



Ohio Revised Code

Section 3719.141 Peace officer may sell controlled substance in performance of official duties.

Effective: September 29, 2011

Legislation: House Bill 153 - 129th General Assembly

(A) A peace officer may sell any controlled substance in the performance of the officer's official duties only if either of the following applies:

(1) A peace officer may sell any controlled substance in the performance of the officer's official duties if all of the following apply:

(a) Prior approval for the sale has been given by the prosecuting attorney of the county in which the sale takes place, in any manner described in division (B) of this section;

(b) The peace officer who makes the sale determines that the sale is necessary in the performance of the officer's official duties;

(c) Any of the following applies:

(i) The person to whom the sale is made or any other person who is involved in the sale does not know that the officer who makes the sale is a peace officer, and the peace officer who makes the sale determines that the sale is necessary to prevent the person from determining or suspecting that the officer who makes the sale is a peace officer.

(ii) The peace officer who makes the sale determines that the sale is necessary to preserve an identity that the peace officer who makes the sale has assumed in the performance of the officer's official duties.

(iii) The sale involves a controlled substance that, during the course of another sale, was intercepted by the peace officer who makes the sale or any other peace officer who serves the same agency served by the peace officer who makes the sale; the intended recipient of the controlled substance in the other sale does not know that the controlled substance has been so intercepted; the sale in



question is made to the intended recipient of the controlled substance in the other sale and is undertaken with the intent of obtaining evidence of a drug abuse offense against the intended recipient of the controlled substance; and the sale in question does not involve the transfer of any money or other thing of value to the peace officer who makes the sale or any other peace officer who serves the same agency served by the peace officer who makes the sale in exchange for the controlled substance.

(d) If the sale is made under the circumstances described in division (A)(1)(c)(i) or (ii) of this section, no person is charged with any criminal offense or any delinquent act based upon the sale unless both of the following apply:

(i) The person also is charged with a criminal offense or a delinquent act that is based upon an act or omission that is independent of the sale but that either is connected together with the sale, or constitutes a part of a common scheme or plan with the sale, or is part of a course of criminal conduct involving the sale.

(ii) The criminal offense or delinquent act based upon the sale and the other criminal offense or delinquent act are charged in the same indictment, information, or complaint.

(e) The sale is not part of a continuing course of conduct involving the sale of controlled substances by the peace officer who makes the sale.

(f) The amount of the controlled substance sold and the scope of the sale of the controlled substance is as limited as possible under the circumstances.

(g) Prior to the sale, the law enforcement agency served by the peace officer who makes the sale has adopted a written internal control policy that does all of the following:

(i) Addresses the keeping of detailed records as to the amount of money or other things of value obtained in the sale in exchange for the controlled substance;

(ii) Addresses the delivery of all moneys or things of value so obtained to the prosecuting attorney pursuant to division (D) of this section;



(iii) Addresses the agency's use and disposition of all such moneys or things of value that are deposited in the law enforcement trust fund of the sheriff, municipal corporation, or township, pursuant to division (D) of this section, and that are used by the sheriff, are allocated to the police department of the municipal corporation by its legislative authority, or are allocated by the board of township trustees to the township police department, township or joint police district police force, or office of the constable;

(iv) Provides for the keeping of detailed financial records of the receipts of the proceeds, the general types of expenditures made out of the proceeds received, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any peace officer involved in the sale, any information that is or may be needed in an ongoing investigation, or any specific expenditure that is made in an ongoing investigation.

(2) A peace officer may sell any controlled substance in the performance of the officer's official duties if all of the following apply:

(a) Prior approval for the sale has been given by the prosecuting attorney of the county in which the sale takes place, in any manner described in division (B) of this section;

(b) Prior to the sale, the law enforcement agency served by the peace officer has adopted a written internal control policy that does the things listed in divisions (A)(1)(g)(i) to (iv) of this section;

(c) The purchaser of the controlled substance acquires possession of it in the presence of the peace officer who makes the sale.

(d) Upon the consummation of the sale, either of the following occurs:

(i) The peace officer arrests the purchaser of the controlled substance, recovers it and the proceeds of the sale, and secures it and the proceeds as evidence to be used in a subsequent prosecution.

(ii) The peace officer makes a reasonable, good faith effort to arrest the purchaser of the controlled substance and to recover the controlled substance and the proceeds of the sale, but the officer is



unable to make the arrest and recover all of the controlled substance and proceeds for reasons beyond the officer's control, and the peace officer secures all of the controlled substance recovered and all of the proceeds recovered as evidence to be used in a subsequent prosecution.

(B) The approval of a prosecuting attorney required by division (A)(1)(a) or (2)(a) of this section may be in either of the following forms:

(1) A general approval that is given by the prosecuting attorney to the peace officer who makes the sale or to the law enforcement agency served by that peace officer, that grants approval only to that peace officer, and that grants approval for any such sale that may be necessary, after the approval has been granted, under the standards described in division (A)(1) or (2) of this section;

(2) A specific approval that is given by the prosecuting attorney to the peace officer who makes the sale or to the law enforcement agency served by that peace officer, and that grants approval only to that peace officer and only for the particular sale in question, under the standards described in division (A)(1) or (2) of this section.

(C) If a peace officer sells a controlled substance in the performance of the officer's official duties under division (A)(1) or (2) of this section, the peace officer, within a reasonable time after the sale, shall provide the prosecuting attorney who granted approval for the sale with a written summary that identifies the amount and type of controlled substance sold, the circumstances of the sale, and the amount of any money or other thing of value obtained in the sale in exchange for the controlled substance. The summary shall not identify or enable the identification of any peace officer involved in the sale and shall not contain any information that is or may be needed in an ongoing investigation.

