



H.B. 163

126th General Assembly
(As Passed by the General Assembly)

Reps. Widener, McGregor, Wagner, C. Evans, Setzer, Kearns, Oelslager, Widowfield, Seaver, Schaffer, Latta, Wagoner, Reidelbach, Webster, Evans, D., Hughes, Willamowski, Calvert, Cassell, Domenick, Flowers, McGregor, R., Patton, T., Perry, Smith, G.

Sens. Dann, Grendell, Zurz, Carey

Effective date: *

ACT SUMMARY

- Authorizes a court sentencing an offender convicted of a drug abuse offense or imposing disposition on a delinquent child for committing an act that would be a drug abuse offense if committed by an adult to order the offender or child to reimburse involved law enforcement agencies for the costs of tests that determined that a substance involved in the offense contained a controlled substance.
- Specifies that no court can order a delinquent child or offender under the provisions described in the preceding dot point to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance.

CONTENT AND OPERATION

Reimbursement of the cost of certain drug tests

Under preexisting law, unchanged by the act, in a criminal prosecution for a violation of the Drug Law (R.C. Chapter 2925.) or the Controlled Substances Law (R.C. Chapter 3719.), a laboratory report that states that the substance that is the

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

basis of the alleged offense has been weighed and analyzed, states the content, weight, and identity of the substance, and states that the substance contains a controlled substance is prima facie evidence that the substance is a controlled substance and prima facie evidence of the content, identity, and weight of the controlled substance (R.C. 2925.51, *not in the act*).

The act provides that a court imposing sentence upon an offender who is convicted of or pleads guilty to a "drug abuse offense" (see **COMMENT 1**) or a juvenile court making disposition of a child adjudicated a delinquent child for committing an act that would be a drug abuse offense if committed by an adult may order the offender or delinquent child to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in having tests performed under R.C. 2925.51 or in any other manner on any substance that was the basis of, or involved in, the offense or delinquent act to determine whether the substance contained any amount of a "controlled substance" (see **COMMENT 2**) if the results of the tests indicate that the substance tested contained any controlled substance. For an adult offender, the act provides that this sanction is in addition to the financial sanctions authorized or required for felonies or misdemeanors (respectively, R.C. 2929.18 and 2929.28) and to any costs otherwise authorized or required under any provision of law. For a juvenile offender, the act provides that this sanction is in addition to the dispositions authorized or required for delinquent children (R.C. 2152.20) and to any costs otherwise authorized or required under any provision of law. (See **COMMENT 3**.)

The act further specifies that no court may order a delinquent child or offender under the provisions described in the preceding paragraph to pay the costs of tests performed on a substance if the results of the tests do not indicate that the substance tested contained any controlled substance. To determine the amount of costs to be imposed pursuant to this new provision, the act requires the court to hold a hearing. This hearing may be a part of the dispositional hearing for a child or as part of an adult offender's sentencing hearing. (R.C. 2152.202 and 2925.511.)

COMMENT

1. As used in the act, "drug abuse offense" means any of the following (preexisting R.C. 2152.02(J) and 2925.01(G), *not in the act*):

(a) A violation of R.C. 2913.02(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;

(b) 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 paragraph (1)(a), above;

(c) 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;

(d) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense under paragraph (1)(a), (b), or (c), above.

2. As used in the act, "controlled substance" means a drug, compound, mixture, preparation, or substance included in Schedule I, II, III, IV, or V. "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 preexisting R.C. 3719.41, as amended pursuant to preexisting R.C. 3719.43 or 3719.44, none of which are in the act (R.C. 2152.202(B) and preexisting R.C. 2925.01(A), *not in the act*, by reference to preexisting R.C. 3719.01(C) and (BB), *not in the act*).

3. Preexisting R.C. 2949.111, *not in the act*, provides a schedule that specifies the order in which a misdemeanor's payments are to be applied toward the satisfaction of amounts the offender owes as a result of his or her offense. It specifies that, unless the court, in accordance with the provision described in the next paragraph, enters in the record of the case a different method of assigning payments, if a person who is charged with a misdemeanor is convicted of or pleads guilty to the offense, if the court orders the offender to pay any combination of "court costs," "state fines or costs," "restitution," a "conventional fine," or any "reimbursement" (the definition of each term in quotation marks is set forth below), and if the offender makes any payment of any of them to a clerk of court, the clerk must assign the offender's payment in the following manner: (a) if the court ordered the offender to pay any court costs, the offender's payment must be assigned toward the satisfaction of those court costs until they have been entirely paid, (b) if the court ordered the offender to pay any state fines or costs and if all of the court costs that the court ordered the offender to pay have been paid, the remainder of the offender's payment must be assigned on a *pro rata* basis toward the satisfaction of the state fines or costs until they have been entirely paid,

(c) if the court ordered the offender to pay any restitution and if all of the court costs and state fines or costs that the court ordered the offender to pay have been paid, the remainder of the offender's payment must be assigned toward the satisfaction of the restitution until it has been entirely paid, (d) if the court ordered the offender to pay any fine and if all of the court costs, state fines or costs, and restitution that the court ordered the offender to pay have been paid, the remainder of the offender's payment must be assigned toward the satisfaction of the fine until it has been entirely paid, and (e) *if the court ordered the offender to pay any reimbursement and if all of the court costs, state fines or costs, restitution, and fines that the court ordered the offender to pay have been paid, the remainder of the offender's payment shall be assigned toward the satisfaction of the reimbursements until they have been entirely paid.*

If a person who is charged with a misdemeanor is convicted of or pleads guilty to the offense and if the court orders the offender to pay any combination of court costs, state fines or costs, restitution, fines, or reimbursements, the court, at the time it orders the offender to make those payments, may prescribe an order of payments that differs from the order set forth in the preceding paragraph by entering in the record of the case the order so prescribed. If a different order is entered in the record, on receipt of any payment, the clerk of the court must assign the payment in the manner prescribed by the court.

As used in the section:

(a) "Court costs" means any assessment that the court requires an offender to pay to defray the costs of operating the court.

(b) "State fines or costs" means any costs imposed or forfeited bail collected by the court under R.C. 2743.70 for deposit into the Reparations Fund or under R.C. 2949.091 for deposit into the General Revenue Fund and all fines, penalties, and forfeited bail collected by the court and paid to a law library association under R.C. 3375.50 to 3375.53.

(c) "*Reimbursement*" means any reimbursement for the costs of confinement that the court orders an offender to pay pursuant to R.C. 2929.28, any supervision fee (see (d), below), any fee for the costs of house arrest with electronic monitoring that an offender agrees to pay, any reimbursement for the costs of an investigation or prosecution that the court orders an offender to pay pursuant to R.C. 2929.71, or *any other costs that the court orders an offender to pay.*

(d) "Supervision fees" means any fees that a court, pursuant to R.C. 2929.18, 2929.28, and 2951.021, requires an offender who is under a "community control sanction" (see (e), below) to pay for supervision services.

(e) "Community control sanction" has the same meaning as in R.C. 2929.01.

HISTORY

ACTION	DATE
Introduced	04-05-05
Reported, H. Criminal Justice	01-18-06
Passed House (89-7)	01-24-06
Reported, S. Judiciary - Criminal Justice	03-29-06
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