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Substitute Bill Comparative Synopsis

Sub. S.B. 3

133rd General Assembly

House Criminal Justice

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Corrected Version

This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Previous Version (As Passed by the Senate)	Latest Version (I_133_0567-8)
Measurement of drug amounts	
Increases threshold amounts for subjecting a person to penalties specified under existing trafficking offenses, except when the offense involves a sexual assault-enabling drug or a fentanyl-related compound or occurs in the vicinity of a school (<i>R.C. 2925.03, 2925.031, and 2925.032</i>).	Generally, returns threshold quantities to existing law levels for felonies of the first, second, and third degree except as follows: <ul style="list-style-type: none"> For felonies of the third degree, the bill removes the presumption for a prison term unless the quantities exceed increased threshold amounts in the bill for each corresponding felony (<i>R.C. 2925.031(C)</i>). For aggravated trafficking in cocaine involving 20-27 grams of the drug, a second degree felony, the bill eliminates the

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	<p>mandatory prison term and instead allows for the court to impose a prison term of 2, 3, 4, 5, 6, 7, or 8 years with no presumption for a prison term <i>(R.C. 2925.03(D)(1)(a))</i>.</p> <ul style="list-style-type: none"> ▪ For aggravated trafficking in cocaine involving 20-27 grams of the drug and committed in the vicinity of a school, lowers the penalty from a first degree felony to a second degree felony, but still requires a mandatory prison term for the offense <i>(R.C. 2925.03(D)(1)(b))</i>. ▪ For aggravated trafficking in cocaine involving 27-50 grams of the drug, a first degree felony, the bill eliminates the mandatory prison term and instead allows the court to impose a prison term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years except that the mandatory prison term continues to apply if the offense occurred in the vicinity of a school <i>(R.C. 2925.03(D)(2))</i>. ▪ For aggravated trafficking in heroin involving between 100 unit doses or 10 grams and 300 unit doses or 30 grams of the drug, a second degree felony, the bill eliminates the mandatory prison term and instead allows for the court to impose a prison term of 2, 3, 4, 5, 6, 7, or 8 years with no presumption for a prison term <i>(R.C. 2925.03(F)(1)(a))</i>. ▪ For aggravated trafficking in heroin involving the above amount committed in the vicinity of a school, the bill lowers the penalty from a first degree felony to a second degree felony, but still requires a mandatory prison term for the offense <i>(R.C. 2925.03(F)(1)(b))</i>. ▪ For major trafficking involving an unclassified schedule I or II drug in an amount that equals or exceeds five times the bulk amount, the bill eliminates the mandatory prison term and instead allows for the court to impose a prison term of 2, 3, 4,

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<p>In references to amounts of different controlled substances that qualify an offender to varying levels of a drug trafficking or possession offense, or that constitute a “bulk amount” of a controlled substance, existing law, unchanged by the bill, refers to an amount “equal to or exceeding” a unit dose amount, a weighted amount, or a volume amount (<i>R.C. 2925.01(D); 2925.03(A)(2), (F)(1), and (F)(2); 2925.031(A)(2), 2925.032(A)(2), (B)(5), and (B)(9); 2925.11(A)(2) and (C)(1); 2925.112(A)(2)</i>).</p>	<p>5, 6, 7, or 8 years with no presumption for a prison term (<i>R.C. 2925.031(C)(1)(c)</i>).</p> <p>Clarifies that “equal to or exceeding” in these cases applies to any measurement of the amount, be it a unit dose measurement, a weighted measurement, or a volume measurement of the controlled substance (<i>R.C. 2925.01(D); 2925.03(A)(2), (F)(1), and (F)(2); 2925.031(A)(2), 2925.032(A)(2), (B)(5), and (B)(9); 2925.11(A)(2) and (C)(1); 2925.112(A)(2)</i>).</p>
Computerization fees	
<p>No provision.</p>	<p>Increases from \$10 to \$20, the amount a municipal court or county court may impose as an extra filing fee or similar fee for use in computerizing the office of the court’s clerk (<i>R.C. 1901.261(B)(1) and 1907.261(B)(1)</i>).</p>
Jurisdiction for plea agreements	
<p>Specifies that if a person commits a reclassified misdemeanor drug possession offense within the territory of a municipal court or county court and the person is charged with the offense, the charges must be filed in the common pleas court of the county in which the offense was committed and that court then will have exclusive jurisdiction in all actions or proceedings in the case (<i>R.C. 1901.20</i>).</p>	<p>Further specifies that the court’s jurisdiction does not limit or restrict a prosecutor from accepting a plea agreement to a felony drug possession offense that reduces the offense to a misdemeanor or accepting a plea agreement to a reclassified misdemeanor drug possession offense or any other misdemeanor to a misdemeanor of a lesser degree (<i>R.C. 1901.20</i>).</p>

