



**S.B. 158**

125th General Assembly  
(As Introduced)

Sen. Roberts

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**BILL SUMMARY**

- Prohibits a person, with purpose to commit or aid in the commission of a drug abuse offense, from loitering in any public place and doing any of the following: (1) repeatedly beckoning to, stopping, or attempting to stop passers-by or engaging passers-by in conversation, (2) repeatedly stopping or attempt to stop motor vehicles, or (3) repeatedly interfering with the free passage of other persons.

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**CONTENT AND OPERATION**

**Operation of the bill**

The bill enacts a prohibition against loitering to commit, or in aid of commission of, a drug abuse offense.

**Prohibition**

The bill enacts a provision that prohibits a person, with purpose to commit or aid in the commission of a "drug abuse offense" (see "**Definitions**," below), from *loitering* (not defined in the bill) in any "public place" (see "**Definitions**," below) and doing any of the following (see **COMMENT**): (1) repeatedly beckoning to, stopping, or attempting to stop passers-by or engaging passers-by in conversation, (2) repeatedly stopping or attempt to stop motor vehicles, or (3) repeatedly interfering with the free passage of other persons (R.C. 2917.14(B)).

**Limitation on authority to arrest for a possible violation; opportunity for person to explain conduct**

The bill requires a law enforcement officer, prior to arresting a person for a violation of the prohibition it enacts, to afford the person an opportunity to explain his or her conduct and to have probable cause to believe that the person had a purpose to commit or aid in the commission of a drug abuse offense. In

determining purpose under the prohibition, a law enforcement officer may consider, in addition to the acts set forth in the preceding paragraph that are listed as elements of the offense, any of the following factors that may be applicable: (1) that the person has been convicted of a drug abuse offense within the three years preceding the date of the loitering incident, (2) that the person is loitering and, by speaking, hailing, waving of arms, pointing, signaling, or otherwise gesturing, is directing pedestrians or motorists toward a person who possesses or sells controlled substances or toward premises at which controlled substances are possessed or sold, (3) that the person is loitering, has an electronic paging device, walkie-talkie, or beeper, and is within 100 yards of a person who possesses or sells controlled substances or of premises at which controlled substances are possessed or sold, or (4) any statement by the person. (R.C. 2917.14(D).)

### **Penalty**

A violation of the prohibition the bill enacts is the offense of "loitering in aid of drug abuse offenses." Generally, the offense is a misdemeanor of the fourth degree, but, if the offender previously has been convicted of loitering in aid of drug abuse offenses, it is a misdemeanor of the second degree (R.C. 2917.14(C)).

### **Definitions**

The following definitions apply to the bill's provisions:

**"Controlled substance"** means a "drug," compound, mixture, preparation, or substance included in "schedule I, II, III, IV, or V." As used in this definition: (1) **"drug"** means: (a) any article recognized in the United States Pharmacopoeia and National Formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (b) any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (c) any article, other than food, intended to affect the structure or any function of the body of humans or animals, or (d) any article intended for use as a component of any article specified in clause (1)(a), (b), or (c)--but "drug" does not include devices or their components, parts, or accessories, and (2) **"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 R.C. 3719.41, as amended pursuant to R.C. 3719.43 or 3719.44. (R.C. 2917.14(A), by reference to existing R.C. 3719.01 and additional reference to existing R.C. 4729.01--not in the bill.)

**"Drug abuse offense"** means any of the following: (1) a violation of R.C. 2913.03(A) that constitutes theft of drugs, or a violation of R.C. 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, (2) a violation of an

existing or former law of Ohio or any other state or of the United States that is substantially equivalent to any section listed in clause (1), (3) an offense under an existing or former law of Ohio 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, or (4) a conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense listed in clause (1), (2), or (3) of this paragraph (R.C. 2917.14(A), by reference to existing R.C. 2925.01--not in the bill).

**"Public place"** means any street, sidewalk, bridge, alley, right-of-way, plaza, park, driveway, parking lot, transportation facility, or other place open to the public; a doorway, entrance, porch, passageway, or roof to a building that fronts on any place open to the public; or a motor vehicle in or on any place open to the public (R.C. 2917.14(A)).

### **Background--existing offenses that relate to loitering**

Existing law does not contain any prohibition that prohibits a person from loitering in any circumstance similar to the circumstances proscribed under the bill. A few existing provisions, not in the bill, do contain loitering-related prohibitions, though:

**R.C. 1567.63** specifies that each employee of a mine must go to and from his or her place of duty by the traveling ways provided, prohibits the employee from traveling around the mine, or the buildings, tracks, or machinery connected therewith, where duty does not require and when not on duty, and prohibits the employee from *loitering* at, in, or around the mine, or the buildings, tracks, or machinery connected therewith. Under existing R.C. 1567.99, a violation of any prohibition contained in R.C. Chapter 1567. is a minor misdemeanor.

