



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 237*

131st General Assembly
(As Reported by S. Criminal Justice)

Sens. LaRose, Burke, Tavares, Bacon

BILL SUMMARY

- Increases the penalties for drug trafficking, drug possession, and aggravated funding of drug trafficking convictions when the drug involved is a fentanyl-related compound.
- Provides for an additional mandatory prison term of 3, 4, 5, 6, 7, or 8 years 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.
- 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.
- Specifies that a prison term imposed for an involuntary manslaughter conviction based on a drug trafficking, drug possession, or funding of drug trafficking offense runs consecutively to any prison term imposed for the base offense.

* This analysis was prepared before the report of the Senate Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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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 related penalties, depend upon the amount of the controlled substance in relation to the "bulk amount" specified for that controlled substance and some depend upon the type of controlled substance involved (e.g., cocaine, heroin, marijuana, 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 Schedules I to V² and bulk amount³ for its purposes.

¹ R.C. Chapter 2925., not in the bill except for R.C. 2925.01 to 2925.04, 2925.05, 2925.11, 2925.13, and 2925.36.

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

³ R.C. 2925.01.



Penalties for trafficking in a fentanyl-related compound, possession of such a compound, or aggravated funding of drug trafficking involving such a compound

Under existing law, unchanged by the bill, fentanyl is a Schedule II controlled substance, in the narcotics-opiates subcategory (other compounds related to fentanyl also are in that subcategory or are Schedule I narcotics-opiates).⁴ As such, the "bulk amount" of a compound, mixture, preparation, or substance that is or contains any fentanyl or any of the related compounds 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.⁵ Existing law does not provide special penalties that apply 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 are those that apply to Schedule II narcotics-opiates controlled substances, and they generally are determined based on the amount of fentanyl or the related compound involved in the offense in relation to its specified bulk amount.

The bill defines the term "fentanyl-related compound" (see "**Definition of fentanyl-related compound**," below), enacts special, exclusive penalties for a violation of the existing drug trafficking prohibition that involves a fentanyl-related compound and names such a violation "trafficking in a fentanyl-related compound," provides special, exclusive penalties for a violation of the existing drug possession prohibition that involves a fentanyl-related compound and names such a violation "possession of a fentanyl-related compound," and modifies the elements and penalties for "aggravated funding of drug trafficking" when the offense involves a fentanyl-related compound.⁶ Related to this, it modifies the provision that identifies the bulk amount of Schedule I, Schedule II, and Schedule III controlled substances to specify that the provision does not apply to any fentanyl-related compound.⁷

Trafficking in a fentanyl-related compound

Operation of the bill

Under the bill, for a violation of a drug trafficking prohibition involving any fentanyl-related compound, or any compound, mixture, preparation, or substance

⁴ R.C. 3719.41, Schedule I(A) and Schedule II(B).

⁵ R.C. 2925.01(D)(1)(d).

⁶ R.C. 2925.03, 2925.05, and 2925.11.

⁷ R.C. 2925.01(D).



containing a fentanyl-related compound, the violation is the offense of "trafficking in a fentanyl-related compound" and the penalty is determined as follows:⁸

Amount of drug involved	Degree of offense	Applicable sentencing rule
< 10 unit doses, or < one gram	Generally, F5, but if committed in vicinity of 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 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 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 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.

Currently

Currently, for a violation of a drug trafficking prohibition involving fentanyl or any of the compounds related to fentanyl, the violation is the offense of "aggravated trafficking in drugs" and the penalty is determined as follows:⁹

⁸ R.C. 2925.03(C)(9).

⁹ 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 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 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 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

Operation of the bill

Under the bill, 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 violation is the offense 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 < one gram	F5	Presumption against prison term.

¹⁰ R.C. 2925.11(C)(9).

Amount of drug involved	Degree of offense	Applicable sentencing rule
≥ 10 unit doses but < 50 unit doses, or ≥ 1 gram but < than 5 grams	F4	No presumption for or against 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.
≥ 1,000 unit doses, or ≥ 100 grams	F1	Offender is "major drug offender" and mandatory prison term is maximum term prescribed for F1.

Currently

Currently, for a violation of the drug possession or use prohibition involving fentanyl or any of the compounds related to fentanyl, the violation is the offense of "aggravated possession of drugs" and the penalty is determined as follows: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.
≥ 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.

¹¹ R.C. 2925.11(C)(1).

Amount of drug involved	Degree of offense	Applicable sentencing rule
≥ 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 bill reduces the amount of fentanyl that must be involved in order for a person who provides funding to another for the purpose of selling or offering to sell the fentanyl to have committed the offense of "aggravated funding of drug trafficking," and changes the penalty for the offense when fentanyl is the drug involved. Regarding that offense under the bill when it involves fentanyl, a person is prohibited from knowingly providing 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, if the controlled substance is a fentanyl-related compound, in an amount of the compound that equals or exceeds ten unit doses or equals or exceeds one gram. Aggravated funding of drug trafficking committed in those circumstances 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

Currently with respect to fentanyl and the compounds related to fentanyl, the prohibition prohibits a person from knowingly providing money or other items of value to another person with the purpose that the recipient of the money or items of value use them 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, if the controlled substance is fentanyl or any of the related compounds, in an amount of the fentanyl that equals or exceeds 20 grams or five times the maximum daily dose in the usual dose range. Aggravated funding of drug trafficking committed in those circumstances is a first degree felony, the court must impose as a mandatory prison term one of the prison terms prescribed for a first degree