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Possession charges held in abeyance	
<p>Allows a court to hold in abeyance a charge of possession of a controlled substance and allows the court to continue with prosecution against the person charged if that person does not comply with the treatment program imposed under the abeyance mechanism (<i>R.C. 2925.11(D)(2)</i>).</p> <p>Requires the court to issue an order that establishes terms and conditions of the drug treatment program and requires the person to complete the program, and requires the court to place the offender under the general control and supervision of the county probation department, Adult Parole Authority (APA), 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 existing law (<i>R.C. 2925.11(D)(2)</i>).</p>	<p>Clarifies that the option to continue with prosecution may include authorizing the person charged to apply for intervention in lieu of conviction if it appears that the person is eligible for intervention in lieu of conviction (<i>R.C. 2925.11(D)(2)</i>).</p> <p>Same, but requires the court to place the offender under the general control and supervision of the <i>probation department or other entity that provides probation services to the court</i>, as if the offender was subject to a community control sanction imposed under existing law (<i>R.C. 2925.11(D)(2)</i>).</p>
Supervision of unclassified misdemeanants	
<p>No provision.</p>	<p>Designates the following entity as the supervisory entity of an offender convicted of possession of a controlled substance when the offense is an unclassified misdemeanor, if the offense, prior to the bill's effective date, would have been a felony, and if the offender is sentenced to treatment as a sanction or is sentenced to any other community control sanction under the Misdemeanor Sentencing Law that requires supervision of the offender (<i>R.C. 2925.11(C)(7)(f)</i>):</p> <ul style="list-style-type: none"> ▪ The county probation department that serves the court; ▪ The APA when there is no department of probation in the county and the court has entered an agreement with the APA under continuing law;

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No provision.	<ul style="list-style-type: none"> ▪ Another entity that provides probation services by contract under existing law. <p>Specifies that existing provisions regarding DRC conveyance and reception of convicted felons apply to unclassified misdemeanants sentenced to a prison term under the bill and specifies that all provisions of law that pertain to an offender sentenced to or serving a stated prison term for a fourth degree felony apply to an unclassified misdemeanor serving a prison term under the bill as if the unclassified misdemeanor had been sentenced to and is serving the term for a felony of the fourth degree, except as is clearly inapplicable, impossible, or infeasible (<i>R.C. 2925.11(C)(7)(e)</i>).</p>
Sentence when possession of a controlled substance is an unclassified misdemeanor	
Creates a presumption that an offender convicted of an unclassified misdemeanor for possession of a controlled substance would be sentenced to treatment under the bill. The presumption does not apply 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 (<i>R.C. 2925.11(C)(7)</i>).	<p>Modifies the presumption to specify that the presumption does not apply with respect to an offender if <i>the jury or judge as trier of fact</i> determines that the offender, in committing the offense or related in any way to the offense, has made threats of violence to any person and adds that the presumption does not apply if all of the following apply with respect to the offender and the unclassified misdemeanor offense (<i>R.C. 2925.11(C)(7)</i>):</p> <ul style="list-style-type: none"> ▪ The prosecution of the offender for the violation that resulted in the unclassified misdemeanor conviction had been held in abeyance under the bill’s abeyance mechanism; ▪ The court determined that the offender failed to comply with any term or condition imposed under the abeyance mechanism as part of the offender’s drug treatment program, and continued with the prosecution of the violation that was held in abeyance; and

