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Bill Analysis

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Version: As Reported by Senate Judiciary

Primary Sponsors: Sens. Eklund and O'Brien

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SUMMARY

(Note that due to time constraints, amendments adopted in the committee on June 30, 2020, are addressed only in the **SUMMARY** portion of this analysis.)

Controlled substance trafficking and possession offenses

- Replaces the current controlled substance trafficking offenses and controlled substance possession offenses with new offenses located in six Revised Code sections and redesignates the offenses as aggravated trafficking offenses, major trafficking in drugs, trafficking offenses, possession of a controlled substance, possession of marihuana, possession of hashish, possession of a controlled substance trace amount, and possession of a trace amount of marihuana or hashish.

Trafficking offenses

- In the new aggravated trafficking offenses, major trafficking in drugs offense, and trafficking offenses:
  - Retains the current penalties under the existing trafficking offenses for trafficking conduct involving a sexual assault-enabling drug or a fentanyl-related compound or

* This analysis was prepared before the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete. (**Note that due to time constraints, amendments adopted in the committee on June 30, 2020, are addressed only in the SUMMARY portion of this analysis**.)

conduct occurring in the vicinity of a school, subject to a trace amount minimum exception for those drugs under the trafficking offenses;

- Changes the exemptions from the current trafficking offenses to affirmative defenses and applies them to the new aggravated trafficking offenses, major trafficking in drugs offense, and trafficking offenses; and
- Provides a transition to the new aggravated trafficking offenses, major trafficking in drugs offense, and trafficking offenses for certain conduct covered by the current trafficking offenses.

- Provides in the new aggravated trafficking offenses that they:
  - Apply regarding trafficking conduct involving specified large amounts of a controlled substance, other than a Schedule III, IV, or IV controlled substance;
  - Generally apply to conduct that currently is classified a first or second degree felony under the existing trafficking offenses;
  - Have higher threshold amounts for subjecting a person to the penalties than are specified under the existing trafficking offenses for subjecting a person to the same penalty, except when the offense involves a sexual assault-enabling drug or a fentanyl-related compound or occurs in the vicinity of a school; and
  - In addition to prohibiting currently prohibited trafficking conduct, also prohibit obtaining or possessing the specified large amount.
- Provides in the new major trafficking in drugs offense that it:
  - Applies regarding specified amounts of a controlled substance that are lower than the amounts under its aggravated trafficking offenses and higher than the amounts under its trafficking offenses;
  - Generally applies to conduct that currently is classified a third degree felony under the existing trafficking offenses;
  - Has higher threshold amounts for subjecting a person to the penalties than are specified under the existing trafficking offenses for subjecting a person to the same penalty, except when the offense involves a sexual assault-enabling drug or a fentanyl-related compound or occurs in the vicinity of a school; and
  - In addition to prohibiting currently prohibited trafficking conduct, also prohibits obtaining or possessing the specified intermediate amount.
- Provides in the new trafficking offenses that they:
  - Apply regarding specified amounts of a controlled substance that are lower than the amounts specified under its major trafficking in drugs offense and higher than specified trace amounts of the controlled substance;
  - Generally apply to conduct that currently is classified a fourth or fifth degree felony under the existing trafficking offenses;

- Have higher threshold amounts for subjecting a person to the penalties than are specified under the existing trafficking offenses for subjecting a person to the same penalty, except when the offense involves a sexual assault-enabling drug or a fentanyl-related compound or occurs in the vicinity of a school; and
- In addition to prohibiting currently prohibited trafficking conduct, also include a prohibition against obtaining or possessing a controlled substance with purpose or intent to distribute or sell it.

Possession offenses

- **Adopted by Senate Judiciary on June 30, 2020**: Modified the bill's provisions described below by changing the penalty for the offense of possession of a controlled substance, when it involves heroin, to be one of the following:[1]
  - If the amount of the heroin involved equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit dose but is less than three grams or 30 unit doses, the offense generally is an unclassified misdemeanor, but if the offender twice previously has been convicted of possession of a controlled substance or a violation of a substantially equivalent state law or municipal ordinance in the three years immediately preceding the offense date, it is a fifth degree felony.
  - If the amount of the heroin involved equals or exceeds three grams or 30 unit doses but is less than five grams or 50 unit doses, possession of a controlled substance is a felony of the fifth degree (previously under the bill, the offense involving this amount of heroin also was punished as described above).
- **Adopted by Senate Judiciary on June 30, 2020**: Modified the provisions of existing law and the bill's provisions described below by including within the targeting community alternatives to prison (T-CAP) program sanctions imposed on an offender for an unclassified misdemeanor drug possession offense under the bill's provisions committed on or after the bill's effective date, and provides for county use of funding under that program for the cost of such sanctions.[2]
- In the new possession of a controlled substance offense, possession of marihuana offense, possession of hashish offense, possession of a controlled substance trace amount offense, and possession of a trace amount of marihuana or hashish offense:
  - Changes the exemptions from the current possession offenses to affirmative defenses and applies them to the new possession offenses; and
  - Provides a transition to the new possession offenses for certain conduct covered by the current possession offenses.

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[1] R.C. 2925.11.

[2] R.C. 5149.38.

- In the new possession of a controlled substance offense, retains the current penalties under the existing possession offenses for possession conduct involving a sexual assault-enabling drug or a fentanyl-related compound.
- Provides in the new possession of a controlled substance offense that it:
  - Applies regarding possession conduct involving specified amounts of a controlled substance, other than marihuana or hashish, that are lower than the amounts under its major trafficking in drugs offense and, except for sexual assault-enabling drugs and fentanyl-related compounds, higher than specified trace amounts;
  - Generally applies to conduct that currently is classified a misdemeanor or a fourth or fifth degree felony under the existing possession offenses;
  - Generally makes a violation of the prohibitions under the offense an unclassified misdemeanor with special penalties provided, whereas the existing possession offenses never are penalized as an unclassified misdemeanor; and
  - Is presumed that the unclassified misdemeanor carries a sentence to treatment but that the presumption does not apply and other specified sanctions, including a jail term, may be imposed if the offender made threats of violence to any person.
- Provides in the new possession of marihuana and possession of hashish offenses that they:
  - Apply regarding possession conduct involving specified amounts of marihuana or hashish that are lower than the amounts under its major trafficking in drugs offense and higher than specified trace amounts;
  - Generally apply to conduct that currently is classified a misdemeanor or a fourth or fifth degree felony under the existing possession offenses; and
  - Have higher threshold amounts for subjecting a person to the penalties than are specified under the existing possession offenses for subjecting a person to the same penalty.
- Provides in the new possession of a controlled substance trace amount and possession of a trace amount of marihuana or hashish offenses that:
  - They apply regarding possession conduct involving not more than specified trace amounts of the drug involved;
  - They generally apply to conduct that currently is classified a fifth degree felony, first degree misdemeanor, or minor misdemeanor under the existing possession offenses;
  - They generally make a violation of the prohibitions under the offenses, other than with respect to marihuana or hashish, an unclassified misdemeanor with special penalties provided, whereas the existing possession offenses never are penalized as an unclassified misdemeanor; and

- It is presumed that the unclassified misdemeanor carries a sentence to treatment but that the presumption does not apply and other specified sanctions, including a jail term, may be imposed if the offender made threats of violence to any person.

- Specifies that, in certain circumstances, a court hearing a charge against a person of any of the new misdemeanor possession offenses enacted in the bill, when not a minor misdemeanor, may hold the prosecution in abeyance and stay all criminal proceedings and order the person to a drug treatment program, and that:
  - If the person completes the program, the court must dismiss the proceedings; and
  - If the person does not complete the program, the court may allow continued treatment with the same, or different, terms and conditions or may continue the prosecution.

Sexual assault-enabling drug

- Defines "sexual assault-enabling drug" for purposes of the trafficking and possession offenses described above.

Having a weapon while under a disability

- Specifies that a person who is charged with or has been convicted of any unclassified misdemeanor offense involving the illegal possession of a controlled substance under the bill, or who has been adjudicated a delinquent child for committing such an offense, is under a disability for purpose of the offense of "having weapons while under a disability."

Attempt to commit an unclassified misdemeanor drug possession offense

- Provides that an attempt to commit a drug possession offense that is an unclassified misdemeanor under the bill is a first degree misdemeanor, with the same unclassified misdemeanor penalties available as would be available if the offense had actually been committed.

90-day or 180-day limit on use of prison term as sanction for community control sanction violation

- **Adopted by Senate Judiciary on June 30, 2020**: With respect to the provisions of existing law and the bill's provisions described below that pertain to the prison term that a court may impose for a violation of a community control sanction or for a violation of a law or leaving the state without the permission of the court or the offender's probation officer:[3]

[3] R.C. 2929.15.

- (1)Modified the existing provisions and the bill's provisions that impose a 90-day or 180-day limit on the length of the term if it is for a technical violation of a community control sanction imposed for most fourth or fifth degree felonies by:
- (a) Removing the provision that specifies that the 90 days or 180 days are in addition to the period of the community control and adding a new limitation specifying that if the remaining period of the offender's community control, or the remaining period of the offender's suspended prison sentence, at that time is less than 90 or 180 days, the prison term may not exceed the length of the remaining period of community control or the remaining period of the offender's suspended prison sentence; and
- (b) Specifying that the time the offender spends in prison under the term must be credited against the offender's community control sanction or the offender's suspended prison sentence that was being served at the time of the violation, the remaining time under that community control sanction or suspended prison sentence must be reduced by the time that the offender spends in prison under the term, and the offender upon release from the prison term will continue serving the remaining time under the community control sanction or community control sanction replacing the suspended prison term, as reduced.
- (2) Specified that a court is not limited in the number of times it may sentence an offender to a prison term under the existing provisions and the bill's provisions for a violation of the conditions of a community control sanction or for a violation of a law or leaving the state without the permission of the court or the offender's probation officer.

- Clarifies the meaning of "technical violation" in the provisions that impose a 90-day or 180-day limit, in specified circumstances, on the use of a prison term as a sanction for a felony community control sanction violation, and the manner of computing the application of such a sanction.

Court jurisdiction over reclassified drug possession offense charge

- **Adopted by Senate Judiciary on June 30, 2020**: Modified the bill's provisions described below that pertain to jurisdiction over reclassified misdemeanor drug possession offenses under the bill by:[4]
  - Specifying that if a person commits a reclassified misdemeanor drug possession offense within the territory of a municipal court or county court, and if the person is charged with the offense, the charges must be filed in the court of common pleas of the county in which the offense was committed; the common pleas court then will have jurisdiction in all actions or proceedings in the case.

[4] R.C. 1901.186, 1901.20, 1907.02, and 2931.03.

  - Specifying that the provisions described in the preceding paragraph do not apply to the Tiffin-Fostoria municipal court.

- With respect to charges of a drug possession offense that the bill reclassifies from a felony to a misdemeanor:
  - Requires that the charges initially must be filed in the municipal or county court;
  - Allows the prosecutor, defendant, or court to move to transfer the case to common pleas court;
  - Specifies that, when a transfer motion is filed, the municipal or county court decides whether to transfer the case and that if that court does not transfer the case to the court of common pleas, the municipal court or county court has exclusive jurisdiction in the case; and
  - Specifies that, when a transfer motion is filed, if the municipal court or county court does transfer the case to the court of common pleas, the court of common pleas has exclusive jurisdiction in the case.

Period of limitations

- Specifies that the period of limitations applicable to the prosecution of a person who commits an unclassified misdemeanor drug possession offense that the bill converts from a felony offense is the same as if the offense had remained a felony.

Speedy Trial Law

- Specifies that the time for trial under the state's Speedy Trial Law applicable to the prosecution of a person charged with an unclassified misdemeanor drug possession offense that the bill converts from a felony offense is the same as if the offense had remained a felony.

Forfeiture Law

- Specifies that if a person commits a drug possession offense prior to the bill's effective date that was a felony when committed and that the bill changes to an unclassified misdemeanor, the state's Forfeiture Law applies with respect to a person who committed the offense to the same extent as if the offense had remained a felony.
- Specifies that any forfeiture ordered before the bill's effective date with respect to a person who committed a drug possession offense before that date that was a felony when committed and that the bill converts to an unclassified misdemeanor remains valid as if the offense had remained a felony.

Involuntary court-ordered treatment for person suffering from alcohol or drug abuse

- Modifies the criteria governing applications for, granting of, and treatment under a mechanism providing for a probate court order requiring involuntary treatment for a person suffering from alcohol or other drug abuse.

- Provides for the emergency hospitalization of a respondent under a petition filed under the mechanism if the court determines that the respondent presents an imminent danger or imminent threat of danger to self, family, or others as a result of alcohol or other drug abuse, separate from the treatment ordered by the court.
- Specifies that, in addition to the current sanction of contempt of court, if a respondent fails to complete court-ordered treatment under the mechanism, the court may require the respondent to appear at a specified time and place.

Conviction Record Sealing Law

- In the Conviction Record Sealing Law:
  - Modifies the eligibility for applying for sealing of official records to include a specific reference to persons convicted of a drug possession offense the bill reclassifies from a felony to a misdemeanor;
  - Specifies that such persons are to be considered as convicted misdemeanants; and
  - Authorizes an offender convicted of any of the new possession offenses enacted under the bill to apply upon successful completion of a court-ordered treatment program or intervention plan.

Not Guilty/Dismissed Charges Record Sealing Law

- Modifies the Not Guilty/Dismissed Charges Record Sealing Law to ensure that its provisions apply to a person charged with any of the bill's new possession offenses who had the charge held in abeyance under the bill, successfully completed the treatment program or intervention plan, and had the charges dismissed.

