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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 230  
135<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Homeland Security

**Primary Sponsors:** Reps. Abrams and Swearingen

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## SUMMARY

### Participating in an organization or operation for trafficking in persons

- Creates the offense of participating in an organization or operation for trafficking in persons.
- Provides that the penalty for participating in an organization or operation for trafficking in persons is a first degree felony.

### Drug offense changes

- Increases the penalties and changes the quantities required for trafficking cocaine, fentanyl-related compounds, heroin, and methamphetamine.
- Removes the knowledge requirement for possession of a fentanyl-related compound when the other drug involved is not marijuana.
- Requires that all death certificates include a space to indicate whether the cause of death was due to fentanyl poisoning.

### Fentanyl abuse prevention instruction and awareness

- Beginning with the 2024-2025 school year, requires public schools to provide age-appropriate, research-based instruction on the dangers of fentanyl to students in grades kindergarten through twelve that includes instruction in prescribed areas of focus.
- Requires state institutions of higher education to develop and implement an age-appropriate and research-based education program to advise students regarding the dangers of fentanyl that includes prescribed areas of focus.
- Designates August as “Fentanyl Poisoning Awareness Month” to increase awareness of the dangers of fentanyl and potential overdoses.

- Requires public schools to designate a week during the school year as “Fentanyl Poisoning Awareness Week” to educate students about the dangers posed by fentanyl.

## **Oral fluid testing**

- Authorizes law enforcement to collect an oral fluid sample from a person arrested for operating a vehicle under the influence (OVI).
- Authorizes the testing of that oral fluid sample for the presence of a drug of abuse or a metabolite of a drug of abuse.
- Authorizes the oral fluid sample and its test results to be used as evidence related to charges that a person operated a vehicle while “under the influence of alcohol, a drug of abuse, or a combination of them” (the general OVI prohibition).
- Specifies that any person who operates a vehicle or who is in physical control of a vehicle has given consent to have that person’s oral fluid collected and tested if arrested for OVI (“implied consent”).

Makes conforming changes to the laws governing OVI while operating a watercraft or a commercial motor vehicle and the release of drug test records in criminal cases.

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## **DETAILED ANALYSIS**

### **Participating in an organization or operation for trafficking in persons**

The bill prohibits a person from doing any of the following:<sup>1</sup>

- Knowingly organizing, managing, directing, supervising, coordinating, facilitating, leading, assisting, participating in, or financing an organization for trafficking in persons or an operation that furthers the criminal objectives of an organization or operation for trafficking in persons.
- Knowingly furnishing advice or direction in the conduct, financing, or management of an organization or operation for trafficking in persons’ affairs with the intent to promote or further the criminal objectives of that organization or operation for trafficking in persons.
- Knowingly directing or instructing others to engage in violence or intimidation to promote or further the criminal objectives of an organization or operation for trafficking in persons.
- Intentionally promoting or furthering the criminal objectives of an organization or operation for trafficking in persons for a public servant to commit any act or omission in

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<sup>1</sup> R.C. 2905.321(A) to (D).

violation of the public servant's official duty, or to induce a public servant to commit the act or omission.

- Knowingly assisting an organization or operation for the trafficking in persons by transporting a person, or procuring transportation for a person, with the intent to either conceal the person from a peace officer or to assist the person in fleeing from a peace officer who is attempting to lawfully arrest or detain the person.

A person who violates any of the prohibitions listed above is guilty of participating in an organization or operation for trafficking in persons, a first degree felony.<sup>2</sup>

A prosecution for participating in an organization or operation for trafficking in persons does not preclude a prosecution of a violation of any other Revised Code section. One or more acts, a series of acts, or a course of behavior that can be prosecuted under R.C. 2905.321 or any other Revised Code section may be prosecuted under R.C. 2905.321, the other Revised Code section, or both sections.<sup>3</sup>

If an offender is convicted of or pleads guilty to a felony violation of participating in an organization or operation for trafficking in persons and also is convicted of or pleads guilty to an existing specification (furtherance of human trafficking), the court must impose as a minimum prison term a mandatory term of not less than five years and not greater than 11 years.<sup>4</sup>

## **Drug offense changes**

The table below summarizes the increases to drug trafficking penalties and the changes in amount of each drug required for the different offense levels in the bill.

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<sup>2</sup> R.C. 2905.321(E).

<sup>3</sup> R.C. 2905.321(F).

