



Michael J. O'Neill

Bill Analysis
Legislative Service Commission

H.B. 331

123rd General Assembly
(As Introduced)

**Reps. DePiero, Perry, Jerse, Verich, Taylor, Metelsky, Pringle, Vesper,
Goodman, Opfer, Sullivan**

BILL SUMMARY

- Modifies the procedures under which a felon upon whom specified consecutive sentences are imposed may seek leave to appeal the sentence if the consecutive sentences exceed the maximum prison term allowed under the Felony Sentencing Laws for the most serious offense of which the defendant was convicted.
- Provides that, if the defendant seeks leave to appeal under the above provision, the grounds for the appeal are that the record does not support the consecutive sentences or that the sentence is otherwise contrary to law.
- Permits the court hearing an appeal under the above provision to increase, reduce, or otherwise modify such an appealed sentence or to vacate the sentence and remand the matter to the trial court for resentencing if the court clearly and convincingly finds that the record does not support the sentence or that the sentence is otherwise contrary to law.

CONTENT AND OPERATION

Existing law

Imposition of consecutive sentences under the Felony Sentencing Laws

The existing Felony Sentencing Law permits consecutive sentences to be imposed upon an offender in specified circumstances. When consecutive prison terms are imposed pursuant to these provisions, the term to be served is the aggregate of all of the terms so imposed. The circumstances specified in the Felony Sentencing Laws include (sec. 2929.14(E)--not in the bill):

(1) If a prison term is imposed for aggravated robbery when the offense involves knowingly removing or attempting to remove a deadly weapon from the person of a law enforcement officer, or knowingly depriving or attempting to deprive a law enforcement officer of a deadly weapon, in specified circumstances, the offender must serve that prison term consecutively to any other prison term.

(2) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed the multiple offenses while the offender was awaiting trial or sentencing, was under a community control sanction, or was under post-release control for a prior offense.

(b) The harm caused by the multiple offenses was so great or unusual that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

Rights of appeal in felony cases

The existing Felony Sentencing Law specifically authorizes a number of appeals to the imposition of a felony sentence. The rights to appeal fall into four categories:

Sec. 2953.08(A) appeals. Section 2953.08(A) provides that, in addition to any other right to appeal, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds:

(1) The sentence consisted of or included the maximum prison term allowed for the offense by the Felony Sentencing Laws and was not a major drug offender additional prison term, and the court imposed it under one of the following circumstances: (a) the sentence was imposed for only one offense, or (b) the sentence was imposed for two or more offenses arising out of a single

incident, and the court imposed the maximum prison term for the offense of the highest degree.

(2) The sentence consisted of or included a prison term, the offense for which it was imposed required the court to find that one or more factors apply relative to the defendant before a prison term could be imposed, and the court did not specify at sentencing that it found that one or more of those factors apply.

(3) The person was convicted of or pleaded guilty to a sexually violent offense, was adjudicated as being a sexually violent predator, and was sentenced to an indefinite term under the Sexually Violent Predator Laws, if the minimum term of the indefinite term is the longest term available for the underlying sexually violent offense.

(4) The sentence is contrary to law.

(5) The sentence consisted of an additional prison term of ten years the Felony Sentencing Law permits to be imposed upon a major drug offender.

Sec. 2953.08(B)(1) and (2) appeals. In addition to any other right to appeal, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony on either of the following grounds (sec. 2953.08(B)(1) and (2)):

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed.

(2) The sentence is contrary to law.

Sec. 2953.08(B)(3) appeals. In addition to any other right to appeal, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right the modification of a sentence imposed upon such a defendant on the ground that the sentence is a modification under judicial release of a sentence that was imposed for a felony of the first or second degree (sec. 2953.08(B)(3)).

Sec. 2953.08(C) appeals. In addition to sec. 2953.08(A) and (B) appeals, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences as described in "**Imposition of consecutive sentences under the Felony Sentencing Laws**" and that the consecutive sentences

exceed the maximum prison term allowed under the Felony Sentencing Laws for the most serious offense of which the defendant was convicted. Upon the filing of a motion under this provision, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true.

