ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2015-1782
Plaintiff-Appellee,	:	
	:	On Appeal from the
v.	:	Warren County Court of Appeals,
	:	Twelfth Appellate District,
HAMZA SHALASH,	:	Case No. CA2014-12-146
	:	
Defendant-Appellant.	:	

MERIT BRIEF OF APPELLANT HAMZA SHALASH

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INTRODUCTION

Because the General Assembly had not created the offense of trafficking in controlled substance analogs until December 20, 2012, a person could not be charged for such offenses allegedly committed prior to that date. However, this has not prevented the State from prosecuting persons for such offenses who legally transacted business in Ohio prior to the amendment of R.C. 2925.01(A) and prohibition against selling controlled substance analogs. In so doing, the State has prosecuted persons, like Hamza Shalash, for activity that was not illegal.

STATEMENT OF THE CASE AND FACTS

On May 21, 2012, Mr. Shalash was indicted on eight counts of aggravated trafficking in a controlled substance analog in violation of either R.C. 2925.03(A)(1) or R.C. 2925.03(A)(2). The offenses were charged as either first-, second-, third-, or fourth-degree felonies. He was also charged with one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1), a first-degree felony:

Count	Date	Offense	Degree	Amount	Spec
1	January 18, 2012	2925.03(A)(1)	4th	Not Specified	NA
2	January 18, 2012	2925.03(A)(1)	4th	Not Specified	NA
3	January 18, 2012	2925.03(A)(1)	4th	Not Specified	NA
4	January 18, 2012	2925.03(A)(2)	1st	<100x bulk amount	MDO
5	January 18, 2012	2925.03(A)(2)	3rd	= or exceeds bulk amount but > 5x bulk amount	NA
6	February 7, 2012	2925.03(A)(1)	4th	Not Specified	NA
7	February 10, 2012	2925.03(A)(1)	4th	Not Specified	NA
8	February 13, 2012	2925.03(A)(2)	2nd	= or exceeds 5x bulk amount but >50x bulk amount	NA
9	November 2011-February 2012	2923.31(A)(1)	1st	NA	NA

(May 21, 2012, Indictment, Case Nos. 12CR28290, 12CR28291). It was alleged that the items at issue contained JWH122, JWH210, JWH250 or AM2201, or a combination of those substances. *State v. Shalash*, 12th Dist. Warren No. CA2013-06-052, 2014-Ohio-2584, ¶ 9 (*Shalash I*).

Mr. Shalash filed a motion in limine to challenge expert testimony about the substances and requested a *Daubert* hearing on the matter. The trial court denied Mr. Shalash's motion in limine without holding a hearing. After a two-day jury trial, Mr. Shalash was convicted on all nine counts,[1] and the trial court sentenced him to an aggregate 11-year prison sentence. *Id.* at ¶ 11.

Effective December 20, 2012, the General Assembly sought to do the following:

> To amend sections 2925.01, 2925.03, 2925.11, 2925.55, 2925.56, 2925.57, 2929.01, 3715.05, 3719.013, and 3719.41 and to enact sections 109.89, 3715.051, 3715.052, 3715.053, and 3715.054 of the Revised Code to establish procedures regarding the participation of pharmacies, retailers, and the Attorney General in electronically tracking pseudoephedrine and ephedrine product sales through a national exchange; to specify that certain classes of compounds and individual compounds are schedule I controlled substances; *to create the offenses of trafficking in and possession of controlled substance analogs*; and to declare an emergency.

(Emphasis added.) 2011 Am.Sub.H.B. No. 334.

On June 10, 2013, Mr. Shalash appealed his conviction, arguing that the trial court erred in denying his motion in limine to exclude the State's expert witness testimony without holding a *Daubert* hearing. *Shalash I* at ¶ 15-16. The Twelfth District reversed his convictions and remanded the matter for further proceedings. *Id.* at ¶ 55.

On remand, the trial court held the *Daubert* hearing and determined that "pursuant to the law that existed at the time of this offense, the question of 'substantially similar' is a factual question for the jury to resolve." (December 8, 2014, Decision and Entry, Case No.

---

[1] The trial court dismissed the MDO specification attached to Count Four, pursuant to Mr. Shalash's Crim.R. 29 motion.

12CR28290). Mr. Shalash then moved to dismiss the case on the ground that the sale of controlled substance analogs was not criminalized at the time when he sold them. The trial court denied his motion.

Mr. Shalash appealed the denial of the motion to dismiss in *State v. Shalash*, 12th Dist. Warren No. CA2014-12-146, 2015-Ohio-1263 (*Shalash II*).[2] In *Shalash II*, Mr. Shalash argued that the trial court erred in failing to grant his motion to dismiss because controlled substance analogs were not criminalized at the time he was alleged to have committed the offenses. In advance of this argument, Mr. Shalash relied on *State v. Smith*, 10th Dist. Franklin Nos. 14AP-154, 14-AP-155, 2014-Ohio-5303. In *Smith*, the Tenth District held:

> Applying the rule of lenity, which requires us to construe ambiguity in criminal statutes strictly so as to apply only to conduct that is clearly proscribed, we conclude that, during the period from February through July of 2012, R.C. 2925.03 and 2925.11 did not adequately 'state a positive prohibition and provide a penalty for violation of such prohibition' on the sale or possession of controlled substance analogs. Accordingly, the acts appellee is alleged to have committed were not clearly defined as criminal offenses under the law as it existed at the time. The trial court did not err by granting appellee's motion to dismiss the indictments against him.

Id. at 16.

Contrarily, the Twelfth District overruled Mr. Shalash's assignment of error and held:

> ...since the words in R.C. 3719.013 are unambiguous, there is no need to resort to the canons of statutory construction, as the Tenth District did in *Smith*. The Ohio Supreme Court has made it clear that the rule of lenity applies only when the criminal statute in question is ambiguous. *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, ¶ 40, 912 N.E.2d 582. We do not, nor did the court in *Smith*, find R.C. 3719.013 to be ambiguous. The court in Smith found that the ambiguity arose because the reference to analogs was placed in Chapter 3719, rather than Chapter 2925. *Id.* at ¶ 14. The court in *Smith* noted that Chapter 3719 generally pertains to the civil regulation of controlled substances while Chapter 2925 governs criminal offenses. However, there is frequent interplay and integration for purposes of implementation between Chapters 3719 and 2925 as schedule I is

[2] In *Shalash II*, Mr. Shalash raised two assignments of error. The Twelfth District overruled both assignments of error and this appeal relates only to Assignment of Error 1.

> mentioned in various places in Chapter 3719. Indeed, the court in *Smith* acknowledged this frequent interplay and integration by noting that R.C. Chapter 2925 defines certain terms by incorporating the definitions contained in R.C. Chapter 3719. *Id.* at ¶ 12.

Shalash II at ¶ 25. On September 28, 2015, Mr. Shalash filed an App.R. 25 motion to certify a conflict between *Shalash II* and the Tenth District's decisions in *Smith*, *State v. Mohammad*, 10th Dist. Franklin No. 14AP-662, 2015-Ohio-1234, and *State v. Mabarak*, 10th Dist. Franklin No. 14AP-517, 2015-Ohio-3007. The Twelfth District granted that motion. (October 22, 2015, Entry Granting Motion to Certify a Conflict, Case No. CA2014-12-146). And on December 16, 2015, this Court determined a conflict exists and certified the following question: "Whether 'controlled substance analogs' were criminalized as of October 17, 2011, the effective date of House Bill 64." (December 16, 2015, Entry, Case No. 2015-1782).

ARGUMENT

Certified-Conflict Question:

Whether "controlled substance analogs" were criminalized as of October 17, 2011, the effective date of House Bill 64?

Proposition of Law:

Because R.C. 2925.03(A), effective October 17, 2011, criminalized only the sale of controlled substances and had not created the offense of trafficking in "controlled substance analogs" until December 20, 2012, a person could not be charged for those offenses prior to that date.

A. Trafficking in "controlled substance analogs" was not defined as an offense until the General Assembly enacted 2011 Am.Sub.H.B. No. 334.

Prior to the enactment of 2011 Am.Sub.H.B. No. 334, Ohio criminalized the trafficking of only "controlled substances." *See* R.C. 2925.03(A) as set forth in 2011 Am.Sub.H.B. No. 64, effective October 17, 2011. Therefore, trafficking in "controlled substance analogs" was not defined as an offense until the General Assembly announced its intention, effective December 20, 2012, "to create the offenses of trafficking in and possession of controlled substance analogs . . . ." That is, trafficking in, and possession of, controlled substance analogs was criminalized by inserting the phrase "controlled substance analog" in divisions (A)(1) and (2) of R.C. 2925.03.

In Ohio, "[n]o conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code." R.C. 2901.03(A). And "[a]n offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty." R.C. 2901.03(B). Prior to the enactment of 2011 Am.Sub.H.B. No. 334, R.C. 2925.03 did not state a positive prohibition against trafficking in "controlled substance analogs." Moreover, prior to the enactment of 2011 Am.Sub.H.B. No. 334, no section of the Revised Code provided a penalty for

trafficking in "controlled substance analogs." Courts are "required to apply the plain language of a statute when it is clear and unambiguous." *Jaques v. Manton*, 125 Ohio St.3d 342, 2010-Ohio-1838, 928 N.E.2d 434, ¶ 14, citing *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 9. And because the General Assembly stopped short of including "controlled substance analogs," as a consequence, the activity alleged in the indictment was *not* a crime.[3]

Mr. Shalash did not illegally traffic in controlled substance analogs on January 18, 2012 or February 7, 10, and 13, 2012, an assertion that is fully supported by the canon of statutory construction *expressio unius est exclusio alterius*. That canon "tells us that the express inclusion of one thing [in the language of a statute] implies that exclusion of the other." *Myers v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, 852 N.E.2d 1176, ¶ 24, citing Black's Law Dictionary 620 (8th ed.2004).

Indeed, Title 37 of the Revised Code sets out laws that focus on regulating health and safety. For example, Title 37 sets out laws for the Department of Health, the Board of Pharmacy, and laws regarding vital statistics, food service, alcohol, building regulations, and even casino and lottery gambling. As part of the chapter regulating licensing and use of controlled substances, R.C. 3719.01 sets out over 40 definitions. But the version of Title 29 of the Revised Code in effect during Mr. Shalash's transactions (pre-December 2012), explicitly adopted only the following 17 definitions:

> (A) "Administer," "controlled substance," "dispense," "distribute," "hypodermic," "manufacturer," "official written order," "person," "pharmacist," "pharmacy," "sale," "schedule I," "schedule II," "schedule III," "schedule IV," "schedule V," and "wholesaler" have the same meanings as in section 3719.01 of the Revised Code.

R.C. 2925.01(A) (2011). Notably absent is a definition of "controlled substance analog."

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[3]As alleged in the indictment, Counts 1-5 occurred 337 days prior to the enactment of 2011 Am.Sub.H.B. No. 334. Count 6 occurred 317 days prior to the enactment. Count 7 occurred 314 days prior to the enactment. And Count 8 occurred 311 days prior to the enactment.

In fact, at all times relevant to this case, no part of Title 29 mentioned the term "controlled substance analog." The relevant definitions provided by R.C. 3719.01 and adopted by R.C. 2925.01 were:

> (C) "Controlled substance" means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V.
>
> ...
>
> (BB) "Schedule I," "schedule II," "schedule III," "schedule IV," and "schedule V" mean controlled substance schedules I, II, III, IV, and V, respectively, established pursuant to section 3719.41 of the Revised Code, as amended pursuant to section 3719.43 or 3719.44 of the Revised Code.

In other words, according to the definitions explicitly adopted by the "Drug Offenses" chapter of the Revised Code, something was a controlled substance if and only if it was listed in Schedules I through V, set out in R.C. 3719.41, and amended by R.C. 3719.43 or R.C. 3719.44. It is undisputed that AM 2201, JWH122, JWH210, and JWH250 were not listed on schedules before December 2012. Thus, nothing Mr. Shalash sold was illegal, based on the statutory definitions operative at the time.

Ohio's express statutory rule of lenity requiring "sections of the Revised Code defining offenses . . . shall be strictly construed against the state, and liberally construed in favor of the accused," supports the Tenth District's decision. R.C. 2901.04. Here, the General Assembly's definition of "controlled substances" prior to the enactment of 2011 Am.Sub.H.B. No. 334 stopped short of including "controlled substance analogs." Mr. Shalash did not engage in illegal activity under Ohio law.

B. Revised Code Section 3719.013 did not criminalize the sale of controlled substance analogs.

The Tenth District held R.C. 3719.013 did not incorporate the definition of "controlled substance analog" into the definition of "controlled substance" contained in R.C. 2925.01. *Smith*, 10th Dist. Franklin Nos. 14AP-154, 14-AP-155, 2014-Ohio-5303, at ¶ 12-16.

Indeed, the Tenth District recognized that, under Ohio law, the definition of a phrase in a civil statute such as R.C. 3719.013 does not necessarily import the same meaning to the same phrase in interpreting a criminal statute, such as R.C. 2925.01(A). *Smith* at ¶ 12. That is because where two statutes do not expressly state that the word or phrase has the same meaning in *both*, it might have different meanings. *State v. Dickinson*, 28 Ohio St.2d 65, 69, 275 N.E.2d 599 (1971). Here, trafficking in "controlled substance analogs" was not specifically listed on the drug schedules, and was first criminalized when the General Assembly inserted the phrase "controlled substance analog" in R.C. 2925.03(A)(1) and (2), effective December 20, 2012. *See* 2011 Am.Sub.H.B. No. 334. Therefore, Mr. Shalash's trafficking offenses, alleged to have occurred between January and February 2012, do not constitute criminal offenses.

As noted above, Mr. Shalash was charged with trafficking controlled substance analogs prior to December 20, 2012. At that time, the Revised Code did not define a "controlled substance analog" as a "controlled substance." Specifically, the General Assembly in 2011 Am.Sub.H.B. No. 64, effective October 17, 2011, amended R.C. 3719.01(C) to state that "'[c]ontrolled substance' means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V." At that time, the General Assembly did not define a "controlled substance analog" as a "controlled substance." The General Assembly, in H.B. 64, inserted R.C. 3719.01(HH)(1)(a), which defined "controlled substance analog" as a substance that is (1) substantially similar chemically to drugs that are on schedules I or II; (2) if they produce similar

effects on the central nervous system as drugs that are on those schedules; or (3) are intended or represented to produce effects similar to those produced by drugs that are on those schedules. By defining "controlled substance" as a substance actually included in the drug schedules, the General Assembly recognized that "controlled substance analogs" were *not* already included in the drug schedules.

Significantly, there are three methods to add, transfer, or remove a controlled substance from Ohio's schedules. *See* 2001 Ohio Atty.Gen.Ops. No. 2001-014. First, the Ohio schedule of controlled substances is subject to modification by the Ohio Board of Pharmacy. R.C. 3719.44. Second, when the United States Attorney General adds, transfers, or removes a substance from the federal schedule of controlled substances, the corresponding Ohio schedules are automatically amended under R.C. 3719.43. Third, the General Assembly may independently act to add drugs to the controlled-substance schedules that have not been placed there by federal action or the State Board of Pharmacy. *See e.g.*, 1991-1992 Ohio Laws, Part II, 2834, 2860 (1991 Am.Sub.H.B. No. 62) (adding anabolic steroids to schedule III). None of these methods were used to add JWH122, JWH210, JWH250, or AM2201 to Ohio's schedules prior to December 20, 2012.

Instead, effective October 17, 2011, the General Assembly enacted 2011 Am.Sub.H.B. No. 64 and created R.C. 3719.013, which provided:

> Except as otherwise provided in section 2925.03 or 2925.11 of the Revised Code, a controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of the Revised Code as a controlled substance in schedule I.

R.C. 3719.013 (2011). That amendment did not add, transfer, or remove any chemical to the controlled-substance schedules. Nor did the amendment define "controlled substance analogs" as "controlled substances." Instead, that amendment indicated that a "controlled substance

analog" shall be treated as a schedule I "controlled substance." This distinction is significant because only trafficking in chemicals specifically included on the drug schedules was criminalized under R.C. 2925.03 during the relevant time period.

The General Assembly recognized this because 2011 Am.Sub.H.B. No. 64 criminalized specifically named compounds by adding six synthetic cannabinoids and six synthetic derivatives of cathinone to the list of schedule I controlled substances. Thus, 2011 Am.Sub.H.B. No. 64 did not allow unknown iterations of scheduled controlled substances to be prosecuted in the same manner as controlled substances. Conversely, 2011 Am.Sub.H.B. No. 334 criminalized an entire class of dangerous drugs, not just specifically named compounds, by inserting the phrase "controlled substance analogs" into the drug statutes. *At that point*, the General Assembly allowed the sale of controlled substance analogs to be prosecuted in the same manner as controlled substances.

C. During the period from January through February of 2012, R.C. 2925.03 did not unambiguously state a positive prohibition or a penalty for the sale of controlled substance analogs.