State Criminal Sentencing Commission additional duties

- Expands the duties of the State Criminal Sentencing Commission by:
  - Designating the Commission as a criminal justice agency and specifying that it thus is authorized to apply for access to the computerized databases of the National Crime Information Center or LEADS, and to other computerized databases administered for the purpose of making criminal justice information accessible to state criminal justice agencies;
  - Requiring the Commission to study the impact of sections relevant to the bill on an ongoing basis and to make biennial reports, commencing not later than December 31, 2020, to the General Assembly and the Governor regarding the results of the study described above and recommendations.

Adopted by Senate Judiciary on June 30, 2020 – Restraining or confining a pregnant woman who is in the juvenile justice or criminal justice system

- Added provisions to the bill that prohibit restraining or confining a woman or child who is a charged, convicted, or adjudicated a criminal offender or delinquent child at certain points during pregnancy or postpartum recovery.[5]

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[5] R.C. 109.749, 2152.75, 2901.10, and 2921.45

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DETAILED ANALYSIS

Introduction

The bill modifies the current offenses that pertain to controlled substance trafficking or controlled substances possession in several ways. It relocates the current prohibitions into six Revised Code sections (instead of the current two sections) and redesignates the offenses as aggravated trafficking offenses, major trafficking in drugs, trafficking offenses, possession of a controlled substance, possession of marihuana, possession of hashish, possession of a controlled substance trace amount, and possession of a trace amount of marihuana or hashish. It also treats possession of high amounts of a controlled substance as an aggravated trafficking offense or as major trafficking in drugs, and includes a new prohibition that treats possession of relatively low amounts of a controlled substance as trafficking if the person possessing the controlled substance does so with purpose to distribute or sell it.

Regarding penalties, the bill changes the controlled substance threshold amounts that determine the penalties for the offenses and modifies the penalties for the offenses except when the violation involves a sexual assault-enabling drug or, subject to one exception, a fentanyl-related compound, or is committed in the vicinity of a school. Related to the reclassification of some of the offenses from felonies to misdemeanors, the bill addresses the jurisdiction of municipal courts, county courts, and common pleas courts with respect to the reclassified possession offenses by requiring that charges of the offense initially be filed in the appropriate municipal court or county court and then allowing the transfer of the case to the appropriate common pleas court in specified circumstances and specifies that possession offenses committed prior to the bill's effective date that are reclassified in that manner generally are to be treated under the law establishing periods of limitations and under the Speedy Trial Law and Forfeiture Law as if they had remained felonies.

Outside of the Controlled Substances Law, the bill enacts a special penalty for an attempt to commit an unclassified drug possession offense, includes a charge of or conviction or delinquent child adjudication for an unclassified drug possession offense as a disability under the offense of having weapons while under a disability, clarifies the application of the 90-day and 180-day limitations on the use of a prison term as a sanction for a violation of a felony community control sanction, modifies the Conviction Record Sealing Law and the Not Guilty/Dismissed Charges Record Sealing Law with respect to certain controlled substance possession offenses, modifies certain criteria under the drug and alcohol abuse civil commitment mechanism, and expands the duties of the State Criminal Sentencing Commission regarding access to and use of computerized criminal justice databases and requires the Commission to study and make annual reports to the General Assembly and the Governor regarding the impact of the bill.

In all of the tables used in this analysis to describe the penalties for the various offenses, references to "bulk" mean the bulk amount of the particular controlled substance, "UD" means unit dose, "g" means gram, "kg" means kilogram, and "MDO" means major drug offender. The terms "bulk amount" and "unit dose" are defined in the Drug Offenses Law.[6] The charts indicate whether the penalty includes a presumption for a prison term, but do not detail whether the penalty is to be determined under the provisions[7] that generally apply to third, fourth, and fifth degree felonies and relate to a presumption against a prison term or to no presumption for or against a prison term.

Sexual assault-enabling drug definition

The bill defines the term "sexual assault-enabling drug" for use in its provisions. Under the bill, the term means any of the following:[8] (1) Gamma hydroxybutyric acid, (2) Flunitrazepam, (3) Ketamine, or (4) any controlled substance not listed in clause (1) to (3) if all of the following apply with respect to the controlled substance: (a) an offender convicted of a violation of any of the bill's aggravated trafficking offenses, major trafficking in drugs, trafficking offenses, or possession of a controlled substance possessed the controlled substance immediately prior to, or at the time of, the violation, (b) for the purpose of preventing another person's resistance to sexual activity, the offender knowingly substantially impaired the other person's judgment or control by administering the controlled substance to the other person surreptitiously or by force, threat of force, or deception, (c) after the administration of the controlled substance as described in clause (4)(b), the offender engaged in sexual activity with the other person to whom the controlled substance was administered, and (d) either the offender's possession of the controlled substance at the time of the conduct described in clause (4)(b) was in violation of a prohibition under the bill's possession of a controlled substance offense or the offender's possession of the controlled substance at that time was not in violation of a prohibition under that offense but the offender's use of the controlled substance was not for the intended purpose for which the offender legally possessed the controlled substance.

Aggravated trafficking offenses

Generally, and prohibition

The bill enacts new offenses, named "aggravated trafficking in . . ." (with the specific name depending on the type of drug involved – see below), that consist of a prohibition against trafficking in specified large amounts of any controlled substance, other than a Schedule III, IV, or V controlled substance. The new offenses are among several trafficking-related offenses that the bill enacts to replace the existing trafficking offenses,[9] and they generally apply to conduct

[6] R.C. 2925.01.

[7] R.C. 2929.13(B) and (C).

[8] R.C. 2925.01(PP).

[9] Current R.C. 2925.03.

that currently is classified a first or second degree felony under the existing trafficking offenses. However, except when the drug involved is a sexual assault-enabling drug or a fentanyl-related compound or when the offense is committed in the vicinity of a school, the bill's threshold amounts for subjecting a person to the penalties for its aggravated trafficking offenses are higher than the threshold amounts specified under the existing trafficking offenses for subjecting a person to the same penalty for violation of the trafficking prohibition under the existing offenses. Schedule III, IV, and V controlled substances are not within the scope of these new offenses. The prohibition under the new offenses is the same as the prohibition in the existing Revised Code section that prohibits trafficking in any controlled substance, except that it applies only when the amount of the drug involved is within the specified large amount and that it also prohibits knowingly obtaining or possessing the specified large amount.

Specifically, the prohibition under the new offenses prohibits a person from: (1) knowingly obtaining, possessing, selling, or offering to sell a controlled substance or controlled substance analog in an amount specified below, or (2) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance or a controlled substance analog in an amount specified below, when the person knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.[10] The bill provides affirmative defenses to the prohibitions for certain persons or entities, parallel to the exemptions under the existing trafficking offenses (e.g., manufacturers, medical professionals, and pharmacists acting in accordance with law, certain anabolic steroid research personnel, and persons engaged in conduct involving anabolic steroids for animal use, etc.), but under the bill, the specified circumstances are provided as affirmative defenses instead of as exemptions.[11]

Amount of the drug involved needed for the prohibition to apply and name of offense

The bill's aggravated trafficking prohibition described above applies when the specified conduct involves a drug in the following amount:[12]

1. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule I or Schedule II, other than marihuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance analog, an amount of the drug so involved that equals or exceeds 50 times the bulk amount (a violation involving such a drug is "aggravated trafficking in drugs");
2. If the drug involved in the conduct is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the drug so involved that equals or exceeds 50 grams (a violation involving such a drug is "aggravated trafficking in cocaine");

[10] R.C. 2925.03(A)(1).

[11] R.C. 2925.03(B).

[12] R.C. 2925.03(A)(2).

3. If the drug involved in the conduct is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the drug so involved that equals or exceeds 500 unit doses of L.S.D. in solid form or equals or exceeds 50 grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form (a violation involving such a drug is "aggravated trafficking in L.S.D.");
4. If the drug involved in the conduct is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the drug so involved that equals or exceeds 300 unit doses or 30 grams (a violation involving such a drug is "aggravated trafficking in heroin");
5. If the drug involved in the conduct is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound, an amount of the drug so involved that equals or exceeds 100 unit doses or 10 grams (a violation involving such a drug is "aggravated trafficking in a fentanyl-related compound," except as described in the table below when the compound is mixed with marihuana);
6. If the drug involved in the conduct is marihuana other than hashish or a compound, mixture, preparation, or substance containing marihuana other than hashish, an amount of the drug so involved that equals or exceeds 40,000 grams (a violation involving such a drug is "aggravated trafficking in marihuana");
7. If the drug involved in the conduct is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the drug so involved that equals or exceeds 2,000 grams (a violation involving such a drug is "aggravated trafficking in hashish");
8. If the drug involved in the conduct is a controlled substance analog or a compound, mixture, preparation, or substance containing a controlled substance analog, an amount of the drug so involved that equals or exceeds 30 grams (a violation involving such a drug is "aggravated trafficking in a controlled substance analog").

Aggravated trafficking offense penalties

The following table lists the penalties for the aggravated trafficking offenses under the bill for the specified threshold amounts, and the threshold amount under existing law under the current trafficking offenses that provides a comparable penalty:[13]

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
Schedule I or II **(but see "Schedule I or II sexual assault-enabling drug" and**	≥ 50 and <100 times bulk	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school,	≥ 5 and <50 times bulk;(also increased to F-1 if in vicinity of juvenile, with mandatory w/in F-1

[13] R.C. 2925.03(C) through (K) under the bill, and existing R.C. 2925.03(C).

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
"Fentanyl-related compound," below)		with mandatory w/in F-1 range)	range)
	≥ 100 times bulk	F-1 (mandatory w/in F-1 range)	≥ 50 and <100 times bulk ≥ 100 times bulk (MDO)
Marihuana	≥ 40 kg	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school, with mandatory maximum w/in F-1 range)	≥ 20 kg and < 40 kg (but mandatory is 5, 6, 7, or 8 years, and also increased to F-1 if in vicinity of juvenile; when increased to F-1, mandatory is maximum w/in F-1 range) ---------- ≥ 40 kg (mandatory maximum F-2 penalty, and also increased to F-1 if in vicinity of juvenile; when increased to F-1, mandatory is maximum w/in F-1 range)
Cocaine	≥ 50 g and < 100 g	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school, with mandatory w/in F-1 range)	≥ 20 g and < 27 g (also increased to F-1 if in vicinity of juvenile, with mandatory w/in F-1 range)
	≥ 100 g and < 250 g	F-1 (mandatory w/in F-1 range)	≥ 27 g and < 100 g
	≥ 250 g	F-1 (MDO – 10 or 11 year mandatory)	≥ 100 g (but mandatory is maximum w/in F-1 range)

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
LSD: Solid	≥ 500 UD and < 5000 UD	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school, with mandatory w/in F-1 range)	≥ 250 UD and < 1000 UD (also increased to F-1 if in vicinity of juvenile, with mandatory w/in F-1 range)
	≥ 5000 UD	F-1 (mandatory w/in F-1 range)	≥ 1000 UD and < 5000 UD ---------- ≥ 5000 UD (MDO and mandatory is maximum from F-1 range)
LSD: Liquid	≥ 50 g and < 500 g	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school, with mandatory w/in F-1 range)	≥ 25 g and < 100 g (also increased to F-1 if in vicinity of juvenile, with mandatory w/in F-1 range)
	≥ 500 g	F-1 (mandatory w/in F-1 range)	≥ 100 g and < 500 g ---------- ≥ 500 g (MDO and mandatory is maximum from F-1 range)
Heroin	≥ 30 g and < 50 g; ≥ 300 UD and < 500 UD	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school, with mandatory w/in F-1 range)	≥ 10 g and < 50 g; ---------- ≥ 100 UD and < 500 UD (also increased to F-1 if in vicinity of juvenile, with mandatory w/in F-1 range)
	≥ 50 g and < 100 g; ≥ 500 UD and < 1000 UD	F-1 (mandatory w/in F-1 range)	≥ 50 g and < 100 g; ≥ 500 UD and < 1000 UD
	≥ 100 g;	F-1 (MDO – 10 or 11 year	≥ 100 g; ≥ 1000 UD

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
	≥ 1000 UD	mandatory)	(but mandatory is maximum from F-1 range)
Hashish	≥ 2 kg	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school with mandatory maximum w/in F-1 range)	≥ 1 kg and < 2 kg (solid) ≥ 200 g (liquid) and < 400 g (liquid) (but mandatory is 5, 6, 7, or 8 years, and also increased to F-1 if in vicinity of juvenile; when F-1, mandatory is maximum w/in F-1 range) ---------- ≥ 2 kg (solid); ≥ 400 g (liquid) (mandatory maximum F-2 penalty; also increased to F-1 if in vicinity of juvenile; when F-1, mandatory is maximum w/in F-1 range)
Controlled Substance Analog	≥ 30 g and < 40 g	F-2 (mandatory w/in F-2 range; increased to F-1 if in vicinity of school, with mandatory w/in F-1 range)	Same (also increased to F-1 if in vicinity of juvenile; when F-1, mandatory w/in F-1 range)
	≥ 40 g and < 50 g	F-1 (mandatory w/in F-1 range)	Same
	≥ 50 g	F-1 (MDO – 10 or 11 year mandatory)	Same

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
Schedule I or II sexual assault-enabling drug	≥ 50 times bulk and < 100 times bulk	F-1 (mandatory w/in F-1 range)	Same
	≥ 100 bulk	F-1 (MDO – mandatory is maximum w/in F-1 range)	Same
Fentanyl-related compound	≥ 10 g and < 20 g; ≥ 100 UD and < 200 UD	F-2 (mandatory w/in F-2 range) Increased to F-1 if in vicinity of school or juvenile (mandatory w/in F-1 range)	Same
	≥ 20 g and < 50 g; ≥ 200 UD and < 500 UD	F-1 (mandatory w/in F-1 range)	Same
	≥ 50 g and < 100 g; ≥ 500 UD and < 1,000 UD	F-1 (mandatory is maximum w/in F-1 range)	Same
	≥ 100 g; ≥ 1,000 UD	F-1 (MDO – mandatory is maximum w/in F-1 range)	Same
	Fentanyl-related compound combined with marihuana: (1) generally charged as aggravated trafficking in marihuana or major trafficking in drugs,		Same

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
	involving marihuana, (2) if offender knows or has reason to know that fentanyl-related compound involved, charged with aggravated trafficking in fentanyl-related compound		

Other provisions regarding aggravated trafficking offenses

Transition provisions

The bill specifies that if a person has been charged with a violation of the current drug trafficking statute (the version of R.C. 2925.03 in effect prior to the bill's effective date) allegedly committed prior to the bill's effective date, all of the following apply:[14]

1. The conduct constituting the violation must be considered for purposes of (2) and (3), below, to be a violation of the bill's aggravated trafficking, major trafficking, or trafficking statute (R.C. 2925.03, 2925.031, and 2925.032 under the bill), whichever would apply to that conduct if it were committed on or after the bill's effective date.
2. If the charges are pending on the bill's effective date, the bill's aggravated trafficking, major trafficking, or trafficking statute, whichever would apply to the conduct constituting the violation, including the sentencing provisions under those statutes, applies with respect to the charges.
3. If the person has been convicted of the violation and the penalty, forfeiture, or punishment for the violation that includes the conduct has not been imposed as of the bill's effective date, both of the following apply: (i) if the penalty, forfeiture, or punishment for the violation, as set forth in the bill's aggravated trafficking, major trafficking, or trafficking statute, is a reduction of the penalty, forfeiture, or punishment for the violation that applied under the current drug trafficking statute, the penalty, forfeiture, or punishment for the violation must be imposed according to the bill's aggravated trafficking, major trafficking, or trafficking statute, whichever is applicable regarding the conduct, and (ii) if clause (3)(i), above, does not apply, the penalty, forfeiture, or punishment for the violation must be imposed according to the current drug trafficking statute.

