



H.B. 49*

123rd General Assembly
(As Reported by H. Criminal Justice)

Reps. Patton, Allen, James, Bender, Jones, Opfer, Callender

BILL SUMMARY

- Eliminates the distinction between crack cocaine and cocaine that is not crack cocaine in the offenses of trafficking in cocaine, preparation of cocaine for sale, and possession of cocaine and in the definition of "major drug offender."
- Uses the drug quantity thresholds in existing law for crack cocaine as the quantity thresholds for determining the penalties for the involved offense.

CONTENT AND OPERATION

In existing law, the offenses of trafficking in drugs and possession of drugs contain two sets of penalties if the drug involved in the violation is cocaine. One set of penalties applies to cocaine that is crack cocaine, and another set applies to cocaine that is not crack cocaine. The bill eliminates the distinctions between the two forms of cocaine; the bill uses the existing crack cocaine drug quantity thresholds to determine the penalty for the offense regardless of the form of cocaine involved in the offense.

Trafficking in cocaine

Existing law

Existing law prohibits a person from knowingly selling or offering to sell a controlled substance. If the drug is cocaine or a compound, mixture, preparation, or substance containing cocaine, a person who violates the prohibition is guilty of

* This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

trafficking in cocaine (sec. 2925.03(A) and (C)(4)). The offense classification and penalty for the offense depend upon the amount of the drug involved in the offense and upon whether the drug is or is not crack cocaine (see **COMMENT 1**).

If the cocaine is not crack cocaine, the classification and penalty for trafficking in cocaine are as set forth in the following chart (see **COMMENT 2**) (sec. 2925.03(C)(4)):

Amount of cocaine involved (not crack cocaine) and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 5 grams or less-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Exceeds 5 grams and does not exceed 10 grams-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term
(3) Exceeds 10 grams but does not exceed 100 grams-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(4) Exceeds 100 grams and does not exceed 500 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Exceeds 500 grams and does not exceed 1,000 grams--	F1	Mandatory prison term
(6) Exceeds 1,000 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

If the cocaine is crack cocaine, the classification and penalty for trafficking in cocaine are as set forth in the following chart (see **COMMENT 2**) (sec. 2925.03(C)(4)):

Amount of crack cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 1 gram or less-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Exceeds 1 gram and does not exceed 5 grams-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term
(3) Exceeds 5 grams and does not exceed 10 grams-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(4) Exceeds 10 grams and does not exceed 25 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Exceeds 25 grams and does not exceed 100 grams--	F1	Mandatory prison term
(6) Exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years.

Operation of the bill

The bill abolishes the references to "crack cocaine" and "cocaine that is not crack cocaine" and establishes one range of penalties for trafficking in cocaine. Those penalties are the same as the penalties in existing law that apply to crack cocaine.

Under the bill, the penalties for trafficking in cocaine are the penalties set forth in the following chart (see **COMMENT 2**) (sec. 2925.03(C)(4)):

Amount of cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 1 gram or less-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Exceeds 1 gram and does not exceed 5 grams-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term
(3) Exceeds 5 grams and does not exceed 10 grams-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(4) Exceeds 10 grams and does not exceed 25 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Exceeds 25 grams and does not exceed 100 grams--	F1	Mandatory prison term
(6) Exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years.

Preparation of cocaine for sale

Existing law

Existing law prohibits a person from knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance when the person intends to sell or resell the controlled substance or when the person knows or has reasonable cause to believe that another person intends to sell or resell the controlled substance. If the controlled substance involved is cocaine or a compound, mixture, preparation, or substance containing cocaine, a person who violates the prohibition is guilty of preparation of cocaine for sale. (Sec. 2925.07(A) and (C)(4).) The offense classification and penalty for the offense depend upon the amount of the controlled substance involved in the offense and upon whether the drug is or is not crack cocaine (see **COMMENT 1**).

If the cocaine is not crack cocaine, the classification and penalty for preparation of cocaine for sale are as set forth in the following chart (see **COMMENT 2**) (sec. 2925.07(C)(4)):

Amount of cocaine involved (not crack cocaine) and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 5 grams or less-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Exceeds 5 grams-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term

If the cocaine is crack cocaine, the classification and penalty for preparation of cocaine for sale are as set forth in the following chart (see **COMMENT 2**) (sec. 2925.07(C)(4)):

Amount of crack cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 1 gram or less-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Exceeds 1 gram-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term

Operation of the bill

The bill abolishes the references to "crack cocaine" and "cocaine that is not crack cocaine" and establishes one range of penalties for preparation of cocaine for sale. Those penalties are the same as the penalties in existing law that apply to crack cocaine.

Under the bill, the penalties for preparation of cocaine for sale are the penalties set forth in the following chart (see **COMMENT 2**) (sec. 2925.07(C)(4)):



Amount of cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 1 gram or less-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Exceeds 1 gram-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term

Possession of cocaine

Existing law

Existing law prohibits a person from knowingly obtaining, possessing, or using a controlled substance. If the controlled substance is cocaine or a compound, mixture, preparation, or substance containing cocaine, a person who violates the prohibition is guilty of possession of cocaine. (Sec. 2929.11(A) and (C)(4).) The offense classification and penalty for the offense depend upon the amount of the drug involved in the offense and upon whether the drug is crack cocaine or cocaine that is not crack cocaine.

