



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Sub. H.B. 195
127th General Assembly
(As Passed by the House)

Reps. Core, J. McGregor, Evans, Bupp, Combs, Adams, Stebelton, Fende, Hughes, Aslanides, Batchelder, Collier, Daniels, DeBose, Domenick, Dyer, Fessler, Flowers, Gibbs, Jones, Latta, Mandel, R. McGregor, Oelslager, Patton, Schneider, J. Stewart, Uecker, Wachtmann, Wagoner, Webster, Yuko

BILL SUMMARY

- Provides that the prescription-related exemption from the drug possession offenses applies only if the prescription was a "lawful prescription," defined as 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.
- Increases the base penalty for possession of a Schedule III, IV, or V drug when the amount of the drug involved is less than the bulk amount.
- Provides that the penalty for the offense of deception to obtain a dangerous drug when committed by a person based on the possession of an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug is a felony of the fifth degree on a first offense and a felony of the fourth degree if the offender previously has been convicted of or pleaded guilty to a drug abuse offense.
- Increases the penalty for the offense of deception to obtain a dangerous drug committed in other circumstances if the amount of the drug involved equals or exceeds the bulk amount or in the case of a dangerous drug, if the offender previously has been convicted of or pleaded guilty to a drug abuse offense.
- Specifies that for purposes of the drug trafficking offenses, the term "drug" includes any substance that is represented to be a drug.

CONTENT AND OPERATION

Possession of drugs offenses

Current law generally prohibits any person from knowingly obtaining, possessing, or using a controlled substance. Depending upon the drug involved, a violation of the prohibition is the offense of "aggravated possession of drugs" (Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish), "possession of drugs" (Schedule III, IV, or V controlled substance), "possession of marihuana," "possession of cocaine," "possession of L.S.D.," "possession of heroin," or "possession of hashish." Depending on the amount of the controlled substance involved, the penalty for a violation of the prohibition ranges from a minor misdemeanor to a felony of the first degree. (R.C. 2925.11.)

Exemptions from the possession of drugs offenses

However, under current law there are several exceptions to the prohibition against obtaining, possessing, or using a controlled substance. One exception is that the prohibition does not apply to any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs. (See **COMMENT 1** for the other exceptions.) The bill modifies this exception so that it applies only if the prescription is a "lawful prescription." (R.C. 2925.11(B)(4).)

The bill defines a "lawful prescription" for R.C. Chapter 2925. as meaning 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 (R.C. 2925.01(KK)). (See **COMMENT 2** for definitions of terms used in this definition.)

Penalty for possession of a Schedule III, IV, or V drug ("possession of drugs")

Current law

Under current law, if the drug involved in a violation of the prohibition described above is a compound, mixture, preparation, or substance included in Schedule III, IV, or V, the offense is "possession of drugs," and the penalty for the offense is determined as follows (R.C. 2925.11(C)(2)):

(1) Except as otherwise provided in paragraph (2), (3), or (4), below, the offense is a misdemeanor of the third degree or, if the offender previously has

been convicted of a drug abuse offense, a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in Schedule III and if the offense is a misdemeanor of the third degree under this provision, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender under a community control sanction that requires the offender to perform supervised community service work.

(2) If the amount of the drug involved equals or exceeds the "bulk amount" (see **COMMENT 3**) but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree with no preference for or against a prison term.

(3) If the amount of the drug involved equals or exceeds five times the "bulk amount" but is less than 50 times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(4) If the amount of the drug involved equals or exceeds 50 times the "bulk amount," possession of drugs is a felony of the second degree, and the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

Operation of the bill

The bill increases the base penalty for possession of a Schedule III, IV, or V drug when the amount of the drug involved is less than the bulk amount from a misdemeanor of the third degree to a felony of the fifth degree for a first offense and from a misdemeanor of the second degree to a felony of the fourth degree if the offender previously has been convicted of a drug abuse offense. The bill also repeals the existing community service work language that currently applies if the drug involved in the violation is an anabolic steroid included in Schedule III and the offense is a misdemeanor of the third degree. The bill makes no changes to the penalty for possession of a Schedule III, IV, or V drug if the amount of the drug involved equals or exceeds the bulk amount. (R.C. 2925.11(C)(2)(a).)

Deception to obtain a dangerous drug

Current law

Current law, unchanged by the bill, prohibits a person, by deception, (1) from procuring the administration of, a prescription for, or the dispensing of, a dangerous drug or (2) from possessing an uncompleted preprinted prescription

blank used for writing a prescription for a dangerous drug.¹ A violation of either of these prohibitions is the offense of "deception to obtain a dangerous drug."

Under current law, deception to obtain a dangerous drug is a felony of the fourth degree with no preference for or against a prison term if the drug involved is a compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana. Deception to obtain a dangerous drug is a felony of the fifth degree with no preference for or against a prison term if the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana. (R.C. 2925.22(A) and (B).)

