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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 22, 2021

Subject: Bill Brief on HB 2365

HB 2365 provides immunity from prosecution for possession of a controlled substance or drug paraphernalia if seeking assistance related to substance use.

The bill would enact a new section of law to provide that a person, and up to four other persons acting with such person, are immune from prosecution for possession of a controlled substance or drug paraphernalia if the person (1) initiated contact with law enforcement or emergency medical services because the person reasonably believed they were in need of medical assistance and cooperated with law enforcement or emergency medical services personnel; (2) initiated contact with law enforcement or emergency medical services for another person who reasonably appeared to be in need of medical assistance, provided their information to law enforcement or emergency medical services, remained at the scene with the person needing assistance and cooperated with emergency medical services and law enforcement; or (3) was the person need of assistance under paragraph (2) and cooperated with emergency medical services and law enforcement.

Subsection (b) provides that a person shall not be allowed to initiate or maintain an action against a law enforcement officer or agency for compliance or failure to comply with this section. Except in cases of reckless or intentional misconduct, law enforcement officers shall be immune from liability for arresting a person who is later determined to be immune from prosecution. Subsection (c) provides that this section shall not apply to a person seeking assistance during the course of the execution of an arrest or search warrant. Subsection (d) provides that nothing in this section precludes a person from being prosecuted on the basis of evidence obtained from an independent source. Subsection (e) provides that no property seized by law enforcement during an encounter that results in a person being immune from prosecution under this section shall be subject to civil asset forfeiture.