If the cocaine is not crack cocaine, the classification and penalty for possession of cocaine are as set forth in the following chart (see **COMMENT 2**) (sec. 2925.11(C)(4)):

Amount of cocaine involved (not crack cocaine)	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 5 grams or less--	F5	Option 1
(2) Exceeds 5 grams and does not exceed 25 grams--	F4	Presumption for prison term
(3) Exceeds 25 grams and does not exceed 100 grams--	F3	Mandatory prison term
(4) Exceeds 100 grams and does not exceed 500 grams--	F2	Mandatory prison term
(5) Exceeds 500 grams and does not exceed 1,000 grams--	F1	Mandatory prison term



Amount of cocaine involved (not crack cocaine)	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(6) Exceeds 1,000 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

If the cocaine is crack cocaine, the classification and penalty for possession of cocaine are as set forth in the following chart (see **COMMENT 2**) (sec. 2925.11(C)(4)):

Amount of crack cocaine involved	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 1 gram or less--	F5	Option 1
(2) Exceeds 1 gram and does not exceed 5 grams--	F4	Presumption for prison term
(3) Exceeds 5 grams and does not exceed 10 grams--	F3	Mandatory prison term
(4) Exceeds 10 grams and does not exceed 25 grams--	F2	Mandatory prison term
(5) Exceeds 25 grams and does not exceed 100 grams--	F1	Mandatory prison term
(6) Exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Operation of the bill

The bill abolishes the references to "crack cocaine" and "cocaine that is not crack cocaine" and establishes one range of penalties for possession of cocaine. Those penalties are the same as the penalties in existing law that apply to crack cocaine.

Under the bill, the penalties for possession of cocaine are as set forth in the following chart (see **COMMENT 2**) (sec. 2925.11(C)(4)):



Amount of cocaine involved	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) 1 gram or less--	F5	Option 1
(2) Exceeds 1 gram and does not exceed 5 grams--	F4	Presumption for prison term
(3) Exceeds 5 grams and does not exceed 10 grams--	F3	Mandatory prison term
(4) Exceeds 10 grams and does not exceed 25 grams--	F2	Mandatory prison term
(5) Exceeds 25 grams and does not exceed 100 grams--	F1	Mandatory prison term
(6) Exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Major drug offender

Existing law

Existing law specifies penalties to be imposed upon a person who is a major drug offender. For this purpose, it defines "major drug offender" as an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains any of the following (sec. 2929.01(Y)):

- (1) At least 1,000 grams of hashish;
- (2) *At least 100 grams of crack cocaine;*
- (3) *At least 1,000 grams of cocaine that is not crack cocaine;*
- (4) At least 250 grams of heroin;
- (5) At least 5,000 unit doses of L.S.D.; or

(6) At least 100 times the amount of any other schedule I or II controlled substance other than marihuana that is necessary to commit a felony of the third degree pursuant to one of five specified sections of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.



Operation of the bill

The bill eliminates the distinction between crack cocaine and cocaine that is not crack cocaine in the definition of "major drug offender." Under the bill, with respect to cocaine, a major drug offender is an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains *at least 100 grams of cocaine* (sec. 2929.01(Y)).

Other changes

The bill eliminates the definition of crack cocaine (sec. 2925.01(GG)) and a cross-reference in sec. 2929.01(D)).

COMMENT

1. Existing law defines "cocaine" as any of the following (sec. 2925.01(X)):

(a) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(b) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;

(c) A salt, compound, derivative, or preparation of a substance identified in (a) or (b), above, that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

Existing law defines "crack cocaine" as a compound, mixture, preparation, or substance that is or contains any amount of cocaine that is analytically identified as the base form of cocaine or that is in a form that resembles rocks or pebbles generally intended for individual use (sec. 2925.01(GG)).

2. As used in the charts:

"Option 1" means a sentencing procedure specified in the existing Sentencing Law for felonies of the fourth and fifth degree. The sentencing court must determine whether any one of eight factors specified in the Sentencing Law applies. If none of the factors apply, the court, after considering general sentencing principles and purposes, may impose a community control sanction or combination of sanctions. If the court finds that one of the factors applies, that a



prison term is consistent with the purposes and principles of sentencing, and that the offender is not amenable to an available community control sanction, the court must impose a prison term (sec. 2929.13(B)).

"Option 2" means a sentencing procedure for felonies of the third degree or certain felony drug offenses. In order to determine whether to impose a prison term upon the offender, the court must comply with the purposes and principles of sentencing and must consider specified factors regarding the seriousness of the offense and factors indicating that the offender is likely to commit future crimes (sec. 2929.13(C)).

"Presumption for prison term" means a presumption that a prison term is the appropriate sanction for the offense.

"Mandatory prison term" means a prison term that a court must impose, selected from the range of prison terms authorized for a felony of the appropriate level.

"Permissive additional prison term of 1 to 10 years" means an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years that a court must impose upon a major drug offender if the court determines it necessary to punish the offender and protect the public or to underscore the seriousness of the offense.

"School" and "juvenile" mean that the penalty for an offense involving a certain amount of cocaine is enhanced when the offense is committed in the vicinity of a school or in the vicinity of a juvenile.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 93
Reported, H. Criminal Justice	---	---

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