



Greg Schwab

Final Analysis
Legislative Service Commission

Am. H.B. 214
126th General Assembly
(As Passed by the General Assembly)

Reps. Hughes, Combs, Evans, C., Latta, McGregor, Seitz, Setzer, Cassell, Domenick, Harwood, Oelslager, Patton, T., Reidelbach, Smith, G., Wagoner

Effective date: June 30, 2006

ACT SUMMARY

- Modifies a private citizen's authority to file an affidavit charging an offense.
- Retains the authority of a private citizen to file an affidavit charging an offense with the judge of a court of record, a prosecuting attorney or other attorney charged by law with prosecuting offenses, or a magistrate (reviewing officials) but specifies that the purpose of the filing is for review to determine if the prosecutor should file a complaint.
- Modifies a private citizen's authority to file an affidavit charging an offense with the clerk of a court of record so that the private citizen may file the affidavit with the clerk only before or after the normal business hours of the reviewing officials if the clerk's office is open at those times and requires the clerk to forward the affidavit to a reviewing official when the official's normal business hours resume.

CONTENT AND OPERATION

Filing an affidavit to cause an arrest or prosecution

Under prior law, in all cases not provided for in the laws governing the arrest authority of peace officers and private citizens (see **COMMENT**), a peace officer or a private citizen having knowledge of the facts, in order to cause the arrest or prosecution of a person charged with committing an offense, was required to file an affidavit charging the offense with the judge or clerk of a court of record or with a magistrate. The peace officer or private citizen also had the

option of filing the affidavit with the prosecuting attorney or other attorney charged by law with prosecuting offenses for the purpose of having the prosecuting or other attorney file a complaint. (R.C. 2935.09.)

The act revises the former procedures for causing the arrest or prosecution of a person in cases not provided for in the laws governing the arrest authority of peace officers and private citizens. Regarding peace officers, the act authorizes a peace officer who has knowledge of the facts and seeks to cause an arrest or prosecution to file an affidavit charging an offense with a "reviewing official" or the clerk of a court of record. As used in the act, "reviewing official" means a judge of a court of record, a magistrate, or the prosecuting attorney or other attorney charged by law with prosecuting offenses in a court or before a magistrate. (R.C. 2935.09(A) and (C).)

Regarding private citizens, the act authorizes a private citizen who has knowledge of the facts and seeks to cause an arrest or prosecution to file an affidavit charging the offense committed only with a "reviewing official" for the purpose of review to determine if the prosecuting attorney or other attorney charged by law with prosecuting offenses should file a complaint in the court or before the magistrate. A private citizen may file an affidavit charging an offense with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials must forward it to a reviewing official when the reviewing official's normal business hours resume. (R.C. 2935.09(A), (B), and (D).)

COMMENT

R.C. 2935.02 authorizes the arrest anywhere in Ohio of a person against whom an arrest warrant was issued. R.C. 2935.03 pertains to warrantless arrests by specified peace officers. R.C. 2935.031 and 2935.032 require law enforcement agencies to adopt policies regarding pursuit in motor vehicles and responses to domestic violence reports. R.C. 2935.04 authorizes arrests for felonies without a warrant. R.C. 2935.041 provides for detention of shoplifters or persons who damage or take library, museum, or archival institution property. R.C. 2935.05 to 2935.08 provide follow-up procedures to be followed when a person is arrested under R.C. 2935.03 or 2935.04 or detained under R.C. 2935.041. None of the sections are in the act.

HISTORY

ACTION	DATE
Introduced	04-21-05
Reported, H. Judiciary	10-11-05
Passed House (88-4)	11-15-05
Reported, S. Judiciary on Criminal Justice	02-16-06
Passed Senate (24-8)	03-01-06

06-hb214-126.doc/jc