Courts are "required to apply the plain language of a statute when it is clear and unambiguous." *Jaques*, 125 Ohio St.3d 342, 2010-Ohio-1838, 928 N.E.2d 434, at ¶ 14, citing *Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, at ¶ 9. With all deference to this Court's rulings in *Jacques* and *Lowe*, the Tenth District in *Smith* correctly recognized that the applicability of R.C. 2925.03 to the possession and trafficking of AM2201 and a-PVP was ambiguous. At the time of Mr. Smith's alleged sale of AM2201 and a-PVP, R.C. 2925 defined certain terms by incorporating R.C. 3719:

> As used in this chapter:
>
> (A) "Administer," "controlled substance," "dispense," "distribute," "hypodermic," "manufacturer," "official written order," "person," "pharmacist," "pharmacy," "sale," "schedule I," "schedule II," "schedule III," "schedule IV,"

> "schedule V," and "wholesaler" have the same meanings as in section 3719.01 of the Revised Code.
>
> (B) "Drug dependent person" and "drug of abuse" have the same meanings as in section 3719.011 of the Revised Code.
>
> * * *
>
> (AA) "Marihuana" has the same meaning as in section 3719.01 of the Revised Code, except that it does not include hashish.

Smith, 10th Dist. Franklin Nos. 14-AP-154, 14-AP-155, 2014-Ohio-5303, at ¶ 12. The Tenth District correctly observed that "the list of definitions contained in R.C. 2925.01(A) at the time did not expressly incorporate the definition of "controlled substance analog" created in House Bill 64 and codified as R.C. 3719.01(HH)." *Id.*

The Tenth District further highlighted the ambiguity in the applicability of 2011 Am.Sub.H.B. No. 64 when it reasoned:

> The ambiguity under the law as amended by House Bill 64 is also demonstrated by comparing the treatment of controlled substance analogs with the treatment of certain chemical compounds referred to as "spice." Under House Bill 64, the General Assembly amended R.C. 2925.03 to provide that, if an individual sold certain specified chemical compounds, as defined in the law, the individual was guilty of "trafficking in spice." R.C. 2925.03(C)(8) (2012). The legislation likewise amended R.C. 2925.11 to provide that, if an individual possessed those specified chemical compounds, the individual was guilty of "possession of spice." R.C. 2925.11(C)(8) (2012). House Bill 64 also added those specified compounds to the list of schedule I drugs. R.C. 3719.41(I)(C)(35)-(39) (2012). By contrast, the General Assembly did not amend R.C. 2925.03 or 2925.11 to expressly prohibit the sale or possession of controlled substance analogs and did not amend any part of Chapter 2925 to explicitly refer to controlled substance analogs and, as relevant to this case, AM 2201 and a-PVP.
>
> * * *
>
> As noted above, House Bill 64 was similar to the federal Controlled Substance Analogue Enforcement Act of 1986. However, the placement of the relevant provisions within the overall statutory structure also demonstrates a notable distinction between the two measures. Under the Controlled Substance Analogue Enforcement Act of 1986, all of the relevant provisions, including the definition of "controlled substance analogue" and the requirement that such analogues be treated as controlled substances, were placed into the same portion of federal law that contained the prohibitions on possession and sale of controlled substances—

> i.e., Subchapter I ("Control and Enforcement") of Chapter 13 ("Drug Abuse Prevention and Control") of Title 21 ("Food and Drugs") of the United States Code. *See* 21 U.S.C. 802(32)(defining "controlled substance analogue"); 21 U.S.C. 813 (providing that controlled substance analogues shall be treated as controlled substances); and 21 U.S.C. 841(a)(1) (prohibiting the manufacture, distribution, or dispensation of controlled substances, or possession of controlled substances with intent to manufacture, distribute, or dispense). By contrast, House Bill 64 placed the controlled substance analog provisions in Chapter 3719 separate from the prohibitions and penalties set forth in Chapter 2925, and failed to incorporate any explicit cross-references in Chapter 2925 to the controlled substance analog provisions.

Smith at ¶ 14-15

Similarly, as the Tenth District recognized in *Smith*, prior to February of 2012, the illegality of the sale of controlled substance analogs was ambiguous at best under the law. The Tenth District was correct. Likewise, Mr. Shalash did not commit offenses under Ohio law. Therefore, this Court should vacate Mr. Shalash's convictions with prejudice.

CONCLUSION

This Court should adopt the analysis and conclusions of the Tenth District Court of Appeals in *Smith*. Mr. Shalash's convictions should be vacated with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **MERIT BRIEF OF APPELLANT HAMZA SHALASH** was sent by regular U.S. Mail, postage-prepaid to the office of Kathryn Horvath, Assistant Prosecuting Attorney, Warren County Prosecutor's Office, 500 Justice Drive, Lebanon, Ohio 45036 on this 5th day of April, 2016.

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2015-1782
Plaintiff-Appellee,	:	
	:	On Appeal from the
v.	:	Warren County Court of Appeals,
	:	Twelfth Appellate District,
HAMZA SHALASH,	:	Case No. CA2014-12-146
	:	
Defendant-Appellant.	:	

APPENDIX TO

MERIT BRIEF OF APPELLANT HAMZA SHALASH

The Supreme Court of Ohio

FILED

DEC 16 2015

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

Hamza Shalash

Case No. 2015-1782

ENTRY

This cause is pending before the court on the certification of a conflict by the Court of Appeals for Warren County. On review of the order certifying a conflict, it is determined that a conflict exists. The parties are to brief the issue stated at page 2 of the court of appeals' entry granting motion to certify conflict filed October 22, 2015, as follows:

"The question certified is whether 'controlled substance analogs' were criminalized as of October 17, 2011, the effective date of House Bill 64."

It is ordered by the court that the clerk shall issue an order for the transmittal of the record from the Court of Appeals for Warren County.

(Warren County Court of Appeals; No. CA2014-12-146)

Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/

SEP 2015

COURT OF APPEALS
WARREN COUNTY
FILED
SEP 21 2015
James L. Spaeth, Clerk
LEBANON OHIO

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

HAMZA SHALASH,

Defendant-Appellant.

CASE NO. CA2014-12-146

OPINION
9/21/2015

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 12CR28290

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PIPER, P.J.

{¶ 1} Defendant-appellant, Hamza Shalash, appeals his conviction in the Warren County Court of Common Pleas on multiple counts of aggravated trafficking in controlled substance analogs and one count of engaging in a pattern of corrupt activity, for which he was sentenced to 11 years in prison. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} In 2012, appellant was indicted on eight counts of aggravated trafficking in a controlled substance analog in violation of either R.C. 2925.03(A)(1) or (A)(2), which were charged as either a first-, second-, third-, or fourth-degree felony,[1] and one count of engaging in a pattern of corrupt activity in violation of R.C. 2923.32(A)(1), a first-degree felony. Appellant filed a motion in limine to prohibit the state from presenting expert testimony to prove that the substances seized from his premises were controlled substance analogs, and requested a *Daubert* hearing on the matter.[2] The trial court denied appellant's motion in limine, without holding a *Daubert* hearing. After a two-day jury trial appellant was convicted on all nine counts, and the trial court sentenced him to an aggregate 11-year prison term.

{¶ 3} Appellant appealed his conviction to this court, arguing the trial court erred in denying his motion in limine to exclude the state's expert witness testimony without holding a *Daubert* hearing. *State v. Shalash*, 12th Dist. Warren No. CA2013-06-052, 2014-Ohio-2584, ¶ 15-16. We agreed with appellant's argument, reversed his conviction, and remanded the matter for further proceedings. *Id.* at ¶ 55.

{¶ 4} On remand, the trial court held a *Daubert* hearing, during which both parties presented expert testimony regarding the scientific reliability of determining whether controlled substance analogs were "substantially similar" to controlled substances, both in terms of composition and in the effect controlled substance analogs have on persons who use them. Afterwards, the trial court issued a decision ruling that the state's "expert testimony will be admitted." The trial court found that (1) the "visual assessment/comparison method" used by the state's experts is no different than forensic methods employed by chemists for decades; (2) the procedures used by the Miami Valley Regional Crime

1. Five of the eight counts were charged as fourth-degree felonies while the remaining three counts were charged as felonies of either the first, second, or third degree.

2. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993).

Laboratory (MVRCL) are objectively verifiable, are validly derived from widely accepted principles of forensic chemistry, and are conducted in a way that will yield an accurate result; and (3) the expert pharmacological testimony to be offered is grounded in traditional science generally accepted in the scientific community." Additionally, the trial court determined that "pursuant to the law that existed at the time of this offense, the question of 'substantially similar' is a factual question for the jury to resolve."

{¶ 5} Appellant then moved to dismiss the case on the ground that the sale of controlled substance analogs was not criminalized at the time he sold them. The trial court denied appellant's motion to dismiss. With the court participating in a discussion between the parties regarding several issues including appellant's anticipated appeal, appellant pled no contest to the charges in the indictment. The trial court accepted appellant's no contest plea, found him guilty as charged, and sentenced him to an aggregate 11-year prison term.

{¶ 6} Appellant now appeals, assigning the following as error:

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT ERRED IN FAILING TO GRANT SHALASH'S MOTION TO DISMISS BECAUSE CONTROLLED SUBSTANCE ANALOGS WERE NOT CRIMINALIZED AT THE TIME SHALASH WAS ALLEGED TO HAVE COMMITTED THESE OFFENSES.

{¶ 9} Assignment of Error No. 2:

{¶ 10} THE TRIAL COURT ERRED IN HOLDING THE STATE COULD PRESENT EXPERT TESTIMONY AT TRIAL THAT THE SUBSTANCES AT ISSUE WERE SUBSTANTIALLY SIMILAR TO CONTROLLED SUBSTANCES BECAUSE THIS EVIDENCE WAS UNRELIABLE.

{¶ 11} In his first assignment of error, Shalash argues the trial court erred in denying his motion to dismiss the charges against him, because controlled substance analogs were

not criminalized at the time he allegedly committed the offense of aggravated trafficking of such substances. Specifically, Shalash contends that, at the time he was alleged to have sold controlled substance analogs, which was from January 2012 to February 2012, R.C. 2925.03(A) criminalized selling or offering to sell controlled substances, but did not criminalize selling or offering to sell controlled substance *analogs*. He notes that at the time of his alleged offenses, the term "controlled substance analog" did not appear in R.C. Chapter 2925, and that it was not until December 2012 that "controlled substance analog" was added to R.C. 2925.03(A) and 2925.01(A). He asserts that since controlled substance analogs were not criminalized until ten months after he was indicted for trafficking in such substances, the indictment against him should have been dismissed.

{¶ 12} In support of his argument, appellant relies on *State v. Smith*, 10th Dist. Franklin Nos. 14AP-154 and 14AP-155, 2014-Ohio-5303. In that case, Smith was indicted on five counts of aggravated possession of controlled substance analogs and five counts of aggravated trafficking in controlled substance analogs. *Id.* at ¶ 2. Smith moved to dismiss the indictment, asserting that controlled substance analogs were not criminalized at the time his alleged offenses occurred, and therefore he could not be convicted of the offenses for which he had been indicted. *Id.* at ¶ 3. The trial court agreed with Smith's arguments and granted his motion to dismiss the indictments and charges against him. *Id.* The state appealed the trial court's decision to the Tenth District Court of Appeals, which upheld the trial court's decision. *Id.* at ¶ 1, 22.

{¶ 13} The Tenth District observed that, in 2011, the General Assembly enacted House Bill 64, which became effective on October 17, 2011. *Id.* at ¶ 7. The court acknowledged that House Bill 64 created a definition of "controlled substance analog" in R.C. 3719.01(HH). House Bill 64 also provided that "[a] controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of the

Revised Code as a controlled substance in schedule I." *Id.*, citing 2011 Sub.H.B. No. 64. This latter provision in H.B. 64 was codified in R.C. 3719.013.

{¶ 14} The Tenth District noted in *Smith* that "[c]ourts apply the 'rule of lenity' when faced with ambiguity in a criminal statute[,]" *Id.* at ¶ 9, and that under the rule of lenity, "'ambiguity in a criminal statute is construed strictly so as to apply the statute only to conduct that is *clearly* proscribed.'" (Emphasis added by the Tenth District.) *Id.*, quoting *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, ¶ 10.

{¶ 15} The Tenth District observed that at the time of Smith's alleged acts, R.C. Chapter 2925, which governs criminal drug offenses, defined certain terms by incorporating the definitions contained in R.C. Chapter 3719. *Id.* at ¶ 12. However, the court observed that "[n]otably, the list of definitions contained in R.C. 2925.01(A) * * * did not expressly incorporate the definition of 'controlled substance analog' created in House Bill 64 and codified as R.C. 3719.01(HH)." *Id.* After citing the canon of statutory construction, "expressio unius est exclusio alterius," i.e., "the express inclusion of one thing implies the exclusion of the other[,]" the Tenth District stated that "arguably, by creating a definition of 'controlled substance analog' in R.C. 3719.01(HH) under House Bill 64 but failing to incorporate that definition into R.C. 2925.01, the General Assembly *excluded* that definition from applying in the context of the criminal drug offense statutes." *Id.* (Emphasis sic.)

{¶ 16} The Tenth District further found that the ambiguity under the law as amended by House Bill 64 is also demonstrated by comparing the treatment of controlled substance analogs with the treatment of certain chemical compounds referred to as 'spice.'" *Id.* at ¶ 13. The court noted that unlike the amendments it made to Chapter 2925 in order to criminalize spice, the General Assembly "did not amend R.C. 2925.03 or 2925.11 to expressly prohibit the sale or possession of controlled substance analogs and did not amend any part of Chapter 2925 to explicitly refer to controlled substance analogs[.]" *Id.*

{¶ 17} The Tenth District rejected the state's argument that R.C. 3719.013, which provides that a controlled substance analog "shall be treated for purposes of any provision of the Revised Code as a controlled substance in schedule I," "necessarily incorporated controlled substance analogs into all parts of the Revised Code addressing schedule I controlled substances[.]" *Id.* at ¶ 14. The court noted that Chapter 3719 "generally relates to the civil regulation of controlled substances, not to criminal enforcement[;]" and that at the time Smith allegedly committed his offenses, "there were no cross-references or any other indicators in Chapter 2925 to provide notice that the treatment of controlled substance analogs under Chapter 3719 also applied to Chapter 2925." *Id.* The court added that "[a]lso confusing is R.C. 3719.01(HH)(2)(a), which states that '"controlled substance analog" does not include any of the following: (a) A controlled substance,' seemingly contradicting R.C. 3719.013." *Id.*

{¶ 18} The Tenth District further found that "the placement of the relevant provisions within the overall statutory structure [of House Bill 64] also demonstrates a notable distinction between [that measure and the federal Controlled Substance Analogue Enforcement Act (CSAEA) of 1986]." *Id.* at ¶ 15. The court observed that under the CSAEA of 1986, "all of the relevant provisions, including the definition of 'controlled substance analogue' and the requirement that such analogues be treated as controlled substances, were placed into the same portion of federal law that contained the prohibitions on possession and sale of controlled substances[.]" *Id.* The court noted that "[b]y contrast, House Bill 64 placed the controlled substance analog provisions in Chapter 3719 separate from the prohibitions and penalties set forth in Chapter 2925, and failed to incorporate any explicit cross-references in Chapter 2925 to the controlled substance analog provisions." *Id.*

{¶ 19} "Applying the rule of lenity," the Tenth District concluded that, at the time Smith committed his offenses, i.e., from February 2012 through July 2012, "R.C. 2925.03 and

2925.11 did not adequately 'state a positive prohibition * * * and provide a penalty for violation of such prohibition' on the sale or possession of controlled substance analogs [as required by R.C. 2901.03(B),]" and therefore the acts Smith allegedly committed "were not clearly defined as criminal offenses under the law as it existed at the time." *Id.* at ¶ 16. Consequently, the Tenth District found that the trial court did not err by granting Smith's motion to dismiss the indictments against him. *Id.*[3]

{¶ 20} Appellant requests that we follow *Smith* in this case. We decline to do so.

{¶ 21} When reviewing a trial court's decision regarding a motion to dismiss, this court applies a de novo standard of review, meaning that we give no deference to the trial court's decision. *State v. Hubbard*, 12th Dist. Preble No. CA2004-12-018, 2005-Ohio-6425, ¶ 6.

{¶ 22} The primary goal of statutory construction is to determine the General Assembly's intent. *State v. Kormos*, 12th Dist. Clermont No. CA2011-08-059, 2012-Ohio-3128, ¶ 14. The first step in determining legislative intent is to look at the language of the statute. *Id.* If the meaning of the statute is clear and definite, then the statute must be applied as written. *Id.* However, if the language of the statute is ambiguous and subject to more than one meaning, then further interpretation is needed. *Id.*

{¶ 23} In House Bill 64, which became effective on October 11, 2011, the General Assembly amended R.C. 3719.01 by adding subsection (HH), which defines "controlled substance analog." House Bill 64 also added R.C. 3719.013, which provides that "[a] controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of *any* provision of the Revised Code as a controlled substance in schedule I." (Emphasis added.) We emphasize the word "any" because "any" means "all" or "without limitation." *See Wachendorf v. Shaver*, 149 Ohio St. 231, 239-240 (1948). See, also, *United*

3. The Tenth District has followed *Smith* in *State v. Mohammad*, 10th Dist. Franklin No. 14AP-662, 2015-Ohio-1234; and *State v. Mobarak*, 10th Dist. Franklin No. 14AP-517, 2015-Ohio-3007.