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<p>Allows the court to sentence an offender convicted of an unclassified misdemeanor for possession of a controlled substance to whom the presumption of treatment does not apply to any sanction under the</p>	<ul style="list-style-type: none"> ▪ At any time prior to imposing sentence, the court determined that the offender’s failure described in the above bullet point consisted of or included the offender’s articulated or demonstrated refusal to participate in the drug treatment program or any of its terms or conditions, and the refusal demonstrated to the court that the offender had abandoned the objects of the treatment program. <p>Specifies that the presumption is a <i>rebuttable</i> presumption and that the presumption is rebutted if the court determines, beyond a reasonable doubt, based on evidence before the court, that either of the following applies to the offender and the offense:</p> <ul style="list-style-type: none"> ▪ The offender is unwilling to participate in a certified treatment program or has signed a statement stipulating that the offender is unwilling to enroll in a certified treatment program; ▪ The court conducts a review, based on the single validated risk assessment tool selected by DRC under existing law and using the specified evidence or information, as to whether the person poses a risk to society that is sufficiently high enough so that the presumption should not apply and, based on that review, determines that the offender poses a risk to society that is sufficiently high enough so that the presumption should not apply. <p>Specifies that the court may sentence an offender for whom the presumption was rebutted under the same sentencing provisions currently in the bill that apply regarding an offender to whom the presumption does not apply. (<i>R.C. 2925.11(C)(7)(a) to (d).</i>)</p> <p>Same, but allows the court to impose that term of up to 364 days as either a jail term or a prison term, except that if, at the time of the sentencing, DRC has certified to the court that the county in which the</p>

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Misdemeanor Sentencing Law or to a special authorized sanction of a jail term of up to 364 days, a fine of up to \$1,000, or a community-based correctional facility term of up to six months (R.C. 2925.11(C)(7)(d)).	person is being sentenced is unable to house the defendant in a facility that is operating at or under 90% of the facility's capacity, the term must be a prison term (R.C. 2925.11(C)(7)(d)).
Immunity for drug offenses – Good Samaritan	
No provision.	Expands existing law immunity from prosecution for minor drug possession offenses to include drug paraphernalia offenses (R.C. 2925.11(B)(2), 2925.12(B)(2), 2925.14(D)(3), and 2925.141(E)(2)).
Felony community control and nonresidential sanctions	
No provision.	Limits the term of a community control sanction for a felony to five years for any felony of the first or second degree, three years for any felony of the third degree, or two years for any felony of the fourth or fifth degree rather than limiting the term to five years for all felonies under existing law (R.C. 2929.15(A) and (B)).
No provision.	Makes several changes regarding the general terms and conditions of community control sanctions including allowing for drug testing, rather than only allowing for <i>random</i> drug testing, and expanding professional assessment of offenders eligible for community control to include offenders who have mental illness or an addiction, rather than only allowing such an assessment if the person is drug addicted (R.C. 2929.15(A) and (D)).

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No provision.	If a professional assessment under continuing law, expanded as referenced in the row above, indicates that the offender is addicted or has mental illness, and the treatment is recommended, generally requires the court to impose on the offender a community control sanction with treatment to be known as “recovery sentencing” <i>(R.C. 2929.15(A))</i> .
No provision.	Makes several changes regarding the supervision of a person under a community control sanction, including references to the existing law entity with supervisory authority over an offender generally as the “supervising entity,” allowing a supervisory entity to take appropriate action upon violation of a term of a community control sanction as determined by the seriousness of the violation and risk presented by the offender, and allowing, rather than requiring, the supervisory entity to report the violation to the sentencing court according to a graduated response policy adopted by the supervisory entity <i>(R.C. 2929.15(A) and (D))</i> .
No provision.	Requires that the length and intensity of supervision or monitoring as a nonresidential sanction for a felony be determined only as indicated by the results of a risk and needs assessment <i>(R.C. 2929.17(E))</i> .
No provision.	Specifically allows for a nonresidential sanction imposed for a felony to include drug testing other than random drug testing <i>(R.C. 2929.17(G))</i> .
No provision.	Allows for a court to require an offender to complete a cognitive-behavioral intervention designed to address dynamic criminogenic risk factors, as a nonresidential sanction for a felony offense <i>(R.C. 2929.17(M))</i> .

