



# Ohio Legislative Service Commission

## Final Analysis

Dennis M. Papp

### Sub. H.B. 110

131st General Assembly  
(As Passed by the General Assembly)

**Reps.** Hill, Blessing, Brown, Rezabek, Rogers, Dever, Antonio, Baker, Boose, Buchy, Duffey, Green, Grossman, Hambley, T. Johnson, Kraus, Landis, Manning, M. O'Brien, S. O'Brien, Patterson, Perales, Phillips, Ruhl, Schaffer, Slaby, K. Smith, Stinziano, Young, Rosenberger

**Sens.** Eklund, Balderson, Burke, Coley, Hackett, Hite, Jones, LaRose, Manning, Seitz, Uecker

**Effective date:** September 13, 2016

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## ACT SUMMARY

### Failure to stop after an accident

- Modifies the requirements for giving specified information after a public or nonpublic road accident.
- Increases the penalties for failure to stop after an accident and failure to stop after a nonpublic road accident when the offense results in the death of a person or serious physical harm to a person and the offender knows that result.
- Names the act's "failure to stop" penalty changes "Brandon's Law."

### Disclosure of naloxone administration

- Requires emergency medical service personnel to report the administration of naloxone on request of a law enforcement agency in specified circumstances and for specified purposes.

### Medical assistance for drug overdose

- Provides immunity from arrest for a minor drug possession offense to a person who seeks medical help for a drug overdose being experienced by that person or another, or who is the subject of another person seeking or obtaining medical assistance for a drug overdose, if all of the following apply:

- The evidence of the violation came from seeking medical help.
  - Within 30 days after seeking or obtaining the medical assistance, the person seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a credentialed addiction treatment professional.
  - The person who obtains the screening and receives the referral submits documentation to any prosecuting attorney, upon request, verifying that the person satisfied those requirements. (The documentation is limited to the dates and times of the screening and referral.)
- Exempts from the immunity provisions a person who is under a community or post-release control sanction and a person who twice previously has been granted an immunity under these provisions.
  - Specifies that the immunity provisions do not compel any protected individual to disclose protected health information in a way that conflicts with the federal Health Insurance Portability and Accountability Act or specified federal regulations.
  - Limits the availability of imprisonment as a penalty for a violation of a felony community control sanction resulting from seeking or obtaining medical help as described above.
  - Requires a court or the Parole Board to first consider drug treatment or mitigation of the penalty for violation of a community or post-release control sanction resulting from seeking or obtaining medical help as described above.
  - Requires a court or the Parole Board to consider the seeking or obtaining of medical help as described above as a mitigating factor in imposing a penalty for violation of a community or post-release control sanction based on a minor drug possession offense.
  - Requires that "public safety answering point personnel" who are certified as "emergency service telecommunicators" receive training in informing individuals who call about an apparent drug overdose about the act's immunity from prosecution for a minor drug possession offense.
  - Requires those personnel, upon receiving a call about an apparent drug overdose, to make reasonable efforts, upon the caller's inquiry, to inform the caller about that immunity.



- Requires that the basic training course for emergency service telecommunicators include instructional or training units in informing individuals who call about an apparent drug overdose about the act's immunity from prosecution for a minor drug possession offense.
- Prohibits construing the act's immunity provisions from affecting certain matters related to evidence, arrest, and other immunities.

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## **CONTENT AND OPERATION**

### **Failure to stop after a public road accident**

The act modifies the information required to be given after an accident on a public road or highway and increases the penalty for failure to stop after such an accident in cases in which serious physical harm to a person or death results and the offender knows that result.

Preexisting law, unchanged by the act, requires the driver of a motor vehicle involved in an accident on a public road to stop. Formerly, the driver then was required to give to any person injured in the accident, to the operator, occupant, owner or attendant of any vehicle damaged, or to any police officer on the scene the driver's name and address and the motor vehicle registration number of the driver's vehicle. The act retains the stopping requirement, but requires that the driver give the specified information to all of the identified persons. Under continuing law: if the driver is not the owner of the vehicle, the driver also must provide the owner's name and address; if an injured person is unable to comprehend and record the information, the other driver must notify the nearest police authority and wait at the scene until an officer arrives; and if a driver collides with an unattended vehicle, the driver must leave the required information in or on the vehicle. A violation of the statute is the offense of failure to stop after an accident.<sup>1</sup>

Formerly, failure to stop after an accident normally was a first degree misdemeanor. If the accident resulted in serious physical harm to a person, the offense was a fifth degree felony. If the accident resulted in a person's death, the offense was a third degree felony. The act retains this general penalty structure, but raises the penalty to a fourth degree felony if the accident results in serious physical harm and the offender knows that the accident had that result, and raises the penalty to a second

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<sup>1</sup> R.C. 4549.02.

degree felony if the accident results in death and the offender knows that the accident had that result.<sup>2</sup>

Continuing law also requires a Class 5 suspension of the offender's license or other operating privilege and authorizes restitution if the offender does not provide proof of financial responsibility.<sup>3</sup>

### **Failure to stop after a nonpublic road accident**

The act modifies the information required to be given to law enforcement in certain circumstances after an accident on any public or private property other than a public road or highway, and increases the penalty for failure to stop after such an accident in cases in which serious physical harm to a person or death results and the offender knows that result.

