



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 462 of the 131st G.A.

Date: April 11, 2016

Status: As Introduced

Sponsor: Reps. Hagan and Sprague

Local Impact Statement Procedure Required: No

Contents: Solicitation, prescription exemption to drug offenses, civil immunity for officers administering naloxone, and joint police and fire districts

State Fiscal Highlights

- It is unlikely that many, if any, additional offenders will be sentenced to a prison term for either a solicitation or drug possession offense, which means that there should be little, if any, discernible effect on the Department of Rehabilitation and Correction's annual incarceration costs.
- There may be a likely minimal at most annual gain in state court costs collected from offenders convicted of either solicitation or drug possession and then forwarded for distribution between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs are \$60 for a felony and \$29 for a misdemeanor.

Local Fiscal Highlights

- The bill may increase the number of arrests and convictions for the offenses of solicitation and drug possession by making it easier to charge and successfully prosecute certain conduct the circumstances of which may make it difficult to prosecute under current law. The number of additional cases likely to be affected in any given county or municipal criminal justice system will be relatively small, which means any associated additional costs to resolve such cases will be minimal at most annually, including any costs related to sanctioning violators, e.g., incarceration and probation. There is also the possibility that drug possession violators may be ordered into treatment, the number and cost of which is uncertain. There may also be a likely minimal at most annual gain in local revenue from court costs, fees, and fines.

Detailed Fiscal Analysis

Solicitation

Current law prohibits a person from soliciting another to engage in sexual activity for hire, a violation of which is generally a third degree misdemeanor, but may be elevated to a fifth degree felony if the person is 16 or 17 years of age and a third degree felony if the person is under 16 years of age or is developmentally disabled (see Table 3 for sentences and fines generally). The bill expands the solicitation offense to apply to a person who agrees with another person to engage in sexual activity for hire.

The bill may increase the number of arrests and convictions for solicitation by making it easier to charge and successfully prosecute certain conduct the circumstances of which may make it difficult to prosecute under current law. The number of additional cases likely to be affected in any given county or municipal criminal justice system will be relatively small, which means any associated additional costs to resolve such cases will be minimal at most annually, including any costs related to sanctioning violators, e.g., incarceration and probation. There may also be a likely minimal at most annual gain in: (1) local revenue from court costs, fees, and fines, and (2) state revenue from locally collected state court costs (\$60 for a felony and \$29 for a misdemeanor). Very few, if any, additional offenders will be convicted of a felony and subsequently sentenced to prison.

Prescription drug exemption

Current law concerning the possession of controlled substances (R.C. 2925.11 specifically) and the penalties therein do not apply to those who have obtained a controlled substance via a lawful prescription issued by a licensed health professional. The bill removes the exemption when the controlled substance is misused, meaning that the penalties associated with a drug possession violation will apply to a new subset of the population: those who use more of the drug than the maximum amount prescribed or who use the drug contrary to the manner prescribed.

According to the federal Substance Abuse and Mental Health Services Administration (SAMHSA), the most commonly misused or abused types of legal drugs are opioid pain relievers and psychiatric drugs (see Table 1 below).

Table 1. Most Commonly Abused Prescription Drugs		
Drug	Example	Schedule¹
Hydrocodone	Vicodin	II
Oxycodone	Oxycontin	II
Amphetamine	Adderall	II
Methylphenidate	Ritalin, Concerta	II
Codeine	Codeine	II, III, or IV
Alprazolam	Xanax	IV
Clonazepam	Klonopin	IV
Diazepam	Valium	IV
Zolpidem	Ambien	IV

In the case of pain relievers, SAMHSA estimates, based on recent national survey data, that an annual average of 401,000 people in Ohio use pain relievers nonmedically. The SAMHSA data alone suggests the number of people that could be charged with drug possession by the change to this prescription exemption will be very large. The question, however, is how will law enforcement apprehend these people who have legally obtained drugs. Presumably, the most likely and easiest situation in which law enforcement would discover the misuse of a legally obtained drug or drugs will be in the context of an overdose. In these cases, if a person is arrested and prosecuted for a drug possession offense, the outcome generally may be that the court orders the person into treatment rather than imposing a term of incarceration. The annual treatment costs for any given county or municipality are uncertain, as the number of persons that may be ordered into treatment is unknown.

