



Ohio Legislative Service Commission

Bill Analysis

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S.B. 313

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(As Introduced)

Sens. Kearney, Turner

BILL SUMMARY

- Provides a qualified immunity from arrest, prosecution, conviction, penalizing, and supervised release sanctioning for a specified drug offense for a person who seeks assistance for self or another person who is experiencing an emergency drug overdose if other specified criteria are satisfied with respect to the person and the offense.
- Specifies that the following offenses are ones for which a person has a qualified immunity under those circumstances: a minor drug possession offense, possessing drug abuse instruments based on the possession or use of the instrument, illegal use or possession of drug paraphernalia, or illegal use or possession of marihuana drug paraphernalia.
- Prescribes circumstances under which the qualified immunity is not available.

CONTENT AND OPERATION

Introduction

The Drug Offenses Law contains a prohibition against knowingly obtaining, possessing, or using a controlled substance, with the name and penalty for a violation of the prohibition being determined by the controlled substance involved and the amount of that controlled substance. A violation of the prohibition that is a misdemeanor or a felony of the fifth degree is specified as being a "minor drug possession offense." The Drug Offenses Law also prohibits a person from: (1) engaging in specified types of conduct with respect to an instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug other than marihuana, under the offense of "possessing drug abuse instruments," (2) using,

possessing, or possessing with purpose to use any drug paraphernalia, other than with respect to marihuana, under the offense of "illegal use or possession of drug paraphernalia," and (3) using or possessing with purpose to use any drug paraphernalia with respect to marihuana, under the offense of "illegal use or possession of marihuana drug paraphernalia."¹ These offenses are described in more detail below in "**Background – drug possession and paraphernalia offenses.**"

Qualified immunity for person who reports emergency drug overdose event

Grant of immunity and criteria that must be satisfied

The bill provides that, notwithstanding any provision of the Criminal Code (R.C. Title XXIX) or any other provision of law, a person may not be arrested, charged, prosecuted, convicted, penalized, or sanctioned, for any "minor drug possession offense," for "possessing drug abuse instruments" based on the possession or use of the instrument, for "illegal use or possession of drug paraphernalia," or for "illegal use or possession of marihuana drug paraphernalia," or be found in violation of any community control sanction or post-release control sanction for any such offense (hereafter, these offenses collectively are referred to as "protected offenses"), if all of several specified criteria, which are described below, are satisfied. The immunity applies to a person who reports an emergency drug overdose event experienced by another person and satisfies the specified criteria with respect to the other person's event and to a person who personally experiences an emergency drug overdose event and satisfies the specified criteria with respect to the person's own event.²

In order to be within the scope of the qualified immunity, all of the following criteria must be satisfied:³

(1) The person must report in good faith an emergency drug overdose event to a peace officer, to the 9-1-1 system, or to a health care provider;

(2) The person must remain at the scene of the event until a peace officer or first responder arrives, or if the person makes the report in person at the facilities of a health care provider, the person must remain at those facilities until a peace officer arrives;

(3) The person must identify self to, and cooperate with, the peace officer, 9-1-1 system operator, or health care provider to whom the report is made, and with the peace officer or first responder who arrives;

¹ R.C. 2925.01(E), not in the bill, and R.C. 2925.11, 2925.12, 2925.14, and 2925.141.

² R.C. 2925.11(B)(2), 2925.12(B)(2), 2925.14(D)(3), 2925.141(D)(2), and 2925.142(B) to (D).

³ R.C. 2925.142(B)(1) to (4).



(4) The violation must arise from the same course of events from which the emergency drug overdose event arose.

Construction of immunity provisions

The bill specifies that nothing in its provisions granting the qualified immunity described above:

(1) Prohibits or may be interpreted as prohibiting the arrest, charging, prosecution, conviction, penalizing, sanctioning, or finding to be in violation of a community control sanction or post-release control sanction with regards to a defendant who does not qualify for the immunity or with regards to any violation other than a protected offense committed by a person who qualifies for the immunity for a protected offense.

(2) May be construed to limit any seizure of evidence or contraband otherwise permitted by law or to 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 in the immunity provision.

(3) Limits or may be interpreted as limiting the ability of a prosecutor or peace officer to obtain or use evidence obtained from a report, recording, or other statement "provided pursuant to R.C. 2925.142(A)" to investigate and prosecute any violation other than a protected offense (the reference to R.C. 2925.142(A) is incorrect, and apparently is intended to be a reference to a report, recording, or other statement provided in a report of an emergency drug overdose made to a peace officer, the 9-1-1 system, or a health care provider).⁴

Definitions

As used in the bill's immunity provisions:⁵

"Community control sanction" generally means a sanction that is not a prison term and is described in the laws pertaining to felony community residential sanctions, nonresidential sanctions, and financial sanctions or is not a jail term and is described in the laws pertaining to misdemeanor community nonresidential sanctions and financial sanctions.⁶

⁴ R.C. 2925.142(E).