<sup>4</sup> R.C. 2929.14(B)(7)(a) and 2941.1422(A).

Drug trafficking – R.C. 2925.03						
Drug	Amount (existing law)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict	Amount (H.B. 230 IN)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict
Cocaine <sup>5</sup>	< 5g	F5	F4	< 5g	F5	F4
	>= 5g – < 10g	F4	F3	>= 5g – < 10g	F4	F3
	>= 10g – < 20g	F3	F2	>= 10g – < 20g	F2	F1
	>= 10g – < 20g, plus 2 or more prior felony drug abuse offenses	F3	F3	>= 10g – < 20g, plus 2 or more prior felony drug abuse offenses	F2	F2
	>= 20g – < 27g	F2	F1	>= 20g – < 100g	F1	F1
	>= 27g – < 100g	F1	F1			
	>= 100g	F1 (MDO)	F1 (MDO)	>= 100g	F1 (MDO)	F1 (MDO)
Fentanyl-related	< 1g; <10 UD	F5	F4	< 1g; <10 UD	F2	F1

<sup>5</sup> R.C. 2925.03(C)(4).

Drug trafficking – R.C. 2925.03						
Drug	Amount (existing law)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict	Amount (H.B. 230 IN)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict
<b>compound<sup>6</sup></b>	>= 1g – < 5g; >= 10 UD – < 50 UD	F4	F3	>= 1g – < 5g; >= 10 UD – < 50 UD	F1	F1
	>= 5g – <10g; >= 50 UD – < 100 UD	F3	F2	>= 5g – <10g; >= 50 UD – < 100 UD	F1	F1
	>= 10g – < 20g; >= 100 UD – < 200 UD	F2	F1	>= 10g – < 50g; >= 100 UD – < 500 UD	F1	F1
	>= 20g – < 50g; >= 200 UD – < 500 UD	F1	F1			
	>= 50g – < 100g; >= 500 UD – < 1000 UD	F1	F1	>= 50g – < 100g; >= 500 UD – < 1000 UD	F1	F1
	>= 100g; >= 1000 UD	F1 (MDO)	F1 (MDO)	>= 100g; >= 1000 UD	F1 (MDO)	F1 (MDO)
<b>Heroin<sup>7</sup></b>	< 1g; <10 UD	F5	F4	< 1g; <10 UD	F5	F4

<sup>6</sup> R.C. 2925.03(C)(9).

<sup>7</sup> R.C. 2925.03(C)(6).

Drug trafficking – R.C. 2925.03						
Drug	Amount (existing law)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict	Amount (H.B. 230 IN)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict
	>= 1g – < 5g; >= 10 UD – < 50 UD	F4	F3	>= 1g – < 5g; >= 10 UD – < 50 UD	F2	F1
	>= 5g – <10g; >= 50 UD – < 100 UD	F3	F2	>= 5g – <10g; >= 50 UD – < 100 UD	F1	F1
	>= 10g – < 50g; >= 100 UD – < 500 UD	F2	F1	>= 10g – <100g; >= 100 UD – < 1000 UD	F1	F1
	>= 50g – < 100g; >= 500 UD – < 1000 UD	F1	F1			
	>= 100g; >= 1000 UD	F1 (MDO)	F1 (MDO)	>= 100g; >= 1000 UD	F1 (MDO)	F1 (MDO)
<b>Methamphetamine<sup>8</sup></b>	< 3g	F4	F3	< 3g	F4	F3
	>= 3g – < 15g	F3	F2	>= 3g – < 10g	F3	F2

<sup>8</sup> Under existing law, methamphetamine is considered a Schedule II controlled substance (R.C. 2925.03(C)(1)), but under the bill the penalties for trafficking in methamphetamine are located at R.C. 2925.03(C)(11).