[14] R.C. 2925.03(S).

Other provisions

The bill retains, and makes applicable to its new aggravated trafficking offenses, the following provisions under the existing trafficking offenses: (1) provisions that authorize a driver's or commercial driver's license or permit suspension of a person convicted of any of the new aggravated trafficking offenses, (2) provisions that authorize, and in certain circumstances require, the imposition of a special fine in certain circumstances and disbursement of the fine in a specified manner, (3) provisions that require the reporting of the conviction to the licensing authority, if the person is a professionally licensed person, (4) provisions that require the trier of fact to determine and return findings as to the amount of the controlled substance involved in the offense, and (5) provisions that establish a special affirmative defense for a person charged with any of the offenses.[15]

Major trafficking in drugs

Generally, and prohibition

The bill enacts a new offense, named "major trafficking in drugs," that consists of a prohibition against trafficking in specified amounts of any controlled substance that are lower than the amounts specified under the bill's aggravated trafficking offenses, as described above, and higher than the amounts specified under the bill's trafficking offenses, as described below. The new offense is one of several that the bill enacts to replace the existing trafficking offenses, and it generally applies to conduct that currently is classified a third degree felony or, in some cases, a second degree felony under the existing trafficking offenses. However, except when the drug involved is a sexual assault-enabling drug or a fentanyl-related compound or when the offense is committed in the vicinity of a school, the bill's threshold amounts for subjecting a person to the penalties for its major trafficking in drugs offense are higher than the threshold amounts specified under the existing trafficking offenses for subjecting a person to the same penalty for violation of the trafficking prohibition under the existing offenses. The prohibition under the new offense is the same as the prohibition in the existing Revised Code section that prohibits trafficking in any controlled substance, except that it applies only when the amount of the drug involved is within the specified intermediate amount and that it also prohibits knowingly obtaining or possessing the intermediate amount. The major trafficking in drugs offense incorporates the existing third degree felony controlled substance possession offenses.

Specifically, the prohibition under the new offense prohibits a person from: (1) knowingly obtaining, possessing, selling, or offering to sell a controlled substance or controlled substance analog in an amount specified below, or (2) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance or a controlled substance analog in an amount specified below, when the person knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale.[16] The bill provides affirmative defenses to the

[15] R.C. 2925.03(L) to (R).

[16] R.C. 2925.031(A)(1).

prohibitions for certain persons or entities, parallel to the exemptions under the existing trafficking offenses (e.g., manufacturers, medical professionals, and pharmacists acting in accordance with law, certain anabolic steroid research personnel, persons engaged in conduct involving anabolic steroids for animal use, and persons who obtained the controlled substance under a lawful prescription, etc.), but under the bill, the specified circumstances are provided as affirmative defenses instead of as exemptions.[17]

Amount of the drug involved needed for the prohibition to apply and name of offense

The bill's major trafficking in drugs prohibition described above applies when the specified conduct involves a drug in the following amount (a violation involving any of the drugs in the specified amounts is "major trafficking in drugs"):[18]

1. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule I or Schedule II, other than marihuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance analog, an amount of the drug so involved that equals or exceeds the bulk amount but is less than 50 times the bulk amount;
2. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule III, Schedule IV, or Schedule V, an amount of the drug so involved that equals or exceeds five times the bulk amount;
3. If the drug involved in the conduct is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the drug so involved that equals or exceeds 10 grams but is less than 50 grams;
4. If the drug involved in the conduct is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the drug so involved that equals or exceeds 50 unit doses but is less than 500 unit doses of L.S.D. in solid form or equals or exceeds five grams but is less than 50 grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form;
5. If the drug involved in the conduct is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the drug so involved that equals or exceeds 50 unit doses or five grams but is less than 300 hundred unit doses or 30 grams;
6. If the drug involved in the conduct is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound, an amount of the drug so involved that equals or exceeds 50 unit doses or five grams but is less than 100 unit doses or 10 grams;

[17] R.C. 2925.031(B).

[18] R.C. 2925.031(A)(2).

7. If the drug involved in the conduct is marihuana other than hashish or a compound, mixture, preparation, or substance containing marihuana other than hashish, an amount of the drug so involved that equals or exceeds 1,000 grams but is less than 40,000 grams;
8. If the drug involved in the conduct is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the drug so involved that equals or exceeds 50 grams but is less than 2,000 grams;
9. If the drug involved in the conduct is a controlled substance analog or a compound, mixture, preparation, or substance containing a controlled substance analog, an amount of the drug so involved that equals or exceeds 20 grams but is less than 30 grams.

Major trafficking in drugs penalties

The following table lists the penalties for the major trafficking in drugs offense under the bill for the specified threshold amounts, and the threshold amount under existing law under the current trafficking offenses that provides a comparable penalty:[19]

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
Schedule I or II (but see "Sexual assault-enabling drug" and "Fentanyl-related compound," below)	≥ bulk amount and < 50 times bulk	F-3 (increased to F-2 if in vicinity of school, and mandatory w/in F2 range)	≥ bulk and < 5 times bulk (but if two or more prior felony drug abuse convictions, mandatory w/in F-3 range; also increased to F-2 if in vicinity of juvenile, and when F-2, mandatory w/in F-2 range)

[19] R.C. 2925.031(C) under the bill, and existing R.C. 2925.03(C).

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
Schedule III, IV, or V (but see "Sexual assault-enabling drug" and "Fentanyl-related compound," below)	≥ 5 times bulk	F-3 (if in vicinity of school: increased to F-2 and presumption for prison; and to F-1 if amount ≥ 50 times bulk, with mandatory w/in F1 range)	≥ 5 times bulk and < 50 times bulk (presumption for prison, and also increased to F-2 if in vicinity of juvenile, and when F-2, presumption for prison) ---------- ≥ 50 times bulk F-2 (mandatory w/in F-2 range, and also increased to F-1 if in vicinity of juvenile; when F-1, mandatory from w/in F-1 range)
Marihuana	≥ 1 kg and < 40 kg	F-3 (increased to F-2 if in vicinity of school, and presumption for prison)	≥ 1 kg and < 5 kg (also increased to F-2 if in vicinity of juvenile; when F-2, presumption for prison) ---------- ≥ 5 kg and < 20 kg F-3 (presumption for prison, and also increased to F-2 if in vicinity of juvenile; when F-2, presumption for prison)
Cocaine	≥ 10 g and < 50 g	F-3 (increased to F-2 if in vicinity of school, and mandatory w/in F-2 range)	≥ 10 g and < 20 g (presumption for prison, except if two or more prior felony drug abuse convictions, mandatory w/in F-3

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
			range; also increased to F-2 if in vicinity of juvenile; when F-2, mandatory w/in F-2 range)
LSD: Solid	≥ 50 UD and < 500 UD	F-3 (increased to F-2 if in vicinity of school, and mandatory w/in F-2 range)	≥ 50 UD and < 250 UD (presumption for prison, except if two or more prior felony drug abuse convictions, mandatory w/in F-3 range; also increased to F-2 if in vicinity of juvenile; when F-2, mandatory w/in F-2 range)
LSD: Liquid	≥ 5 g and < 50 g	F-3 (increased to F-2 if in vicinity of school, and mandatory w/in F-2 range)	≥ 5 g and < 25 g (presumption for prison, except if two or more prior felony drug abuse convictions, mandatory w/in F-3 range; also increased to F-2 if in vicinity of juvenile; when F-2, mandatory w/in F-2 range)
Heroin	≥ 5 g and < 30 g; ≥ 50 UD and < 300 UD	F-3 (increased to F-2 if in vicinity of school, and presumption for prison)	≥ 5 g and < 10 g; ≥ 50 UD and < 100 UD (presumption for prison; also increased to F-2 if in vicinity of juvenile; when F-2, presumption for prison)
Hashish	≥ 50 g and < 2 kg	F-3 (increased to F-2 if in vicinity of school, and presumption for	≥ 50 g and < 250 g (solid) ≥ 10 g and < 50 g

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
		prison)	(liquid) (also increased to F-2 if in vicinity of juvenile, and presumption for prison) ---------- ≥ 250 g and < 1 kg (solid) ≥ 50 g and < 200 g (liquid) (presumption for prison, and also increased to F-2 if in vicinity of juvenile; when F-2, presumption for prison)
Controlled Substance Analog	≥ 20 g and < 30 g	F-3 (increased to F-2 if in vicinity of school, and presumption for prison)	≥ 20 g and < 30 g (presumption for prison, and also increased to F-2 if in vicinity of juvenile; when F-2, presumption for prison)
Schedule I or II sexual assault-enabling drug	≥ bulk and < 5 times bulk	F-3 (presumption for prison, except if 2 or more prior felony drug abuse convictions, mandatory w/in F-3 range) Increased to F-2 if in vicinity of school or juvenile (mandatory w/in F-2 range)	Same Same

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
	≥ 5 times bulk and < 50 times bulk	F-2 (mandatory w/in F-2 range) Increased to F-1 if in vicinity of school or juvenile (mandatory w/in F-1 range)	Same Same
Schedule III, IV, or V sexual assault-enabling drug	≥ 5 times bulk and < 50 times bulk	F-3 (presumption for prison) Increased to F-2 if committed in vicinity of school or juvenile (presumption for prison)	Same Same
	≥ 50 times bulk	F-2 (mandatory w/in F-2 range) Increased to F-1 if in vicinity of school or juvenile (mandatory w/in F-1 range)	Same Same
Fentanyl-related compound	≥ 5 g and < 10 g; ≥ 50 UD and < 100 UD	F-3 (presumption for prison) Increased to F-2 if in vicinity of school or juvenile (presumption for	Same Same

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
		prison)	
	Fentanyl-related compound combined with marihuana: (1) generally charged as major trafficking in drugs, involving marihuana, (2) if offender knows or has reason to know that fentanyl-related compound is involved, charged with major trafficking in drugs, involving fentanyl-related compound		Same

Other provisions regarding major trafficking in drugs

The bill retains, and makes applicable to its new major trafficking in drugs offense, the following provisions under the existing trafficking offenses: (1) provisions that authorize a driver's or commercial driver's license or permit suspension of a person convicted of the new major trafficking offense, (2) provisions that authorize, and in certain circumstances require, the imposition of a special fine in certain circumstances and disbursement of the fine in a specified manner, (3) provisions that require the reporting of the conviction to the licensing authority, if the person is a professionally licensed person, (4) provisions that require the trier of fact to determine and return findings as to the amount of the controlled substance involved in the offense, and (5) provisions that establish a special affirmative defense for a person charged with any of the offenses.[20]

The bill's transition provisions described above with respect to the bill's aggravated trafficking offenses also apply with respect to the bill's major trafficking in drugs offense.[21]

Trafficking offenses

Generally, and prohibition

The bill enacts new offenses, named "trafficking in . . ." (with the specific name depending on the type of drug involved – see below), that consist of a prohibition against

[20] R.C. 2925.031(D) to (F).

[21] R.C. 2925.03(S).

trafficking in specified amounts of any controlled substance that are lower than the amounts specified under the bill's major trafficking in drugs offenses, as described above, and higher than specified trace amounts of the controlled substance. The new offenses are among several offenses that the bill enacts to replace the existing trafficking offenses, and they generally apply to conduct that currently is classified a fourth or fifth degree felony or, in some cases, a third degree felony under the existing trafficking offenses. However, except when the drug involved is a sexual assault-enabling drug or a fentanyl-related compound or when the offense is committed in the vicinity of a school, the bill's threshold amounts for subjecting a person to the penalties for its trafficking offenses are higher than the threshold amounts specified under the existing trafficking offenses for subjecting a person to the same penalty for violation of the trafficking prohibition under the existing offenses. The prohibition under the new offenses is the same as the prohibition in the existing Revised Code section that prohibits trafficking in any controlled substance, except that it applies only when the amount of the drug involved is within the specified lower amount and that it also includes a prohibition against obtaining or possessing a controlled substance or controlled substance analog with purpose or intent to distribute or sell it.