No right to appeal. A sentence imposed upon a defendant is not subject to review under the above provisions if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge. A sentence imposed for aggravated murder or murder is not subject to review under these provisions, as other appeal provisions apply. (Sec. 2953.08(D).)

Findings required for amending or vacating a sentence

Sec. 2953.08(A) or (B)(1) or (2) appeals. The court hearing a sec. 2953.08(A) appeal or a sec. 2953.08(B)(1) or (2) appeal may increase, reduce, or otherwise modify an appealed sentence or may vacate the sentence and remand the matter to the trial court for resentencing if the court clearly and convincingly finds any of the following (sec. 2953.08(G)(1)):

(1) That the record does not support the sentence;

(2) That the sentence included a prison term, that (a) the offense for which it was imposed required the court to find that one or more factors apply relative to the defendant before a prison term could be imposed, (b) the court did not specify at sentencing that it found that one or more of those factors apply, and (3) either that the procedures set forth for determining whether to impose a prison term for such an offense were not followed or that those procedures were followed but there is an insufficient basis for imposing a prison term for the offense;

(3) That the sentence did not include a prison term, that the offense for which it was imposed is an offense for which there is a presumption in favor of a prison term, and either that the procedures set forth in the Felony Sentencing Laws that set forth the only circumstances in which the presumption may be overridden (and a sanction other than a prison term may be imposed in lieu of a prison term) were not followed or that those procedures were followed but there is an insufficient basis for overriding the presumption and imposing a sanction other than a prison term for the offense;

(4) That the sentence is otherwise contrary to law.

Sec. 2953.08(B)(3) appeals. The court hearing a sec. 2953.08(B)(3) appeal involving the trial court's modification of a sentence under judicial release may overturn the modification and reinstate the original sentence, or may vacate the modification of the sentence and remand the matter to the trial court for reconsideration, only if the court clearly and convincingly finds any of the following (sec. 2953.08(G)(2)):

(1) That the record does not support the modification based on the criteria for modification set forth in the Judicial Release Law;

(2) That the modification was not made in accordance with the procedures set forth in the Judicial Release Law, that the defendant was not eligible for the modification under that Law, or that the modification otherwise was contrary to law.

Sec. 2953.08(C) appeals. Existing law does not state what findings the court hearing a sec. 2953.08(C) appeal must make in order to increase, reduce, or otherwise modify the sentence or to vacate the sentence and remand the matter to the trial court for resentencing (sec. 2953.08(G)).

Operation of the bill

The bill revises the right of appeal of consecutive sentences and specifies what a court must find for amending or vacating consecutive sentences. Under the bill, in addition to the other rights of appeal specified in section 2953.08, a defendant who is convicted of or pleads guilty to a felony may seek leave to appeal a sentence imposed upon the defendant "if" (rather than "on the basis that" under existing law) the sentencing judge has imposed consecutive sentences as described above in "**Imposition of consecutive sentences under the Felony Sentencing Laws**" and that the consecutive sentences exceed the maximum prison term allowed under the Felony Sentencing Laws for the most serious offense of which the defendant was convicted. Upon the filing of a motion under this provision, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the "grounds of the motion" (rather than "as the basis of the motion" under existing law) are true. The bill additionally provides that if the defendant seeks leave to appeal under this provision the grounds for the appeal are that the record does not support the consecutive sentences or that the sentence is otherwise contrary to law. (Sec. 2953.08(C).)

The court hearing an appeal based on consecutive sentences as described above may increase, reduce, or otherwise modify an appealed sentence or may vacate the sentence and remand the matter to the trial court for resentencing if the court clearly and convincingly finds that the record does not support the sentence

or that the sentence is otherwise contrary to law. These findings are the same findings required under existing law for appeals under sec. 2953.08(A) or (B)(1) or (2) as discussed above under "*Findings required for amending or vacating a sentence.*" (Sec. 2953.08(G)(1).)

HISTORY

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