Preexisting law, unchanged by the act, requires the driver of a motor vehicle involved in an accident on such property to stop and, on request of any person, give that person the driver's name and address, or the owner's name and address if the driver is not the owner, and the motor vehicle registration number. The driver must also show his or her driver's license if it is available. Formerly, a driver who did not furnish the required information to the owner or person in charge of the damaged property was required, within 24 hours after the accident, to forward the information to the police department of the city or village in which the accident occurred or to the sheriff if the accident occurred outside municipal limits. When forwarding the information, the driver was required to include the date, time, and location of the accident.

The act changes the police/sheriff notification requirement so that it applies if the operator does not provide the information to a requesting person and removes the date, time, and location as required information. Under continuing law, if a driver collides with an unattended vehicle, the driver must leave the required information in or on the vehicle. A violation of the statute is the offense of failure to stop after a nonpublic road accident.<sup>4</sup>

Formerly, failure to stop after a nonpublic road accident normally was a first degree misdemeanor. If the accident resulted in serious physical harm to a person, the offense was a fifth degree felony. If the accident resulted in a person's death, the offense

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<sup>2</sup> R.C. 4549.02(B).

<sup>3</sup> R.C. 4549.02(B).

<sup>4</sup> R.C. 4549.021.



was a third degree felony. The act retains this general penalty structure, but raises the penalty to a fourth degree felony if the accident results in serious physical harm and the offender knows that the accident had that result and raises the penalty to a second degree felony if the accident results in death and the offender knows that the accident had that result.<sup>5</sup>

Continuing law also requires a Class 5 suspension of the offender's license or other operating privilege and authorizes restitution if the offender does not provide proof of financial responsibility.<sup>6</sup>

### **Name of act's "failure to stop" penalty changes**

The act provides that its changes to the penalties for failing to stop are to be known as "Brandon's Law."<sup>7</sup>

### **Disclosure of naloxone administration to law enforcement agency**

The act requires a specified first responder (emergency medical service personnel and a firefighter or volunteer firefighter acting within the course of the firefighting profession) to disclose, upon request of a law enforcement agency as described below, the name and address, if known, of an individual to whom the first responder administered naloxone due to an actual or suspected drug overdose, unless the first responder reasonably believes that the law enforcement agency making the request does not have jurisdiction over the place where the naloxone was administered. A law enforcement agency may request a name and address of an individual for the purposes of investigation or treatment referral and may use a name and address received under the provision for either or both of those purposes.<sup>8</sup>

As used in this provision, "law enforcement agency" means a government entity that employs peace officers to perform law enforcement duties."<sup>9</sup> As used in the definition, "peace officer" means a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, or township constable, who is employed by an Ohio political subdivision; a member of a metropolitan housing authority or regional transit authority police force; a state university law enforcement officer; a veterans' home police officer; a

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<sup>5</sup> R.C. 4549.021(B).

<sup>6</sup> R.C. 4549.021(B).

<sup>7</sup> Section 3.

<sup>8</sup> R.C. 4765.44(B).

<sup>9</sup> R.C. 4765.44(A), by reference to R.C. 2925.61, which is not in the act.



port authority special police officer; an officer, agent, or employee of the state or a state agency, instrumentality, or political subdivision, with a statutory duty to conserve the peace or enforce all or certain laws and authority to arrest violators, within the limits of that duty and authority; or a State Highway Patrol trooper with primary duties to preserve the peace, protect life and property, and enforce the laws, ordinances, or rules of the state or any of its political subdivisions.<sup>10</sup>

## **Medical assistance for drug overdose**

### **Immunity from prosecution**

The act provides specified criminal immunity for a "minor drug possession offense" (a misdemeanor or fifth degree felony drug possession offense under state law)<sup>11</sup> to a person who is not on community control or post-release control and is a person acting in good faith who seeks medical assistance for another person who is experiencing a drug overdose, a person who experiences a drug overdose and seeks medical assistance for that overdose, or a person who is the subject of another person seeking or obtaining medical assistance for that overdose. The types of medical assistance covered by the provision include, but are not limited to, making a 9-1-1 call, contacting in person or by telephone an on-duty peace officer, or transporting or presenting a person to a health care facility.<sup>12</sup>

Under the immunity, subject to the limitations described below, an individual in a category described in the preceding paragraph may not be arrested, charged, prosecuted, convicted, or penalized under the Drug Offenses Law for a minor drug possession offense if all of the following apply:<sup>13</sup>

(1) The evidence of the person's violation of the drug possession statute that would be the basis of the offense was obtained as a result of the individual's seeking the medical assistance or experiencing an overdose and needing medical assistance.

