



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 363

130th General Assembly
(As Introduced)

Reps. Sprague and Driehaus, J. Adams, Antonio, Buchy, Grossman, Hackett, Patterson, Phillips, Scherer, Sears, Sheehy, Smith, Wachtmann

BILL SUMMARY

- Prevents a person acting in good faith who seeks or obtains medical assistance for another person who is experiencing a medical emergency as a result of ingesting drugs or alcohol from being arrested, charged, prosecuted, convicted, or penalized for a minor drug possession offense or being found in violation of any community control sanction or post-release control sanction based on a minor drug possession offense if the evidence of the prohibition that would be the basis of the offense was obtained as a result of the person seeking the medical assistance.
- Prevents a person who experiences a medical emergency as a result of ingesting drugs or alcohol and who seeks medical assistance for that emergency or who is the subject of another person seeking or obtaining medical assistance for that emergency from being arrested, charged, prosecuted, convicted, or penalized for a minor drug possession offense or being found in violation of any community control sanction or post-release control sanction based on a minor drug possession offense if the evidence of the prohibition that would be the basis of the offense was obtained as a result of the person ingesting drugs or alcohol and needing the medical assistance.
- Prescribes the circumstances under which the bill's provisions granting the above protections are not to be construed.

CONTENT AND OPERATION

Background – prohibition regarding possession of drugs

R.C. 2925.11(A) in the Drug Offenses Law prohibits any person from knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog. A violation of this prohibition is any of the offenses described in "**Drug possession**

offenses," below. The prohibition has specified exclusions described in "**Exclusions from prohibition.**"

Seeking or obtaining medical assistance for another person experiencing a medical emergency for ingesting drugs or alcohol

The bill provides that a person acting in good faith who "seeks or obtains medical assistance" for another person who is experiencing a medical emergency as a result of ingesting drugs or alcohol cannot be arrested, charged, prosecuted, convicted, or penalized pursuant to the Drug Offenses Law for a minor drug possession offense (see "**Minor drug possession offenses,"** below) or be found in violation of any "community control sanction" or "post-release control sanction" based on a minor drug possession offense if the evidence of the obtaining, possession, or use of the controlled substance or controlled substance analog that would be the basis of the offense was obtained as a result of the person seeking the medical assistance.¹ (See "**Definitions**" for the definitions of the terms in quotation marks.)

Seeking or obtaining medical assistance for self for a medical emergency for ingesting drugs or alcohol

The bill provides that a person who experiences a medical emergency as a result of ingesting drugs or alcohol and who seeks medical assistance for that emergency or who is the subject of another person seeking or obtaining medical assistance for that emergency as described above cannot be arrested, charged, prosecuted, convicted, or penalized pursuant to the Drug Offenses Law for a minor drug possession offense or be found in violation of any community control sanction or post-release control sanction based on a minor drug possession offense if the evidence of the obtaining, possession, or use of the controlled substance or controlled substance analog that would be the basis of the offense was obtained as a result of the person ingesting drugs or alcohol and needing the medical assistance.²

Construction of bill's protections

The bill provides that nothing in its provisions granting the above protections may be construed to do any of the following:³

- Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regards to a defendant who

¹ R.C. 2925.11(B)(2)(a).

² R.C. 2925.11(B)(2)(b).

³ R.C. 2925.11(B)(2)(c).

does not qualify for the protections or with regards to any crime other than a minor drug possession offense committed by a person who qualifies for either protection for a minor drug possession offense.

- Limit any seizure of evidence or contraband otherwise permitted by law.
- Limit or abridge the authority of a "peace officer" to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided with respect to either protection.
- Limit, modify, or remove any immunity from liability available pursuant to law in effect prior to the bill's effective date to any "public agency" or to an employee of any public agency.

Definitions

The bill defines the following terms:⁴

"Community control sanction" generally means a sanction that is not a prison term or a jail term and is described in the laws pertaining to community residential sanctions, nonresidential sanctions, and financial sanctions.⁵

"Health care facility" means a hospital, clinic, ambulatory surgical treatment center, other center, medical school, office of a physician, infirmary, dispensary, medical training institution, or other institution or location in or at which medical care, treatment, or diagnosis is provided to a person.⁶

"Peace officer" means the same individuals considered a peace officer under the Criminal Procedure Law, which includes, among others, a sheriff, deputy sheriff, member of the organized police department of any municipal corporation, a police officer of a township or joint police district, and a state university law enforcement officer.⁷

"Post-release control sanction" is a sanction that applies during the prisoner's period of post-release control under R.C. 2967.28.