States v. Gonazales, 520 U.S. 1, 5, 117 S.Ct. 1032 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.' Webster's Third New International Dictionary 97 [1976]").

{¶ 24} The plain and clear language of R.C. 3719.013 incorporated controlled substance analogs into every other chapter of the Revised Code, including R.C. Chapter 2925. Therefore, the sale or possession of controlled substance analogs was criminalized as of October 11, 2011, the date House Bill 64 became effective, and thus controlled substance analogs were criminalized at the time appellant committed the offenses with which he was charged.

{¶ 25} Additionally, since the words in R.C. 3719.013 are unambiguous, there is no need to resort to the canons of statutory construction, as the Tenth District did in *Smith*. The Ohio Supreme Court has made it clear that the rule of lenity applies *only* when the criminal statute in question is ambiguous. *State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, ¶ 40. We do not, nor did the court in *Smith*, find R.C. 3719.013 to be ambiguous. The court in *Smith* found that the ambiguity arose because the reference to analogs was placed in Chapter 3719, rather than Chapter 2925. *Id.* at ¶ 14. The court in *Smith* noted that Chapter 3719 generally pertains to the civil regulation of controlled substances while Chapter 2925 governs criminal offenses. However, there is frequent interplay and integration for purposes of implementation between Chapters 3719 and 2925 as schedule I is mentioned in various places in Chapter 3719. Indeed, the court in *Smith* acknowledged this frequent interplay and integration by noting that R.C. Chapter 2925 defines certain terms by incorporating the definitions contained in R.C. Chapter 3719. *Id.* at ¶ 12.

{¶ 26} Ironically, the court in *Smith* cited the interplay and integration between Chapters 3719 and 2925 and the canon of statutory construction, espressio unius est exclusio alterius, in support of its observation that, by creating a definition of "controlled

substance analog" in R.C. 3719.01(HH) and then failing to incorporate that definition into R.C. 2925.01, the General Assembly "arguably" excluded that definition from applying in the context of criminal drug offenses. *Id.* However, the maxim does not apply to every statutory list or group; rather, it applies only when the items expressed in the list or group are members of an associated group or series that would justify an inference that the items not mentioned were intentionally excluded by the legislature. *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, ¶ 35. Here, the frequent interplay and integration for purposes of implementation between Chapters 3719 and 2925, which the court in *Smith* acknowledged, undermines any suggested inference that by placing the definition of "controlled substance analog" in R.C. 3719.01(HH), the General Assembly deliberately intended to exclude that definition from applying in the context of the criminal drug offense statutes.

{¶ 27} Additionally, it has also long been held that the maxim "[l]ike other canons of statutory construction[,] * * * is only an aid in the ascertainment of the meaning of the law, and must yield whenever a contrary intention on the part of the lawmaker is apparent." *Wachendorf*, 149 Ohio St. at 239-240. Here, a contrary intention on the part of the General Assembly is apparent from R.C. 3719.013, which provides that a controlled substance analog "shall be treated for purposes of *any* provision of the Revised Code as a controlled substance in schedule I." (Emphasis added.)

{¶ 28} As R.C. 3719.013 is clear and unambiguous on its face, appellant's first assignment of error is overruled.

{¶ 29} In his second assignment of error, appellant argues the trial court erred in denying his motion in limine to prohibit the state from presenting expert testimony showing that the alleged controlled substance analogs were "substantially similar" to controlled substances. Specifically, he contends that the expert testimony is unreliable under *Daubert*. However, before addressing the substantive arguments raised by appellant in his second

assignment of error, we must first consider whether appellant's no contest plea preserved for appellate review the trial court's ruling on his motion in limine.

{¶ 30} A trial court's ruling on a motion in limine, including a motion to exclude expert testimony, is a tentative, interlocutory, and precautionary ruling that reflects the trial court's anticipated treatment of an evidentiary issue that may arise at trial. *State v. Harris*, 12th Dist. Butler No. CA2007-11-280, 2008-Ohio-4504, ¶ 27. A motion in limine is directed to the trial court's discretion on an evidentiary issue that might arise at trial but that has not yet been presented in full context. *Id.* Generally, a trial court's ruling on a motion in limine does not preserve for review any error the trial court may have made in ruling on the motion; rather, any claimed error "must be preserved at trial by an objection, proffer, or ruling on the record[;]" and "[f]ailing to object to the admissibility of the evidence at trial waives any error except plain error." *Id.* However, not all motions in limine are alike. See *State v. Johnston*, 2d Dist. Montgomery No. 26016, 2015-Ohio-450, ¶ 14-16; *State v. Echard*, 9th Dist. Summit No. 24643, 2009-Ohio-6616, ¶ 14-31, Dickson, J., dissenting.

{¶ 31} A definitive or exclusionary motion in limine has been called "the functional equivalent" of a motion to suppress. *State v. Johnston*, 2015-Ohio-450 at ¶ 16, citing *State v. French*, 72 Ohio St.3d 446, 450 (1995). A motion in limine may be used "as the *functional equivalent* of a motion to suppress evidence that is either not competent or improper due to some unusual circumstance not rising to the level of a constitutional violation." (Emphasis sic.) *Id.* "The essential difference between a Crim.R. 12[(C)] motion [e.g., a pretrial motion to suppress] and a motion in limine is that the former is capable of resolution without a full trial, while the latter requires consideration of the issue in the context of the other evidence.' (Emphasis deleted.)" *Johnston* at ¶ 17, quoting *State v. Hall*, 57 Ohio App.3d 144, 146 (8th Dist.1989).

{¶ 32} In *Johnston*, the appellant, Johnston, was charged with a number of crimes,

including kidnapping, rape, sexual battery, and aggravated menacing. *Id.* at ¶ 2. Johnston pled not guilty by reason of insanity. *Id.* at ¶ 3. When the state's psychologist determined that Johnston was competent to stand trial, Johnston sought a second evaluation by another psychologist who found that Johnston was legally insane at the time of the alleged offenses due to an amphetamine-induced psychotic disorder and a chronic mood disorder not otherwise specified. *Id.* at ¶ 4. The state filed a motion in limine to exclude any testimony or evidence at trial as to Johnston's alleged psychiatric or psychological conditions that are related to his voluntary ingestion of drugs and requested a *Daubert* hearing to determine whether the expert opinion of Johnston's psychologist was admissible. *Id.* at ¶ 5.

{¶ 33} After holding a hearing, the trial court granted the state's motion in limine and issued an order excluding the testimony of Johnston's psychologist on the ground that it was improper under R.C. 2901.21(C), which precludes using voluntary intoxication as a defense. *Id.* at ¶ 8. Johnston then pled no contest to the charges in the indictment. *Id.* at ¶ 9. Defense counsel represented that Johnston entered the plea because the trial court's ruling excluding the testimony of his psychologist destroyed his sole defense and Johnston wanted the opportunity to appeal the ruling." *Id.* The trial court accepted defense counsel's representation, without any comment. The trial court then accepted Johnston's no contest plea, found him guilty, and sentenced him to an aggregate ten-year prison term. *Id.*

{¶ 34} On appeal, Johnston argued the trial court "erred and abused its discretion" in granting the state's motion in limine and excluding the testimony of his expert psychologist and that his psychologist's opinion on the issues of insanity and involuntary intoxication should have been permitted. *Id.* at ¶ 12. The state argued the trial court's ruling on the motion in limine was a preliminary, interlocutory order, and therefore, was not reviewable on appeal. *Id.*

{¶ 35} The Second District Court of Appeals rejected the state's argument, finding that

the trial court's "ruling on the State's motion in limine was the functional equivalent of a suppression ruling[,]" since "[t]he trial court's ruling on the motion was not akin to a preliminary, anticipatory ruling that needed to be finalized at trial[,] * * * rather, the trial court conclusively determined that [Johnston's psychologist] would not be allowed to testify at trial because his testimony was improper under R.C. 2901.21(C)." *Id.* at ¶ 23.

{¶ 36} The court also observed that this was not a situation where the admissibility of the expert testimony could have been determined only in the context of the other evidence presented at trial and that the admission of the expert evidence was not dependent on a foundation being laid at trial; instead, "[l]ike a suppression hearing, all the evidence and testimony necessary to make this decision was presented at the evidentiary hearing where [Johnston's psychologist] was fully questioned and cross-examined by the parties." *Id.* at ¶ 24. Therefore, the court found that "the motion was assessed in its full evidentiary/testimonial context and a conclusive ruling was thereafter made." *Id.*

{¶ 37} Additionally, the court noted that "during Johnston's plea hearing, the trial court indirectly indicated that Johnston would be able to appeal the evidentiary ruling excluding [his psychologist's] testimony and the State did not disagree." *Id.* at ¶ 25. The court concluded that "Johnston's challenge to the trial court's evidentiary ruling excluding [his psychologist's] testimony was preserved for appeal despite being labeled in limine, as it is the equivalent of a suppression ruling that was fully developed and ripe for determination." *Id.* at ¶ 26.

{¶ 38} Having examined the case law on this issue, we conclude that a trial court's ruling on a motion in limine may be preserved for review by a no contest plea if (1) the motion in limine is being used as the "functional equivalent" of a motion to suppress evidence that is either improper or not competent due to some circumstance not rising to the level of a constitutional violation, (2) there is a clear understanding between the trial court and the parties that the trial court's ruling on the evidentiary issue presented will be preserved for

review, (3) the evidentiary issue has been contested and fully developed in the record, and (4) the evidentiary issue was conclusively determined without a trial and is ripe for appellate review.

{¶ 39} Applying this rule to the case before us, we conclude that all of these requirements have been met. Therefore, the trial court's refusal to grant appellant's motion in limine, which was the "functional equivalent" of a motion to suppress, to prohibit the state from presenting expert testimony on whether controlled substance analogs were substantially similar to controlled substances was preserved for review. We now turn to the issue of whether the trial court erred in denying appellant's motion in limine.

{¶ 40} The specific issue at the *Daubert* hearing was whether the state should be prohibited from presenting expert testimony regarding the controlled substance analogs being substantially similar to controlled substances. The proposed testimony involved both the substances' chemical and molecular structure and the effect the substances have on the central nervous systems of the persons using them. The trial court, applying the factors listed in *Daubert*, determined that the expert testimony that the state wanted to present on this issue was reliable, and thus denied appellant's request to prohibit the state from presenting the expert testimony.

{¶ 41} Appellant argues the trial court erred or abused its discretion when it refused to prohibit the state from presenting this expert testimony at trial. Specifically, appellant argues (1) the term "substantially similar" has no commonly accepted definition, (2) the scientific technique or methodology used to determine whether a controlled substance analog is substantially similar to a controlled substance is not generally accepted, and (3) there was insufficient evidence to prove that the controlled substance analogs have the same or greater effect on the central nervous system of persons who use them as a controlled substance would have.

{¶ 42} While appellate courts generally review a trial court's ruling on a motion in limine under an abuse-of-discretion standard, this is an improper standard of appellate review to use where the motion in limine is the functional equivalent of motion to suppress. *Johnston*, 2015-Ohio-450 at ¶ 27. In that instance, an appellate court uses the standard of review applicable to a motion to suppress: *Id.* In reviewing a trial court's decision on a motion to suppress, an appellate court must accept as true the trial court's findings of fact if they are supported by competent, credible evidence, and then independently determine, without deference to the trial court's decision, whether the facts satisfy the applicable legal standard. *Id.* at ¶ 28.

{¶ 43} The issue raised by appellant in his motion in limine involved whether to admit or exclude expert testimony. Therefore, the "applicable legal standard" in this case is Evid.R. 702, which governs the admission of expert testimony.

{¶ 44} Evid.R. 702 states as follows:

> A witness may testify as an expert if all of the following apply:
>
> (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;
>
> (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
>
> (C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:
>
> (1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;
>
> (2) The design of the procedure, test, or experiment reliably implements the theory;
>
> (3) The particular procedure, test, or experiment was conducted in a

way that will yield an accurate result.

{¶ 45} The Ohio Supreme Court has held that "[c]ourts should favor the admissibility of expert testimony whenever it is relevant and the criteria of Evid.R. 702 are met." *State v. Nemeth*, 82 Ohio St.3d 202, 207 (1998), quoting *State v. Williams*, 4 Ohio St.3d 53, 57-58 (1983). Evid.R. 702(C) requires a trial court to find that "[t]he witness' testimony is based on *reliable* scientific, technical, or other specialized information" and "[t]o the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is *reliable* only if all of [conditions listed in Evid.R. 702(C)(1)-(3)] apply[.]" However, "Evid.R. 702 does not define 'reliability' in the context of admitting expert testimony." *Nemeth* at 209.

{¶ 46} The Ohio Supreme Court has set forth four factors to be considered by courts "in evaluating the reliability of scientific evidence: (1) whether the theory or technique has been tested, (2) whether it has been subjected to peer review, (3) whether there is a known or potential rate of error, and (4) whether the methodology has gained general acceptance." *Id.* at 211, citing *Miller v. Bike Athletic Co.*, 80 Ohio St.3d 607 (1998), citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-594, 113 S.Ct. 2786 (1993). "[N]one of these factors is a determinative prerequisite to admissibility." *Nemeth*, citing *Miller* at 612-613 and *Daubert* at 593.

{¶ 47} The Ohio Supreme Court also stated in *Nemeth* as follows:

> Relevant evidence based on valid principles will satisfy the threshold reliability standard for the admission of expert testimony. The credibility to be afforded these principles and the expert's conclusions remain a matter for the trier of fact. The reliability requirement in Evid.R. 702 is a threshold determination that should focus on a particular type of scientific evidence, not the truth or falsity of an alleged scientific fact or truth. "'In other words, the court need not make the initial determination that the expert testimony or the evidence proffered is true before submitting the information to the jury.'" *State v. Pierce*, 64 Ohio St.3d at 501, 597 N.E.2d at 115, quoting *United States v. Jakobetz* (C.A.2, 1992), 955 F.2d 786, 796-797.

{¶ 48} In the present case, the state presented the expert testimony of Brook Ehlers, a forensic chemist with MVRCL, who testified about the procedure that she and other chemists at MVRCL use in examining substances that are suspected of being controlled substance analogs. Ehlers testified that after a chemist determines that the substance in question is *not* a controlled substance, the chemist then determines whether or not the substance is "structurally similar" to a controlled substance. The definition MVRCL uses in determining whether a substance is structurally similar to a controlled substance is whether the "vast majority" of a molecule of the substance in question is the same as a molecule of a schedule I or II controlled substance. This determination is made by the chemists at MVRCL using 2-D models of both substances. Ehlers defines the term "vast majority" or "vast amount" as meaning that the molecule of the substance in question and the molecule of the controlled substance have more in common than not. Ehlers testified that other forensic scientists use a similar definition.

{¶ 49} The state also presented the expert testimony of Dr. Jon Sprague, who has a PhD in pharmacology and toxicology. Dr. Sprague testified that for 25 years, he has researched controlled substance analogs such as synthetic cannabinoids, synthetic cathinones, ecstasy, and bath salts. Dr. Sprague testified as to both the molecular structure of controlled substance analogs and the effects that the controlled substance analogs have on the central nervous system of persons who use them and whether these controlled substance analogs have the same or greater effect on a person's central nervous system that a controlled substance would have.

{¶ 50} Appellant presented the expert testimony of Joseph P. Bono, "a forensic science consultant in the area of forensic science laboratory operations and the issues associated with purported controlled substance analogs." Bono holds a bachelor's degree in chemistry and a master's degree in political science. Bono stated that the term "substantially

"similar" does not have an objective scientific definition; that as a scientist, he could not give an opinion on whether two chemicals are substantially similar because there is no objective standard; and that he was not aware of any scientific test to determine whether two chemicals are substantially similar. Bono acknowledged during cross-examination that in 1991, he wrote a chapter for a chemistry book in which he used 2-D models to show the different structures for heroin, cocaine, and methamphetamine. However, Bono explained that that he changed his mind about the efficacy of 2-D models in 2007, because his retirement from government work had "open[ed] [his] mind." However, Bono acknowledged that even though he has changed his mind about 2-D models, he still has used them in all of his reports since 2007.

{¶ 51} Appellant also presented the expert testimony of Dr. Robert Belloto, a forensic chemist, who testified that there is no scientific test for determining whether two substances are "substantially similar" and that a mathematical or statistical test needs to be created to quantify what constitutes substantial similarity. Dr. Belloto also testified that there is not a test for determining whether two substances will have similar pharmacological effects on persons who use them.

{¶ 52} As to appellant's argument that the term "substantially similar" has no commonly accepted definition, we note that courts have consistently determined that this term is to be defined by its plain, ordinary meaning. *See, e.g., United States v. Brown*, 279 F.Supp.2d 1238, 1240-1241 (S.D.Ala.2003) (since the federal controlled substance analogue act does not indicate the term "substantially similar" is to be defined as it is used scientifically, the words will be defined as they are used in everyday language); *United States v. Bays*, N.D.Tex. No. 3:13-CR-0357-B, 2014 WL 3764876, *3 (there is no indication that Congress intended for the words "substantially similar" in the federal controlled substance analogue act to have a specialized or scientific meaning, and therefore the words should be given their

ordinary meaning).