⁵ R.C. 2925.142(A).

⁶ By reference to R.C. 2929.01, not in the bill.



"Emergency drug overdose" means, unless the context clearly requires otherwise, an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death, resulting from the consumption or use of a controlled substance or another substance with which a controlled substance was combined and that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

"First responder" means an individual who holds a current, valid certificate issued under R.C. 4765.30 to practice as a first responder.⁷

"Health care provider" means a health care professional or facility. "Health care professional" means a physician, psychologist, nurse practitioner, or other health care practitioner licensed, accredited, or certified to perform health care services consistent with state law. "Facility" means an institution providing health care services, or a health care setting, including hospitals and other licensed inpatient centers, ambulatory, surgical, treatment, skilled nursing, residential treatment, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.⁸

"Minor drug possession offense" means a drug possession offense in violation of R.C. 2925.11 that is a misdemeanor or a felony of the fifth degree.⁹

"Peace officer" has the same meaning as in the existing Arrest Law. Under that Law, the term includes: persons traditionally considered to be peace officers, such as county, municipal, and township law enforcement officers; personnel of specified state agencies with law enforcement authority; and various other specified public officials or quasi-public officials with law enforcement authority.¹⁰

"Prosecutor" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case.¹¹

⁷ By reference to R.C. 4765.01, not in the bill.

⁸ By reference to R.C. 3922.01, not in the bill.

⁹ By reference to R.C. 2925.01, not in the bill.

¹⁰ By reference to R.C. 2935.01, not in the bill.

¹¹ By reference to R.C. 2935.01, not in the bill.

"Post-release control sanction" has the same meaning as in R.C. 2967.28. R.C. 2967.28 is the substantive provision that governs post-release control sanctions, but it does not define the term. R.C. 2967.01 defines "post-release control sanction" as a sanction authorized under R.C. 2929.16 to 2929.17 and that is imposed upon a prisoner upon the prisoner's release from a prison term.¹²

Background – drug possession and paraphernalia offenses

Drug possession offenses

In general

Existing law, unchanged by the bill, generally prohibits a person from knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog.¹³

The name and penalty for a violation of the prohibition described above is determined by the controlled substance involved and the amount of that controlled substance. The offense is: "aggravated possession of drugs" if the drug involved is a Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, hashish, or a controlled substance analog; "possession of drug" if the drug involved is a Schedule III, IV, or IV controlled substance; "possession of marihuana" if the drug involved is marihuana; "possession of cocaine" if the drug involved is cocaine; "possession of L.S.D." if the drug involved is L.S.D.; "possession of heroin" if the drug involved is heroin; "possession of hashish" if the drug involved is hashish; and "possession of a controlled substance analog" if the drug involved is a controlled substance analog.

Minor drug possession offenses

The following offenses in violation of the prohibition described above are within the definition of "minor drug possession offense" (i.e., a violation of that prohibition that is a misdemeanor or felony of the fifth degree) in existing law that applies to the bill.¹⁴

¹² R.C. 2967.01, not in the bill.

¹³ R.C. 2925.11(A) and (B).

¹⁴ R.C. 2925.11(C); R.C. 2925.01(EE), not in the bill.



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 Offender previously convicted of a drug abuse offense	Misdemeanor 1 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



Drug paraphernalia offenses

Possessing drug abuse instruments

Existing law, unchanged by the bill, generally prohibits a person from knowingly making, obtaining, possessing, or using any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use. A violation of the prohibition is the offense of "possessing drug abuse instruments," a second degree misdemeanor or, if the offender previously has been convicted of a drug abuse offense, a first degree misdemeanor.¹⁵

Illegal use or possession of drug paraphernalia

Existing law includes several drug paraphernalia prohibitions. Relevant to the bill, one of them, unchanged by the bill, generally prohibits a person from knowingly using, or possessing with purpose to use, drug paraphernalia. A violation of the prohibition is the offense of "illegal use or possession of drug paraphernalia," a fourth degree misdemeanor.

As used in the prohibition, "drug paraphernalia" means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. In addition to this general meaning, the definition lists specific examples of types of drug paraphernalia and factors that a court or law enforcement officer must consider in determining if any equipment, product, or material is drug paraphernalia.¹⁶

Illegal use or possession of marihuana drug paraphernalia

Existing law, unchanged by the bill, generally prohibits a person from knowingly using, or possessing with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana. A violation of the

¹⁵ R.C. 2925.12, not in the bill.

¹⁶ R.C. 2925.14(A), (C)(1), (D), and (F)(1).



prohibition is the offense of "illegal use or possession of marihuana drug paraphernalia," a minor misdemeanor.

As used in the prohibition, the definition of "drug paraphernalia" and the factors to be considered in determining if any equipment, product, or material is drug paraphernalia that are described above in "**illegal use or possession of drug paraphernalia**" apply.¹⁷

HISTORY

ACTION	DATE
Introduced	03-31-14

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¹⁷ R.C. 2925.141.

