



Sub. H.B. 195

127th General Assembly
(As Reported by H. Criminal Justice)

Reps. Core, J. McGregor, Evans, Bulp, Combs, Adams, Stebelton, Fende, Hughes

BILL SUMMARY

- Provides that the prescription-related exemption from the drug possession offenses only applies if the prescription was a "lawful prescription," defined as a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.
- Increases the base penalty for possession of a Schedule III, IV, or V drug (less than the bulk amount).
- Provides that possession of an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug is a felony of the fifth degree on a first offense and a felony of the fourth degree if the offender previously has been convicted of or pleaded guilty to a drug abuse offense.
- Increases the penalty for the offense of deception to obtain a dangerous drug if the amount of the drug involved equals or exceeds the bulk amount or in the case of a dangerous drug, if the offender previously has been convicted of or pleaded guilty to a drug abuse offense.
- Specifies that for purposes of the trafficking in drugs offenses, the term "drug" includes any substance that is represented to be a drug.

CONTENT AND OPERATION

Possession of drugs

Current law, generally, prohibits any person from knowingly obtaining, possessing, or using a controlled substance. Depending on the substance and amount involved, the penalty for a violation of this prohibition ranges from a minor misdemeanor to a felony of the first degree. (R.C. 2925.11.)

Exemptions from the drug possession offenses

However, under current law there are several exceptions to the prohibition against obtaining, possessing, or using a controlled substance. One of these exceptions is for any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs. (See **COMMENT** for the other exceptions.) The bill modifies this exception so that it only applies if the prescription is a "lawful prescription." (R.C. 2925.11(B)(4).)

The bill defines a "lawful prescription" as meaning a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense (R.C. 2925.01(KK) and (LL)).

Penalty for possession of a Schedule III, IV, or V drug

The bill increases the base penalty for possession of a Schedule III, IV, or V drug (less than the bulk amount) from a misdemeanor of the third degree to a felony of the fifth degree for a first offense and from a misdemeanor of the second degree to a felony of the fourth degree if the offender previously has been convicted of a drug abuse offense. The bill makes no changes to the penalty for possession of such a drug if the amount of the drug involved equals or exceeds the bulk amount. (R.C. 2925.11(C)(2)(a).)

Deception to obtain a dangerous drug

Current law

Current law, unchanged by the bill, prohibits a person, by deception, (1) from procuring the administration of, a prescription for, or the dispensing of, a dangerous drug or (2) from possessing an uncompleted preprinted prescription

blank used for writing a prescription for a dangerous drug.¹ A violation of either of these prohibitions is the offense of deception to obtain a dangerous drug.

Under current law, deception to obtain a dangerous drug is a felony of the fourth degree with no preference for or against a prison term if the drug involved is a compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana. Deception to obtain a dangerous drug is a felony of the fifth degree with no preference for or against a prison term if the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana. (R.C. 2925.22(A) and (B).)

The bill

The bill changes the penalty for the offense of deception to obtain a dangerous drug as follows (R.C. 2925.22(B)):

Drug involved	Penalty	
Possession of an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug	Generally	F5, with no preference for or against a prison term (<i>added by the bill</i>)
	The offender previously has been convicted of or pleaded guilty to a drug abuse offense	F4, with no preference for or against a prison term (<i>added by the bill</i>)

¹ "Dangerous drug" means any of the following: (1) any drug to which either of the following applies: (a) under the "Federal Food, Drug, and Cosmetic Act," the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, or (b) under R.C. Chapter 3715. or 3719., the drug may be dispensed only upon a prescription, (2) any drug that contains a Schedule V controlled substance and that is exempt from R.C. Chapter 3719. or to which that chapter does not apply, (3) any drug intended for administration by injection into the human body other than through a natural orifice of the human body (R.C. 2925.01, referencing R.C. 4729.01(F)).

Drug involved	Penalty	
Dangerous drug, unless a different penalty applies as provided in the following rows	Generally	F5, with no preference for or against a prison term (<i>same as current law</i>)
	The offender previously has been convicted of or pleaded guilty to a drug abuse offense	F4, with no preference for or against a prison term (<i>added by the bill</i>)
Compound, mixture, preparation, or substance included in Schedule I or II, except marihuana	Generally	F4, with no preference for or against a prison term (<i>same as current law</i>)
	Amount of drug involved equals or exceeds the bulk amount but is less than five times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F3, with a presumption for a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 5 times the bulk amount but is less than 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F2, with a presumption for a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F1, with a presumption for a prison term (<i>added by the bill</i>)

Drug involved	Penalty	
Compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana	Generally	F5, with no preference for or against a prison term (<i>same as current law</i>)
	Amount of drug involved equals or exceeds the bulk amount but is less than five times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F4, with no preference for or against a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 5 times the bulk amount but is less than 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F3, with a presumption of a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 50 times the bulk amount or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F2, with a presumption for a prison term (<i>added by the bill</i>)

Trafficking in drugs

Current law, unchanged by the bill, generally prohibits any person (subject to specified exemptions) from either (1) selling or offering to sell a controlled substance or (2) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person. A violation of either of these prohibitions is one of the trafficking in drugs offenses. Depending on the drug and

the amount involved, a violation of these prohibitions ranges from a minor misdemeanor to a felony of the first degree. (R.C. 2925.03.)

The bill specifies that for purposes of these trafficking in drugs offenses, the term "drug" includes any substance that is represented to be a drug (R.C. 2925.03(I)).

COMMENT

The drug possession offenses also do not apply to the following persons (R.C. 2925.11(B)(1), (2), and (3)):

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the U.S. FDA;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

HISTORY

ACTION	DATE
Introduced	05-01-07
Reported, H. Criminal Justice	06-05-07

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