{¶ 53} As to appellant's argument that the method MVRCL uses to determine whether a controlled substance analog is substantially similar to a controlled substance is not generally accepted, we note that both Ehlers and Dr. Sprague testified that the visual comparison method, including the use of 2-D models, is generally accepted in the scientific community. This same conclusion has been reached by a number of federal courts. *See, e.g., United States v. Brown*, 415 F.3d 1257, 1267 (11th Cir.2005); *Bays* at *8. Dr. Sprague also testified that his methodology for determining whether a controlled substance analog has the same or greater effect on a user's central nervous system that a controlled substance would have has been peer reviewed and is generally accepted in the scientific community.

{¶ 54} As to appellant's argument that there was insufficient evidence to prove that the controlled substance analogs have the same or greater effect on a user's central nervous system that a controlled substance would have, we note that Dr. Sprague testified that he considers the "binding" or "affinity" of the controlled substance analog to receptors in the brain and how this binding or affinity is measured by the "Ki value[,]" and that the lower the Ki value a substance has, the more potent the substance is. Dr. Sprague testified that he uses the "Ki value" to determine whether a controlled substance analog has the same or greater effect on a person's central nervous system that a controlled substance would have and that use of the "Ki value" is generally accepted in the scientific community.

{¶ 55} Dr. Sprague also testified that research has been done on the substances at issue in this case to compare the level of "affinity," and that the levels in question have been verified in studies on rodents. Dr. Sprague testified that this methodology is generally accepted in the scientific community and that the results of the studies have been presented in peer-reviewed publications. A number of federal courts have upheld the use of these methods in determining the physiological effects of controlled substance analogues. *See,*

e.g., *Bays* at *8, and the cases cited therein, including *United States v. McFadden*, W.D.Va. No. 3:12CR00009, 2013 WL 8339005, at *5 (May 10, 2013) (expert testimony based on animal studies was properly admitted in a controlled substance analogue case and any shortcomings identified by the defendant went to the weight to be given the evidence rather than its admissibility), *aff'd*, 753 F.3d 432 (4th Cir.).

{¶ 56} In light of the foregoing, the state presented sufficient evidence to show that the expert testimony it intended to introduce at appellant's trial met the standards set forth in Evid.R. 702 and *Daubert*, including that the testimony was "reliable" under Evid.R. 702(C), and therefore, the trial court did not err in refusing appellant's request to prohibit the state from presenting the expert testimony at trial.

{¶ 57} Judgment affirmed.

S. POWELL and RINGLAND, JJ., concur.

SEP 2015

COURT OF APPEALS
WARREN COUNTY
FILED
SEP 21 2015
James L. Spaeth, Clerk
LEBANON OHIO

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-12-146
	:	JUDGMENT ENTRY
- vs -	:	
HAMZA SHALASH,	:	
Defendant-Appellant.	:	

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

Robin N. Piper, Presiding Judge

Stephen W. Powell, Judge

Robert P. Ringland, Judge

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

2014 DEC -8 AM 9:21

JAMES L. SPAETH
CLERK OF COURTS

STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT
CRIMINAL DIVISION

STATE OF OHIO,	:	
Plaintiff,	:	CASE NO: 12CR28290
v.	:	(JUDGE ODA)
HAMZA SHALASH	:	
Defendant	:	**DECISION AND ENTRY OVERRULING MOTION TO DISMISS**

This matter is before the Court on the Motion to Dismiss filed on October 29, 2014 on behalf of the Defendant.

The Court finds the Motion is not well-taken and is hereby **DENIED.**

SO ORDERED.

Electronic Signature pursuant to WCCP Local Rule 2.08 12/8/2014 9:14 AM

Donald E. Oda II, Judge
Warren County Common Pleas Court

c: Jon Paul Rion, Esq.
Derek Faulkner, Asst. Prosecutor

RREN COUNTY
MMON PLEAS COURT
GE DONALD E. ODA II
Justice Drive
anon, Ohio 45036

ORC Ann. 2901.03

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 2901.03 Common law offenses abrogated.

(A) No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code.

(B) An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

(C) This section does not affect any power of the general assembly under section 8 of Article II, Ohio Constitution, nor does it affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment, or decree.

History

134 v H 511. Eff 1-1-74.

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ORC Ann. 2901.04

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 2901.04 Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

History

134 v H 511 (Eff 1-1-74); *148 v S 107*. Eff 3-23-2000; *150 v S 146*, § 1, eff. 9-23-04.

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ORC Ann. 2923.31

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 2923.31 Definitions.

As used in sections 2923.31 to 2923.36 of the Revised Code:

(A) "Beneficial interest" means any of the following:

(1) The interest of a person as a beneficiary under a trust in which the trustee holds title to personal or real property;

(2) The interest of a person as a beneficiary under any other trust arrangement under which any other person holds title to personal or real property for the benefit of such person;

(3) The interest of a person under any other form of express fiduciary arrangement under which any other person holds title to personal or real property for the benefit of such person.

"Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership.

(B) "Costs of investigation and prosecution" and "costs of investigation and litigation" mean all of the costs incurred by the state or a county or municipal corporation under sections 2923.31 to 2923.36 of the Revised Code in the prosecution and investigation of any criminal action or in the litigation and investigation of any civil action, and includes, but is not limited to, the costs of resources and personnel.

(C) "Enterprise" includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. "Enterprise" includes illicit as well as licit enterprises.

(D) "Innocent person" includes any bona fide purchaser of property that is allegedly involved in a violation of section 2923.32 of the Revised Code, including any person who establishes a valid claim to or interest in the property in accordance with division (E) of section 2981.04 of the Revised Code, and any victim of an alleged violation of that section or of any underlying offense involved in an alleged violation of that section.

(E) "Pattern of corrupt activity" means two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.

At least one of the incidents forming the pattern shall occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern shall occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity.

For the purposes of the criminal penalties that may be imposed pursuant to section 2923.32 of the Revised Code, at least one of the incidents forming the pattern shall constitute a felony under the laws of this state in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, shall constitute a felony under the law of the United States or the other state and would be a criminal offense under the law of this state if committed in this state.

(F) "Pecuniary value" means money, a negotiable instrument, a commercial interest, or anything of value, as defined in *section 1.03 of the Revised Code*, or any other property or service that has a value in excess of one hundred dollars.

(G) "Person" means any person, as defined in *section 1.59 of the Revised Code*, and any governmental officer, employee, or entity.

(H) "Personal property" means any personal property, any interest in personal property, or any right, including, but not limited to, bank accounts, debts, corporate stocks, patents, or copyrights. Personal property and any beneficial interest in personal property are deemed to be located where the trustee of the property, the personal property, or the instrument evidencing the right is located.

(I) "Corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:

(1) Conduct defined as "racketeering activity" under the "Organized Crime Control Act of 1970," *84 Stat. 941*, *18 U.S.C. 1961(1)(B)*, (1)(C), (1)(D), and (1)(E), as amended;

(2) Conduct constituting any of the following:

(a) A violation of section 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2905.32 as specified in division (I)(2)(g) of this section, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, or 2923.17; division (F)(1)(a), (b), or (c) of section 1315.53; division (A)(1) or (2) of section 1707.042; division (B), (C)(4), (D), (E), or (F) of section 1707.44; division (A)(1) or (2) of section 2923.20; division (E) or (G) of section 3772.99; division (J)(1) of section 4712.02; section 4719.02, 4719.05, or 4719.06; division (C), (D), or (E) of section 4719.07; section 4719.08; or division (A) of *section 4719.09 of the Revised Code*.

(b) Any violation of *section 3769.11*, *3769.15*, *3769.16*, or *3769.19 of the Revised Code* as it existed prior to July 1, 1996, any violation of *section 2915.02 of the Revised Code* that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of *section 3769.11 of the Revised Code* as it existed prior to that date, or any violation of *section 2915.05 of the Revised Code* that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of *section 3769.15*, *3769.16*, or *3769.19 of the Revised Code* as it existed prior to that date.

(c) Any violation of *section 2907.21*, *2907.22*, *2907.31*, *2913.02*, *2913.11*, *2913.21*, *2913.31*, *2913.32*, *2913.34*, *2913.42*, *2913.47*, *2913.51*, *2915.03*, *2925.03*, *2925.04*, *2925.05*, or *2925.37 of the Revised Code*, any violation of *section 2925.11 of the Revised Code* that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of *section 2915.02 of the Revised Code* that occurred prior to July 1, 1996, any violation of *section 2915.02 of the Revised Code* that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of *section 3769.11 of the Revised Code* as it existed prior to that date, any violation of *section 2915.06 of the Revised Code* as it existed prior to July 1, 1996, or any violation of division (B) of *section 2915.05 of the Revised Code* as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds one thousand dollars, or any combination of violations described in division (I)(2)(c) of this section when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other

property illegally possessed, sold, or purchased in the combination of violations exceeds one thousand dollars;

(d) Any violation of *section 5743.112 of the Revised Code* when the amount of unpaid tax exceeds one hundred dollars;

(e) Any violation or combination of violations of *section 2907.32 of the Revised Code* involving any material or performance containing a display of bestiality or of sexual conduct, as defined in *section 2907.01 of the Revised Code*, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds one thousand dollars;

(f) Any combination of violations described in division (I)(2)(c) of this section and violations of *section 2907.32 of the Revised Code* involving any material or performance containing a display of bestiality or of sexual conduct, as defined in *section 2907.01 of the Revised Code*, that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds one thousand dollars;

(g) Any violation of *section 2905.32 of the Revised Code* to the extent the violation is not based solely on the same conduct that constitutes corrupt activity pursuant to division (I)(2)(c) of this section due to the conduct being in violation of *section 2907.21 of the Revised Code*.

(3) Conduct constituting a violation of any law of any state other than this state that is substantially similar to the conduct described in division (I)(2) of this section, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(4) Animal or ecological terrorism;

(5)

(a) Conduct constituting any of the following:

(i) Organized retail theft;

(ii) Conduct that constitutes one or more violations of any law of any state other than this state, that is substantially similar to organized retail theft, and that if committed in this state would be organized retail theft, if the defendant was convicted of or pleaded guilty to the conduct in a criminal proceeding in the other state.

(b) By enacting division (I)(5)(a) of this section, it is the intent of the general assembly to add organized retail theft and the conduct described in division (I)(5)(a)(ii) of this section as conduct constituting corrupt activity. The enactment of division (I)(5)(a) of this section and the addition by division (I)(5)(a) of this section of organized retail theft and the conduct described in division (I)(5)(a)(ii) of this section as conduct constituting corrupt activity does not limit or preclude, and shall not be construed as limiting or precluding, any prosecution for a violation of *section 2923.32 of the Revised Code* that is based on one or more violations of *section 2913.02* or *2913.51 of the Revised Code*, one or more similar offenses under the laws of this state or any other state, or any combination of any of those violations or similar offenses, even though the conduct constituting the basis for those violations or offenses could be construed as also constituting organized retail theft or conduct of the type described in division (I)(5)(a)(ii) of this section.

(J) "Real property" means any real property or any interest in real property, including, but not limited to, any lease of, or mortgage upon, real property. Real property and any beneficial interest in it is deemed to be located where the real property is located.

(K) "Trustee" means any of the following:

(1) Any person acting as trustee under a trust in which the trustee holds title to personal or real property;

(2) Any person who holds title to personal or real property for which any other person has a beneficial interest;

(3) Any successor trustee.

"Trustee" does not include an assignee or trustee for an insolvent debtor or an executor, administrator, administrator with the will annexed, testamentary trustee, guardian, or committee, appointed by, under the control of, or accountable to a court.

(L) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any federal or state law relating to the business of gambling activity or relating to the business of lending money at an usurious rate unless the creditor proves, by a preponderance of the evidence, that the usurious rate was not intentionally set and that it resulted from a good faith error by the creditor, notwithstanding the maintenance of procedures that were adopted by the creditor to avoid an error of that nature.

(M) "Animal activity" means any activity that involves the use of animals or animal parts, including, but not limited to, hunting, fishing, trapping, traveling, camping, the production, preparation, or processing of food or food products, clothing or garment manufacturing, medical research, other research, entertainment, recreation, agriculture, biotechnology, or service activity that involves the use of animals or animal parts.

(N) "Animal facility" means a vehicle, building, structure, nature preserve, or other premises in which an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale, including, but not limited to, a zoo, rodeo, circus, amusement park, hunting preserve, or premises in which a horse or dog event is held.

(O) "Animal or ecological terrorism" means the commission of any felony that involves causing or creating a substantial risk of physical harm to any property of another, the use of a deadly weapon or dangerous ordnance, or purposely, knowingly, or recklessly causing serious physical harm to property and that involves an intent to obstruct, impede, or deter any person from participating in a lawful animal activity, from mining, foresting, harvesting, gathering, or processing natural resources, or from being lawfully present in or on an animal facility or research facility.

(P) "Research facility" means a place, laboratory, institution, medical care facility, government facility, or public or private educational institution in which a scientific test, experiment, or investigation involving the use of animals or other living organisms is lawfully carried out, conducted, or attempted.

(Q) "Organized retail theft" means the theft of retail property with a retail value of one thousand dollars or more from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence.

(R) "Retail property" means any tangible personal property displayed, held, stored, or offered for sale in or by a retail establishment.

(S) "Retail property fence" means a person who possesses, procures, receives, or conceals retail property that was represented to the person as being stolen or that the person knows or believes to be stolen.

(T) "Retail value" means the full retail value of the retail property. In determining whether the retail value of retail property equals or exceeds one thousand dollars, the value of all retail property stolen from the retail establishment or retail establishments by the same person or persons within any one-hundred-eighty-day period shall be aggregated.

History

141 v H 5 (Eff 1-1-86); 141 v S 74 (Eff 9-3-86); 142 v H 708 (Eff 4-19-88); 142 v H 624 (Eff 3-17-89); 143 v H 347 (Eff 7-18-90); *144 v S 323* (Eff 4-16-93); *146 v S 2* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 333* (Eff 9-19-96); *146 v S 214*, § 1 (Eff 12-5-96); *146 v S 214*, § 3 (Eff 12-5-96); *146 v S 277* (Eff 3-31-97); *147 v H 565* (Eff 3-30-99); *149 v S 184*. Eff 5-15-2002; *151 v S 9*, § 1, eff. 4-14-06; *151 v H 241*, § 1, eff. 7-1-07; *152 v S 320*, § 1, eff. 4-7-09; 153 v S 235, § 1, eff. 3-24-11; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 HB 386*, § 1, eff. June 11, 2012; *2012 HB 262*, § 1, eff. June 27, 2012.

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ORC Ann. 2923.32

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 2923.32 Engaging in pattern of corrupt activity; forfeiture.

(A)

(1) No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt.

(2) No person, through a pattern of corrupt activity or the collection of an unlawful debt, shall acquire or maintain, directly or indirectly, any interest in, or control of, any enterprise or real property.

(3) No person, who knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt, shall use or invest, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

A purchase of securities on the open market with intent to make an investment, without intent to control or participate in the control of the issuer, and without intent to assist another to do so is not a violation of this division, if the securities of the issuer held after the purchase by the purchaser, the members of the purchaser's immediate family, and the purchaser's or the immediate family members' accomplices in any pattern of corrupt activity or the collection of an unlawful debt do not aggregate one per cent of the outstanding securities of any one class of the issuer and do not confer, in law or in fact, the power to elect one or more directors of the issuer.

(B)

(1) Whoever violates this section is guilty of engaging in a pattern of corrupt activity. Except as otherwise provided in this division, engaging in corrupt activity is a felony of the second degree. Except as otherwise provided in this division, if at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, aggravated murder, or murder, if at least one of the incidents was a felony under the law of this state that was committed prior to July 1, 1996, and that would constitute a felony of the first, second, or third degree, aggravated murder, or murder if committed on or after July 1, 1996, or if at least one of the incidents of corrupt activity is a felony under the law of the United States or of another state that, if committed in this state on or after July 1, 1996, would constitute a felony of the first, second, or third degree, aggravated murder, or murder under the law of this state, engaging in a pattern of corrupt activity is a felony of the first degree. If the offender also is convicted of or pleads guilty to a specification as described in *section 2941.1422 of the Revised Code* that was included in the indictment, count in the indictment, or information charging the offense, engaging in a pattern of corrupt activity is a felony of the first degree, and the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of *section 2929.14 of the Revised Code* and shall order the offender to make restitution as provided in division (B)(8) of *section 2929.18 of the Revised Code*. Notwithstanding any other provision of law, a person may be convicted of violating the provisions of this section as well as of a conspiracy to violate one or more of those provisions under *section 2923.01 of the Revised Code*.

(2) Notwithstanding the financial sanctions authorized by *section 2929.18 of the Revised Code*, the court may do all of the following with respect to any person who derives pecuniary value or causes property

damage, personal injury other than pain and suffering, or other loss through or by the violation of this section:

(a) In lieu of the fine authorized by that section, impose a fine not exceeding the greater of three times the gross value gained or three times the gross loss caused and order the clerk of the court to pay the fine into the state treasury to the credit of the corrupt activity investigation and prosecution fund, which is hereby created;

(b) In addition to the fine described in division (B)(2)(a) of this section and the financial sanctions authorized by *section 2929.18 of the Revised Code*, order the person to pay court costs;

(c) In addition to the fine described in division (B)(2)(a) of this section and the financial sanctions authorized by *section 2929.18 of the Revised Code*, order the person to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution the costs of investigation and prosecution that are reasonably incurred.