Table 2 below summarizes sentencing information for the offenses of aggravated drug possession and drug possession, including whether there is a presumption for a term of state or local incarceration. If, as expected, the majority of drug possession cases generated by the bill involved an overdose, then it seems likely that a violation will be either a fifth degree felony (aggravated drug possession) or a first degree misdemeanor (drug possession). As noted above, this means that generally there should be few, if any, additional offenders sentenced to a term of state or local incarceration.

¹ For drugs, substances, and certain chemicals used to make drugs, "schedule" refers to acceptable medical use and the drug's abuse or dependency potential. Schedule I drugs are considered the most dangerous with a high potential for abuse and potentially severe psychological and/or physical dependence. Schedule V drugs are considered to have the least potential for abuse.

Table 2. Drug Possession			
Drug	Amount	Violation Level	Sentencing Guidance for Incarceration
Schedule I or II (Aggravated Possession)	Bulk amount or less	F5	Optional prison term
	Bulk but less than 5 times bulk amount	F3	Presumption of prison term
	5 times bulk amount but less than 50 times bulk amount	F2	Mandatory prison term
	50 times bulk amount but less than 100 times bulk amount	F1	Mandatory prison term
	100 times bulk amount or more	F1	Mandatory maximum prison term
Schedule III, IV, or V (Possession)	Less than bulk amount	M1	Optional jail term
	Less than bulk amount with prior drug abuse conviction	F5	Optional prison term
	Bulk amount but less than 5 times bulk amount	F4	Optional prison term
	5 times bulk amount but less than 50 times bulk amount	F3	Presumption of prison term
	50 times bulk amount or more	F2	Mandatory prison term

Note: Bulk amounts are set by schedule in R.C. 2925.01, and those amounts are used to determine the charge and penalties for a drug violation.

Civil immunity for naloxone use by peace officers

Under current law, a peace officer who obtains naloxone from his or her law enforcement agency and administers it in good faith to someone who is apparently experiencing an opioid-related drug overdose is not subject to administrative action or criminal prosecution. Current law also provides immunity from civil damages for the administration of emergency care in an emergency situation.² The bill adds immunity from civil liability for any injury, death, or loss to person or property that allegedly arises from an officer's acts or omissions in obtaining and administering the naloxone.

This change makes it even less likely that a person will file a civil action against a peace officer related to the administration of naloxone, or if an action is filed, for that person to prevail. There will be no discernible fiscal effect on the courts with jurisdiction over such matters, most likely courts of common pleas, as cases of this nature are relatively infrequent.

Joint police districts and joint fire districts

The bill permits: (1) the legislative authorities of two or more municipal corporations to form a joint police district, (2) the legislative authority of a municipal corporation to create and participate in a joint fire district or join an existing joint fire district, and (3) the legislative authority of a municipal corporation to form and participate in a joint police district or join an existing joint police district.

² R.C. 2305.23.

These provisions do not create any fiscal effects, as a municipal corporation is permitted to take certain actions, but is not required to do so. Thus, any fiscal effects will be a result of a municipal corporation opting to utilize the authority to form, create, and/or join a joint police or fire district. Presumably, a municipal corporation will enter into such a joint arrangement because there is some improvement in the efficiency and effectiveness of the service delivery system, including the possibility of some expenditure savings effect.

Sentences and fines generally

Table 3 below displays the sentences and fines for misdemeanor and felony offenses generally.

Table 3. Existing Sentences and Fines for Offenses Generally		
Offense Level	Fine	Possible Term of Incarceration
Felony	Range	Prison Term
1st degree	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10, 11 years definite
2nd degree	Up to \$15,000	2, 3, 4, 5, 6, 7, 8 years definite
3rd degree	Up to \$10,000	1, 2, 3, 4, 5 years definite
4th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 months definite
5th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, 12 months definite
Misdemeanor	Range	Jail Stay
1st degree	Up to \$1,000	Not more than 180 days
2nd degree	Up to \$750	Not more than 90 days
3rd degree	Up to \$500	Not more than 60 days
4th degree	Up to \$250	Not more than 30 days
Minor misdemeanor	Up to \$150	None