Specifically, the prohibition under the new offenses prohibits a person from: (1) knowingly selling or offering to sell a controlled substance or controlled substance analog in an amount specified below, (2) obtaining or possessing, with purpose to distribute or sell, a controlled substance or controlled substance analog in an amount specified below, or (3) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance or a controlled substance analog in an amount specified below, when the person knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale.[22] The bill provides affirmative defenses to the prohibitions for certain persons or entities, parallel to the exemptions under the existing trafficking offenses (e.g., manufacturers, medical professionals, and pharmacists acting in accordance with law, certain anabolic steroid research personnel, and persons engaged in conduct involving anabolic steroids for animal use, etc.), but under the bill, the specified circumstances are provided as affirmative defenses instead of as exemptions.[23]

Amount of the drug involved needed for the prohibition to apply and name of offense

The bill's trafficking prohibition described above applies when the specified conduct involves a drug in the following amount:[24]

1. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule I or Schedule II, other than marihuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, or a controlled substance analog, an amount of the

[22] R.C. 2925.032(A)(1).

[23] R.C. 2925.032(C).

[24] R.C. 2925.032(A)(2).

drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than the bulk amount (a violation involving such a drug is "trafficking in Schedule I or Schedule II drugs");

2. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule III, Schedule IV, or Schedule V, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than five times the bulk amount (a violation involving such a drug is "trafficking in drugs");
3. If the drug involved in the conduct is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than ten grams (a violation involving such a drug is "trafficking in cocaine");
4. If the drug involved in the conduct is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the drug so involved that equals or exceeds one-fourth of one unit dose but is less than 50 unit doses of L.S.D. in solid form or equals or exceeds twenty-five one-thousandths of one gram but is less than five grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form (a violation involving such a drug is "trafficking in L.S.D.");
5. If the drug involved in the conduct is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit dose but is less than five grams or 50 unit doses (a violation involving such a drug is "trafficking in heroin");
6. If the drug involved in the conduct is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit doses but is less than five grams or 50 unit doses (a violation involving such a drug is "trafficking in a fentanyl-related compound");
7. If the drug involved in the conduct is marihuana other than hashish or a compound, mixture, preparation, or substance containing marihuana other than hashish, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than 1,000 grams (a violation involving such a drug is "trafficking in marihuana");
8. If the drug involved in the conduct is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than 50 grams (a violation involving such a drug is "trafficking in hashish");
9. If the drug involved in the conduct is a controlled substance analog or a compound, mixture, preparation, or substance containing a controlled substance analog, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than 20 grams (a violation involving such a drug is "trafficking in a controlled substance analog").

Trafficking offense penalties

The following table lists the penalties for the trafficking offenses under the bill for the specified threshold amounts, and the threshold amount under existing law under the current trafficking offenses that provides a comparable penalty:[25]

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
Schedule I or II (but see "Sexual assault-enabling drug" and "Fentanyl-related compounds," below)	≥ 0.025 g and < bulk	F-5 Increased to F-3 if in vicinity of school	No F-5 penalty < bulk is F-4. Also increased to F-3 if in vicinity of juvenile
Schedule III, IV, or V (but see "Sexual assault-enabling drug" and "Fentanyl-related compounds," below)	≥ 0.025 g and < bulk	F-5 Increased to F-4 if in vicinity of school	< bulk Also increased to F-4 if in vicinity of juvenile
	≥ bulk and < 5 times bulk	F-4 Increased to F-3 if in vicinity of school, and presumption for prison	Same Also increased to F-3 if in vicinity of juvenile, and presumption for prison
Marihuana	Gift of ≤ 20 g	MM on first offense and M-3 on subsequent offense Increased to M-3 in all cases if in vicinity of school But see R.C. 2925.032(D), for inconsistent provision regarding penalty	Same Also increased to M-3 in all cases if in vicinity of juvenile
	≥ 0.025 g and < 1 kg	F-5 If in vicinity of school: increased to F-4, and to F-3 if ≥ 200 g and < 1 kg	< 200 g Also increased to F-4 if in vicinity of juvenile

[25] R.C. 2925.032(B) and (E) under the bill, and existing R.C. 2925.03(C).

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
			---------- ≥ 200 g and < 1 kg F-4 Also increased to F-3 if in vicinity of juvenile
Cocaine	≥ 0.025 g and < 10 g	F-5 If in vicinity of school: increased to F-4, and to F-3 and presumption for prison if ≥ 5 g and < 10 g	< 5 g Also increased to F-4 if in vicinity of juvenile ---------- ≥ 5 g and < 10 g F-4 Also increased to F-3 if in vicinity of juvenile and presumption for prison
LSD: Solid	≥ 0.25 UD and < 50 UD	F-5 If in vicinity of school: increased to F-4, and to F-3 and presumption for prison if ≥ 10 UD and < 50 UD	< 10 UD Also increased to F-4 if in vicinity of juvenile ---------- ≥ 10 UD and < 50 UD F-4 Also increased to F-3 and presumption for prison if in vicinity of juvenile
LSD: Liquid	≥ 0.025 g < 5 g	F-5 If in vicinity of school: increased to F-4, and to F-3 and presumption for prison if ≥ 1 g and < 5 g	< 1 g Also increased to F-4 if in vicinity of juvenile ---------- ≥ 1 g and < 5 g F-4 Also increased to F-3 if

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
			in vicinity of juvenile
Heroin	≥ 0.025 g and < 1 g; ≥ 0.25 UD and < 10 UD	F-5 Increased to F-4 if in vicinity of school	< 1 g; < 10 UD Also increased to F-4 if in vicinity of juvenile
	≥ 1 g and < 5 g; ≥ 10 UD and < 50 UD	F-4 Increased to F-3 if in vicinity of school, and presumption for prison	Same Also increased to F-3 and presumption for prison if in vicinity of juvenile
Hashish	≥ 0.025 g and < 50 g	F-5 If in vicinity of school: increased to F-4, and to F-3 if ≥ 10 g and < 50 g (solid) or ≥ 2 g and < 10 g (liquid)	< 10 g (solid) < 2 g (liquid) Also increased to F-4 if in vicinity of juvenile ---------- ≥ 10 g and < 50 g (solid) ≥ 2 g and < 10 g (liquid) F-4 Also increased to F-3 if in vicinity of juvenile
Controlled Substance Analog	≥ 0.025 g and < 10 g	F-5 Increased to F-4 if in vicinity of school	< 10 g Also increased to F-4 if in vicinity of juvenile
	≥ 10 g and < 20 g	F-4 Increased to F-3 and presumption for prison if in vicinity of school	Same Also increased to F-3 and presumption for prison if in vicinity of juvenile
Schedule I or II sexual assault-enabling drug	≥ 0.025 g and < bulk	F-4 Increased to F-3 if in vicinity of school or juvenile	< bulk Same

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
Schedule III, IV, or V sexual assault-enabling drug	≥ 0.025 g and < bulk	F-5 Increased to F-4 if in vicinity of school or juvenile	< bulk Same
	≥ bulk and < 5 times bulk	F-4 Increased to F-3 if in vicinity of school or juvenile and presumption for prison	Same Same
Fentanyl-related compound	≥ 0.025 g and < 1 g; ≥ .25 UD and < 10 UD	F-5 Increased to F-4 if in vicinity of school	< 1 g; < 10 UD Also increased to F-4 if in vicinity of juvenile
	≥ 1 g and < 5 g; ≥ 10 UD and < 50 UD	F-4 Increased to F-3 if in vicinity of school with presumption for prison	Same Also increased to F-3 and presumption for prison if in vicinity of juvenile
	Fentanyl-related compound combined with marihuana: (1) generally charged as trafficking in marihuana, (2) if offender knows or has reason to know that fentanyl-related compound is involved, charged with trafficking in a fentanyl-related compound		Same

Other provisions regarding trafficking in drugs

The bill retains, and makes applicable to its new trafficking in drugs offenses, the following provisions under the existing trafficking offenses: (1) provisions that authorize a driver's or commercial driver's license or permit suspension of a person convicted of any of the new trafficking offenses, (2) provisions that authorize, and in certain circumstances require, the

imposition of a special fine in certain circumstances and disbursement of the fine in a specified manner, (3) provisions that require the reporting of the conviction to the licensing authority, if the person is a professionally licensed person, (4) provisions that require the trier of fact to determine and return findings as to the amount of the controlled substance involved in the offense, and (5) provisions that establish a special affirmative defense for a person charged with any of the offenses.[26]

The bill's transition provisions described above with respect to the bill's aggravated trafficking offenses also apply with respect to the bill's trafficking in drugs offenses.[27]

Possession of a controlled substance

Generally, and prohibition

The bill enacts a new offense, named "possession of a controlled substance," that consists of a prohibition against possessing specified amounts of any controlled substance, other than marihuana or hashish (see "**Possession of marihuana or hashish**," below), that are lower than the amounts specified under the bill's major trafficking in drugs offense, as described above, and, except for sexual assault-enabling drugs and fentanyl-related compounds, higher than specified trace amounts of the controlled substances (no trace amount exemption is provided for sexual assault-enabling drugs or fentanyl-related compounds). The new offense is one of several the bill enacts to replace the existing possession offenses,[28] and it applies to conduct that currently is classified a misdemeanor or a fourth or fifth degree felony under the existing possession offenses. However, under the bill, a violation of the prohibition under the new possession of a controlled substance offense generally is an unclassified misdemeanor with special penalties provided, whereas the existing possession offenses never are penalized as an unclassified misdemeanor. The specified amounts under the new offense parallel the specified amounts under the bill's trafficking offenses. The prohibition under the new offense is the same as the prohibition in the existing Revised Code section that prohibits possession of any controlled substance, except that it applies only when the amount of the drug involved is within the specified lower amount.

Specifically, the prohibition under the new offense prohibits a person from knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog in an amount specified below.[29] The bill provides affirmative defenses to the prohibitions for certain persons or entities, parallel to the exemptions under the existing possession offense (e.g., manufacturers, medical professionals, and pharmacists acting in accordance with law, certain anabolic steroid research personnel, persons engaged in conduct involving anabolic steroids for animal use, persons who obtained the controlled substance pursuant to a valid prescription,

[26] R.C. 2925.032(E) to (G).

[27] R.C. 2925.03(S).

[28] Current R.C. 2925.11.

[29] R.C. 2925.11(A)(1).

etc.), but under the bill, the specified circumstances are provided as affirmative defenses instead of as exemptions. The bill preserves the existing "seeking medical assistance Good Samaritan" exemption from the possession offenses so that it applies to the new possession offense.[30]

Amount of the drug involved needed for the prohibition to apply and name of offense

The bill's possession of controlled substances prohibition described above applies when the specified conduct involves a drug in the following amount (a violation involving any of the drugs in the specified amounts is "possession of a controlled substance"):[31]

1. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule I or Schedule II, other than marihuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, a controlled substance analog, or a sexual assault-enabling drug, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than the bulk amount;
2. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule III, Schedule IV, or Schedule V (note that the bill should include an exception here for a sexual assault-enabling drug – see (8), below), an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than five times the bulk amount;
3. If the drug involved in the conduct is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than ten grams;
4. If the drug involved in the conduct is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the drug so involved that equals or exceeds one-fourth of one unit dose but is less than 50 unit doses of L.S.D. in solid form or equals or exceeds twenty-five one-thousandths of one gram but is less than five grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form;
5. If the drug involved in the conduct is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit dose but is less than five grams or 50 unit doses;
6. If the drug involved in the conduct is a fentanyl-related compound or a compound, mixture, preparation, or substance containing a fentanyl-related compound, an amount of the drug so involved that is less than five grams or 50 unit doses;

[30] R.C. 2925.11(B).

[31] R.C. 2925.11(A)(2).

7. If the drug involved in the conduct is a controlled substance analog or a compound, mixture, preparation, or substance containing a controlled substance analog, an amount of the drug so involved that equals or exceeds twenty-five one-thousandths of one gram but is less than 20 grams;
8. If the drug involved in the conduct is a sexual assault-enabling drug or a compound, mixture, preparation, or substance containing a sexual assault-enabling drug, an amount of the drug so involved that is less than the bulk amount if the drug is a Schedule I or II controlled substance or that is less than five times the bulk amount if the drug is a Schedule III, IV, or V controlled substance.

Possession of a controlled substance penalties

The following table lists the penalties for the possession of a controlled substance offense under the bill for the specified threshold amounts, but it differs from the other charts regarding the summary of existing law. For all of the drugs other than sexual assault-enabling drugs and fentanyl-related compounds, existing law does not contain any penalties that are the same as those provided in the bill – for those drugs without a comparable penalty, the last column in the table lists the current penalties provided for the amount of the particular drug specified in the "**Bill's Threshold**" column. For sexual assault-enabling drugs and fentanyl-related compounds, the last column lists the current threshold to get the same penalty provided under the bill for the amount of the particular drug specified in the "**Bill's Threshold**" column. The penalties the bill provides for the offenses it specifies as unclassified misdemeanors are described below in "**Unclassified misdemeanor penalties**." Under the bill:[32]

Drug	Bill's Threshold	Bill's Offense Level	Current Penalty for Threshold Amount/Current Threshold to get Same Penalty
Schedule I or II (but see "Sexual assault-enabling drug" and "Fentanyl-related compound," below)	≥ 0.025 g and < bulk	Unclassified misdemeanor, increased to F-5 if two or more prior state or municipal possession convictions in preceding 3 years	No unclassified misdemeanor penalty. Current penalty: < bulk is F-5 ---------- Larger amount possessed is covered by bill under aggravated and major trafficking

[32] R.C. 2925.11(C)(1) to (6) under the bill, and existing R.C. 2925.03(C).