The court shall hold a hearing to determine the amount of fine, court costs, and other costs to be imposed under this division.

(3) In addition to any other penalty or disposition authorized or required by law, the court shall order any person who is convicted of or pleads guilty to a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit to the state under Chapter 2981. of the Revised Code any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of a violation of this section, or that was derived from or realized through conduct in violation of this section, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation, including all of the following:

(a) Any position, office, appointment, tenure, commission, or employment contract of any kind acquired or maintained by the person in violation of this section, through which the person, in violation of this section, conducted or participated in the conduct of an enterprise, or that afforded the person a source of influence or control over an enterprise that the person exercised in violation of this section;

(b) Any compensation, right, or benefit derived from a position, office, appointment, tenure, commission, or employment contract described in division (B)(3)(a) of this section that accrued to the person in violation of this section during the period of the pattern of corrupt activity;

(c) Any interest in, security of, claim against, or property or contractual right affording the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of this section;

(d) Any amount payable or paid under any contract for goods or services that was awarded or performed in violation of this section.

History

141 v H 5 (Eff 1-1-86); 141 v S 74 (Eff 9-3-86); 142 v H 708 (Eff 4-19-88); 143 v H 215 (Eff 4-11-90); 143 v H 266 (Eff 9-6-90); *146 v S 2* (Eff 7-1-96); *147 v S 164* (Eff 1-15-98); *148 v S 179*, § 3. Eff 1-1-2002; *151 v H 241*, § 1, eff. 7-1-07; *152 v H 280*, § 1, eff. 4-7-09; *2011 HB 86*, § 1, eff. Sept. 30, 2011.

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§ 2925.01. Definitions

As used in this chapter:

(A) "Administer," "controlled substance," "dispense," "distribute," "hypodermic," "manufacturer," "official written order," "person," "pharmacist," "pharmacy," "sale," "schedule I," "schedule II," "schedule III," "schedule IV," "schedule V," and "wholesaler" have the same meanings as in *section 3719.01 of the Revised Code*.

(B) "Drug dependent person" and "drug of abuse" have the same meanings as in *section 3719.011 of the Revised Code*.

(C) "Drug," "dangerous drug," "licensed health professional authorized to prescribe drugs," and "prescription" have the same meanings as in *section 4729.01 of the Revised Code*.

(D) "Bulk amount" of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in schedule I, schedule II, or schedule III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (D)(2) or (5) of this section, whichever of the following is applicable:

(a) An amount equal to or exceeding ten grams or twenty-five unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I opiate or opium derivative;

(b) An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a schedule I stimulant or depressant;

(d) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II opiate or opium derivative;

(e) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant that is in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," *52 Stat. 1040 (1938), 21 U.S.C.A. 301*, as amended, and the federal drug abuse control laws, as defined in *section 3719.01 of the Revised Code*, that is or contains any amount of a schedule II depressant substance or a schedule II hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws.

(2) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III or IV substance other than an anabolic steroid or a schedule III opiate or opium derivative;

(3) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III opiate or opium derivative;

(4) An amount equal to or exceeding two hundred fifty milliliters or two hundred fifty grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule V substance;

(5) An amount equal to or exceeding two hundred solid dosage units, sixteen grams, or sixteen milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III anabolic steroid.

(E) "Unit dose" means an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

(F) "Cultivate" includes planting, watering, fertilizing, or tilling.

(G) "Drug abuse offense" means any of the following:

(1) A violation of division (A) of section 2913.02 that constitutes theft of drugs, or a violation of *section 2925.02*, *2925.03*, *2925.04*, *2925.041*, *2925.05*, *2925.06*, *2925.11*, *2925.12*, *2925.13*, *2925.22*, *2925.23*, *2925.24*, *2925.31*, *2925.32*, *2925.36*, or *2925.37 of the Revised Code*;

(2) A violation of an existing or former law of this or any other state or of the United States that is substantially equivalent to any section listed in division (G)(1) of this section;

(3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element;

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense under division (G)(1), (2), or (3) of this section.

(H) "Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States.

(I) "Harmful intoxicant" does not include beer or intoxicating liquor but means any of the following:

(1) Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

(b) Any aerosol propellant;

(c) Any fluorocarbon refrigerant;

(d) Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol.

(J) "Manufacture" means to plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

(K) "Possess" or "possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

(L) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(M) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of any of the following reference works:

(1) "The National Formulary";

(2) "The United States Pharmacopeia," prepared by authority of the United States Pharmacopeial Convention, Inc.;

(3) Other standard references that are approved by the state board of pharmacy.

(N) "Juvenile" means a person under eighteen years of age.

(O) "Counterfeit controlled substance" means any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to that trademark, trade name, or identifying mark;

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance;

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

(P) An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.

(Q) "School" means any school operated by a board of education, any community school established under Chapter 3314. of the Revised Code, or any nonpublic school for which the state board of education prescribes minimum standards under *section 3301.07 of the Revised Code*, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

(R) "School premises" means either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

(2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under Chapter 3314. of the Revised Code, or the governing body of a nonpublic school for which the state board of education prescribes minimum standards under *section 3301.07 of the Revised Code* and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

(S) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

(T) "Disciplinary counsel" means the disciplinary counsel appointed by the board of commissioners on grievances and discipline of the supreme court under the Rules for the Government of the Bar of Ohio.

(U) "Certified grievance committee" means a duly constituted and organized committee of the Ohio state bar association or of one or more local bar associations of the state of Ohio that complies with the criteria set forth in Rule V, section 6 of the Rules for the Government of the Bar of Ohio.

(V) "Professional license" means any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in divisions (W)(1) to (36) of this section and that qualifies a person as a professionally licensed person.

(W) "Professionally licensed person" means any of the following:

(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under Chapter 3719. of the Revised Code;

(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under Chapter 4701. of the Revised Code and who holds an Ohio permit issued under that chapter;

(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under Chapter 4703. of the Revised Code;

(4) A person who is registered as a landscape architect under Chapter 4703. of the Revised Code or who holds a permit as a landscape architect issued under that chapter;

(5) A person licensed under Chapter 4707. of the Revised Code;

(6) A person who has been issued a certificate of registration as a registered barber under Chapter 4709. of the Revised Code;

(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of Chapter 4710. of the Revised Code;

(8) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, managing cosmetologist's license, managing hair designer's license, managing manicurist's license, managing esthetician's license, managing natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license, or tanning facility permit under Chapter 4713. of the Revised Code;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under Chapter 4715. of the Revised Code;

(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under Chapter 4717. of the Revised Code;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under Chapter 4723. of the Revised Code;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under Chapter 4725. of the Revised Code;

(13) A person licensed to act as a pawnbroker under Chapter 4727. of the Revised Code;

(14) A person licensed to act as a precious metals dealer under Chapter 4728. of the Revised Code;

(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under Chapter 4729. of the Revised Code;

(16) A person who is authorized to practice as a physician assistant under Chapter 4730. of the Revised Code;

(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under Chapter 4731. of the Revised Code;

(18) A person licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code;

(19) A person registered to practice the profession of engineering or surveying under Chapter 4733. of the Revised Code;

(20) A person who has been issued a license to practice chiropractic under Chapter 4734. of the Revised Code;

(21) A person licensed to act as a real estate broker or real estate salesperson under Chapter 4735. of the Revised Code;

(22) A person registered as a registered sanitarian under Chapter 4736. of the Revised Code;

(23) A person licensed to operate or maintain a junkyard under Chapter 4737. of the Revised Code;

(24) A person who has been issued a motor vehicle salvage dealer's license under Chapter 4738. of the Revised Code;

(25) A person who has been licensed to act as a steam engineer under Chapter 4739. of the Revised Code;

(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under Chapter 4741. of the Revised Code;

(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under Chapter 4747. of the Revised Code;

(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under Chapter 4749. of the Revised Code;

(29) A person licensed and registered to practice as a nursing home administrator under Chapter 4751. of the Revised Code;

(30) A person licensed to practice as a speech-language pathologist or audiologist under Chapter 4753. of the Revised Code;

(31) A person issued a license as an occupational therapist or physical therapist under Chapter 4755. of the Revised Code;

(32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under Chapter 4757. of the Revised Code;

(33) A person issued a license to practice dietetics under Chapter 4759. of the Revised Code;

(34) A person who has been issued a license or limited permit to practice respiratory therapy under Chapter 4761. of the Revised Code;

(35) A person who has been issued a real estate appraiser certificate under Chapter 4763. of the Revised Code;

(36) A person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.

(X) "Cocaine" means any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(2) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;

(3) A salt, compound, derivative, or preparation of a substance identified in division (X)(1) or (2) of this section that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

(Y) "L.S.D." means lysergic acid diethylamide.

(Z) "Hashish" means the resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

(AA) "Marihuana" has the same meaning as in *section 3719.01 of the Revised Code*, except that it does not include hashish.

(BB) An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

(CC) "Presumption for a prison term" or "presumption that a prison term shall be imposed" means a presumption, as described in division (D) of *section 2929.13 of the Revised Code*, that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under *section 2929.11 of the Revised Code*.

(DD) "Major drug offender" has the same meaning as in *section 2929.01 of the Revised Code*.

(EE) "Minor drug possession offense" means either of the following:

(1) A violation of *section 2925.11 of the Revised Code* as it existed prior to July 1, 1996;

(2) A violation of *section 2925.11 of the Revised Code* as it exists on and after July 1, 1996, that is a misdemeanor or a felony of the fifth degree.

(FF) "Mandatory prison term" has the same meaning as in *section 2929.01 of the Revised Code*.

(GG) "Adulterate" means to cause a drug to be adulterated as described in *section 3715.63 of the Revised Code*.

(HH) "Public premises" means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

(II) "Methamphetamine" means 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.

(JJ) "Lawful prescription" means a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

(KK) "Deception" and "theft offense" have the same meanings as in *section 2913.01 of the Revised Code*.

History

136 v H 300 (Eff 7-1-76); 136 v S 414 (Eff 9-22-76); 137 v H 565 (Eff 11-1-78); 138 v H 900 (Eff 7-1-80); 138 v S 378 (Eff 3-23-81); 139 v H 535 (Eff 8-20-82); 139 v S 199 (Eff 7-1-83); 141 v H 281 (Eff 7-18-85); 143 v H 215 (Eff 4-11-90); 143 v S 258 (Eff 11-20-90); *144 v H 62* (Eff 5-21-91); *144 v H 322* (Eff 3-2-92); *145 v H 156* (Eff 5-19-93); *146 v S 143*, § 1 (Eff 3-5-96); *146 v S 2* (Eff 7-1-96); *146 v S 143*, § 5 (Eff 7-1-96); *146 v H 125* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v S 223* (Eff 3-18-97); *147 v S 66* (Eff 7-22-98); *147 v S 117* (Eff 8-5-98); *147 v H 606* (Eff 3-9-99); *147 v S 200* (Eff 3-30-99); *148 v H 18* (Eff 10-20-99); *148 v H 202* (Eff 2-9-2000); *149 v H 7* (Eff 8-7-2001); *149 v H 273* (Eff 7-23-2002); *149 v H 415* (4-7-2003); *149 v H 364*, § 1, eff. 4-8-2003; *149 v H 364*, § 8, eff. 1-1-04; *149 v S 123*, § 1, eff. 1-1-04; *150 v H 163*, § 1, eff. 9-23-04; *150 v S 209*, § 1, eff. 5-6-05; *151 v S 53*, § 1, eff. 5-17-06; *152 v H 195*, § 1, eff. 9-30-08; *2011 HB 86, § 1*, eff. Sept. 30, 2011.

Page's Ohio Revised Code Annotated:
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ORC Ann. 2925.01

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 2925.01 Definitions.

As used in this chapter:

(A) "Administer," "controlled substance," "controlled substance analog," "dispense," "distribute," "hypodermic," "manufacturer," "official written order," "person," "pharmacist," "pharmacy," "sale," "schedule I," "schedule II," "schedule III," "schedule IV," "schedule V," and "wholesaler" have the same meanings as in section 3719.01 of the Revised Code.

(B) "Drug dependent person" and "drug of abuse" have the same meanings as in section 3719.011 of the Revised Code.

(C) "Drug," "dangerous drug," "licensed health professional authorized to prescribe drugs," and "prescription" have the same meanings as in section 4729.01 of the Revised Code.

(D) "Bulk amount" of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in schedule I, schedule II, or schedule III, with the exception of controlled substance analogs, marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (D)(2) or (5) of this section, whichever of the following is applicable:

(a) An amount equal to or exceeding ten grams or twenty-five unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I opiate or opium derivative;

(b) An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a schedule I stimulant or depressant;

(d) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II opiate or opium derivative;

(e) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant that is in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the federal drug abuse control laws, as defined in section 3719.01 of the Revised Code, that is or contains any amount of a schedule II depressant substance or a schedule II hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant, or any of its salts or

isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws.

(2) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III or IV substance other than an anabolic steroid or a schedule III opiate or opium derivative;

(3) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III opiate or opium derivative;

(4) An amount equal to or exceeding two hundred fifty milliliters or two hundred fifty grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule V substance;

(5) An amount equal to or exceeding two hundred solid dosage units, sixteen grams, or sixteen milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III anabolic steroid.

(E) "Unit dose" means an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

(F) "Cultivate" includes planting, watering, fertilizing, or tilling.

(G) "Drug abuse offense" means any of the following:

(1) A violation of division (A) of section 2913.02 that constitutes theft of drugs, or a violation of *section 2925.02*, *2925.03*, *2925.04*, *2925.041*, *2925.05*, *2925.06*, *2925.11*, *2925.12*, *2925.13*, *2925.22*, *2925.23*, *2925.24*, *2925.31*, *2925.32*, *2925.36*, or *2925.37 of the Revised Code*;

(2) A violation of an existing or former law of this or any other state or of the United States that is substantially equivalent to any section listed in division (G)(1) of this section;

(3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element;

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense under division (G)(1), (2), or (3) of this section.

(H) "Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States.

(I) "Harmful intoxicant" does not include beer or intoxicating liquor but means any of the following:

(1) Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

(a) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

(b) Any aerosol propellant;

(c) Any fluorocarbon refrigerant;

(d) Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol.

(J) "Manufacture" means to plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

(K) "Possess" or "possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

(L) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(M) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of references that are approved by the state board of pharmacy.

(N) "Juvenile" means a person under eighteen years of age.

(O) "Counterfeit controlled substance" means any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to that trademark, trade name, or identifying mark;

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance;

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

(P) An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.

(Q) "School" means any school operated by a board of education, any community school established under Chapter 3314. of the Revised Code, or any nonpublic school for which the state board of education prescribes minimum standards under *section 3301.07 of the Revised Code*, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

(R) "School premises" means either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

(2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under Chapter 3314. of the Revised Code, or the governing body of a nonpublic school for which the state board of education prescribes minimum standards under *section 3301.07 of the Revised Code* and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

(S) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

(T) "Disciplinary counsel" means the disciplinary counsel appointed by the board of commissioners on grievances and discipline of the supreme court under the Rules for the Government of the Bar of Ohio.

(U) "Certified grievance committee" means a duly constituted and organized committee of the Ohio state bar association or of one or more local bar associations of the state of Ohio that complies with the criteria set forth in Rule V, section 6 of the Rules for the Government of the Bar of Ohio.

(V) "Professional license" means any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in divisions (W)(1) to (36) of this section and that qualifies a person as a professionally licensed person.