Operation of the bill

The bill provides a separate penalty for the offense of deception to obtain a dangerous drug when the offender's conduct in committing the offense is the possession of an uncompleted preprinted prescription blank and changes the current penalties for the offense of deception to obtain a dangerous drug as follows (R.C. 2925.22(B)):

Drug involved	Penalty under the bill	
Possession of an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug	Generally	F5, with no preference for or against a prison term (<i>added by the bill</i>)
	The offender previously has been convicted of or pleaded guilty to a drug abuse offense	F4, with no preference for or against a prison term (<i>added by the bill</i>)

¹ "Dangerous drug" means any of the following: (1) any drug to which either of the following applies: (a) under the "Federal Food, Drug, and Cosmetic Act," the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, or (b) under R.C. Chapter 3715. or 3719., the drug may be dispensed only upon a prescription, (2) any drug that contains a Schedule V controlled substance and that is exempt from R.C. Chapter 3719. or to which that chapter does not apply, (3) any drug intended for administration by injection into the human body other than through a natural orifice of the human body (R.C. 2925.01, referencing R.C. 4729.01(F)).

Drug involved	Penalty under the bill	
Dangerous drug, unless a different penalty applies as provided in the following rows	Generally	F5, with no preference for or against a prison term (<i>same as current law</i>)
	The offender previously has been convicted of or pleaded guilty to a drug abuse offense	F4, with no preference for or against a prison term (<i>added by the bill</i>)
Compound, mixture, preparation, or substance included in Schedule I or II, except marihuana	Generally	F4, with no preference for or against a prison term (<i>same as current law</i>)
	Amount of drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F3, with a presumption for a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 5 times the bulk amount but is less than 50 times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F2, with a presumption for a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 50 times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F1, with a presumption for a prison term (<i>added by the bill</i>)

Drug involved	Penalty under the bill	
Compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana	Generally	F5, with no preference for or against a prison term (<i>same as current law</i>)
	Amount of drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F4, with no preference for or against a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 5 times the bulk amount but is less than 50 times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F3, with a presumption of a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 50 times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F2, with a presumption for a prison term (<i>added by the bill</i>)

Drug trafficking offenses

Current law, unchanged by the bill, generally prohibits any person (subject to specified exemptions) from either (1) selling or offering to sell a controlled substance or (2) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing 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. Depending upon the drug involved, a violation of the prohibition is the offense of "aggravated trafficking in

drugs" (Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish), "trafficking in drugs" (Schedule III, IV, or V controlled substance), "trafficking in marihuana," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," or "trafficking in hashish." Depending on the amount of the "drug" involved, the penalty for a violation of either prohibition ranges from a minor misdemeanor to a felony of the first degree. (R.C. 2925.03.)

Under current law, as used in R.C. Chapter 2925., including the provisions establishing the penalty for the drug trafficking offenses, "drug" means: (1) 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, (2) any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (3) any article, other than food, intended to affect the structure or any function of the body of humans or animals, or (4) any article intended for use as a component of any article specified in clause (1), (2), or (3) of this sentence; but does not include devices or their components, parts, or accessories (R.C. 2925.01(C), by reference to existing R.C. 4729.01, which is not in the bill). The bill specifies that, for purposes of the drug trafficking offenses, the term "drug" includes any substance that is represented to be a drug (R.C. 2925.03(I)).

COMMENT

1. Under existing law, unchanged by the bill, the drug possession offenses also do not apply to the following persons (R.C. 2925.11(B)(1), (2), and (3)):

(a) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;

(b) 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 U.S. FDA;

(c) 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," and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

2. As used in the definition lawful prescription:

(1) "Licensed health professional authorized to prescribe drugs" means an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following (existing R.C. 2925.01(C), by reference to existing R.C. 4729.01, which is not in the bill): (a) a dentist licensed under R.C. Chapter 4715., (b) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under R.C. 4723.48, (c) an optometrist licensed under R.C. Chapter 4725. to practice optometry under a therapeutic pharmaceutical agents certificate, (d) a physician authorized under R.C. Chapter 4731. to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, (e) a physician assistant who holds a certificate to prescribe issued under R.C. Chapter 4730., or (f) a veterinarian licensed under R.C. Chapter 4741.

(2) "Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact (R.C. 2925.01(LL) as enacted in the bill, by reference to existing R.C. 2913.01, which is not in the bill).

(3) "Theft offense" means any of the following (R.C. 2925.01(LL) as enacted in the bill, by reference to existing R.C. 2913.01, which is not in the bill): (a) a violation of R.C. 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, 2913.51, 2915.05, or 2921.41, or former R.C. 2913.47 or 2913.48, (b) a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any section listed in clause (a) of this paragraph or a violation of R.C. 2913.41, 2913.81, or 2915.06 as it existed prior to July 1, 1996, (c) an offense under an existing or former municipal ordinance or law of Ohio, any other state, or the United States involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud, or (d) a conspiracy or attempt to commit, or complicity in committing, any offense listed in clause (a), (b), or (c) of this paragraph.

3. Existing R.C. 2925.01(D), unchanged by the bill, provides that, as used in R.C. Chapter 2925., "bulk amount" of a controlled substance means any of the following:

(a) For any compound, mixture, preparation, or substance included in Schedule I, II, or III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as described below in **COMMENT** 3(b) or (e), below, whichever of the following is applicable: (i) an amount equal to or exceeding ten grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative, (ii) 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, (iii) an amount equal to or exceeding 30 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, (iv) an amount equal to or exceeding 20 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, (v) 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, (vi) an amount equal to or exceeding 120 grams or 30 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 and the federal drug abuse control laws that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance, or (vii) 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;

(b) An amount equal to or exceeding 120 grams or 30 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;

(c) An amount equal to or exceeding 20 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;

(d) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance;

(e) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

HISTORY

ACTION	DATE
Introduced	05-01-07
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