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S.B. 55
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsor: Sen. Gavarone

Effective date: Vetoed

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SUMMARY

- Would have reduced the penalties for violating Department of Health and local board of health orders that relate to pandemic diseases.
- Would have enhanced the penalties for most drug trafficking offenses when committed on the premises of a substance addiction services provider's facility, or within 1,000 feet of the premises, if the offender recklessly disregarded whether the offense is being committed within that vicinity.
- Would have set the new penalty enhancements at the same level as existing enhancements for the same drug trafficking offenses committed in the vicinity of a school or juvenile.

DETAILED ANALYSIS

On July 17, 2020, Governor DeWine vetoed S.B. 55. The following describes the provisions of the act that would have become law but for the Governor's veto.

Penalties for violating health orders

Ohio law prohibits violating any rule adopted or order issued by the Director of Health or the Department of Health (ODH) to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.¹ With respect to boards of health of city or general health districts, the law also prohibits violating an order or regulation issued to prevent or restrict

¹ R.C. 3701.352, not in the act; R.C. 3701.99.

disease or that relates to infectious or communicable diseases.² The act would have reduced as follows the penalties for violating these orders, rules, or regulations – but only in regard to pandemic diseases:

Violation	Penalty under current law	Reduced Penalty (VETOED)
ODH or Director of Health rule or order	Second degree misdemeanor (a jail term of not more than 90 days or a fine of not more than \$750)	A warning on a first offense A fine of not more than \$150 on a subsequent offense (no jail term)
Local board of health order or regulation to prevent or restrict disease	A fine of not more than \$100, a jail term of not more than 90 days, or both; however, on a first offense, a jail term cannot be imposed	A warning on a first offense A fine not to exceed \$100 on a subsequent offense (no jail term)
Local board of health order or regulation relating to an infectious or communicable disease	Minor misdemeanor on a first offense (a fine of not more than \$150) Fourth degree misdemeanor on a subsequent offense (a jail term of not more than 30 days and a fine of not more than \$250)	A warning on a first offense A fine not to exceed \$100 on a subsequent offense (no jail term)

Drug offenses committed near treatment centers

The act would have generally enhanced the penalties for trafficking in any Schedule I or II controlled substance, with the exception of marihuana or, in limited circumstances, a fentanyl-related compound combined with marihuana, when the offense was “committed in the vicinity of a substance addiction services provider.” It would not have applied the enhancement to trafficking in a Schedule III, IV, or V controlled substance or trafficking in marihuana. The penalty enhancements would have applied to the following drug trafficking offenses:³

- Aggravated trafficking in drugs (the drug involved in this offense is a Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance analog);

² R.C. 3707.48; R.C. 3707.01 to 3707.50, none in the act; R.C. 3709.20 and 3709.21, neither in the act; R.C. 3709.99.

³ R.C. 2925.03(C)(1) and (4) to (9).

- Trafficking in cocaine;
- Trafficking in L.S.D.;
- Trafficking in heroin;
- Trafficking in hashish;
- Trafficking in a controlled substance analog;
- Trafficking in a fentanyl-related compound (unless the fentanyl-related compound is combined with marihuana and the offender does not know or have reason to know that the mixture contains a fentanyl-related compound, in which case the offense is treated as trafficking in marihuana).

The penalty enhancements would have equaled existing enhancements for the same drug offenses when committed in the vicinity of a school or juvenile. (Note that for some of the offenses, when a specified large amount of the drug is involved, committing the offense in the vicinity of a school, a juvenile, or a substance addiction services provider does not result or would not have resulted in an enhanced penalty under current law or the act).

The specific penalties and enhancements vary according to the particular type and amount of the controlled substance involved.⁴ For example, under current law, if the amount of the drug involved in the offense of aggravated trafficking in drugs is less than 20 grams (the bulk amount), the offense is generally a fourth degree felony, but becomes a third degree felony when committed in the vicinity of a school or juvenile. Under the act, aggravated trafficking in that amount would have been a third degree felony when committed in the vicinity of a substance addiction services provider.⁵

The act's penalty enhancement provisions would have been titled the "Relapse Reduction Act."⁶

For purposes of the act, an offense would have been "committed in the vicinity of a substance addiction services provider" if:⁷

1. The offender committed the offense (a) on the premises of a substance addiction services provider's facility, including a facility licensed to provide methadone treatment under the law in effect until June 29, 2019, or an opioid treatment program licensed under the law in effect on that date, or (b) within 1,000 feet of the premises of a substance addiction services provider's facility; and

⁴ R.C. 2925.03(C)(1) and (4) to (9).

⁵ R.C. 2925.03(C)(1)(a) and (b).

⁶ Section 4.

⁷ R.C. 2925.01(MM).

2. The offender recklessly disregarded whether the offense was being committed within the vicinity described in (1).

Under the act, relevant to the meaning of “committed in the vicinity of a substance addiction services provider”:⁸

“**Substance addiction services provider**” would have meant an agency, association, corporation or other legal entity, individual, or program that provides one or more of the following at a facility: (1) either alcohol addiction services, or drug addiction services, or both services that are certified by the Director of Mental Health and Addiction Services, or (2) recovery supports that are related to either alcohol addiction services, or drug addiction services, or both such services and paid for with federal, state, or local funds administered by the Department of Mental Health and Addiction Services or a board of alcohol, drug addiction, and mental health services.

“**Premises of a substance addiction services provider’s facility**” would have meant the parcel of real property on which any substance addiction service provider’s facility is situated.

“**Alcohol and drug addiction services**” would have meant services, including intervention, for the treatment of alcoholics or persons who abuse drugs of abuse and for the prevention of alcoholism and drug addiction.

HISTORY

Action	Date
Introduced	02-19-19
Reported, S. Judiciary	04-03-19
Passed Senate (31-2)	05-15-19
Reported, H. Criminal Justice	11-05-19
Passed House (72-23)	05-06-20
Senate concurred in House amendments (18-10)	06-30-20
Vetoed	07-17-20

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⁸ R.C. 2925.01(NN) to (PP) and, by reference R.C. 5119.01, not in the act.