(W) "Professionally licensed person" means any of the following:

(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under Chapter 3719. of the Revised Code;

(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under Chapter 4701. of the Revised Code and who holds an Ohio permit issued under that chapter;

(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under Chapter 4703. of the Revised Code;

(4) A person who is registered as a landscape architect under Chapter 4703. of the Revised Code or who holds a permit as a landscape architect issued under that chapter;

(5) A person licensed under Chapter 4707. of the Revised Code;

(6) A person who has been issued a certificate of registration as a registered barber under Chapter 4709. of the Revised Code;

(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of Chapter 4710. of the Revised Code;

(8) A person who has been issued a cosmetologist's license, hair designer's license, manicurist's license, esthetician's license, natural hair stylist's license, managing cosmetologist's license, managing hair designer's license, managing manicurist's license, managing esthetician's license, managing natural hair stylist's license, cosmetology instructor's license, hair design instructor's license, manicurist instructor's license, esthetics instructor's license, natural hair style instructor's license, independent contractor's license, or tanning facility permit under Chapter 4713. of the Revised Code;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under Chapter 4715. of the Revised Code;

(10) A person who has been issued an embalmer's license, a funeral director's license, a funeral home license, or a crematory license, or who has been registered for an embalmer's or funeral director's apprenticeship under Chapter 4717. of the Revised Code;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under Chapter 4723. of the Revised Code;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under Chapter 4725. of the Revised Code;

(13) A person licensed to act as a pawnbroker under Chapter 4727. of the Revised Code;

(14) A person licensed to act as a precious metals dealer under Chapter 4728. of the Revised Code;

(15) A person licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under Chapter 4729. of the Revised Code;

(16) A person who is authorized to practice as a physician assistant under Chapter 4730. of the Revised Code;

(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine, or podiatry under Chapter 4731. of the Revised Code;

(18) A person licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code;

(19) A person registered to practice the profession of engineering or surveying under Chapter 4733. of the Revised Code;

(20) A person who has been issued a license to practice chiropractic under Chapter 4734. of the Revised Code;

(21) A person licensed to act as a real estate broker or real estate salesperson under Chapter 4735. of the Revised Code;

(22) A person registered as a registered sanitarian under Chapter 4736. of the Revised Code;

(23) A person licensed to operate or maintain a junkyard under Chapter 4737. of the Revised Code;

(24) A person who has been issued a motor vehicle salvage dealer's license under Chapter 4738. of the Revised Code;

(25) A person who has been licensed to act as a steam engineer under Chapter 4739. of the Revised Code;

(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under Chapter 4741. of the Revised Code;

(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under Chapter 4747. of the Revised Code;

(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under Chapter 4749. of the Revised Code;

(29) A person licensed and registered to practice as a nursing home administrator under Chapter 4751. of the Revised Code;

(30) A person licensed to practice as a speech-language pathologist or audiologist under Chapter 4753. of the Revised Code;

(31) A person issued a license as an occupational therapist or physical therapist under Chapter 4755. of the Revised Code;

(32) A person who is licensed as a licensed professional clinical counselor, licensed professional counselor, social worker, independent social worker, independent marriage and family therapist, or marriage and family therapist, or registered as a social work assistant under Chapter 4757. of the Revised Code;

(33) A person issued a license to practice dietetics under Chapter 4759. of the Revised Code;

(34) A person who has been issued a license or limited permit to practice respiratory therapy under Chapter 4761. of the Revised Code;

(35) A person who has been issued a real estate appraiser certificate under Chapter 4763. of the Revised Code;

(36) A person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.

(X) "Cocaine" means any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(2) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;

(3) A salt, compound, derivative, or preparation of a substance identified in division (X)(1) or (2) of this section that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

(Y) "L.S.D." means lysergic acid diethylamide.

(Z) "Hashish" means the resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

(AA) "Marihuana" has the same meaning as in *section 3719.01 of the Revised Code*, except that it does not include hashish.

(BB) An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

(CC) "Presumption for a prison term" or "presumption that a prison term shall be imposed" means a presumption, as described in division (D) of *section 2929.13 of the Revised Code*, that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under *section 2929.11 of the Revised Code*.

(DD) "Major drug offender" has the same meaning as in *section 2929.01 of the Revised Code*.

(EE) "Minor drug possession offense" means either of the following:

(1) A violation of *section 2925.11 of the Revised Code* as it existed prior to July 1, 1996;

(2) A violation of *section 2925.11 of the Revised Code* as it exists on and after July 1, 1996, that is a misdemeanor or a felony of the fifth degree.

(FF) "Mandatory prison term" has the same meaning as in *section 2929.01 of the Revised Code*.

(GG) "Adulterate" means to cause a drug to be adulterated as described in *section 3715.63 of the Revised Code*.

(HH) "Public premises" means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

(II) "Methamphetamine" means 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.

(JJ) "Lawful prescription" means a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

(KK) "Deception" and "theft offense" have the same meanings as in *section 2913.01 of the Revised Code*.

History

136 v H 300 (Eff 7-1-76); 136 v S 414 (Eff 9-22-76); 137 v H 565 (Eff 11-1-78); 138 v H 900 (Eff 7-1-80); 138 v S 378 (Eff 3-23-81); 139 v H 535 (Eff 8-20-82); 139 v S 199 (Eff 7-1-83); 141 v H 281 (Eff 7-18-85); 143 v H 215 (Eff 4-11-90); 143 v S 258 (Eff 11-20-90); *144 v H 62* (Eff 5-21-91); *144 v H 322* (Eff 3-2-92); *145 v H 156* (Eff 5-19-93); *146 v S 143*, § 1 (Eff 3-5-96); *146 v S 2* (Eff 7-1-96); *146 v S 143*, § 5 (Eff 7-1-96); *146 v H 125* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v S 223* (Eff 3-18-97); *147 v S 66* (Eff 7-22-98); *147 v S 117* (Eff 8-5-98); *147 v H 606* (Eff 3-9-99); *147 v S 200* (Eff 3-30-99); *148 v H 18* (Eff 10-20-99); *148 v H 202* (Eff 2-9-2000); *149 v H 7* (Eff 8-7-2001); *149 v H 273* (Eff 7-23-2002); *149 v H 415* (4-7-2003); *149 v H 364*, § 1, eff. 4-8-2003; *149 v H 364*, § 8, eff. 1-1-04; *149 v S 123*, § 1, eff. 1-1-04; *150 v H 163*, § 1, eff. 9-23-04; *150 v S 209*, § 1, eff. 5-6-05; *151 v S 53*, § 1, eff. 5-17-06; *152 v H 195*, § 1, eff. 9-30-08; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2012 HB 334*, § 1, eff. Dec. 20, 2012; *2014 HB 232*, § 1, eff. July 10, 2014.

Page's Ohio Revised Code Annotated
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Notice

This section has more than one version with varying effective dates. To view a complete list of the versions of this section see Table of Contents.

§ 2925.03. Trafficking in drugs [Effective until September 28, 2012]

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," *52 Stat. 1040 (1938), 21 U.S.C.A. 301,* as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If aggravated trafficking in drugs is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and 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 is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), (g), or (h) of this section, trafficking in marihuana is a felony of the fifth degree, and division (B) of

section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(3)(c), (d), (e), (f), (g), or (h) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty thousand grams but is less than forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the

maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds forty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(h) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, trafficking in cocaine is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than twenty grams of cocaine, trafficking in cocaine is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in cocaine is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second

degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty grams but is less than twenty-seven grams of cocaine, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds twenty-seven grams but is less than one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was

committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in L.S.D. is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, trafficking in heroin is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking

in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), (f), or (g) of this section, trafficking in hashish is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(7)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than fifty 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, trafficking in hashish is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams

of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than two thousand grams of hashish in a solid form or equals or exceeds two hundred grams but is less than four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form trafficking in hashish is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(8) If the drug involved in the violation is 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol or a compound, mixture, preparation, or substance containing 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, whoever violates division (A) of this section is guilty of trafficking in spice. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(8)(b) of this section, trafficking in spice is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) If the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in spice is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

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

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of *section 2929.18 of the Revised Code* unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.

(2) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section.

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

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

(F)

(1) Notwithstanding any contrary provision of *section 3719.21 of the Revised Code* and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to division (A) or (B)(5) of *section 2929.18 of the Revised Code* to the county, township,

municipal corporation, park district, as created pursuant to *section 511.18* or *1545.04 of the Revised Code*, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2) (a) Prior to receiving any fine moneys under division (F)(1) of this section or division (B) of *section 2925.42 of the Revised Code*, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under *section 149.43 of the Revised Code*. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (F)(1) of this section or division (B) of *section 2925.42 of the Revised Code* shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (F)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under *section 149.43 of the Revised Code*. Not later than the fifteenth day of April in the calendar year in which the reports are received, the attorney general shall send to the president of the senate and the speaker of the house of representatives a written notification that does all of the following:

(i) Indicates that the attorney general has received from law enforcement agencies reports of the type described in this division that cover the previous calendar year and indicates that the reports were received under this division;

(ii) Indicates that the reports are open for inspection under *section 149.43 of the Revised Code*;

(iii) Indicates that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(3) As used in division (F) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(G) When required under division (D)(2) of this section or any other provision of this chapter, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any violation of this section or any other specified provision of this chapter. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the suspension.

(H)

(1) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, in addition to any other penalty or sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section 2929.18 of the Revised Code. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible alcohol and drug addiction programs in accordance with divisions (H)(2) and (3) of this section.

(2) The court that imposes a fine under division (H)(1) of this section shall specify in the judgment that imposes the fine one or more eligible alcohol and drug addiction programs for the support of which the fine money is to be used. No alcohol and drug addiction program shall receive or use money paid or collected in satisfaction of a fine imposed under division (H)(1) of this section unless the program is specified in the judgment that imposes the fine. No alcohol and drug addiction program shall be specified in the judgment unless the program is an eligible alcohol and drug addiction program and, except as otherwise provided in division (H)(2) of this section, unless the program is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible alcohol and drug addiction program is located in any of those counties, the judgment may specify an eligible alcohol and drug addiction program that is located anywhere within this state.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay any fine imposed under division (H)(1) of this section to the

eligible alcohol and drug addiction program specified pursuant to division (H)(2) of this section in the judgment. The eligible alcohol and drug addiction program that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification under *section 3793.06 of the Revised Code* or in the application for a license under *section 3793.11 of the Revised Code* filed with the department of alcohol and drug addiction services by the alcohol and drug addiction program specified in the judgment.

(4) Each alcohol and drug addiction program that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the court of common pleas and the board of county commissioners of the county in which the program is located, with the court of common pleas and the board of county commissioners of each county from which the program received the moneys if that county is different from the county in which the program is located, and with the attorney general. The alcohol and drug addiction program shall file the report no later than the first day of March in the calendar year following the calendar year in which the program received the fine moneys. The report shall include statistics on the number of persons served by the alcohol and drug addiction program, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the alcohol and drug addiction program. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under *section 149.43 of the Revised Code*.

(5) As used in divisions (H)(1) to (5) of this section:

(a) "Alcohol and drug addiction program" and "alcohol and drug addiction services" have the same meanings as in *section 3793.01 of the Revised Code*.

(b) "Eligible alcohol and drug addiction program" means an alcohol and drug addiction program that is certified under *section 3793.06 of the Revised Code* or licensed under *section 3793.11 of the Revised Code* by the department of alcohol and drug addiction services.

(I) As used in this section, "drug" includes any substance that is represented to be a drug.

History

136 v H 300 (Eff 7-1-76); 141 v S 67 (Eff 8-29-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v H 266 (Eff 9-6-90); 143 v S 258 (Eff 11-20-90); *144 v H 62* (Eff 5-21-91); *144 v S 174* (Eff 7-31-92); *144 v H 591* (Eff 11-2-92); *145 v H 377* (Eff 9-30-93); *145 v H 391* (Eff 7-21-94); *146 v S 2* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v S 166* (Eff 10-17-96); *147 v S 164* (Eff 1-15-98); *147 v S 66* (Eff 7-22-98); *148 v S 107* (Eff 3-23-2000); *148 v H 241* (Eff 5-17-2000); *148 v H 528*. Eff 2-13-2001; *149 v S 123*, § 1, eff. 1-1-04; *151 v S 154*, § 1, eff. 5-17-06; *151 v H 241*, § 1, eff. 7-1-07; *152 v H 195*, § 1, eff. 9-30-08; *2011 HB 86, § 1*, eff. Sept. 30, 2011; *2011 HB 64, § 1*, eff. Oct. 17, 2011.

Page's Ohio Revised Code Annotated:
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ORC Ann. 2925.03

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

Notice

This section has more than one version with varying effective dates.

First of two versions of this section.

§ 2925.03 Trafficking in drugs.

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance or a controlled substance analog;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

(B) This section does not apply to any of the following:

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," *52 Stat. 1040* (1938), *21 U.S.C.A. 301*, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs is a

felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If aggravated trafficking in drugs is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved equals or exceeds fifty times the bulk amount but is less than one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five times the bulk amount but is less than fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and 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 is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), (g), or (h) of this section, trafficking in marihuana is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(3)(c), (d), (e), (f), (g), or (h) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred grams but is less than one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five thousand grams but is less than twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty thousand grams but is less than forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds forty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds forty thousand grams and

if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(h) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, trafficking in cocaine is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than twenty grams of cocaine, trafficking in cocaine is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in cocaine is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty grams but is less than twenty-seven grams of cocaine, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds twenty-seven grams but is less than one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds one hundred grams of cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a

juvenile, trafficking in cocaine is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than two hundred fifty unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and, except as otherwise provided in this division, there is a presumption for a prison term for the offense. If trafficking in L.S.D. is a felony of the third degree under this division and if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty unit doses but is less than one thousand unit doses of L.S.D. in a solid form or equals or exceeds twenty-five grams but is less than one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds one thousand unit doses but is less than five thousand unit doses of L.S.D. in a solid form or equals or exceeds one hundred grams but is less than five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds five thousand unit doses of L.S.D. in a solid form or equals or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten unit doses but is less than fifty unit doses or equals or exceeds one gram but is less than five grams, trafficking in heroin is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty unit doses but is less than one hundred unit doses or equals or exceeds five grams but is less than ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one hundred unit doses but is less than five hundred unit doses or equals or exceeds ten grams but is less than fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than two thousand five hundred unit doses or equals or exceeds fifty grams but is less than two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds two thousand five hundred unit doses or equals or exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), (f), or (g) of this section, trafficking in hashish is a felony of the fifth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(7)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than fifty 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, trafficking in hashish is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds fifty grams but is less than two hundred fifty grams of hashish in a solid form or equals or exceeds ten grams but is less than fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two hundred fifty grams but is less than one thousand grams of hashish in a solid form or equals or exceeds fifty grams but is less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds one thousand grams but is less than two thousand grams of hashish in a solid form or equals or exceeds two hundred grams but is less than four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum

prison term prescribed for a felony of the second degree. If the amount of the drug involved equals or exceeds two thousand grams of hashish in a solid form or equals or exceeds four hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(8) If the drug involved in the violation is a controlled substance analog or compound, mixture, preparation, or substance that contains a controlled substance analog, whoever violates division (A) of this section is guilty of trafficking in a controlled substance analog. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(8)(b), (c), (d), (e), (f), or (g) of this section, trafficking in a controlled substance analog is a felony of the fifth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(8)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the fourth degree, and division (C) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds ten grams but is less than twenty grams, trafficking in a controlled substance analog is a felony of the fourth degree, and division (B) of *section 2929.13 of the Revised Code* applies in determining whether to impose a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds twenty grams but is less than thirty grams, trafficking in a controlled substance analog is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved equals or exceeds thirty grams but is less than forty grams, trafficking in a controlled substance analog is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved equals or exceeds forty grams but is less than fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved equals or exceeds fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in a controlled substance analog is a felony of the first degree, the offender is a major drug offender, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

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

(1) If the violation of division (A) of this section is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of *section 2929.18 of the Revised Code* unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.

(2) The court shall suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section.

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

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

(F)

(1) Notwithstanding any contrary provision of *section 3719.21 of the Revised Code* and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to division (A) or (B)(5) of *section 2929.18 of the Revised Code* to the county, township, municipal corporation, park district, as created pursuant to *section 511.18* or *1545.04 of the Revised Code*, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2) Prior to receiving any fine moneys under division (F)(1) of this section or division (B) of *section 2925.42 of the Revised Code*, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the

general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under *section 149.43 of the Revised Code*. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(3) As used in division (F) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in *section 2935.01 of the Revised Code*.

(G) When required under division (D)(2) of this section or any other provision of this chapter, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any violation of this section or any other specified provision of this chapter. If an offender's driver's or commercial driver's license or permit is suspended pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the suspension; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the suspension.

(H)

(1) In addition to any prison term authorized or required by division (C) of this section and *sections 2929.13* and *2929.14 of the Revised Code*, in addition to any other penalty or sanction imposed for the offense under this section or *sections 2929.11* to *2929.18 of the Revised Code*, and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of *section 2929.18 of the Revised Code*. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible community addiction services provider in accordance with divisions (H)(2) and (3) of this section.

(2) The court that imposes a fine under division (H)(1) of this section shall specify in the judgment that imposes the fine one or more eligible community addiction services provider for the support of which the fine money is to be used. No community addiction services provider shall receive or use money paid or collected in satisfaction of a fine imposed under division (H)(1) of this section unless the services provider is specified in the judgment that imposes the fine. No community addiction services provider shall be specified in the judgment unless the services provider is an eligible community addiction services provider and, except as otherwise provided in division (H)(2) of this section, unless the services provider is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible community addiction services provider is located in any of those counties, the judgment may specify an eligible community addiction services provider that is located anywhere within this state.

(3) Notwithstanding any contrary provision of *section 3719.21 of the Revised Code*, the clerk of the court shall pay any fine imposed under division (H)(1) of this section to the eligible community addiction services provider specified pursuant to division (H)(2) of this section in the judgment. The eligible community addiction services provider that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification under *section 5119.36 of the Revised Code* or in the application for a license under *section 5119.39 of the Revised Code* filed with the department of mental health and addiction services by the community addiction services provider specified in the judgment.

(4) Each community addiction services provider that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the court of

common pleas and the board of county commissioners of the county in which the services provider is located, with the court of common pleas and the board of county commissioners of each county from which the services provider received the moneys if that county is different from the county in which the services provider is located, and with the attorney general. The community addiction services provider shall file the report no later than the first day of March in the calendar year following the calendar year in which the services provider received the fine moneys. The report shall include statistics on the number of persons served by the community addiction services provider, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to determine the identity of, any person served by the community addiction services provider. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under *section 149.43 of the Revised Code*.