⁴ R.C. 2925.11(B)(2)(d).

⁵ By reference to R.C. 2929.01, not in the bill.

⁶ By reference to R.C. 2919.16, not in the bill.

⁷ By reference to R.C. 2935.01, not in the bill.



"**Public agency**" means an office, agency, department, bureau, or other governmental entity of the state or of a political subdivision of the state.⁸

"**Seeks or obtains medical assistance**" includes, but is not limited to making a 9-1-1 call, contacting in person or by telephone call an on-duty "peace officer," or transporting or presenting a person to a "health care facility."

Drug possession offenses

Under continuing law, a violation of the prohibition against any person knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog is any of the following offenses:⁹

- "Aggravated possession of drugs" if the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs.
- "Possession of drugs" if the drug involved is a compound, mixture, preparation, or substance included in schedule III, IV, or V.
- "Possession of marihuana" if the drug involved is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish.
- "Possession of cocaine" if the drug involved is cocaine or a compound, mixture, preparation, or substance containing cocaine.
- "Possession of L.S.D." if the drug involved in L.S.D.
- "Possession of heroin" if the drug involved is heroin or a compound, mixture, preparation, or substance containing heroin.
- "Possession of hashish" if the drug involved is hashish or a compound, mixture, preparation, or substance containing hashish.
- "Possession of a controlled substance analog" if the drug involved is a controlled substance analog or compound, mixture, preparation, or substance that contains a controlled substance analog.

⁸ By reference to R.C. 2930.01, not in the bill.

⁹ R.C. 2925.11(C).



Exclusions from prohibition

Under continue law, the prohibition against any person knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog does not apply to any of the following:¹⁰

- 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.
- 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.
- 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.
- Any person who obtained the controlled substance pursuant to a lawful prescription issued by a licensed health professional authorized to prescribe drugs.

Minor drug possession offenses

The following offenses in R.C. 2925.11 are within the definition of "minor drug possession offense" in continuing law that applies to the bill (a violation of that section that is a misdemeanor or a felony of the fifth degree):¹¹

Offense	Penalty
"Aggravated possession of drugs" if the drug involved is less than the bulk amount	Felony 5
"Possession of drugs" if the drug involved is less than the bulk amount	Misdemeanor 1

¹⁰ R.C. 2925.11(B)(1).

¹¹ R.C. 2925.01(EE), not in the bill.



Offense	Penalty
Offender previously convicted of a drug abuse offense	Felony 5
"Possession of marihuana" if the amount involved: <ul style="list-style-type: none"> • is less than 100 grams • equals or exceeds 100 grams but is less than 200 grams • equals or exceeds 200 grams but is less than 1,000 grams 	Minor misdemeanor Misdemeanor 4 Felony 5
"Possession of cocaine" if the amount involved is less than 5 grams	Felony 5
"Possession of L.S.D." if the amount involved is less than 10 unit doses in solid form or less than 1 gram in liquid concentrate, liquid extract, or liquid distillate form	Felony 5
"Possession of heroin" if the amount involved is less than 10 unit doses or less than 1 gram	Felony 5
"Possession of hashish" if the amount involved: <ul style="list-style-type: none"> • is less than 5 grams in solid form or less than 1 gram in liquid concentrate, liquid extract, or liquid distillate form • equals or exceeds 5 grams but is less than 10 grams in solid form or equals or exceeds 1 gram but is less than 2 grams in liquid concentrate, liquid extract, or liquid distillate form • equals or exceeds 10 grams but is less than 50 grams in solid form or equals or exceeds 2 grams but is less than 10 grams in liquid concentrate, liquid extract, or liquid distillate form 	Minor misdemeanor Misdemeanor 4 Felony 5
"Possession of a controlled substance analog" if the amount involved is less than 10 grams	Felony 5

HISTORY

ACTION

DATE

Introduced

11-26-13