**R.C. 2907.241** prohibits a person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, from doing any of the following: (1) beckoning to, stopping, or attempting to stop another, (2) engaging or attempting to engage another in conversation, (3) stopping or attempting to stop the operator of a vehicle or approaching a stationary vehicle, (4) if the offender is the operator of or a passenger in a vehicle, stopping, attempting to stop, beckoning to, attempting to beckon to, or enticing another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger, or (5) interfering with the free passage of another. A violation of this prohibition is the offense of "loitering to engage in solicitation," a misdemeanor of the third degree. R.C. 2907.241 also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes

AIDS, from engaging in conduct in violation of the prohibition described in the first sentence in this paragraph. A violation of this AIDS-related prohibition is the offense of "loitering to engage in solicitation after a positive HIV test," a felony of the fifth degree. As used in these provisions, "public place" means a street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot, or transportation facility; a doorway or entrance way to a building that fronts on a place described in the preceding clause; or a place not described in either of the preceding clauses that is open to the public.

**R.C. 3501.35**, in relevant part, prohibits a person, during an election and the counting of the ballots, from *loitering* or congregating within the area between the polling place and the small flags of the United States placed on the thoroughfares and walkways leading to the polling place or in any manner hindering or delaying an elector in reaching or leaving the place fixed for casting his ballot. No penalties are provided regarding a violation of this prohibition, but see the next paragraph.

**R.C. 3599.24**, in relevant part, prohibits a person from *loitering* in or about a registration or polling place during registration or the casting and counting of ballots so as to hinder, delay, or interfere with the conduct of the registration or election. A violation of this prohibition is a minor misdemeanor.

**R.C. 3599.31**, in relevant part, prohibits an officer of the law from failing to obey forthwith an order of the presiding judge and aid in enforcing a lawful order of the presiding judges at an election, against persons unlawfully congregating or *loitering* within 100 feet of a polling place, or hindering or delaying an elector from reaching or leaving the polling place. A violation of this prohibition is a misdemeanor of the first degree.

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## COMMENT

Several recent Ohio court decisions, and a recent U.S. Supreme Court decision, have considered prohibitions that relate to loitering and the constitutional issues they present. Although the prohibitions involved in the decisions generally differ from the prohibition enacted in the bill, the constitutional issues the decisions raised are relevant to the bill.

In *City of Chicago v. Morales* (1999), 527 U.S. 41, the United States Supreme Court held that a Chicago ordinance, which prohibited criminal street gang members from loitering in any public place, was unconstitutionally vague and violated the due process clause of the 14th Amendment to the U.S. Constitution. The Court focused on what it identified as the vagueness of the meaning of "loiter," as the ordinance defined the term (i.e., "to remain in any one

place with no apparent purpose"). The Court noted that, under its prior decisions (citing *Williams v. Fears* (1900), 179 U.S. 270; *Kent v. Dulles* (1958), 357 U.S. 116; *Papachristou v. Jacksonville* (1972), 405 U.S. 156), "the freedom to loiter for innocent purposes is part of the "liberty" protected by the Due Process Clause of the 14th Amendment."

In *City of Akron v. Rowland* (1993), 67 Ohio St.3d 374, the Ohio Supreme Court held that an Akron ordinance that prohibited loitering "in a manner and under the circumstances manifesting the purpose to engage in drug-related activity contrary to any of the provisions of R.C. Chapter 2925." was an unconstitutional violation of due process under the Ohio Constitution and the U.S. Constitution, in that it was impermissibly vague and overbroad. The ordinance contained a list of activities that were specified as "circumstances which may be considered in determining whether such purpose is manifested." One of the most significant problems the Court found with the prohibition was that it lacked a requirement that an individual act with specific intent to engage in drug-related activity.

In *State v. Barnes* (Stark County, 2001), 2001 Ohio App. LEXIS 4968, the Court of Appeals held that a Canton ordinance that prohibited a person, with purpose to commit or aid in the commission of a drug abuse offense, from loitering in any public place and doing any of three specified things (the ordinance was similar in certain regards to the bill's provisions) was unconstitutionally vague and overbroad. The ordinance contained a list of activities that were specified as "circumstances which may be considered in determining whether such purpose is manifested."

In *Cleveland v. Mathis* (Cuyahoga County, 1999), 136 Ohio App.3d 41, the Court of Appeals held that a Cleveland ordinance that prohibited loitering in a specified manner for the purpose of engaging in, soliciting, or procuring sexual activity for hire was unconstitutionally vague and overbroad.

In *City of Cleveland v. Stephens* (Cuyahoga County, 1999), the Court of Appeals held that a Cleveland ordinance that prohibited a person, with purpose to engage in any drug-related activity in violation of R.C. Chapter 2925. or 4729. or Chapter 607 of the Cleveland Ordinances, from loitering on or about any street or public or private place (the ordinance was similar in certain regards to the bill's provisions) was unconstitutionally vague and overbroad. The ordinance contained a list of activities that were specified as being among the "circumstances which may be considered in determining whether such loitering is for the purpose of engaging in drug-related activity."

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-03-03	p. 1235

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