(5) As used in divisions (H)(1) to (5) of this section:

(a) "Community addiction services provider" and "alcohol and drug addiction services" have the same meanings as in *section 5119.01 of the Revised Code*.

(b) "Eligible community addiction services provider" means a community addiction services provider that is certified under *section 5119.36 of the Revised Code* or licensed under *section 5119.39 of the Revised Code* by the department of mental health and addiction services.

(I) As used in this section, "drug" includes any substance that is represented to be a drug.

(J) It is an affirmative defense to a charge of trafficking in a controlled substance analog under division (C)(8) of this section that the person charged with violating that offense sold or offered to sell, or prepared for shipment, shipped, transported, delivered, prepared for distribution, or distributed an item described in division (HH)(2)(a), (b), or (c) of *section 3719.01 of the Revised Code*.

History

136 v H 300 (Eff 7-1-76); 141 v S 67 (Eff 8-29-86); 143 v H 215 (Eff 4-11-90); 143 v H 261 (Eff 7-18-90); 143 v H 266 (Eff 9-6-90); 143 v S 258 (Eff 11-20-90); *144 v H 62* (Eff 5-21-91); *144 v S 174* (Eff 7-31-92); *144 v H 591* (Eff 11-2-92); *145 v H 377* (Eff 9-30-93); *145 v H 391* (Eff 7-21-94); *146 v S 2* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v S 166* (Eff 10-17-96); *147 v S 164* (Eff 1-15-98); *147 v S 66* (Eff 7-22-98); *148 v S 107* (Eff 3-23-2000); *148 v H 241* (Eff 5-17-2000); *148 v H 528*. Eff 2-13-2001; *149 v S 123*, § 1, eff. 1-1-04; *151 v S 154*, § 1, eff. 5-17-06; *151 v H 241*, § 1, eff. 7-1-07; *152 v H 195*, § 1, eff. 9-30-08; *2011 HB 86*, § 1, eff. Sept. 30, 2011; *2011 HB 64*, § 1, eff. Oct. 17, 2011; *2012 SB 337*, § 1, eff. Sept. 28, 2012; *2012 HB 334*, § 1, eff. Dec. 20, 2012; *2013 HB 59*, *§ 101.01*, eff. Sept. 29, 2013.

Page's Ohio Revised Code Annotated
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Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 3719.01 Definitions.

As used in this chapter:

(A) "Administer" means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means to a person or an animal.

(B) "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

(C) "Controlled substance" means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V.

(D) "Dangerous drug" has the same meaning as in section 4729.01 of the Revised Code.

(E) "Dispense" means to sell, leave with, give away, dispose of, or deliver.

(F) "Distribute" means to deal in, ship, transport, or deliver but does not include administering or dispensing a drug.

(G) "Drug" has the same meaning as in section 4729.01 of the Revised Code.

(H) "Drug abuse offense," "felony drug abuse offense," "cocaine," and "hashish" have the same meanings as in section 2925.01 of the Revised Code.

(I) "Federal drug abuse control laws" means the "Comprehensive Drug Abuse Prevention and Control Act of 1970," 84 Stat. 1242, 21 U.S.C. 801, as amended.

(J) "Hospital" means an institution for the care and treatment of the sick and injured that is certified by the department of health and approved by the state board of pharmacy as proper to be entrusted with the custody of controlled substances and the professional use of controlled substances.

(K) "Hypodermic" means a hypodermic syringe or needle, or other instrument or device for the injection of medication.

(L) "Isomer," except as otherwise expressly stated, means the optical isomer.

(M) "Laboratory" means a laboratory approved by the state board of pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.

(N) "Manufacturer" means a person who manufactures a controlled substance, as "manufacture" is defined in section 3715.01 of the Revised Code.

(O) "Marihuana" means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.

(P) "Narcotic drugs" means coca leaves, opium, isonipecaine, amidone, isoamidone, ketobemidone, as defined in this division, and every substance not chemically distinguished from them and every drug,

other than cannabis, that may be included in the meaning of "narcotic drug" under the federal drug abuse control laws. As used in this division:

(1) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves, that does not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made.

(2) "Isonipecaine" means any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated.

(3) "Amidone" means any substance identified chemically as 4-4-diphenyl-6-dimethylamino-heptanone-3, or any salt thereof, by whatever trade name designated.

(4) "Isoamidone" means any substance identified chemically as 4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt thereof, by whatever trade name designated.

(5) "Ketobemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated.

(Q) "Official written order" means an order written on a form provided for that purpose by the director of the United States drug enforcement administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by federal law.

(R) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under *section 3719.41 of the Revised Code*, the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts (dextro-methorphan). "Opiate" does include its racemic and levoratory forms.

(S) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(T) "Person" means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.

(U) "Pharmacist" means a person licensed under Chapter 4729. of the Revised Code to engage in the practice of pharmacy.

(V) "Pharmacy" has the same meaning as in *section 4729.01 of the Revised Code*.

(W) "Poison" means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.

(X) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(Y) "Licensed health professional authorized to prescribe drugs," "prescriber," and "prescription" have the same meanings as in *section 4729.01 of the Revised Code*.

(Z) "Registry number" means the number assigned to each person registered under the federal drug abuse control laws.

(AA) "Sale" includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.

(BB) "Schedule I," "schedule II," "schedule III," "schedule IV," and "schedule V" mean controlled substance schedules I, II, III, IV, and V, respectively, established pursuant to *section 3719.41 of the Revised Code*, as amended pursuant to *section 3719.43* or *3719.44 of the Revised Code*.

(CC) "Wholesaler" means a person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced, or prepared personally and includes a "wholesale distributor of dangerous drugs" as defined in *section 4729.01 of the Revised Code*.

(DD) "Animal shelter" means a facility operated by a humane society or any society organized under Chapter 1717. of the Revised Code or a dog pound operated pursuant to Chapter 955. of the Revised Code.

(EE) "Terminal distributor of dangerous drugs" has the same meaning as in *section 4729.01 of the Revised Code*.

(FF) "Category III license" means a license issued to a terminal distributor of dangerous drugs as set forth in *section 4729.54 of the Revised Code*.

(GG) "Prosecutor" has the same meaning as in *section 2935.01 of the Revised Code*.

(HH)

(1) "Controlled substance analog" means, except as provided in division (HH)(2) of this section, a substance to which both of the following apply:

(a) The chemical structure of the substance is substantially similar to the structure of a controlled substance in schedule I or II.

(b) One of the following applies regarding the substance:

(i) The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(ii) With respect to a particular person, that person represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(2) "Controlled substance analog" does not include any of the following:

(a) A controlled substance;

(b) Any substance for which there is an approved new drug application;

(c) With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent that conduct with respect to that substance is pursuant to that exemption;

(d) Any substance to the extent it is not intended for human consumption before the exemption described in division (HH)(2)(b) of this section takes effect with respect to that substance.

(II) "Benzodiazepine" means a controlled substance that has United States food and drug administration approved labeling indicating that it is a benzodiazepine, benzodiazepine derivative, triazolobenzodiazepine, or triazolobenzodiazepine derivative, including the following drugs and their varying salt forms or chemical congeners: alprazolam, chlordiazepoxide hydrochloride, clobazam, clonazepam, clorazepate, diazepam, estazolam, flurazepam hydrochloride, lorazepam, midazolam, oxazepam, quazepam, temazepam, and triazolam.

(JJ) "Opioid analgesic" means a controlled substance that has analgesic pharmacologic activity at the opioid receptors of the central nervous system, including the following drugs and their varying salt forms or chemical congeners: buprenorphine, butorphanol, codeine (including acetaminophen and other combination products), dihydrocodeine, fentanyl, hydrocodone (including acetaminophen

combination products), hydromorphone, meperidine, methadone, morphine sulfate, oxycodone (including acetaminophen, aspirin, and other combination products), oxymorphone, tapentadol, and tramadol.

(KK) "Emergency facility" means a hospital emergency department or any other facility that provides emergency care.

History

136 v H 300 (Eff 7-1-76); 136 v S 414 (Eff 9-22-76); 137 v H 1 (Eff 8-26-77); *145 v H 88* (Eff 6-29-94); *145 v H 391* (Eff 7-21-94); *146 v S 2* (Eff 7-1-96); *146 v S 269* (Eff 7-1-96); *146 v H 162* (Eff 1-1-97); *147 v S 66*. Eff 7-22-98; *2011 HB 64*, § 1, eff. Oct. 17, 2011; *2014 HB 394*, § 1, effective March 19, 2015; *2014 SB 276*, § 1, effective March 19, 2015.

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§ 3719.013. Controlled substance analog

A controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of the Revised Code as a controlled substance in schedule I.

History

2011 HB 64, § 1, eff. Oct. 17, 2011.

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ORC Ann. 3719.013

Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 3719.013 Controlled substance analog.

Except as otherwise provided in section 2925.03 or 2925.11 of the Revised Code, a controlled substance analog, to the extent intended for human consumption, shall be treated for purposes of any provision of the Revised Code as a controlled substance in schedule I.

History

2011 HB 64, § 1, eff. Oct. 17, 2011; 2012 HB 334, § 1, eff. Dec. 20, 2012.

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Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 3719.41 Schedules.

Controlled substance schedules I, II, III, IV, and V are hereby established, which schedules include the following, subject to amendment pursuant to section 3719.43 or 3719.44 of the Revised Code.

SCHEDULE I

(A) Narcotics-opiates

Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted under federal drug abuse control laws, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N- phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

(25) Dipipanone;

(26) Ethylmethylthiambutene;

(27) Etonitazene;

(28) Etoxeridine;

(29) Furethidine;

(30) Hydroxypethidine;

(31) Ketobemidone;

(32) Levomoramide;

(33) Levophenacylmorphan;

(34) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);

(35) 3-methylthiofentanyl (N-[3-methyl-1-[2-(thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide);

(36) Morpheridine;

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(38) Noracymethadol;

(39) Norlevorphanol;

(40) Normethadone;

(41) Norpipanone;

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamid e;

(43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine;

(44) Phenadoxone;

(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;

(54) Tilidine;

(55) Trimeperidine.

(B) Narcotics-opium derivatives

Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted under federal drug abuse control laws, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-n-oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine (except hydrochloride salt);

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-n-oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine;

(23) Thebacon.

(C) Hallucinogens

Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted under federal drug abuse control laws, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation. For the purposes of this division only, "isomer" includes the optical isomers, position isomers, and geometric isomers.

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET);

(2) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methyphenethylamine; 4-bromo-2,5-DMA);

(3) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus);

(4) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(5) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(6) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(7) 5-methoxy-3,4-methylenedioxy-amphetamine;

(8) 4-methyl-2,5-dimethoxy-amphetamine (some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM" and "STP");

(9) 3,4-methylenedioxy amphetamine (MDA);

(10) 3,4-methylenedioxymethamphetamine (MDMA);

(11) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);

(12) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA);

(13) 3,4,5-trimethoxy amphetamine;

(14) Bufotenine (some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

(15) Diethyltryptamine (some trade or other names: N, N-diethyltryptamine; DET);

(16) Dimethyltryptamine (some trade or other names: DMT);

(17) Ibogaine (some trade or other names: 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido[1',2':1,2] azepino [5, 4-b] indole; tabernanthe iboga);

(18) Lysergic acid diethylamide;

(19) Marihuana;

(20) Mescaline;

(21) Parahexyl (some trade or other names: 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyra n; synhexyl);

(22) Peyote (meaning all parts of the plant presently classified botanically as "Lophophora williamsii Lemaire," whether growing or not, the seeds of that plant, any extract from any part of that plant, and every compound, manufacture, salts, derivative, mixture, or preparation of that plant, its seeds, or its extracts);

(23) N-ethyl-3-piperidyl benzilate;

(24) N-methyl-3-piperidyl benzilate;

(25) Psilocybin;

(26) Psilocyn;

(27) Tetrahydrocannabinols (synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta-1-cis or trans tetrahydrocannabinol, and their optical isomers; delta-6-cis or trans tetrahydrocannabinol, and their optical isomers; delta-3,4-cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered.));

(28) Ethylamine analog of phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(29) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP);

(30) Thiophene analog of phencyclidine (some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP);

(31) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine;

(32) Hashish;

(33) Salvia divinorum;

(34) Salvinorin A;

(35) (1-pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144);

(36) 1-pentyl-3-(1-adamantoyl)indole (AB-001);

(37) N-adamantyl-1-pentylindole-3-carboxamide;

(38) N-adamantyl-1-pentylindazole-3-carboxamide (AKB48);

(39) 2-ethylamino-2-(3-methoxyphenyl)cyclohexanone (methoxetamine);

(40) N,N-diallyl-5-methoxytryptamine (5MeO-DALT);

(41) [1-(5-fluoropentylindol-3-yl)]-(2,2,3,3-tetramethylcyclopropyl) methanone (5-fluoropentyl-UR-144; XLR11);

(42) [1-(5-chloropentylindol-3-yl)]-(2,2,3,3-tetramethylcyclopropyl) methanone (5-chloropentyl-UR-144);

(43) [1-(5-bromopentylindol-3-yl)]-(2,2,3,3-tetramethylcyclopropyl)m ethanone (5-bromopentyl-UR-144);

(44) §1-[2-(4-morpholinyl)ethyl]indol-3-yl}-(2,2,3,3-tetramethylcycl opropyl) methanone (A-796,260);

(45) 1-[(N-methylpiperidin-2-yl)methyl]-3-(1-adamantoyl)indole (AM1248);

(46) N-adamantyl-1-(5-fluoropentylindole)-3-carboxamide;

(47) 5-(2-aminopropyl)benzofuran (5-APB);

(48) 6-(2-aminopropyl)benzofuran (6-APB);

(49) 5-(2-aminopropyl)-2,3-dihydrobenzofuran (5-APDB);

(50) 6-(2-aminopropyl)-2,3-dihydrobenzofuran (6-APDB);

(51) Benzothiophenylcyclohexylpiperidine (BTCP);

(52) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(53) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);

(54) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

(55) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);

(56) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

(57) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

(58) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);

(59) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

(60) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

(61) 4-methoxymethamphetamine (PMMA);

(62) 5,6 — Methylenedioxy-2-aminoindane (MDAI);

(63) 5-iodo-2-aminoindiane (5-IAI);

(64) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine(25I-NBOMe);

(65) Diphenylprolinol (diphenyl(pyrrolidin-2-yl)methanol, D2PM);

(66) Desoxypipradrol (2-benzhydrylpiperidine);

(67) Synthetic cannabinoids — unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of a synthetic cannabinoid found to be in any of the following chemical groups or any of those groups which contain any synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical groups:

(a) Naphthoylindoles: any compound containing a 3-(1-naphthoyl)indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthoylindoles include, but are not limited to, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200); 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201), 1-pentyl-3-(1-naphthoyl)indole (JWH-018), and 1-butyl-3-(1-naphthoyl)indole (JWH-073).

(b) Naphthylmethylindoles: any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthylmethylindoles include, but are not limited to, (1-pentylindol-3-yl)(1-naphthyl)methane (JWH-175).

(c) Naphthoylpyrroles: any compound containing a 3-(1-naphthoyl)pyrrole structure with or without substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or

2-(4-morpholinyl)ethyl group, whether or not further substituted on the pyrrole ring to any extent or whether or not substituted on the naphthyl group to any extent. Naphthoylpyrroles include, but are not limited to, 1-hexyl-2-phenyl-4-(1-naphthoyl)pyrrole (JWH-147).

(d) Naphthylmethylindenes: any compound containing a naphthylmethylideneindene structure with or without substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indene group to any extent or whether or not substituted on the naphthyl group to any extent. Naphthylmethylindenes include, but are not limited to, (1-[(3-pentyl)-1H-inden-1-ylidene)methyl]naphthalene (JWH-176).

(e) Phenylacetylindoles: any compound containing a 3-phenylacetylindole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent or whether or not substituted on the phenyl group to any extent. Phenylacetylindoles include, but are not limited to, 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250), and 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole (RCS-8); 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).

(f) Cyclohexylphenols: any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with or without substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the cyclohexyl group to any extent. Cyclohexylphenols include, but are not limited to, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: CP-47,497) and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (some trade or other names: cannabicyclohexanol; CP-47,497 C8 homologue).

(g) Benzoylindoles: any compound containing a 3-(1-benzoyl)indole structure with or without substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)methyl, cyanoalkyl, (N-methylpyrrolidin-2-yl)methyl, (tetrahydropyran-4-yl)methyl, ((N-methyl)-3-morpholinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole

ring to any extent or whether or not substituted on the phenyl group to any extent. Benzoylindoles include, but are not limited to, 1-pentyl-3-(4-methoxybenzoyl)indole (RCS-4), 1-[2-(4-morpholinyl)ethyl]-2-methyl-3-(4-methoxybenzoyl)indole (Pravadoline or WIN 48, 098).

