



Ohio Legislative Service Commission

Bill Analysis

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H.B. 249

131st General Assembly
(As Introduced)

Reps. Driehaus and Sprague, LaTourette, Sheehy, Bishoff, R. Smith, Antonio, Slaby, K. Smith, Reineke, Grossman, Lepore-Hagan, Green

BILL SUMMARY

- Provides immunity from arrest and prosecution for a minor drug possession offense to a person who seeks medical help for a medical emergency being experienced by that person or another as a result of ingesting drugs if evidence of the violation came from seeking medical help.
- Excepts from the immunity provisions a person who is under a community or post-release control sanction.
- Limits the availability of imprisonment as a penalty for a felony community control violation resulting from seeking medical help as described above.
- Requires a court or parole board to consider drug treatment or mitigation of the penalty for violation of a community or post-release control sanction resulting from seeking medical help as described above.
- Requires a court or parole board to consider the seeking of medical help as described above as a mitigating factor in imposing a penalty for violation of a community or post-release control sanction.
- Prohibits construing the bill's immunity provisions from affecting certain matters related to evidence, arrest, and other immunities.

CONTENT AND OPERATION

Immunity from prosecution

The bill provides immunity from arrest and prosecution for a minor drug possession offense (a misdemeanor or fifth-degree felony)¹ to a person who, in good faith, seeks medical assistance for another person (for example, by calling 9-1-1 or contacting a peace officer) who is experiencing a medical emergency as a result of ingesting drugs if the evidence of the person's violation of the drug possession statute resulted from the person's seeking the medical assistance. The bill also provides immunity to the person for whom the medical assistance is sought if the evidence of the violation comes from seeking medical assistance. If either person is under a community control or post-release control sanction, the immunity does not apply to that person.²

The bill provides similar immunity to a person who seeks medical assistance for himself or herself under the same circumstances.³

Penalty for community control or post-release control violation

The bill gives the court directions regarding penalties in cases in which a person is found to be in violation of a community control sanction as a result of either (1) seeking medical assistance in good faith for another person who is experiencing a medical emergency from ingesting drugs or (2) experiencing a medical emergency from ingesting drugs and seeking medical assistance for that emergency or being the person for whom the medical assistance is sought. The court must first consider ordering the person's participation in a drug treatment program or mitigating the penalty specified in the applicable statute (see "**Mitigation**," below). After that, the court may either order the person's participation in a drug treatment program or impose the penalty with the mitigating factor.⁴

The bill includes a like provision with respect to the duties of the court or parole board in similar cases in which a person is found to be in violation of a post-release control sanction.⁵

¹ R.C. 2925.01(EE), not in the bill.

² R.C. 2925.11(B)(2)(a) and (b).

³ R.C. 2925.11(B)(2)(b).

⁴ R.C. 2925.11(B)(2)(c).

⁵ R.C. 2925.11(B)(2)(d).



Imprisonment for violation of a community control sanction

Under the bill, the court may not order the imprisonment of a person who is convicted of a felony violation of a community control sanction as a result of acting under the provisions described above unless either (1) the offender had continued using illegal drugs after a reasonable period of court-ordered participation in a drug treatment program or (2) imprisonment would be consistent with the purposes and principles of sentencing.⁶

Mitigation

The bill does not provide immunity from arrest and prosecution to a person who seeks medical help, or for whom medical help is sought, as described under "**Immunity from prosecution**," above, if the person is under a community or post-release control sanction. However, if such a person is convicted of violating the conditions of a community or post-release control sanction based on a minor drug possession offense, the court or parole board may consider the offender's conduct in seeking medical help or in being the person for whom medical help was sought as a mitigating factor before imposing a penalty.⁷

Effect of bill's provisions on other criminal matters

The bill states that nothing in its provisions may be construed to do any of the following:⁸

- Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections outlined above or with regard to any crime other than a minor drug possession offense committed by a person who does qualify;
- Limit any seizure of evidence or contraband otherwise permitted by law;
- Limit 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 those provisions;

⁶ R.C. 2929.13(E)(2). The purposes and principles of sentencing are set forth in R.C. 2929.11, which is not in the bill.

⁷ R.C. 2929.141(B)(2), 2929.15(B), 2929.25(D)(3), and 2967.28(F)(3).

⁸ R.C. 2925.11(B)(2)(e).



- 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.

HISTORY

ACTION	DATE
Introduced	06-08-15

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