Drug	Bill's Threshold	Bill's Offense Level	Current Penalty for Threshold Amount/Current Threshold to get Same Penalty
			offenses
Schedule III, IV, or V (but see "Sexual assault-enabling drug" and "Fentanyl-related compound," below)	≥ 0.025 g and < 5 times bulk	Unclassified misdemeanor, increased to F-5 if two or more prior state or municipal possession convictions in preceding 3 years	No unclassified misdemeanor penalty. Current penalty: < bulk is M-1, increased to F-5 if prior drug abuse conviction ---------- ≥ bulk and < 5 times bulk is F-4 ---------- Larger amount possessed is covered by bill under aggravated and major trafficking offenses
Cocaine	≥ 0.025 g and < 10 g	Unclassified misdemeanor, increased to F-5 if two or more prior state or municipal possession convictions in preceding 3 years	No unclassified misdemeanor penalty. Current penalty: < 10 g is F-5 ---------- ≥ 5 g and < 10 g if F-4 ---------- Larger amount possessed is covered by bill under aggravated and major trafficking offenses
LSD: Solid	≥ 0.25 UD and < 50 UD	Unclassified misdemeanor, increased to F-5 if two or more prior state or municipal possession convictions in preceding	No unclassified misdemeanor penalty. Current penalty: < 10 UD is F-5 ----------

Drug	Bill's Threshold	Bill's Offense Level	Current Penalty for Threshold Amount/Current Threshold to get Same Penalty
		3 years	≥ 10 UD and < 50 UD is F-4 ---------- Larger amount possessed is covered by bill under aggravated and major trafficking offenses
LSD: Liquid	≥ 0.025 g and < 5 g	Unclassified misdemeanor, but increased to F-5 if two or more prior state or municipal possession convictions in preceding 3 years	No unclassified misdemeanor penalty. Current penalty: < 1 g is F-5 ---------- ≥ 1 g and < 5 g is F-4 ---------- Larger amount possessed is covered by bill under aggravated and major trafficking offenses
Heroin	≥ 0.025 g and < 5 g; ≥ 0.25 UD and < 50 UD	Unclassified misdemeanor, but increased to F-5 if two or more prior state or municipal possession convictions in preceding 3 years	No unclassified misdemeanor penalty. Current penalty: < 1 g; < 10 UD is F-5 ---------- ≥ 1 g and < 5 g; ≥ 10 UD and < 50 UD is F-4 ---------- Larger amount possessed is covered by bill under aggravated and major trafficking offenses

Drug	Bill's Threshold	Bill's Offense Level	Current Penalty for Threshold Amount/Current Threshold to get Same Penalty
Controlled Substance Analog	≥ 0.025 g and < 20 g	Unclassified misdemeanor, but increased to F-5 if two or more prior state or municipal possession convictions in preceding 3 years	No unclassified misdemeanor penalty. Current penalty: < 10 g is F-5 ---------- ≥ 10 g and < 20 g is F-4 (presumption for prison) ---------- Larger amount possessed is covered by bill under aggravated and major trafficking offenses
Schedule I or II sexual assault-enabling drug	< bulk	F-5	Same
Schedule III, IV, or V sexual assault-enabling drug	< bulk	M-1, but increased to F-5 if prior drug abuse conviction	Same
	≥ bulk and < 5 times bulk	F-4	Same
Fentanyl-related compound	< 1 g; < 10 UD	F-5	Same
	≥ 1 g and < 5 g; ≥ 10 UD and < 50 UD	F-4	Same
	Fentanyl-related compound combined with marihuana: 1. generally charged as possession of marihuana (see below), but (2) if offender knows or has reason to know that fentanyl-related		Same

Drug	Bill's Threshold	Bill's Offense Level	Current Penalty for Threshold Amount/Current Threshold to get Same Penalty
	compound is involved, charged with possession of a controlled substance, involving a fentanyl-related compound		
	Fentanyl-related compound combined with Schedule III, IV, or V controlled substance: 1. generally charged as possession of a controlled substance involving a Schedule III, IV, or V controlled substance, but (2) if offender knows or has reason to know that fentanyl-related compound is involved, charged with possession of a controlled substance, involving a fentanyl-related compound		Same
	Fentanyl-related compound combined with any other controlled substance not specified above, charged with possession of a controlled substance, involving a fentanyl-related compound		Same

Unclassified misdemeanor penalties

The bill enacts special sentencing provisions that apply when possession of a controlled substance is an unclassified misdemeanor as shown in the table above (or when possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish, is an unclassified misdemeanor under the provisions described below in "**Possession of a trace amount of a controlled substance, marihuana, or hashish**").[33] Under those provisions, when possession of a controlled substance trace amount or possession of a trace amount of marihuana or hashish is an unclassified misdemeanor, it is presumed that the offender must be sentenced to treatment under the Misdemeanor Sentencing Law provisions that pertain to community residential sanctions and community nonresidential sanctions.[34] If the court determines that the offender, in committing the offense or related in any way to the offense, has made threats of violence to any person, the presumption does not apply and the court may sentence the offender pursuant to any sanction or combination of sanctions under the Misdemeanor Sentencing Law[35] (including a jail term), except that:[36]

1. Notwithstanding the provision that sets forth possible jail terms,[37] the court may impose on the offender a jail term of not more than 364 days;
2. Notwithstanding the provision that sets forth generally authorized fines,[38] the court may fine the offender not more than $1,000;
3. Notwithstanding provisions that pertain to community residential sanctions and community nonresidential sanctions,[39] the court may impose on the offender a term of not more than six months in a community-based correctional facility.

Holding prosecution in abeyance

Under the bill, if a person is charged with a misdemeanor offense of possession of a controlled substance, with a misdemeanor offense of possession of marihuana or possession of hashish (see "**Possession of marihuana or hashish**," below), or with possession of a controlled substance trace amount or possession of a trace amount of marihuana or hashish (see "**Possession of a trace amount of a controlled substance, marihuana, or hashish**," below), the court may hold the prosecution in abeyance and stay all criminal proceedings with respect to the violation if all of the following apply: (1) the person has not previously been convicted of possession of a controlled substance under the bill, any of the

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[33] R.C. 2925.11(C)(7).

[34] R.C. 2929.26 and 2929.27, not in the bill.

[35] R.C. 2929.21 to 2929.28, generally not in the bill.

[36] R.C. 2925.11(C)(7); also, R.C. 2925.112(C)(1).

[37] R.C. 2929.24, not in the bill.

[38] R.C. 2929.28(A)(2)(a), not in the bill.

[39] R.C. 2929.26 and 2929.27, not in the bill.

aggravated trafficking offenses under the bill, major trafficking in drugs, any of the trafficking offenses under the bill, or possession of a controlled substance under the possession statute in effect prior to the bill's effective date if the drug that was the basis of the offense was other than marihuana or hashish, (2) the person agrees to a drug treatment program determined by the court to be appropriate, to comply with all terms and conditions of treatment imposed by the court, and to complete the program, and (3) the person waives the person's right to a speedy trial and any other rights with respect to the time of proceedings related to the violation that otherwise would apply.

If the court, under this provision, holds a prosecution in abeyance and stays all criminal proceedings against a person with respect to a violation, all of the following apply: (1) the court must issue an order that establishes terms and conditions of the drug treatment program and requires the person to complete the program, and must place the offender under the general control and supervision of the county probation department, the Adult Parole Authority, or another appropriate local probation or court services agency, if one exists, as if the offender was subject to a community control sanction imposed under the Misdemeanor Sentencing Law, (2) if the court finds that the person has successfully completed the drug treatment program, the court must dismiss the proceedings against the person – successful completion of the program is without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law upon conviction of a crime, the court may order the sealing of records related to the offense in question in the manner provided in the "**Not Guilty/Dismissed Charges Record Sealing Law**" (see below), and the court must inform the person that the person may apply for the sealing of the records under that law and of the procedure for making such an application, and (3) if the person fails to comply with any term or condition imposed as part of the treatment program for the person, the supervising authority for the person promptly must advise the court of this failure, and the court must hold a hearing to determine whether the person failed to comply with any such term or condition.

If the court, at the hearing required as described in clause (3) of the preceding paragraph, determines that the person has failed to comply with any of those terms and conditions, it must do one of the following: (1) issue an order that continues the person under the same treatment program, with the same terms and conditions, (2) issue an order that continues the person under the same treatment program, with different terms and conditions, (3) issue an order that subjects the person to a different treatment program and establishes terms and conditions of the program, or (4) continue with the prosecution of the violation that was held in abeyance. If a court issues an order of a type described in clause (1), (2), or (3) of the preceding sentence, the court must place the person under the general control and supervision of an entity as if the order was an original order as described in clause (1) of the preceding paragraph, and clauses (2) and (3) of that paragraph apply with respect to the order so issued.

A person may not be required to enter a guilty plea to a misdemeanor offense of possession of a controlled substance, a misdemeanor offense of possession of marihuana or possession of hashish, an offense of possession of a controlled substance trace amount, or an offense of possession of a trace amount of marihuana or hashish in order for a court to hold the

prosecution in abeyance and stay all criminal proceedings with respect to the violation under these provisions.[40]

Other provisions regarding possession of a controlled substance

Transition provisions

The bill specifies that if a person has been charged with a violation of the current drug possession statute (the version of R.C. 2925.11 in effect prior to the bill's effective date) allegedly committed prior to the bill's effective date, all of the following apply:[41]

1. The conduct constituting the violation must be considered for purposes of (2) and (3), below, to be a violation of the bill's possession of a controlled substance, possession of marihuana or hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish statute (R.C. 2925.11, 2925.111, and 2925.112 under the bill), whichever would apply to that conduct if it were committed on or after the bill's effective date;
2. If the charges are pending on the bill's effective date, the bill's possession of a controlled substance, possession of marihuana or hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish statute, whichever would apply to the conduct constituting the violation, including the sentencing provisions under those statutes, applies with respect to the charges;
3. If the person has been convicted of the violation and the penalty, forfeiture, or punishment for the violation that includes the conduct has not been imposed as of the bill's effective date, both of the following apply: (i) if the penalty, forfeiture, or punishment for the violation, as set forth in the bill's possession of a controlled substance, possession of marihuana or hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish statute, is a reduction of the penalty, forfeiture, or punishment for the violation that applied under the current drug possession statute, the penalty, forfeiture, or punishment for the violation must be imposed according to the bill's possession of a controlled substance, possession of marihuana or hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish statute, whichever is applicable regarding the conduct, and (ii) if clause (3)(i), above, does not apply, the penalty, forfeiture, or punishment for the violation must be imposed according to the current drug possession statute.

[40] R.C. 2925.11(D).

[41] R.C. 2925.11(J).

Limitations period, speedy trial time limits, and forfeiture law application

The bill specifies that the provisions of the existing laws governing the period of limitations for felonies, the application of the speedy trial time limits for felonies, and the application of the forfeiture law regarding felonies will apply with respect to a violation of the current drug possession law committed prior to the bill's effective date that currently is a felony and that the bill converts to a misdemeanor (see "**Application of period of limitations**," "**Application of Speedy Trial Law**," and "**Application of Forfeiture Law**," below).

Other provisions

The bill retains, and makes applicable to its new possession of a controlled substance offense, the following provisions under the existing possession offenses: (1) provisions that authorize a driver's or commercial driver's license or permit suspension of a person convicted of any of the new possession offenses, (2) provisions that authorize, and in certain circumstances require, the imposition of a special fine in certain circumstances and disbursement of the fine in a specified manner, (3) provisions that require the reporting of the conviction to the licensing authority, if the person is a professionally licensed person, (4) provisions that require the trier of fact to determine and return findings as to the amount of the controlled substance involved in the offense, and (5) provisions that establish a special affirmative defense for a person charged with any of the offenses.[42]

Possession of marihuana or hashish

Generally, and prohibitions

The bill enacts new offenses, named "possession of marihuana" and "possession of hashish," that consist of a prohibition against possessing specified amounts of marihuana or hashish that are lower than the amounts specified under the bill's major trafficking offense, as described above, and higher than specified trace amounts of the controlled substances. The new offenses are among several that the bill enacts to replace the existing possession offenses, and they apply to conduct that currently is classified a misdemeanor or a fifth degree felony under the existing possession offenses. However, the bill's threshold amounts for subjecting a person to the penalties for its marihuana or hashish possession offenses are higher than the threshold amounts specified under the existing possession offenses for subjecting a person to the same penalty for violation of the possession prohibition under the existing offenses. The prohibitions under the offenses are the same as the prohibition in the existing Revised Code section that prohibits possession of marihuana or hashish, except that they apply only when the amount of the drug involved is within the specified lower amount.

Specifically, the marihuana-related prohibition under the new offense prohibits a person from knowingly obtaining, possessing, or using marihuana other than hashish or a compound,

[42] R.C. 2925.11(E) to (G).

mixture, preparation, or substance containing marihuana other than hashish, when the amount of the drug involved equals or exceeds twenty-five one-thousandths of a gram but is less than 1,000 grams. The hashish-related prohibition under the new offense prohibits a person from knowingly obtaining, possessing, or using hashish or a compound, mixture, preparation, or substance containing hashish, when the amount of the drug involved equals or exceeds twenty-five one-thousandths of a gram but is less than 50 grams.[43] The bill preserves the existing "seeking medical assistance Good Samaritan" exemption from the possession offenses so that it applies to the new marihuana and hashish possession offenses.[44]

Possession of marihuana or hashish penalties

The following table lists the penalties for the possession of marihuana offense and the possession of hashish offense under the bill, and the threshold amount under existing law under the current possession offenses (a violation of the prohibition involving marihuana is the offense of "possession of marihuana" and a violation of the prohibition involving hashish is the offense of "possession of hashish"):[45]

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold to get Same Penalty
Marihuana	≥ 0.025 g and < 200 g	Minor misdemeanor	< 100 g
	≥ 200 g and < 400 g	M-4	≥ 100 g and < 200 g
	≥ 400 g and < 1 kg	M-1	No M-1 penalty ≥ 200 g < 1 kg is F-5
Hashish	≥ 0.025 g and < 10 g	Minor misdemeanor	< 5 g (solid); < 1 g (liquid)
	≥ 10 g and < 20 g	M-4	≥ 5 g < 10 g (solid); ≥ 1 g < 2 g (liquid)
	≥ 20 g and < 50 g	M-1	No M-1 penalty ≥ 10 g < 50 g (solid); ≥ 2 g < 10 g (liquid) is F-5

[43] R.C. 2925.111(A) and (B).