Drug trafficking – R.C. 2925.03						
Drug	Amount (existing law)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict	Amount (H.B. 230 IN)	Penalty	Penalty if in vicinity of school, juvenile, or substance addiction services provider or recovering addict
	>= 15g – < 150g	F2	F1	>= 10g – < 20g	F2	F1
	>= 150g – < 300g	F1	F1	>= 20g – < 100g	F1	F1
	>= 300g	F1 (MDO)	F1 (MDO)	>= 100g	F1 (MDO)	F1 (MDO)

Current law prohibits possession of a compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and any Schedule III, Schedule IV, or Schedule V controlled substance that is not a fentanyl-related compound if one of the following applies:<sup>9</sup>

- If the offender does not know or has no reason to know that the compound, mixture, preparation, or substance that is the drug involved contains a fentanyl-related compound the offender is guilty of possession of drugs, and the penalties range from a first degree misdemeanor for a first offense to the maximum prison term as a mandatory prison term for a second degree felony.
- If the offender knows or has reason to know that the compound, mixture, preparation, or substance that is the drug involved contains a fentanyl-related compound the offender is guilty of possession of a fentanyl-related compound, and the penalties range from a fifth degree felony to the maximum prison term as a mandatory prison term for a first degree felony.

The bill removes the knowledge requirement stated above, and instead applies the penalties for possession of a fentanyl-related compound to both instances, except that if the drug involved is a combination of a fentanyl-related compound and marijuana and the offender did not know or have reason to know, then the offender will not be charged with, convicted of, or punished for possession of a fentanyl-related compound.<sup>10</sup>

### **Death certificate requirement**

Under the bill, all death certificates are required to include a space in the medical certification portion of the certificate to indicate whether the cause of death was due to fentanyl poisoning. The death certificate must include the term fentanyl poisoning if both of the following apply:<sup>11</sup>

- A toxicology examination reveals fentanyl or a fentanyl-related compound was present in the body of the decedent in an amount of concentration that is considered to be lethal by generally accepted scientific standards.
- The results of an autopsy performed on the decedent are consistent with an opioid overdose as the cause of death.

### **Fentanyl or fentanyl-related compound specification**

If an offender is convicted of or pleads guilty to involuntary manslaughter and is also convicted of or pleads guilty to the specification that fentanyl or a fentanyl-related compound was present in the body of the decedent in an amount of concentration that is considered to be

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<sup>9</sup> R.C. 2925.11(C)(10).

<sup>10</sup> R.C. 2925.11(C)(9)(a) and (10).

<sup>11</sup> R.C. 3705.08(D).



lethal by generally accepted scientific standards and that the results of an autopsy performed on the decedent are consistent with an opioid overdose as the cause of death, then in addition to any other penalty imposed the court must impose a mandatory prison term of five years.<sup>12</sup>

## **Definitions**

The bill removes from the definition of “bulk amount” of a controlled substance any compound, mixture, preparation, or substance that is a combination of a fentanyl-related compound and any other compound, mixture, preparation, or substance included in Schedule III, Schedule IV, or Schedule V if the defendant is charged with possession of that drug and the sentencing provisions for possession of fentanyl or a fentanyl-related compound do not apply regarding the defendant and violation.<sup>13</sup>

## **Fentanyl abuse prevention instruction and awareness**

### **Fentanyl abuse prevention instruction**

#### **Grades kindergarten through twelve**

Beginning with the 2024-2025 school year, the bill requires school districts, community schools, STEM schools, and college-preparatory boarding schools to provide age-appropriate, research-based instruction regarding the dangers of fentanyl to students in grades kindergarten through twelve. The instruction must be taught by a licensed educator, school nurse, school counselor, or public safety officer.<sup>14</sup> In the case of a school district, instruction on the dangers of fentanyl must be part of the district’s general health curriculum.<sup>15</sup>

The course material and instruction in fentanyl abuse prevention and drug poisoning awareness must include some or all of the following:<sup>16</sup>

1. Information on fentanyl, including an explanation of the differences between synthetic and nonsynthetic opioids and illicit drugs, the variations of fentanyl, and the differences between the legal and illegal uses of fentanyl;
2. The side effects and risk factors of using fentanyl, including information comparing the lethal amounts of fentanyl to other drugs. Information on risk factors may include the lethal dose of fentanyl, how often fentanyl is placed in drugs without a person’s knowledge, an explanation of what fentanyl does to a person’s body and the severity of its addictive properties, and how the consumption of fentanyl can lead to hypoxia, including an explanation of what hypoxia does to a person’s body;
3. The process of lacing fentanyl in other drugs and why drugs get laced with fentanyl;

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<sup>12</sup> R.C. 2929.14(B)(11)(b) and 2941.1427.

<sup>13</sup> R.C. 2925.01(D)(6).

<sup>14</sup> R.C. 3313.6030, 3314.03, 3326.11, and 3328.24 and Sections 3, 4, and 5.

<sup>15</sup> R.C. 3313.60.

