



# Ohio Legislative Service Commission

## Bill Analysis

Jeff Hobday

### H.B. 141

132nd General Assembly  
(As Introduced)

**Reps.** Dever and Wiggam, Arndt, Becker, Butler, Koehler, Riedel, Sprague, Thompson, Lipps

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## BILL SUMMARY

- Expands the offense of involuntary manslaughter to also include causing or contributing to the death of another or the unlawful termination of another's pregnancy as a result of the offender's illegal sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog.
- Makes the new form of involuntary manslaughter a strict liability offense.
- Prescribes specific penalties for a violation of the new form of involuntary manslaughter, and requires a court to consider specified aggravating factors in imposing a sentence for the violation.

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## CONTENT AND OPERATION

### Involuntary manslaughter by drug overdose

The bill expands the offense of involuntary manslaughter to also include causing or contributing to the death of another or the unlawful termination of another's pregnancy as a result of specified drug-related conduct. Under current law, involuntary manslaughter consists of prohibitions against causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony, a misdemeanor, a regulatory offense, or a minor misdemeanor other than a motor vehicle-related minor misdemeanor. Involuntary manslaughter resulting from the commission of a felony is a first degree felony; otherwise, it is a third degree felony.<sup>1</sup>

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<sup>1</sup> R.C. 2903.04(A), (B), and (C) – (C) is redesignated (E)(1) to (3) in the bill, with conforming changes in R.C. 2903.06, 2919.22, 2929.142, 4510.17, 4510.31, and 4511.181.

Under the bill, involuntary manslaughter also includes a prohibition against causing or contributing to the death of another or the unlawful termination of another's pregnancy as a result of the offender's sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog in violation of any provision of the Drug Offenses Law (R.C. Chapter 2925.). The conduct of the victim is not a defense to a charge of violating the above prohibition.<sup>2</sup>

The bill makes the new form of involuntary manslaughter a strict liability offense, meaning that the prosecution need not demonstrate a culpable mental state such as knowledge or recklessness on the part of the offender in order to obtain a conviction. The bill further states that the designation of the new form of involuntary manslaughter as a strict liability offense does not imply that any other offense for which no degree of culpability is specified is not a strict liability offense (see **COMMENT**).<sup>3</sup>

The bill's prohibition does not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe, administer, or distribute controlled substances, pharmacists, owners of pharmacies, and other persons who have complied with the Controlled Substances Law (R.C. Chapter 3719.) and laws particular to their occupations.<sup>4</sup>

### **Penalty**

The new form of involuntary manslaughter is a felony, and notwithstanding the Felony Sentencing Laws regarding prison terms and financial sanctions, the court must impose on the offender one of the following sentences:<sup>5</sup>

(1) A definite prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, or 20 years;

(2) A fine of not more than \$10,000;

(3) A community control sanction (under the current Felony Sentencing Law) if no more than one of the aggravating factors described below apply to the offender and the court finds any of the following:

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<sup>2</sup> R.C. 2903.04(C).

<sup>3</sup> R.C. 2903.04(C).

<sup>4</sup> R.C. 2903.04(D).

<sup>5</sup> R.C. 2903.04(E)(4).



- The offender was a co-user of the controlled substance or controlled substance analog with the victim.
- The offender did not engage in the sale, distribution, dispensation, or administration of the controlled substance or controlled substance analog to the victim for personal profit.
- The offender is a family member or close personal friend of the victim.

### **Aggravating factors**

In imposing a sentence for the new form of involuntary manslaughter, the court must comply with the purposes and principles of sentencing in R.C. 2929.11 and consider the factors in R.C. 2929.12 (seriousness of crime and recidivism factors) and the following aggravating factors:<sup>6</sup>

(1) The offender was previously convicted of aggravated trafficking in drugs or trafficking in drugs or was engaged as a normal practice in any of the acts that could constitute either offense.

(2) The offender sold, distributed, dispensed, or administered, or caused to be sold, distributed, dispensed, or administered a mixture of various controlled substances or analogs to the victim.

(3) The offender knew or should have known that the victim was participating in or had completed a drug rehabilitation program.

(4) The offender deceived the victim regarding the nature of, or the mixture, preparation, or compound containing the controlled substance or analog.

(5) The offender was part of a criminal enterprise involving controlled substances or analogs.

(6) The offender failed to obtain medical assistance for the victim.

### **Definitions**

As used in the bill:

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<sup>6</sup> R.C. 2903.04(G).

- "Controlled substance" and "controlled substance analog" have the same meanings as in the existing Controlled Substances Law.<sup>7</sup>
- "Unlawful termination of another's pregnancy"<sup>8</sup> means (as under current law) causing the death of an unborn member of the species *homo sapiens*, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs. The term cannot be applied in an offense to a pregnant woman or her physician with respect to a legal abortion, or to a woman in a manner so that the offense is applied to her based on her act or omission that occurs while she is or was pregnant and that results in her causing the death *in utero* of an unborn that she is carrying (including delivery of a stillborn baby), her causing any injury to her child while an unborn if the child is born alive (whether or not the child dies after birth), or in her causing or threatening or attempting to cause, in any other manner, an injury, illness, other physiological impairment, or mental illness or condition to an unborn that she is carrying.

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## COMMENT

R.C. 2901.20, enacted by the 130th General Assembly, requires that every future act creating a new criminal offense specify the degree of mental culpability necessary for the commission of the offense. The bill declares that under R.C. 2901.20 strict liability is a culpable mental state.

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## HISTORY

ACTION	DATE
Introduced	03-21-17

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<sup>7</sup> R.C. 2903.04(H), by reference to R.C. 3719.01, which is not in the bill.

<sup>8</sup> R.C. 2903.09, not in the bill.

