



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Nicholas A. Keller

S.B. 42

132nd General Assembly
(As Introduced)

Sens. Eklund, LaRose, Gardner, Bacon, Huffman, Brown, Hoagland, Oelslager, Hite, Terhar, Peterson

BILL SUMMARY

- Specifies, where reference is made in drug offense laws to the presence of a drug, that any compound, mixture, preparation, or substance containing a detectable amount of that drug is sufficient.
- Specifies, where reference is made in drug offense laws to the weight of a drug, that the weight of any compound, mixture, preparation, or substance containing a detectable amount of that drug is sufficient.
- Declares an emergency.

CONTENT AND OPERATION

Weight and presence of drugs in drug offenses

The bill modifies Ohio's Drug Offense Law so that in every instance where the identity of, presence of, or connection to a drug must be established, the identity of, presence of, or connection to a compound, mixture, preparation, or substance containing a detectable amount of that drug is sufficient.¹ For example, in one variation of the offense of "corrupting another with drugs," continuing law prohibits a person from knowingly, by force, threat, or deception, administering to another or inducing or causing another to use a controlled substance.² The penalty that applies to the offense

¹ R.C. 2925.02(C) and (E); 2925.03(C); 2925.04(C), (E), and (F); 2925.05(A), (C), and (E); 2925.11(C); 2925.12(A); 2925.14(A) and (D); 2925.141(C); 2925.22(B); 2925.23(F); 2925.36(C) and (E); 3719.99(A), (B), (C), and (D); and 4729.99(E) with conforming changes in R.C. 2925.51(F) and 2929.14(B)(3).

² R.C. 2925.02(A)(1).

depends on the particular type of drug involved. If the drug involved is marijuana, corrupting another with drugs under this variation is a fourth degree felony or a third degree felony if committed in the vicinity of a school. Under the bill this penalty would apply if the drug involved is marijuana *or* any compound, mixture, preparation, or substance containing a detectable amount of marijuana.³

The bill also applies where the weight of a drug is at issue. In those cases the bill allows for the weight of the drug to be established by determining the weight of any compound, mixture, preparation, or substance containing a detectable amount of that drug. For example, under continuing law, the offense of trafficking in cocaine is a fourth degree felony if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine. The bill imposes that penalty if "the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine *or of the compound, mixture, preparation, or substance containing the detectable amount of cocaine.*"⁴ This allows the state, in prosecuting a cocaine offense involving a mixed substance, to prove that the weight of the cocaine meets the statutory threshold despite the inclusion of any non-cocaine materials in the mixture. In *State v. Gonzales*, the Ohio Supreme Court interpreted the current wording of the penalties for cocaine possession to mean that the state must prove the weight of pure cocaine, absent any filler, to determine the applicable penalty.⁵

The bill contains an emergency clause so that it may go into immediate effect. The stated necessity for the emergency clause is to ensure that the method for determining the amount of a drug involved in a drug offense for purposes of sentencing that applied prior to the Ohio Supreme Court's holding in *State v. Gonzales* will continue to be valid.⁶

HISTORY

ACTION	DATE
Introduced	02-08-17

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³ R.C. 2925.02(C)(3).

⁴ R.C. 2925.03(C)(4)(c).

⁵ *State v. Gonzales*, 2016-Ohio-8319 at ¶22 (decided December 23, 2016).

⁶ Section 4.