[44] R.C. 2925.111(G).

[45] R.C. 2925.111(C) and (D).

An arrest or a conviction for a minor misdemeanor violation of either prohibition does not constitute a criminal record and need not be reported by the person so arrested or found guilty in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.[46]

Holding prosecution in abeyance

The bill specifies that the provisions pertaining to the court holding a charge in abeyance and staying all criminal proceedings with respect to the charge that are set forth in the prohibitions regarding the offense of possession of a controlled substance (see "**Possession of a controlled substance**," above) also apply with respect to a person charged with a misdemeanor offense of possession of marihuana or possession of hashish.[47]

Other provisions regarding possession of a controlled substance

The bill retains, and makes applicable to its new possession of marihuana or hashish offenses, the following provisions under the existing possession offenses: (1) provisions that authorize a driver's or commercial driver's license or permit suspension of a person convicted of any of the new possession offenses, (2) provisions that authorize, and in certain circumstances require, the imposition of a special fine in certain circumstances and disbursement of the fine in a specified manner, (3) provisions that require the reporting of the conviction to the licensing authority, if the person is a professionally licensed person, and (4) provisions that establish a special affirmative defense for a person charged with any of the offenses.[48]

The bill's transition provisions described above with respect to the bill's possession of a controlled substance offense also apply with respect to the bill's possession of marihuana and possession of hashish offenses.[49]

Possession of a trace amount of a controlled substance, marihuana, or hashish

Generally, and prohibition

The bill enacts new offenses, named "possession of a controlled substance trace amount" and "possession of a trace amount of marihuana or hashish," that consist of a prohibition against possessing specified trace amounts of any controlled substance, other than a fentanyl-related compound, that are lower than the amounts specified under the bill's other possession offenses (possession of any amount of a fentanyl-related substance is discussed above in "**Possession of a controlled substance**" or, for larger amounts, in the portions

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[46] R.C. 2925.111(F).

[47] R.C. 2925.111(H); also R.C. 2925.11(D).

[48] R.C. 2925.111(E) and (G).

[49] R.C. 2925.11(J).

of the analysis discussing the bill's trafficking offenses). The new offenses are one of several the bill enacts to replace the existing possession offenses, and they apply to conduct that currently is classified a minor misdemeanor, first degree misdemeanor, or fifth degree felony under the existing possession offenses. However, under the bill, a violation of the prohibition under the new possession offenses, other than with respect to marihuana or hashish, generally is an unclassified misdemeanor with special penalties provided, whereas the existing possession offenses never are penalized as an unclassified misdemeanor. The prohibition under the new offenses is the same as the prohibition in the existing Revised Code section that prohibits possession of any controlled substance, except that it applies only when the amount of the drug involved does not exceed the specified trace amount.

Specifically, the prohibition under the new offenses prohibits a person from knowingly obtaining, possessing, or using a controlled substance or a controlled substance analog in an amount specified below. The bill provides affirmative defenses to the prohibitions for certain persons or entities, parallel to the exemptions under the existing possession offense (e.g., manufacturers, medical professionals, and pharmacists acting in accordance with law, certain anabolic steroid research personnel, persons engaged in conduct involving anabolic steroids for animal use, persons who obtained the controlled substance pursuant to a valid prescription, etc.), but under the bill, the specified circumstances are provided as affirmative defenses instead of as exemptions.[50] The bill preserves the existing "seeking medical assistance Good Samaritan" exemption from the possession offenses so that it applies to the new possession offense.[51]

Amount of the drug involved needed for the prohibition to apply and name of offense

The bill's possession of a controlled substance trace amount and its possession of a trace amount of marihuana or hashish prohibitions described above applies when the specified conduct involves a drug in the following amount (a violation involving any of the drugs in the specified amounts is "possession of a controlled substance"):[52]

1. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule I or Schedule II, other than marihuana, cocaine, L.S.D., heroin, a fentanyl-related compound, hashish, a controlled substance analog, or a "sexual assault-enabling drug" (this reference appears to be in error), an amount of the drug so involved that is less than twenty-five one-thousandths of one gram;
2. If the drug involved in the conduct is any compound, mixture, preparation, or substance included in Schedule III, Schedule IV, or Schedule V, an amount of the drug so involved that is less than twenty-five one-thousandths of one gram;

[50] R.C. 2925.112(A)(1) and (B).

[51] R.C. 2925.112(F).

[52] R.C. 2925.112(A)(2).

3. If the drug involved in the conduct is marihuana or a compound, mixture, preparation, or substance containing marihuana, an amount of the drug so involved that is less than twenty-five one-thousandths of one gram;
4. If the drug involved in the conduct is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the drug so involved that is less than twenty-five one-thousandths of one gram;
5. If the drug involved in the conduct is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the drug so involved that is less than one-fourth of one unit dose of L.S.D. in solid form or is less than twenty-five one-thousandths of one gram of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form;
6. If the drug involved in the conduct is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the drug so involved that is less than twenty-five one-thousandths of one gram or one-fourth of one unit dose;
7. If the drug involved in the conduct is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the drug so involved that is less than twenty-five one-thousandths of one gram or one-fourth of one unit dose;
8. If the drug involved in the conduct is a controlled substance analog or a compound, mixture, preparation, or substance containing a controlled substance analog, an amount of the drug so involved that is less than twenty-five one-thousandths of one gram.

Possession of a trace amount of a controlled substance, marihuana, or hashish penalties

The following table lists the penalties for the possession of a controlled substance trace amount and possession of a trace amount of marihuana or hashish under the bill for the specified threshold amounts, but it differs from the other tables regarding the summary of existing law. For all of the drugs other than marihuana and hashish, existing law does not contain any penalties that are the same as those provided in the bill – for those drugs without a comparable penalty, the last column in the table lists the current penalties provided for the amount of the particular drug specified in the "**Bill's Threshold**" column. Under the bill, a violation of the prohibition involving marihuana or hashish is the offense of "possession of a trace amount of marihuana or hashish" and a violation of the prohibition involving any other controlled substance other than a fentanyl-related substance is the offense of "possession of a controlled substance trace amount." The penalties the bill provides for the offenses it specifies as unclassified misdemeanors are described below in "**Unclassified misdemeanor penalties**." Under the bill:[53]

[53] R.C. 2925.112(C)(1) to (6) under the bill, and existing R.C. 2925.03(C).

Drug	Bill's Threshold	Bill's Offense Level	Current Threshold for Amount/Current Threshold to get Same Penalty
Schedule I or II	< 0.025 g	Unclassified misdemeanor	No unclassified misdemeanor penalty, current penalty is F-5
Schedule III, IV, or V	< 0.025 g	Unclassified misdemeanor	No unclassified misdemeanor penalty, current penalty is M-1, increased to F-5 if prior drug abuse conviction
Cocaine	< 0.025 g	Unclassified misdemeanor	No unclassified misdemeanor penalty, current penalty is F-5
LSD: Solid	< 0.025 UD	Unclassified misdemeanor	No unclassified misdemeanor penalty, current penalty is F-5
LSD: Liquid	< 0.025 g	Unclassified misdemeanor	No unclassified misdemeanor penalty, current penalty is F-5
Heroin	< 0.025 g < 0.025 UD	Unclassified misdemeanor	No unclassified misdemeanor penalty, current penalty is F-5
Controlled Substance Analog	< 0.025 g	Unclassified misdemeanor	No unclassified misdemeanor penalty, current penalty is F-5
Marihuana	< 0.025 g	Minor misdemeanor	Same
Hashish	< 0.025 g	Minor misdemeanor	Same

An arrest or a conviction for a minor misdemeanor violation of either prohibition does not constitute a criminal record and need not be reported by the person so arrested or found guilty in response to any inquiries about the person's criminal record, including any inquiries

contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.[54]

Unclassified misdemeanor penalties

The bill enacts special sentencing provisions that apply when possession of a controlled substance trace amount is an unclassified misdemeanor as shown in the table above. The sentencing provisions that apply are the same as those that apply when a person is convicted of "possession of a controlled substance" when it is an unclassified misdemeanor, as described above in "**Possession of a controlled substance**."[55]

Holding prosecution in abeyance

The bill specifies that the provisions pertaining to the court holding a charge in abeyance and staying all criminal proceedings with respect to the charge that are set forth in the prohibitions regarding the offense of possession of a controlled substance (see "**Possession of a controlled substance**," above) also apply with respect to a person charged with an offense of possession of a controlled substance trace amount or possession of a trace amount of marihuana or of hashish.[56]

Other provisions regarding possession of a trace amount of a controlled substance, marihuana, or hashish

The bill specifies that the provisions of the existing laws governing the period of limitations for felonies, the application of the speedy trial time limits for felonies, and the application of the forfeiture law to felonies will apply with respect to a violation of the current drug possession law committed prior to the bill's effective date that currently is a felony and that the bill converts to a misdemeanor (see "**Application of period of limitations**," "**Application of Speedy Trial Law**," and "**Application of Forfeiture Law**," below).

The bill retains, and makes applicable to its new possession of a controlled substance trace amount and possession of a trace amount of marihuana or hashish offenses, the following provisions under the existing possession offenses: (1) provisions that authorize a driver's or commercial driver's license or permit suspension of a person convicted of any of the new possession offenses, (2) provisions that authorize, and in certain circumstances require, the imposition of a special fine in certain circumstances and disbursement of the fine in a specified manner, (3) provisions that require the reporting of the conviction to the licensing authority, if the person is a professionally licensed person, and (4) provisions that establish a special affirmative defense for a person charged with any of the offenses.[57]

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[54] R.C. 2925.112(E).

[55] R.C. 2925.112(C)(1); also, R.C. 2925.11(C)(7).

[56] R.C. 2925.112(G); also R.C. 2925.11(D).

[57] R.C. 2925.112(D) and (F).

The bill's transition provisions described above with respect to the bill's possession of a controlled substance offense also apply with respect to the bill's possession of a controlled substance trace amount and possession of a trace amount of marihuana or hashish offenses.[58]

Having weapons while under a disability

Prohibition, penalty, and relief

Existing law, unchanged by the bill except as described in the next paragraph, prohibits a person who is in any of five specified categories from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, unless the person is relieved from disability under operation of law or legal process. A violation of the prohibition is the offense of "having weapons while under a disability," a third degree felony.[59] Existing law, unchanged by the bill, provides a mechanism that a person who is prohibited from acquiring, having, carrying, or using firearms may use as a means of obtaining relief from the disability. Under the mechanism, the person may apply to the court of common pleas of the county in which the person resides for relief from the prohibition and the court, if it makes specified findings, may grant the requested relief. If relief is granted, it is automatically void if the person subsequently comes within any of the five specified categories.[60]

Specified categories that are subject to the prohibition

Existing law specifies five categories of persons who are subject to the prohibition described above. The bill modifies one of the categories so that, in addition to the persons currently in the category, any person who is charged with or has been convicted of any unclassified misdemeanor offense involving the illegal possession of a controlled substance under the bill (see "**Possession of a controlled substance**" and "**Possession of a trace amount of a controlled substance, marihuana, or hashish**," above), or who has been adjudicated a delinquent child for committing such an offense, is subject to the prohibition.[61]

The categories of persons who currently are subject to the prohibition, unchanged by the bill except as described in the preceding paragraph, are any person who:[62] (1) is a fugitive from justice, (2) is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for committing such an offense, (3) is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in a drug of abuse or has been adjudicated a delinquent child for committing such an offense, (4) is drug dependent, in danger of drug

[58] R.C. 2925.11(J).

[59] R.C. 2923.13.

[60] R.C. 2923.14, not in the bill.

[61] R.C. 2923.13(A)(3).

[62] R.C. 2923.13(A).

dependence, or a chronic alcoholic, or (5) is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one who is a patient only for purposes of observation.

Penalties for an attempt to commit a drug abuse offense that is an unclassified misdemeanor

Prohibition

Existing law, unchanged by the bill, prohibits a person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, from engaging in conduct that, if successful, would constitute or result in the offense. It is not a defense to a charge of a violation of the prohibition that, in retrospect, commission of the offense that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be. It is an affirmative defense to a charge of a violation of the prohibition that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose. A violation of the prohibition is an "attempt to commit an offense."[63]

Penalties

Existing law provides special penalties for an attempt to commit an offense, unchanged except as described in the next paragraph. In most cases, the penalty is an offense of the next lesser degree than the offense attempted. An attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the drug abuse offense is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt.[64]

The bill provides a different penalty for an attempt to commit a violation of any provision of R.C. Chapter 2925 that is an unclassified misdemeanor (see "**Possession of a controlled substance**" and "**Possession of a trace amount of a controlled substance, marihuana, or hashish**," above). Under the bill, an attempt to commit any such violation is a first degree misdemeanor, but, notwithstanding the provisions of Criminal Sentencing Law (R.C. Chapter 2929) that generally govern the sentencing of an offender convicted of a first degree misdemeanor, the court sentencing the offender has available any sentencing alternative that would be available for the unclassified misdemeanor if it had been

[63] R.C. 2923.02(A), (B), and (E).