(D) Depressants

Any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers, unless specifically excepted under federal drug abuse control laws, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(E) Stimulants

Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(1) Aminorex (some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Fenethylline;

(3) (+—)cis-4-methylaminorex ((+—)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(4) N-ethylamphetamine;

(5) N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine);

(6) N-methyl-1-(thiophen-2-yl) propan-2-amine (Methiopropamine);

(7) Substituted cathinones — any compound except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

(a) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;

(b) By substitution at the 3-position with an acyclic alkyl substituent;

(c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups;

(d) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

Examples of substituted cathinones include, but are not limited to, methylone (3,4-methylenedioxymethcathinone), MDPV (3,4-methylenedioxypyrovalerone), mephedrone (4-methylmethcathinone), 4-methoxymethcathinone, 4-fluoromethcathinone, 3-fluoromethcathinone, Pentedrone (2-(methylamino)-1-phenyl-1-pentanone), pentylone (1-(1,3-benzodioxol-5-yl)-2-(methylamino)-1-pentanone), 2-(1-pyrrolidinyl)-1-(4-methylphenyl)-1-propanone, alpha-PVP (1-phenyl-2-(1-pyrrodinyl)-1-pentanone), cathinone (2-amino-1-phenyl-1-propanone), and methcathinone (2-(methylamino)-propiophenone).

SCHEDULE II

(A) Narcotics-opium and opium derivatives

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

(a) Raw opium;

(b) Opium extracts;

(c) Opium fluid extracts;

(d) Powdered opium;

(e) Granulated opium;

(f) Tincture of opium;

(g) Codeine;

(h) Ethylmorphine;

(i) Etorphine hydrochloride;

(j) Hydrocodone;

(k) Hydromorphone;

(l) Metopon;

(m) Morphine;

(n) Oxycodone;

(o) Oxymorphone;

(p) Thebaine.

(2) Any salt, compound, derivative, or preparation thereof that is chemically equivalent to or identical with any of the substances referred to in division (A)(1) of this schedule, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine, their salts, isomers, and derivatives, and salts of those isomers and derivatives), and any salt, compound, derivative, or preparation thereof that is chemically equivalent to or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy).

(B) Narcotics-opiates

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, but excluding dextrorphan and levopropoxyphene:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Bulk dextropropoxyphene (non-dosage forms);

(6) Carfentanil;

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (some other names: levo-alpha-acetylmethadol; levomethadyl acetate; LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(17) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(18) Pethidine (meperidine);

(19) Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil;

(27) Sufentanil.

(C) Stimulants

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, its optical isomers, and salts of its optical isomers;

(2) Methamphetamine, its salts, its isomers, and salts of its isomers;

(3) Methylphenidate;

(4) Phenmetrazine and its salts.

(D) Depressants

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Gamma-hydroxy-butyrate;

(3) Glutethimide;

(4) Pentobarbital;

(5) Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)piperidine; PCP);

(6) Secobarbital;

(7) 1-aminophenylcyclohexane and all N-mono-substituted and/or all N-N-disubstituted analogs including, but not limited to, the following:

(a) 1-phenylcyclohexylamine;

(b) (1-phenylcyclohexyl) methylamine;

(c) (1-phenylcyclohexyl) dimethylamine;

(d) (1-phenylcyclohexyl) methylethylamine;

(e) (1-phenylcyclohexyl) isopropylamine;

(f) 1-(1-phenylcyclohexyl) morpholine.

(E) Hallucinogenic substances

(1) Nabilone (another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

(F) Immediate precursors

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(a) Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);

(2) Immediate precursors to phencyclidine (PCP):

(a) 1-phenylcyclohexylamine;

(b) 1-piperidinocyclohexanecarbonitrile (PCC).

SCHEDULE III

(A) Stimulants

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, their optical isomers, position isomers, or geometric isomers, and salts of these isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) All stimulant compounds, mixtures, and preparations included in schedule III pursuant to the federal drug abuse control laws and regulations adopted under those laws;

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(B) Depressants

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and one or more other active medicinal ingredients that are not listed in any schedule;

(2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;

(3) Any substance that contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid;

(4) Chlorhexadol;

(5) Ketamine, its salts, isomers, and salts of isomers (some other names for ketamine: (+-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone);

(6) Lysergic acid;

(7) Lysergic acid amide;

(8) Methyprylon;

(9) Sulfondiethylmethane;

(10) Sulfonethylmethane;

(11) Sulfonmethane;

(12) Tiletamine, zolazepam, or any salt of tiletamine or zolazepam (some trade or other names for a tiletamine-zolazepam combination product: Telazol); (some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone); (some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3, 4-e][1,4]-diazepin-7(1H)-one; flupyrazapon).

(C) Narcotic antidotes

(1) Nalorphine.

(D) Narcotics-narcotic preparations

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(E) Anabolic steroids

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts, esters, isomers, and salts of esters and isomers, whenever the existence of these salts, esters, and isomers is possible within the specific chemical designation:

(1) Anabolic steroids. Except as otherwise provided in division (E)(1) of schedule III, "anabolic steroids" means any drug or hormonal substance that is chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) and that promotes muscle growth. "Anabolic steroids" does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States secretary of health and human services for that administration, unless a person prescribes, dispenses, or distributes this type of anabolic steroid for human use. "Anabolic steroid" includes, but is not limited to, the following:

(a) Boldenone;

(b) Chlorotestosterone (4-chlortestosterone);

(c) Clostebol;

(d) Dehydrochlormethyltestosterone;

(e) Dihydrotestosterone (4-dihydrotestosterone);

(f) Drostanolone;

(g) Ethylestrenol;

(h) Fluoxymesterone;

(i) Formebulone (formebolone);

(j) Mesterolone;

(k) Methandienone;

(l) Methandranone;

(m) Methandriol;

(n) Methandrostenolone;

(o) Methenolone;

(p) Methyltestosterone;

(q) Mibolerone;

(r) Nandrolone;

(s) Norethandrolone;

(t) Oxandrolone;

(u) Oxymesterone;

(v) Oxymetholone;

(w) Stanolone;

(x) Stanozolol;

(y) Testolactone;

(z) Testosterone;

(aa) Trenbolone;

(bb) Any salt, ester, isomer, or salt of an ester or isomer of a drug or hormonal substance described or listed in division (E)(1) of schedule III if the salt, ester, or isomer promotes muscle growth.

(F) Hallucinogenic substances

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product (some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol).

SCHEDULE IV

(A) Narcotic drugs

Unless specifically excepted by federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)[final dosage forms].

(B) Depressants

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Estazolam;

(16) Ethchlorvynol;

(17) Ethinamate;

(18) Ethyl loflazepate;

(19) Fludiazepam;

(20) Flunitrazepam;

(21) Flurazepam;

(22) Halazepam;

(23) Haloxazolam;

(24) Ketazolam;

(25) Loprazolam;

(26) Lorazepam;

(27) Lormetazepam;

(28) Mebutamate;

(29) Medazepam;

(30) Meprobamate;

(31) Methohexital;

(32) Methylphenobarbital (mephobarbital);

(33) Midazolam;

(34) Nimetazepam;

(35) Nitrazepam;

(36) Nordiazepam;

(37) Oxazepam;

(38) Oxazolam;

(39) Paraldehyde;

(40) Petrichloral;

(41) Phenobarbital;

(42) Pinazepam;

(43) Prazepam;

(44) Quazepam;

(45) Temazepam;

(46) Tetrazepam;

(47) Triazolam;

(48) Zaleplon;

(49) Zolpidem.

(C) Fenfluramine

Any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts, their optical isomers, position isomers, or

geometric isomers, and salts of these isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Fenfluramine.

(D) Stimulants

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, their optical isomers, position isomers, or geometric isomers, and salts of these isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Cathine ((+)-norpseudoephedrine);

(2) Diethylpropion;

(3) Fencamfamin;

(4) Fenproporex;

(5) Mazindol;

(6) Mefenorex;

(7) Modafinil;

(8) Pemoline (including organometallic complexes and chelates thereof);

(9) Phentermine;

(10) Pipradrol;

(11) Sibutramine;

(12) SPA [(-)-1-dimethylamino-1,2-diphenylethane].

(E) Other substances

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including their salts:

(1) Pentazocine;

(2) Butorphanol (including its optical isomers).

SCHEDULE V

(A) Narcotic drugs

Unless specifically excepted under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, and their salts, as set forth below:

(1) Buprenorphine.

(B) Narcotics-narcotic preparations

Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, and that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(C) Stimulants

Unless specifically exempted or excluded under federal drug abuse control laws or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

(1) Ephedrine, except as provided in division (K) of *section 3719.44 of the Revised Code*;

(2) Pyrovalerone.

History

136 v H 300 (Eff 7-1-76); *144 v H 62* (Eff 5-21-91); *145 v H 156* (Eff 5-19-93); *145 v H 391* (Eff 7-21-94); *146 v S 269* (Eff 7-1-96); *148 v H 428*. Eff 5-17-2000; *152 v H 215*, § 1, eff. 4-7-09; *2011 HB 153*, § 101.01, eff. Sept. 29, 2011; *2011 HB 64*, § 1, eff. Oct. 17, 2011; *2012 HB 334*, § 1, eff. Dec. 20, 2012; *2012 SB 301*, § 1, eff. Mar. 13, 2013; *2014 HB 315*, § 1, eff. July 10, 2014.

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Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 3719.43 Addition, transfer, removal of substance by attorney general of United States; effect.

When pursuant to the federal drug abuse control laws the attorney general of the United States adds a compound, mixture, preparation, or substance to a schedule of the laws, transfers any of the same between one schedule of the laws to another, or removes a compound, mixture, preparation, or substance from the schedules of the laws then such addition, transfer, or removal is automatically effected in the corresponding schedule or schedules in section 3719.41 of the Revised Code, subject to amendment pursuant to section 3719.44 of the Revised Code.

History

136 v H 300. Eff 7-1-76.

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Current with Legislation passed by the 131st General Assembly and filed with the Secretary of State through file 52 (HB 294).

§ 3719.44 Authority of board of pharmacy to change schedules.

(A) Pursuant to this section, and by rule adopted in accordance with Chapter 119. of the Revised Code, the state board of pharmacy may do any of the following with respect to schedules I, II, III, IV, and V established in section 3719.41 of the Revised Code:

(1) Add a previously unscheduled compound, mixture, preparation, or substance to any schedule;

(2) Transfer a compound, mixture, preparation, or substance from one schedule to another, provided the transfer does not have the effect under this chapter of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal drug abuse control laws;

(3) Remove a compound, mixture, preparation, or substance from the schedules where the board had previously added the compound, mixture, preparation, or substance to the schedules, provided that the removal shall not have the effect under this chapter of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal drug abuse control laws.

(B) In making a determination to add, remove, or transfer pursuant to division (A) of this section, the board shall consider the following:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of the pharmacological effect of the substance, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) The risk to the public health;

(7) The potential of the substance to produce psychic or physiological dependence liability;

(8) Whether the substance is an immediate precursor.

(C) The board may add or transfer a compound, mixture, preparation, or substance to schedule I when it appears that there is a high potential for abuse, that it has no accepted medical use in treatment in this state, or that it lacks accepted safety for use in treatment under medical supervision.

(D) The board may add or transfer a compound, mixture, preparation, or substance to schedule II when it appears that there is a high potential for abuse, that it has a currently

accepted medical use in treatment in this state, or currently accepted medical use in treatment with severe restrictions, and that its abuse may lead to severe physical or severe psychological dependence.

(E) The board may add or transfer a compound, mixture, preparation, or substance to schedule III when it appears that there is a potential for abuse less than the substances included in schedules I and II, that it has a currently accepted medical use in treatment in this state, and that its abuse may lead to moderate or low physical or high psychological dependence.

(F) The board may add or transfer a compound, mixture, preparation, or substance to schedule IV when it appears that it has a low potential for abuse relative to substances included in schedule III, that it has a currently accepted medical use in treatment in this state, and that its abuse may lead to limited physical or psychological dependence relative to the substances included in schedule III.

(G) The board may add or transfer a compound, mixture, preparation, or substance to schedule V when it appears that it has lower potential for abuse than substances included in schedule IV, that it has currently accepted medical use in treatment in this state, and that its abuse may lead to limited physical or psychological dependence relative to substances included in schedule IV.

(H) Even though a compound, mixture, preparation, or substance does not otherwise meet the criteria in this section for adding or transferring it to a schedule, the board may nevertheless add or transfer it to a schedule as an immediate precursor when all of the following apply:

(1) It is the principal compound used, or produced primarily for use, in the manufacture of a controlled substance.

(2) It is an immediate chemical intermediary used or likely to be used in the manufacture of such a controlled substance.

(3) Its control is necessary to prevent, curtail, or limit the manufacture of the scheduled compound, mixture, preparation, or substance of which it is the immediate precursor.

(I) Authority to control under this section does not extend to distilled spirits, wine, or beer, as those terms are defined or used in Chapter 4301. of the Revised Code.

(J) Authority to control under this section does not extend to any nonnarcotic substance if the substance may, under the Federal Food, Drug, and Cosmetic Act and the laws of this state, be lawfully sold over the counter without a prescription. If a pattern of abuse develops for any nonnarcotic drug sold over the counter, the board may, by rule adopted in accordance with Chapter 119. of the Revised Code, after a public hearing and a documented study to determine that the substance actually meets the criteria listed in division (B) of this section, place the abused substance on a controlled substance schedule.

(K)

(1) A drug product containing ephedrine that is known as one of the following and is in the form specified shall not be considered a schedule V controlled substance:

(a) Amesec capsules;

(b) Bronitin tablets;

(c) Bronkotabs;

(d) Bronkolixir;

(e) Bronkaid tablets;

(f) Efedron nasal jelly;

(g) Guiaphed elixir;

(h) Haysma;

(i) Pazo hemorrhoid ointment and suppositories;

(j) Primatene "M" formula tablets;

(k) Primatene "P" formula tablets;

(l) Tedrigen tablets;

(m) Tedral tablets, suspension and elixir;

(n) T.E.P.;

(o) Vatronol nose drops.

(2)

(a) A product containing ephedrine shall not be considered a controlled substance if the product is a food product or dietary supplement that meets all of the following criteria:

(i) It contains, per dosage unit or serving, not more than the lesser of twenty-five milligrams of ephedrine alkaloids or the maximum amount of ephedrine alkaloids provided in applicable regulations adopted by the United States food and drug administration, and no other controlled substance.

(ii) It contains no hydrochloride or sulfate salts of ephedrine alkaloids.

(iii) It is packaged with a prominent label securely affixed to each package that states all of the following: the amount in milligrams of ephedrine in a serving or dosage unit; the amount of the food product or dietary supplement that constitutes a serving or dosage unit; that the maximum recommended dosage of ephedrine for a healthy adult human is the lesser of one hundred milligrams in a twenty-four-hour period for not more than twelve weeks or the maximum recommended dosage or period of use provided in applicable regulations adopted by the United States food and drug administration; and that improper use of the product may be hazardous to a person's health.

(b)

(i) Subject to division (K)(2)(b)(ii) of this section, no person shall dispense, sell, or otherwise give a product described in division (K)(2)(a) of this section to any individual under eighteen years of age.

(ii) Division (K)(2)(b)(i) of this section does not apply to a physician or pharmacist who dispenses, sells, or otherwise gives a product described in division (K)(2)(a) of this section to an individual under eighteen years of age, to a parent or guardian of an individual under eighteen years of age who dispenses, sells, or otherwise gives a product of that nature to the individual under eighteen years of age, or to a person who, as authorized by the individual's parent or legal guardian, dispenses, sells, or otherwise gives a product of that nature to an individual under eighteen years of age.

(c) No person in the course of selling, offering for sale, or otherwise distributing a product described in division (K)(2)(a) of this section shall advertise or represent in any manner that the product causes euphoria, ecstasy, a "buzz" or "high," or an altered mental state; heightens sexual performance; or, because it contains ephedrine alkaloids, increased muscle mass.

(3) A drug product that contains the isomer pseudoephedrine, or any of its salts, optical isomers, or salts of optical isomers, shall not be considered a controlled substance if the drug product is labeled in a manner consistent with federal law or with the product's over-the-counter tentative final monograph or final monograph issued by the United States food and drug administration.

(4) At the request of any person, the board may except any product containing ephedrine not described in division (K)(1) or (2) of this section or any class of products containing ephedrine from being included as a schedule V controlled substance if it determines that the product or class of products does not contain any other controlled substance. The board shall make the determination in accordance with this section and by rule adopted in accordance with Chapter 119. of the Revised Code.

(L) As used in this section:

(1) "Food" has the same meaning as in *section 3715.01 of the Revised Code*.

(2) "Dietary supplement" has the same meaning as in the "Federal Food, Drug, and Cosmetic Act," *108 Stat. 4327* (1994), *21 U.S.C.A. 321(ff)*, as amended.

(3) "Ephedrine alkaloids" means ephedrine, pseudoephedrine, norephedrine, norpseudoephedrine, methylephedrine, and methylpseudoephedrine.

History

136 v H 300 (Eff 7-1-76); *145 v H 391* (Eff 7-21-94); *146 v H 523* (Eff 3-31-97); *147 v S 66* (Eff 7-22-98); *149 v H 371*. Eff 10-11-2002.

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