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Misdemeanor community control sanctions and nonresidential sanctions	
No provision.	Limits the term of community control sanctions for a misdemeanor offense to two years, down from the current law limit of five years (<i>R.C. 2929.25</i>).
No provision.	Makes several changes regarding the supervision of a person under a misdemeanor community control sanction, including requiring the probation department or officer who receives a report of a violation of a community control sanction to take appropriate action based on the seriousness of the violation and the risk presented by the offender and may report the violation to the sentencing court according to a graduated response policy and specifying that if an offender violates a condition, the sentencing court may not punish the offender again for the offense for which the community control sanction was imposed and that any penalty imposed for the violation must be commensurate with the seriousness of the violation in light of the offender's history of crimes and violations (<i>R.C. 2929.25</i>).
No provision.	Prohibits a court from imposing a term in a drug treatment program as a sanction for a misdemeanant until after considering an assessment by a properly credentialed treatment professional, if available (<i>R.C. 2929.27</i>).
No provision.	Prohibits a court from determining the level of intensity of supervision as a sanction for a misdemeanant except as indicated by the results of a risk and needs assessment (<i>R.C. 2929.27</i>).
No provision.	Allows the court to require that an offender complete a cognitive-behavioral intervention designed to address dynamic criminogenic risk factors as a misdemeanor sanction, replacing a current law provision

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No provision.	<p>that allowed the court to require the offender obtain counseling under certain circumstances (<i>R.C. 2929.27</i>).</p> <p>Eliminates the authority for a misdemeanor to make a financial contribution in lieu of previously imposed community service (<i>R.C. 2929.27</i>).</p>
Misdemeanor residential sanctions	
No provision.	Allows a court that sentences a misdemeanor to a community residential sanction to permit the offender to serve the sentence on house arrest, or on GPS monitoring (<i>R.C. 2929.26(B)</i>).
Considerations in misdemeanor sentencing	
No provision.	Adds “to promote the effective rehabilitation of the offender” as the third overriding purpose of misdemeanor sentencing while retaining two existing law purposes of misdemeanor sentencing: “to protect the public from future crime by the offender and others and to punish the offender” (<i>R.C. 2929.21(A) and (B)</i>).
LSC corrective amendment: Targeting Community Alternatives to Prison (T-CAP)*	
No provision.	Includes 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 T-CAP funding for the cost of those sanctions (<i>R.C. 5149.38</i>).

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LSC corrective amendment: restraining or confining a woman in the criminal justice system during pregnancy or postpartum recovery*	
No provision.	Adds provisions to the bill that prohibit restraining or confining a woman or child who is a charged, convicted, or adjudicated criminal offender or delinquent child at certain points during pregnancy or postpartum recovery, and that require the Attorney General to provide training materials to law enforcement, court, and corrections officials on those provisions (<i>R.C. 109.749, 2152.75, 2901.10, and 2921.45</i>).
Effective date	
No provision.	Specifies that the provisions of the bill are to take effect on July 1, 2021 (<i>Section 5</i>).

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* An amendment making the same changes was adopted by the Senate Judiciary Committee, but its provisions were inadvertently omitted in error when LSC and LIS were working together to address technical problems in the committee report related to the drafting software. The omissions were not noticed until after the Senate-passed version was completed. Because of the omissions, the provisions are not in the version of the bill passed by the Senate and currently pending in the House.