<sup>16</sup> R.C. 3313.6030.

4. Detection of fentanyl in drugs and how to save someone from an overdose of fentanyl, including instruction on how to buy and use fentanyl test strips and naloxone through either a nasal spray or injections and how to recognize when a person is overdosing on fentanyl;
5. Awareness of school and community resources and any processes involved in accessing those resources;
6. Information about substance use and abuse, including youth substance abuse; and
7. Guest presentations from community service and religious organizations.

### **Higher education**

The bill also requires state institutions of higher education<sup>17</sup> to develop and implement an age-appropriate and research-based education program to advise students about the dangers of fentanyl. The program *must* include all of the following:<sup>18</sup>

1. The information described in numbers 1 to 4 above;
2. Awareness of university and community resources and any processes involved in accessing those resources; and
3. Information about substance use and abuse.

### **Fentanyl poisoning awareness month and fentanyl awareness weeks**

The bill designates the month of August as “Fentanyl Poisoning Awareness Month” to increase awareness of the dangers of fentanyl and potential overdoses.<sup>19</sup> The bill also requires public schools to designate a week during the school year to be known as “Fentanyl Poisoning Awareness Week” to educate students about the dangers posed by fentanyl and the risk of fentanyl poisoning, including overdose.<sup>20</sup>

### **Oral fluid testing**

Current law prohibits a person from operating any vehicle, streetcar, trackless trolley, watercraft (in various forms), or aircraft while under the influence of alcohol, a drug of abuse, or a combination of them, or with a prohibited concentration of alcohol, a drug of abuse, or a metabolite of that drug (“OVI”).<sup>21</sup> Under current law, enforcement of the OVI Law relies, in part, on chemical tests of either a person’s breath, urine, whole blood, blood serum, or plasma. The bill adds another type of chemical test – of oral fluid – for purposes of OVI enforcement.

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<sup>17</sup> State institutions of higher education include state universities or colleges, community colleges, state community colleges, university branches, and technical colleges; see R.C. 3345.011, not in bill.

<sup>18</sup> R.C. 3345.371.

<sup>19</sup> R.C. 5.56.

<sup>20</sup> R.C. 3313.6031.

<sup>21</sup> R.C. 4511.19(A)(1) (vehicles), supported by R.C. 1547.11 (watercraft) and 4561.15 (aircraft).

While the chemical tests of oral fluid, under the bill, cannot specify the concentration of a drug of abuse or a metabolite of a drug of abuse, it can detect the presence and type of drug of abuse or its metabolite. As such, the bill authorizes the chemical tests of oral fluid to be used as evidence related to charges that a person operated a vehicle while “under the influence of alcohol, a drug of abuse, or a combination of them” (the general OVI prohibition). Evidence of the presence of a drug of abuse in the oral fluid would potentially need to be paired with other evidence to demonstrate that the person was impaired. The chemical tests of oral fluid would not be used as evidence related to a per se violation of the OVI Law (i.e., the person had a concentration of alcohol, a drug of abuse, or a metabolite of that drug that was above the legal limit).<sup>22</sup> Similar to the other chemical tests, a court may order an OVI offender to reimburse a law enforcement agency for the costs of the oral fluid test.<sup>23</sup>

Related to the authorization to collect and use oral fluid as evidence, the bill specifies that any person who operates a vehicle or who is in physical control of a vehicle has given consent to have that person’s oral fluid collected and tested if arrested for OVI (“implied consent”). Under current law, the same implied consent is given for collection and testing of breath, urine, whole blood, blood serum, and plasma. As such, the bill also applies the current law penalties for refusing to allow law enforcement to collect and test the relevant substance to the collection and testing of oral fluid.<sup>24</sup>

Based on the addition of oral fluid to the OVI Law, the bill also makes conforming changes to the laws governing OVI while operating a watercraft or a commercial motor vehicle and to the laws governing the release of drug test records in criminal cases.<sup>25</sup>

## HISTORY

Action	Date
Introduced	06-27-23
Reported, H. Homeland Security	12-06-23

ANHB0230RH-135/ts

<sup>22</sup> R.C. 3701.143 and 4511.19(D).

<sup>23</sup> R.C. 4511.19(G)(8).

<sup>24</sup> R.C. 4511.191 and 4511.192.

<sup>25</sup> R.C. 1547.11, 1547.111, 2317.02, 2317.022, and 4506.17.