(2) Within 30 days after seeking or obtaining the medical assistance, the individual seeks and obtains a screening and receives a referral for treatment from a community addiction services provider (as defined in R.C. 5119.01, not in the act) or a properly credentialed addiction treatment professional.

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<sup>10</sup> R.C. 4765.44(A), by reference to R.C. 2925.61 and 2921.51, which are not in the act.

<sup>11</sup> R.C. 2925.01(EE), not in the act.

<sup>12</sup> R.C. 2925.11(B)(2)(a).

<sup>13</sup> R.C. 2925.11(B)(2)(b).



(3) The individual who obtains a screening and receives a referral as described in (2), upon the request of any prosecuting attorney, submits documentation to the prosecuting attorney verifying that the individual satisfied the requirements of that paragraph. The documentation must be limited to the date and time of the screening obtained and the referral received.

No person may be granted an immunity under the act's provisions more than two times. The immunity provisions do not apply to any person who twice previously has been granted the immunity.

Nothing in the provisions compels any protected individual to disclose protected health information in a way that conflicts with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 and regulations promulgated by the U.S. Department of Health to implement that Act or the requirements of 42 C.F.R. Part 2.<sup>14</sup> The effect of the immunity provisions on other criminal matters is described below.

### **Penalty for community control or post-release control violation**

The act gives a 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 or obtaining medical assistance in good faith for another person who is experiencing a drug overdose, or (2) experiencing a drug overdose and seeking medical assistance for that overdose 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.<sup>15</sup>

The act includes a like provision with respect to the duties of a court or the Parole Board in similar cases in which a person is found to be in violation of a post-release control sanction.<sup>16</sup>

### **Imprisonment for violation of a community control sanction**

Under the act, a court may not order the imprisonment of a person who is convicted of a violation of a felony community control sanction as a result of acting under the provisions described above with respect to a minor drug possession offense

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<sup>14</sup> R.C. 2925.11(B)(2)(f), and (g).

<sup>15</sup> R.C. 2925.11(B)(2)(c).

<sup>16</sup> R.C. 2925.11(B)(2)(d).

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.<sup>17</sup>

### **Mitigation**

The act 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, under the act, 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 the Parole Board may consider the offender's conduct in seeking or obtaining medical help or in being the person for whom medical help was sought or obtained as a mitigating factor before imposing a penalty.<sup>18</sup>

### **Training of 9-1-1 and emergency operators regarding immunity provisions**

The act requires that "public safety answering point" personnel who are certified as "emergency service telecommunicators" (under R.C. 4742.03, not in the act) receive training in informing individuals who call about an apparent drug overdose about the act's immunity from prosecution for a minor drug possession offense. Public safety answering point personnel who receive a call about an apparent drug overdose must make reasonable efforts, upon the caller's inquiry, to inform the caller about that immunity from prosecution for a minor drug possession offense.<sup>19</sup> A "public safety answering point" is a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider.<sup>20</sup>

The act also requires that the basic training course for emergency service telecommunicators must include instructional or training units in informing individuals who call about an apparent drug overdose about the act's immunity from prosecution for a minor drug possession offense.<sup>21</sup> An emergency service telecommunicator is an

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<sup>17</sup> R.C. 2929.13(E)(2) and (K)(3). The purposes and principles of sentencing are set forth in R.C. 2929.11, which is not in the act.

<sup>18</sup> R.C. 2929.141(B), 2929.15(B)(2), 2929.25(D)(3), and 2967.28(A)(6) and (F)(3).

<sup>19</sup> R.C. 128.04.

<sup>20</sup> R.C. 128.01, not in the act.

<sup>21</sup> R.C. 4742.03(A)(2)(g).



individual employed by an emergency service provider, whose primary responsibility is to be an operator for the receipt or processing of calls for emergency services made by telephone, radio, or other electronic means.<sup>22</sup>

### **Effect of immunity provisions on other criminal matters**

The act states that nothing in its immunity provisions may be construed to do any of the following:<sup>23</sup>

- 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 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 or abridge 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;
- Limit, modify, or remove any immunity from liability available pursuant to law in effect prior to the act's effective date to any public agency or to an employee of any public agency.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-10-15
Reported, H. Judiciary	04-22-15
Passed House (92-0)	05-12-15
Reported, S. Criminal Justice	01-28-16
Recommitted to S. Criminal Justice	02-23-16
Re-reported, S. Criminal Justice	05-04-16
Passed Senate (23-10)	05-24-16
House concurred in Senate amendments (93-0)	05-24-16

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<sup>22</sup> R.C. 4742.01, not in the act.

<sup>23</sup> R.C. 2925.11(B)(2)(e).