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

felony, and the offender is subject to additional specified penalties if found to be a major drug offender.¹³

Additional penalty for conviction of trafficking in a fentanyl-related compound, possession of such a compound, or aggravated funding of drug trafficking involving such a compound and major drug offender specification

The bill provides for an additional mandatory prison term of 3, 4, 5, 6, 7, or 8 years for a drug trafficking conviction, drug possession conviction, or aggravated funding of drug trafficking conviction when the drug involved is a fentanyl-related compound (see "**Definition of fentanyl-related compound**," below) and the offender also is convicted of a specification charging that the offender is a major drug offender that was attached to the charging document. The additional term must be imposed in addition to any other penalty imposed for the drug trafficking, drug possession, or aggravated funding of drug trafficking conviction. An additional prison term imposed under this provision may not be reduced under the existing judicial release, earned credits, or 80% release mechanism provisions or any other provision of R.C. Chapter 2967. or 5120., and a court may not impose more than one term on an offender under the provision for felonies committed as part of the same act. The bill enacts a form for the specification.¹⁴

If a mandatory prison term is imposed upon an offender under the bill'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 upon the offender. The term to be served is the aggregate of all the terms imposed.¹⁵

Related to these changes, the bill expands the definition of "major drug offender" that applies to the Criminal Sentencing Law to include, in addition to those persons currently included, 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

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).

¹⁵ R.C. 2929.14(C)(1)(e) and (C)(7).

¹⁶ R.C. 2929.01(W).



The bill makes conforming changes in existing provisions 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 R.C. 3719.07, 3719.08, 3719.16, 3719.161, or 3719.172, or certain violations of R.C. 4729.37, 4729.51, 4729.54, or 4729.61, when the offender also is convicted of a major drug offender specification prescribed under existing law.¹⁷

Definition of fentanyl-related compound

The bill defines "fentanyl-related compound" for purposes of its provisions 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]N-phenylpropanamide);
- (4) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidiny]N-phenylpropanamide);
- (5) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]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]N-phenylpropanamide);
- (8) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny]propanamide);
- (9) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]-propanamide);
- (10) Alfentanil;

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).

(11) Carfentanil;

(12) Remifentanil;

(13) Sufentanil;

(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 below in "**Addition of certain fentanyl compounds as Schedule I narcotics-opiates**," including acetylfentanyl, furanylfentanyl, valerylfentanyl, butyrylfentanyl, isobutyrylfentanyl, 4-methoxybutyrylfentanyl, para-fluorobutyrylfentanyl, acrylfentanyl, and ortho-fluorofentanyl.

Addition of certain fentanyl compounds as Schedule I narcotics-opiates

Currently, the substances identified in paragraphs (1) to (14), above, under "**Definition of fentanyl-related compound**" are included in Ohio's statutory controlled substance schedules as Schedule I narcotics-opiates or Schedule II narcotics-opiates.¹⁹ The bill adds as a statutory Schedule I narcotic-opiate certain fentanyl-related compounds (the compounds currently are included as Schedule I controlled substances under the Administrative Code,²⁰ but they are not included in the statutory provision). The bill adds as a statutory Schedule I narcotic-opiate, except as otherwise provided in R.C. 3719.41, 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 but not limited to, a hydroxyl, ketone, amide, or ester;

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

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

²⁰ O.A.C. 4729-11-02, not in the bill.

²¹ R.C. 3719.41, Schedule I(A)(56).



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

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 marihuana, or illegal assembly or possession of chemicals for the manufacture of drugs. Under the bill, permitting drug abuse is a fifth degree felony and there is no presumption for or against a prison term when it is based upon illegal manufacture of drugs or illegal cultivation of marihuana (or, as under existing law, upon felony corrupting another with drugs or a felony drug trafficking offense). Under the bill, permitting drug abuse also is a fifth degree felony and there is no presumption for or against a prison term when it is based upon 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 for the commission of a felony drug abuse offense, that the person who assembled or possessed the drugs in question in violation of the illegal-assembly-or-possession-of-chemicals prohibition had assembled them or possessed them with the intent to manufacture a controlled substance in Schedule I or II in violation of the illegal-manufacture-of-drugs prohibition. 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.²²

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.²³

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.²⁴

²² R.C. 2925.13(C).

²³ R.C. 2925.13(D).

²⁴ R.C. 2925.13(A) and (B).

Lisdexamfetamine as a Schedule II controlled substance

The bill adds lisdexamfetamine, and its salts, isomers, and salts of its isomers, to the list of Schedule II controlled substances, in the "stimulants" subcategory.²⁵

Currently, federal law classifies lisdexamfetamine as a Schedule II controlled substance.²⁶ 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.²⁷

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

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

The bill specifies that any prison term imposed upon a person for a conviction of "involuntary manslaughter" that is based on a drug trafficking offense, a drug possession offense, or the offense of "aggravated funding of drug trafficking," "funding of drug trafficking," or "funding of marihuana 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.²⁸

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 (other than certain specified minor misdemeanors), or regulatory offense.

²⁵ R.C. 3719.41, Schedule II(C)(5).

²⁶ <http://www.deadiversion.usdoj.gov/schedules/index.html>.

²⁷ R.C. 3719.43, not in the bill.

²⁸ R.C. 2929.14(C)(6) and (7).



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