[64] R.C. 2923.02(E).

committed (those alternatives are described above in "**Possession of a controlled substance**").[65]

Conforming changes to provisions described above

The bill amends several provisions of the Drug Offenses Law and Criminal Sentencing Law to conform to the changes described above. The conforming changes are:

1. Modification of the Drug Offenses Law definitions of "drug abuse offense," and "felony drug abuse offense" to include references to the sections containing the bill's new offenses and the time at which an offense was committed;[66]
2. Modification of the Drug Offenses Law definition of "minor drug possession offense" to ensure that offenses committed under the bill's new possession offenses are included when they are misdemeanors or fifth degree felonies and to clarify the time at which the offenses currently referenced qualify as such an offense;[67]
3. Modification of the Criminal Sentencing Law definition of "major drug offender" to include specific references to persons convicted under the bill's new offense that are expressly designated as major drug offenders under those offenses;[68]
4. Modification of the Criminal Sentencing Law definition of "mandatory prison term" to include references to the sections containing the bill's new offenses;[69]
5. Modifications in the Criminal Sentencing Law provisions regarding consideration of factors in sentencing convicted felons, and regarding offenses for which mandatory prison terms are required, to include references to the sections containing the bill's new offenses.[70]

Imposition of prison term for a violation of a community control sanction imposed for a felony

Currently, if an offender is convicted of a felony, if the court imposes one or more community control sanctions on the offender, and if the offender violates any conditions of a sanction, violates a law, or leaves the state without permission, the sentencing court may impose upon the violator one or more of the following penalties: (1) a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified by law, (2) a more restrictive community control sanction, including a new term in a

[65] R.C. 2923.02(E)(1).

[66] R.C. 2925.01(G) and 2925.11(B).

[67] R.C. 2925.01(EE).

[68] R.C. 2929.01(W).

[69] R.C. 2929.01(X).

[70] R.C. 2929.13, 2929.14, and 2941.1410.

community-based correctional facility, halfway house, or jail, or (3) a prison term on the offender, provided that a prison term is subject to the specified limitations.

Currently, the limitations on the use of a prison term as a sanction specify that: (1) if the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a fifth degree felony or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term may not exceed 90 days, and (2) if the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a fourth degree felony that is not an offense of violence and is not a sexually oriented offense or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term may not exceed 180 days. Current law does not define the term "technical violation," as used in the limitations.

The bill clarifies the application of the limitations on the use of a prison term as a sanction. Under the bill, the limitations on the use of a prison term as a sanction specify that: (1) if the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a fifth degree felony, the prison term may not exceed 90 new days, which are in addition to the period of the community control, and (2) if the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a fourth degree felony that is not an offense of violence and is not a sexually oriented offense, the prison term may not exceed 180 new days, which are in addition to the period of the community control.

Significant to the bill's limitation provisions described in the preceding paragraph, the bill defines a "technical violation" as a violation of the conditions of a community control sanction imposed for a fifth degree felony, or for a fourth degree felony that is not an offense of violence and is not a sexually oriented offense, and to which neither of the following applies: (1) the violation consists of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under the community control sanction, and (2) the violation consists of or includes the offender's articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition.[71]

Municipal court and county court jurisdiction

Currently, a municipal court has jurisdiction to hear misdemeanor cases committed within its territory, has jurisdiction over the violation of any ordinance of any municipal corporation within its territory, with exceptions for certain traffic or parking offenses, and has jurisdiction to conduct certain preliminary proceedings (but not trials) in felony cases. Currently, a county court has jurisdiction of all misdemeanor cases and to conduct certain

[71] R.C. 2929.15(B)(1) and (4).

preliminary proceedings (but not trials) in felony cases. Currently, a court of common pleas has original jurisdiction over all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in a court inferior to the court of common pleas.

The bill enacts a procedure for deciding, when a "reclassified misdemeanor drug possession offense" (see below) is committed within the territory of a municipal court or county court, whether that court or the court of common pleas of the county in which the municipal or county court is located, will hear the case pertaining to the offense. Under the bill, if a person commits a reclassified misdemeanor drug possession offense within the territory of a municipal court or county court, the charges must be filed in the municipal court or county court. After the charges are filed in the municipal court or county court, the municipal court or county court, whichever is applicable, on the motion of the prosecutor in the case, on the motion of the defendant, or on its own motion, may transfer the case to the court of common pleas of the county in which the offense was committed. If the municipal court or county court does not transfer the case to the court of common pleas, the municipal court or county court has exclusive jurisdiction over all actions or proceedings in the case. If the municipal court or county court does transfer the case to the court of common pleas, the court of common pleas has exclusive jurisdiction in the case.[72]

Under the bill, the concurrent jurisdiction that existing law grants the Tiffin-Fostoria Municipal Court with the Seneca County Court of Common Pleas over certain specified criminal actions or proceedings does not apply when a defendant is charged in the Tiffin-Fostoria Municipal Court with a reclassified misdemeanor drug possession offense and the case is transferred to the Seneca County Court of Common Pleas as described above. If the case is not transferred to the Seneca County Court of Common Pleas as described above, the Tiffin-Fostoria Municipal Court has exclusive jurisdiction over all actions or proceedings in the case.[73]

As used in these provisions:[74]

"**Reclassified misdemeanor drug possession offense**" means any violation of a prohibition under any of the possession offenses under the bill (see "**Possession of a controlled substance**," "**Possession of marihuana or hashish**," and "**Possession of a trace amount of a controlled substance, marihuana, or hashish**," above) committed on or after the bill's effective date, or of a prohibition under the current possession offenses in effect prior to the bill's effective date (current R.C. 2925.11) that was committed prior to the bill's effective date, and to which all of the following apply: (1) prior to the bill's effective date, the violation was a felony under the current possession offenses that then were in effect, (2) on the bill's effective date, the offense classification of the felony violation referred to in clause (1) was reduced to a misdemeanor under one of the possession offenses under the bill that takes effect on that date, and (3) if the offense is a violation of a

[72] R.C. 1901.20(A), 1907.02(A), and 2931.03.

[73] R.C. 1901.186.

[74] R.C. 1901.20(A)(4) and 1907.02(A)(4).

prohibition under the current possession offenses in effect prior to the bill's effective date and was committed prior to that date, the penalty, forfeiture, or punishment for that violation has not been imposed as of the bill's effective date.

Application of period of limitations

The bill specifies that if, prior to its effective date, a person committed a violation of a prohibition under the current drug possession offenses in effect prior to that effective date (current R.C. 2925.11), if the violation at the time it was committed was a felony, if the violation is changed by the bill on that effective date to a violation of any provision of R.C. Chapter 2925 that is an unclassified misdemeanor (see "**Possession of a controlled substance**" and "**Possession of a trace amount of a controlled substance, marihuana, or hashish**," above), and if the prosecution of the person for that violation has not been commenced prior to that effective date, notwithstanding the change of the classification of the violation to an unclassified misdemeanor, on and after that effective date, any prosecution of the person for the violation must be commenced within the times specified in the existing statute of limitations that would apply to the violation if it had remained as a felony.[75]

Under that existing statute of limitations, except as described below, a prosecution for a felony drug possession offense is barred unless it is commenced within six years after the offense is committed (not relevant to the bill, other types of felonies have longer limitations periods or have no limitations period). The period of limitation does not run during any of the following times:[76]

1. Any time when the *corpus delicti* remains undiscovered;
2. Any time when the accused purposely avoids prosecution (proof that the accused departed Ohio or concealed the accused's identity or whereabouts is *prima-facie* evidence of the accused's purpose to avoid prosecution);
3. Any time a prosecution against the accused based on the same conduct is pending in Ohio, even though the charges that commenced the prosecution are quashed or the proceedings on the charges are set aside or reversed on appeal.

Application of Speedy Trial Law

Existing law specifies a period of time within which a person against whom a charge of any offense is pending in a court must be brought to trial and within which a person who is charged with a felony must be accorded a preliminary hearing. The bill specifies that a person who is charged with a violation of any provision of R.C. Chapter 2925 that is an unclassified misdemeanor under the bill (see "**Possession of a controlled substance**" and "**Possession of a trace amount of a controlled substance, marihuana, or hashish**," above) must be brought to trial within 270 days after the person's arrest or the

[75] R.C. 2901.13(M).

[76] R.C. 2901.13(A), (G), and (H).

service of summons.[77] An existing provision that specifies that, for purposes of computing the time within which a person is brought to trial, each day during which the accused is held in jail in lieu of bail on the pending charge must be counted as three days, applies to this provision of the bill.[78]

Under the existing Speedy Trial Law, unchanged by the bill except as described in the preceding paragraph: (1) a person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, must be brought to trial within 30 days after the person's arrest or the service of summons, (2) a person against whom a charge of a third or fourth degree misdemeanor, or any other misdemeanor for which the maximum penalty is imprisonment for not more than 60 days, is pending in a court of record, must be brought to trial within 45 days after the person's arrest or the service of summons, (3) a person against whom a charge of a first or second degree misdemeanor, or any other misdemeanor for which the maximum penalty is imprisonment for more than 60 days, is pending in a court of record, must be brought to trial within 90 days after the person's arrest or the service of summons, (4) a person against whom a felony charge is pending must be accorded a preliminary hearing within 15 consecutive days after the person's arrest if the accused is not held in jail in lieu of bail on the charge or within ten consecutive days after the person's arrest if the accused is held in jail in lieu of bail on the charge, and (5) a person against whom a felony charge is pending must be brought to trial within 270 days after the person's arrest. The three-for-one credit described in the preceding paragraph applies to all of these time limits, except the preliminary hearing limit. If a person is charged with multiple offenses arising out of the same act or transaction, the time period applicable to the highest degree of offense charged applies.[79]

Application of Forfeiture Law

Under the existing Forfeiture Law, specified property that is contraband involved in a crime, that is proceeds derived from or acquired through the commission of a crime, or that is an instrumentality that is used in or intended to be used in the commission or facilitation of a specified crime is subject to forfeiture to the state or a political subdivision under a specified criminal or delinquency process.[80]

The "instrumentality portion" of the provision described in the preceding paragraph applies with respect to any felony, to any misdemeanor when forfeiture is specifically authorized by the statute or municipal ordinance setting forth the offense and penalty for it, and to any attempt to commit, complicity in committing, or conspiracy to commit any of the preceding offenses, provided that, in any case, the use or intended use of the instrumentality

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[77] R.C. 2945.71(B)(3).

[78] R.C. 2945.71(E).

[79] R.C. 2945.71.

[80] R.C. Chapter 2981; see R.C. 2981.02(A).

must be sufficient to warrant forfeiture under the process.[81] The Forfeiture Law provides criteria to be used in determining whether an alleged instrumentality was used in or was intended for use in the commission or facilitation of an offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture.[82] For purposes of the Forfeiture Law, "instrumentality" means property otherwise lawful to possess that is used in or intended to be used in an offense; an "instrumentality" may include, but is not limited to, a firearm, a mobile instrumentality, a computer, a computer network, a computer system, computer software, a telecommunications device, money, and any other means of exchange.[83]

The bill enacts provisions regarding the application of the Forfeiture Law to drug abuse offenses that it converts from felonies to misdemeanors (see "**Possession of a controlled substance**" and "**Possession of a trace amount of a controlled substance, marihuana, or hashish**," above). The bill specifies that:[84]

1. If, prior to its effective date, a person committed a drug possession violation under the version of R.C. 2925.11 that was in effect prior to that date, if the violation was a felony when it was committed, and if on that date the violation is changed by the bill to an unclassified misdemeanor, notwithstanding the change of the classification to an unclassified misdemeanor, on and after that date, the provisions of the Forfeiture Law remain applicable with respect to the person and the violation to the same extent as if the charge against the person had remained a charge of a felony (this applies regardless of whether, on the bill's effective date, a forfeiture proceeding is pending under the Forfeiture Law against the person based on the violation).
2. If, prior to its effective date, property of a person was forfeited under the Forfeiture Law based on a drug possession violation under the version of R.C. 2925.11 that was in effect prior to that date, if the violation was a felony when it was committed, and if on that date the violation is changed by the bill to an unclassified misdemeanor, notwithstanding the change of the classification to an unclassified misdemeanor, on and after that date, the change of the classification does not affect the validity of the forfeiture and, for purposes of the Forfeiture Law, the violation will be considered as if it had remained a felony.

Drug and alcohol abuse civil commitment mechanism

Existing law

Existing law contains a mechanism pursuant to which a probate court may order involuntary treatment for a person suffering from alcohol and other drug abuse, if the court

[81] R.C. 2981.02(A)(1).

[82] R.C. 2981.02(A)(2).

[83] R.C. 2981.01(B)(6).

[84] R.C. 2981.01(D).

makes certain findings. A spouse, relative, or guardian may initiate proceedings under the mechanism requesting treatment for an individual (the respondent) suffering from alcohol and other drug abuse by filing a verified petition in the probate court and paying a filing fee, if any, that is charged for the filing of an affidavit seeking the hospitalization of a person. The petition must set forth specified types of information about the petitioner and the respondent, including the petitioner's belief that the respondent is suffering from alcohol and other drug abuse and presents an imminent danger or imminent threat of danger to self, family, or others if not treated for alcohol or other drug abuse and the factual basis for that belief.

The petition must be accompanied by both of the following: (1) a security deposit deposited with the probate court's clerk that will cover half of the estimated cost of treatment of the respondent, and (2) a guarantee, signed by the petitioner or another person authorized to file the petition obligating the guarantor to pay the costs of required examinations of the respondent conducted by a physician and qualified health professional, the respondent's costs associated with the hearing under the mechanism and that the court determines to be appropriate, and the costs of any treatment ordered by the court.

Upon receipt of a petition and the payment of the appropriate fee, if any, the probate court is required to examine the petitioner under oath as to the contents of the petition. If, after reviewing the allegations contained in the petition and examining the petitioner, it appears to the probate court that there is probable cause to believe the respondent may reasonably benefit from treatment, the court causes the respondent to be examined by a physician and by a qualified health professional, conducts a hearing, and performs several related duties.