(D)(1) Except as provided in division (D)(2) of this section, if a peace officer sells a controlled substance in the performance of the officer's official duties under division (A)(1) or (2) of this section, the peace officer, as soon as possible after the sale, shall deliver all money or other things of value obtained in the sale in exchange for the controlled substance to the prosecuting attorney who granted approval for the sale. The prosecuting attorney shall safely keep all money and other things of value the prosecuting attorney receives under this division for use as evidence in any criminal action or delinquency proceeding based upon the sale. All money so received by a prosecuting



attorney that no longer is needed as evidence in any criminal action or delinquency proceeding shall be deposited by the prosecuting attorney in the law enforcement trust fund of the sheriff if the peace officer who made the sale is the sheriff or a deputy sheriff or the law enforcement trust fund of a municipal corporation or township if it is served by the peace officer who made the sale, as established pursuant to section 2981.13 of the Revised Code, and upon deposit shall be expended only as provided in that section. All other things of value so received by a prosecuting attorney that no longer are needed as evidence in any criminal action or delinquency proceeding shall be disposed of, without appraisal, at a public auction to the highest bidder for cash; the proceeds of the sale shall be deposited by the prosecuting attorney in the law enforcement trust fund of the sheriff if the peace officer who made the sale is the sheriff or a deputy sheriff or the law enforcement trust fund of a municipal corporation or township if it is served by the peace officer who made the sale, as established pursuant to section 2981.13 of the Revised Code, and upon deposit shall be expended only as provided in that section. Each law enforcement agency that uses any money that was deposited in a law enforcement trust fund pursuant to this division shall comply with the written internal control policy adopted by the agency, as required by division (A)(1)(g) or (2)(b) of this section, in its use of the money.

(2) Division (D)(1) of this section does not apply in relation to a peace officer who sells a controlled substance in the performance of the officer's official duties under division (A)(1) of this section in any of the following circumstances:

(a) The person to whom the sale is made or any other person who is involved in the sale does not know that the officer is a peace officer, and, if the officer were to retain and deliver the money or other things of value to the prosecuting attorney, the person would determine or suspect that the officer is a peace officer.

(b) If the officer were to retain and deliver the money or other things of value to the prosecuting attorney, an identity that has been assumed in the performance of the officer's official duties would not be preserved.

(c) The sale is made under the circumstances described in division (A)(1)(c)(iii) of this section.

(3) If division (D)(1) of this section does not apply in relation to a peace officer who sells a



controlled substance in the performance of the officer's official duties under division (A)(1) of this section due to the operation of division (D)(2) of this section, the peace officer, as soon as possible after the sale, shall deliver to the prosecuting attorney who granted approval for the sale a written summary that describes the circumstances of the sale and the reason for which division (D)(1) of this section does not apply. The summary shall not identify or enable the identification of any peace officer involved in the sale and shall not contain any information that is or may be needed in an ongoing investigation.

(E)(1) A written internal control policy adopted by a law enforcement agency that is served by a peace officer who sells a controlled substance under division (A)(1) or (2) of this section, as required by division (A)(1)(g) or (2)(b) of this section, is a public record open for inspection under section 149.43 of the Revised Code. Each law enforcement agency that adopts a written internal control policy of that nature shall comply with it in relation to any sale of a controlled substance under division (A)(1) or (2) of this section. All records as to the amount of money or things of value obtained in the sale of a controlled substance, in exchange for the controlled substance, and all financial records of the receipts of the proceeds, the general types of expenditures made out of the proceeds received, and the specific amounts of each general type of expenditure by a law enforcement agency in relation to any sale of a controlled substance under division (A)(1) or (2) of this section are public records open for inspection under section 149.43 of the Revised Code.

(2) A summary required by division (C) or (D)(3) of this section is a public record open for inspection under section 149.43 of the Revised Code.

(F)(1) Each prosecuting attorney who grants approval for a sale of controlled substances by a peace officer and who receives in any calendar year one or more summaries under division (C) of this section relative to the sale of a controlled substance by a peace officer shall prepare a report covering the calendar year that cumulates all of the information contained in each of the summaries so received in the calendar year and shall send the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general.

(2) Each prosecuting attorney who receives any money or any other thing of value under division (D)(1) of this section shall keep detailed financial records of the receipts and dispositions of all



such moneys or things of value so received. No record of that nature shall identify, or enable the identification of, any person from whom money or another thing of value was received as a result of the sale of a controlled substance under division (A)(1) or (2) of this section or contain any information that is or may be needed in an ongoing investigation. Each record of that nature is a public record open for inspection under section 149.43 of the Revised Code and shall include, but is not limited to, all of the following information:

(a) The identity of each law enforcement agency that has so delivered any money or other thing of value to the prosecuting attorney;

(b) The total amount of money or other things of value so received from each law enforcement agency;

(c) The disposition made under this section of all money or other things of value so received.

(G) Divisions (A) to (F) of this section do not apply to any peace officer, or to any officer, agent, or employee of the United States, who is operating under the management and direction of the United States department of justice. Any peace officer, or any officer, agent, or employee of the United States, who is operating under the management and direction of the United States department of justice may sell a controlled substance in the performance of the officer's, agent's, or employee's official duties if the sale is made in accordance with federal statutes and regulations.

(H) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code and also includes a special agent of the bureau of criminal identification and investigation.