and the court in which the conviction occurred or the plea of guilty was entered;
- Include evidence that the offense was a qualified marihuana offense;
- Include a request for expungement of the record of conviction of that offense.

Expungement hearing

The bill provides that, upon filing the application and the payment of the fee, if applicable, the court must set a date for a hearing and must notify the prosecutor for the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor must specify in the objection the reasons for believing a denial of the application is justified.¹⁴

The court must hold the hearing and do each of the following:¹⁵

- If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection;

¹² R.C. 2925.111(F).

¹³ R.C. 2953.39(B).

¹⁴ R.C. 2953.39(C).

¹⁵ R.C. 2953.39(C) and (D).

- Determine whether the applicant has been convicted of or pleaded guilty to a qualified marihuana offense.

Order of expungement

The bill provides that, if the court determines at the hearing that an offense that is the subject of an application is a qualified marihuana offense, the court must order the expungement of all official records pertaining to the case and the deletion of all index references to the case, and if it does order the expungement, must send notice of the order to each public office or agency that the court has reason to believe may have an official record pertaining to the case.¹⁶

The bill specifies that the proceedings in the case that is the subject of the order must be considered not to have occurred and the conviction or guilty plea of the person who is the subject of the proceedings must be expunged. The record of the conviction must not be used for any purpose, including, a criminal records check or determination of eligibility for a concealed handgun license. The applicant may, and the court must, reply that no record exists with respect to the applicant upon any inquiry into the matter.¹⁷

Expungement fee

The bill requires that, upon the filing of an application, the applicant, unless indigent, must pay a fee of \$50. The court must pay \$30 of the fee into the state treasury and must pay \$20 of the fee into the County General Revenue Fund.¹⁸

Expungement definitions

The bill uses the following definitions:¹⁹

- “Expunge” means to destroy, delete, or erase a record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently irretrievable.
- “Official records” means all records that are possessed by any public office or agency that relate to a criminal case, including, but not limited to: the notation to the case in the criminal docket; all subpoenas issued in the case; all papers and documents filed by the defendant or the prosecutor in the case; all records of all testimony and evidence presented in all proceedings in the case; all court files, papers, documents, folders, entries, affidavits, or writs that pertain to the case; all computer, microfilm, microfiche, or microdot records, indices, or references to the case; all index references to the case; all fingerprints and photographs; all DNA specimens, DNA records, and DNA profiles; all

¹⁶ R.C. 2953.39(E).

¹⁷ R.C. 2953.39(F).

¹⁸ R.C. 2953.39(G).

¹⁹ R.C. 2953.39(A).

records and investigative reports pertaining to the case that are possessed by any law enforcement officer or agency, except that any records or reports that are the specific investigatory work product of a law enforcement officer or agency are not and must not be considered to be official records when they are in the possession of that officer or agency; and all investigative records and reports other than those possessed by a law enforcement officer or agency pertaining to the case. "Official records" does not include any of the following: records or reports maintained by a public children services agency or the Department of Job and Family Services; any report of an investigation maintained by the inspector general, to the extent that the report contains information that pertains to an individual who was convicted of or pleaded guilty to an offense discovered in or related to the investigation and whose conviction or guilty plea was not overturned on appeal; and records, reports, or audits maintained by the auditor of state.

- "Prosecutor" means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.
- "Record of conviction" means any record related to a conviction of or plea of guilty to an offense.
- "Qualified marijuana offense" means either of the following:
 - A violation of possession of marijuana, possession of hashish, or possession of fentanyl-related compound (see, "**Allows limited possession of marijuana or hashish**," above), as they existed prior to the effective date of the bill, that involved the obtaining, possession, or use of 200 grams of marijuana or less, or that involved the obtaining, possession, or use of 20 grams of hashish or less.
 - A violation of illegal cultivation of marijuana (see, "**Allows limited cultivation of marijuana**," above), as it existed prior to the effective date of this bill, that involved the cultivation of 12 or fewer marijuana plants.

HISTORY

Action	Date
Introduced	03-16-21