If, upon completion of the hearing held, the probate court finds by clear and convincing evidence that the respondent may reasonably benefit from treatment, the court may order the treatment after considering the qualified health professional's recommendations for treatment that were submitted. If the court orders the treatment, it must order the treatment to be provided through a community addiction services provider or by an individual licensed or certified by the State Medical Board, the Chemical Dependency Professionals Board, the Counselor, Social Worker, and Marriage and Family Therapist Board, or a similar board of another state authorized to provide substance abuse treatment.[85]

Operation of the bill

In general

The bill modifies the mechanism described above as follows:[86]

1. It removes the requirement that the petitioner pay any filing fee to initiate the proceedings for treatment of the respondent;

[85] R.C. 5119.91 to 5119.94, not in the bill except for R.C. 5119.93 and 5119.94.

[86] R.C. 5119.93(A), (B)(7), (C)(1), and (D) and 5119.94(A) to (D)(1)(a).

2. It specifies that the petition must be kept confidential and may not be disclosed by any person, except as needed for purposes of the mechanism or when disclosure is ordered by a court;
3. It expands the requirement that the petition include the petitioner's belief that the respondent is suffering from alcohol and other drug abuse and presents an imminent danger or imminent threat of danger to self, family, or others if not treated for alcohol or other drug abuse and the factual basis for that belief to also require that, if the petitioner's belief is that the respondent is suffering from opioid or opiate abuse, the information provided in the petition also must include any evidence that the respondent has overdosed and been revived one or more times by an opioid antagonist, overdosed in a vehicle, or overdosed in the presence of a minor;
4. It specifies that a physician who is responsible for admitting persons into treatment, if that physician examines the respondent, may be the physician who completes the required examination certificate;
5. It modifies the requirement that the petition include a security deposit and a guarantee or payment of the costs of examinations of the respondent to instead require that the petition be accompanied by both of the following:
    a. One of the following: (i) a security deposit deposited with the probate court's clerk that will cover half of the estimated cost of treatment of the respondent, (ii) documentation establishing that insurance coverage of the petitioner or respondent will cover at least half of that estimated cost, or (iii) other evidence to the satisfaction of the court establishing that the petitioner or respondent will be able to cover some of the estimated cost of treatment of the respondent;
    b. One of the following: (i) a guarantee, signed by the petitioner or another person authorized to file the petition, obligating the guarantor to pay the costs of the respondent's examinations conducted by the physician and qualified health professional, the costs of the respondent associated with the hearing under the mechanism and that the court determines to be appropriate, and the costs of any treatment ordered by the court, (ii) documentation establishing that insurance coverage of the petitioner or respondent will cover the costs described in clause (i), or (iii) documentation establishing that, consistent with the evidence described in (5)(a)(iii), above, the petitioner or respondent will cover some of the costs described in clause (i);
6. It modifies the examination provisions that apply after the court's probable cause determination so that the examination is to be conducted by a qualified health professional (instead of by both a qualified health professional and a physician) who then is to certify findings of the examination to the court within 24 hours;
7. It specifies that if upon completion of the hearing after the probable cause determination, the probate court finds by clear and convincing evidence that the respondent may reasonably benefit from treatment, the court must, instead of may as under existing law, order the treatment;

8. It specifies that evidence that the respondent has overdosed and been revived one or more times by an opioid antagonist, overdosed in a vehicle, or overdosed in the presence of a minor is sufficient to satisfy the evidentiary requirement that the respondent may reasonably benefit from treatment, that is required as the criterion for the court to order treatment for the respondent;
9. It specifies that, if the court orders the treatment for the respondent, the court must specify the type of treatment to be provided, the type of required aftercare, and the duration of the required aftercare which must be at least three months and may not exceed six months and, in addition to ordering the treatment through an entity or person specified under existing law, the court also may order that the respondent submit to periodic examinations by a qualified mental health professional to determine if the treatment remains necessary.

Emergency hospitalization

The bill provides for the emergency hospitalization in specified circumstances of a respondent under a petition filed under the mechanism. Under the bill, if the qualified health professional who examines the respondent after the court's probable cause determination certifies that the respondent is suffering from alcohol and other drug abuse and presents an imminent danger or imminent threat of danger to self, family, or others if not treated for alcohol or other drug abuse, if the court orders treatment for the respondent, and if the court finds by clear and convincing evidence that the respondent presents an imminent danger or imminent threat of danger to self, family, or others as a result of alcohol or other drug abuse, separate from the treatment ordered by the court, the court may order that the respondent be hospitalized for a period not to exceed 72 hours. The court must direct that the order be executed as soon as possible, but not later than 72 hours, after its issuance. If the order cannot be executed within 72 hours after its issuance, it remains valid for "60 days" after its issuance, subject to tolling as described below, and may be executed at any time during that "six-month period" or that "six-month period" as extended by the tolling (the bill is unclear in this provision, regarding the period of validity of the order). Any respondent who has been admitted to a hospital under this provision must be released within 72 hours of admittance, unless the respondent voluntarily agrees to remain longer. A respondent who voluntarily agrees to remain longer may be hospitalized for the additional period of time agreed to by the respondent. No respondent ordered to be hospitalized may be held in jail pending transportation to the hospital unless the court has previously found the respondent to be in contempt of court for either failure to undergo treatment or failure to appear at an evaluation ordered under this section.

The "six-month period" for execution of an order specified in the preceding paragraph will not run during any time when the respondent purposely avoids execution of the order.

Proof that the respondent departed Ohio or concealed the respondent's identity or whereabouts is prima-facie evidence of the respondent's purpose to avoid the execution.[87]

Failure of respondent to complete ordered treatment

Currently, if a court orders a respondent to undergo treatment under the mechanism, the failure of the respondent to undergo and complete the court-ordered treatment is contempt of court. Any community addiction services provider or person providing the treatment must notify the probate court of a respondent's failure to undergo or complete the ordered treatment.

The bill adds an additional sanction if a respondent fails to undergo and complete the court-ordered treatment. It specifies that, in addition to and separate from the currently authorized sanction, if a respondent fails to undergo and complete any court-ordered treatment, the court may issue a summons, to be directed to the respondent and to command the respondent to appear at a time and place specified in the summons. If a respondent who has been summoned under this provision fails to appear at the specified time and place, the court may order a peace officer to transport the respondent to a place at which treatment originally may be ordered (e.g., a community addiction services provider, an individual licensed by the State Medical Board, etc.) or a hospital for treatment. The peace officer, with the approval of the officer's agency, may provide for the transportation of the respondent by a private entity. The transportation costs of the peace officer or the private entity are to be included within the costs of treatment.[88]

Conviction Record Sealing Law

Existing law provides a mechanism, the Conviction Record Sealing Law,[89] pursuant to which a person convicted of a criminal offense who is an "eligible offender" may apply to a court for an order to seal the official records in the case.

A person convicted of an offense may qualify as an eligible offender under that law in either of two manners. One manner is relevant to the bill. Under that manner of qualifying, currently, an eligible offender is anyone who has been convicted of one or more offenses, but not more than five felonies, in Ohio or any other jurisdiction, if all of the offenses in Ohio are felonies of the fourth or fifth degree or misdemeanors and none of those offenses are an offense of violence or a felony sex offense and all of the offenses in another jurisdiction, if committed in Ohio, would be felonies of the fourth or fifth degree or misdemeanors and none of those offenses would be an offense of violence or a felony sex offense. The bill expands this manner of qualifying to include references to reclassified misdemeanor drug possession offenses under the bill – under the bill that manner reads anyone who has been convicted of one or more offenses, but not more than five felonies, in Ohio or any other jurisdiction, if all of

[87] R.C. 5119.94(D)(1)(b).

[88] R.C. 5119.94(D)(2).

[89] R.C. 2953.31 to 2953.36, not in the bill except for R.C. 2953.31 and 2953.32.

the offenses in Ohio are felonies of the fourth or fifth degree, misdemeanors, *or reclassified misdemeanor drug possession offenses*, and none of those offenses are an offense of violence or a felony sex offense and all of the offenses in another jurisdiction, if committed in Ohio, would be felonies of the fourth or fifth degree, misdemeanors, *or reclassified misdemeanor drug possession offenses,* and none of those offenses would be an offense of violence or a felony sex offense.[90]

As used in the provision described in the preceding paragraph, "reclassified misdemeanor drug possession offense" means any of the following: (1) any offense that is a qualifying misdemeanor drug possession offense (defined as a violation of the current drug possession offense statute, R.C. 2925.11, that was committed prior to the bill's effective date if, at the time of the commission of the violation, the violation was a felony under the version of that section that then was in effect and, on the bill's effective date, the offense classification of the violation was reduced to a misdemeanor under the bill's offense of possession of a controlled substance, possession of marihuana, possession of hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish), or (2) any offense committed in any jurisdiction other than Ohio that, if committed in Ohio, would be an offense described in clause (1). Any reference in the Conviction Record Sealing law to a felony does not include any reclassified misdemeanor drug possession offense, and references in that law to a misdemeanor include reclassified misdemeanor drug possession offenses.[91]

A person who is an eligible offender under that law may apply to a court for an order to seal the official records in the case after the expiration of a specified period of time. Currently, an offender may apply at the expiration of three years after the offender's final discharge if convicted of one felony; at the expiration of four years after the offender's final discharge if convicted of two felonies, or at the expiration of five years after final discharge if convicted of three, four, or five felonies and the person qualifies as an eligible offender under the existing criterion described above; or at the expiration of one year after the offender's final discharge if convicted of a misdemeanor. The bill modifies the times at which an application may be made. It specifies that application may be made prior to the first and third times described in the preceding sentence if the conviction was of the bill's possession of a controlled substance, possession of marihuana, possession of hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish offense that is a misdemeanor or a felony of the fourth or fifth degree or that was a violation of a municipal ordinance of an Ohio municipal corporation that is substantially equivalent to any of those offenses, at any time after successful completion of either of the following: (1) a treatment program or other type of program imposed on the eligible offender with respect to the offense,

[90] R.C. 2953.31(A)(1)(a).

[91] R.C. 2953.31(J).

by a drug court, or (2) an intervention plan imposed on the eligible offender with respect to the offense, pursuant to a grant of intervention in lieu of conviction under R.C. 2951.041.[92]

On and after the bill's effective date, any conviction of a violation of the bill's possession of a controlled substance, possession of marihuana, possession of hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish offense that, prior to that date, was a felony and that is a reclassified misdemeanor drug possession offense on and after that date must be considered and treated for purposes of the Conviction Record Sealing Law as if it were, and always had been, a conviction of a misdemeanor.[93]

Not Guilty/Dismissed Charges Record Sealing Law

Existing law provides a mechanism, the Not Guilty/Dismissed Charges Record Sealing Law,[94] pursuant to which a person who is found not guilty of an offense or who has been charged with an offense and has had the charges dismissed may apply to a court for an order to seal the official records in the case. The bill modifies that law to clarify and ensure that its provisions apply to and cover a person who was charged with the bill's possession of a controlled substance, possession of marihuana, possession of hashish, possession of a controlled substance trace amount, or possession of a trace amount of marihuana or hashish offenses, who had the charge held in abeyance under the bill's provisions authorizing the court hearing the charge to do so, who successfully completed the treatment program or intervention plan imposed as part of the abeyance mechanism, and who, as a result of that completion, had the charges dismissed.[95]

State Criminal Sentencing Commission additional duties

The bill expands the current duties of the State Criminal Sentencing Commission (the SCSC) set forth by statute, as follows:[96]

1. In addition to those current duties, it designates the SCSC as a criminal justice agency, as defined in section 109.571 of the Revised Code, and specifies that, as such, the SCSC is authorized by the state to apply for access to the computerized databases administered by the National Crime Information Center or the Law Enforcement Automated Data System (LEADS) in Ohio, and to other computerized databases administered for the purpose of making criminal justice information accessible to state criminal justice agencies.
2. It requires the SCSC, in addition to those current duties, to do all of the following:

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[92] R.C. 2953.32(A)(1).

[93] R.C. 2953.32(A)(3).

[94] R.C. 2953.51 to 2953.56, not in the bill except for R.C. 2953.52.

[95] R.C. 2953.52.

[96] R.C. 181.27.

a. (a) Within 90 days after the bill's effective date, pursuant to its current duties, to commence a study of the impact of sections relevant to the bill, including but not limited to, changes to R.C. 1901.20, 1907.02, 2925.01 to 2925.51, 2941.1410, 2953.31, 2953.32, 2953.52, 5119.93, and 5119.94, and continue studying that impact on an ongoing basis.

b. (b) Not later than December 31, 2020, and biennially thereafter, submit to the General Assembly and the Governor its findings regarding the study described above in (1), in a report that contains the results of the study and recommendations.

Cross-reference, technical, and conforming changes

The bill amends numerous provisions of existing law to change cross-references, or to make technical or conforming changes, to reflect the bill's substantive changes described above.[97]

HISTORY

Action	Date
Introduced	02-12-19
Reported S. Judiciary	---

S0003-RS-133/ts

[97] R.C. 109.572, 128.04, 177.01, 2152.021, 2152.18, 2743.60, 2923.01, 2923.241, 2923.31, 2923.41, 2925.019(F)(6) and (H), 2925.02, 2925.03(L) to (R), 2925.04, 2925.041, 2925.05, 2925.06, 2925.11(F) to (H), 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 2925.38, 2925.42, 2925.51, 2927.21, 2929.14(C)(1)(e), 2929.141, 2929.15(A)(4), 2929.18, 2929.25, 2929.34, 2933.51, 2935.36, 2951.041, 2967.18, 2967.19, 967.28, 3301.32, 3301.541, 3313.662, 3319.31, 3319.39, 3712.09, 3719.013, 3719.21, 3719.99, 3721.121, 3734.44, 3767.01, 4112.02, 4510.17, 4729.99, 4742.03, 5103.0319, 5119.36, 5119.37, 5120.53, 5153.111, and 5502.13.