



H.B. 723*

123rd General Assembly
(As Introduced)

**Reps. Tiberi, Calvert, Robinson, Clancy, Stevens, Allen, Evans, Willamowski,
Harris, Goodman, Widener**

BILL SUMMARY

- Requires a court to impose on an offender a specified mandatory prison term for a felony drug trafficking offense, drug possession offense, illegal manufacture of drugs, or illegal cultivation of marijuana, other than one involving a schedule III, IV, or V controlled substance, and for specified relevant conduct if, at the sentencing hearing, the prosecution introduces evidence and proves by a preponderance of the evidence that the offense constituted, or was committed as part of, a jointly undertaken criminal activity that included the offender, that the jointly undertaken criminal activity included relevant conduct in addition to the offense, and an amount of the controlled substance or controlled substances involved in the relevant conduct that was reasonably foreseeable in connection with the jointly undertaken criminal activity.
- Enacts tables by which mandatory prison terms generally are to be determined.
- Requires the court, if the prosecution proves that the offender has assets that constitute, or are derived directly or indirectly from, any proceeds of the offense described in the first dot point or of the relevant conduct that was reasonably foreseeable in connection with the jointly undertaken

* *As presented in the bill, because of prior enactments occurring this General Assembly, no section in the bill reflects the most recent amendments to the section. However, this analysis does discuss the most recent amendments to those sections when discussing existing law and how the bill interconnects with existing law. Therefore, conflicts exist regarding what is stated as existing law in the analysis versus what is presented as existing law in the bill. The analysis discusses the most up to date changes to those sections. The bill will be updated at the first opportunity to reflect those changes*

criminal activity, to convert those assets into an amount of marihuana to be used in imposing sentence.

- Requires the court, in the circumstances described in the first dot point, to impose specified other sanctions as under existing law.
- If the sentence for the drug involved in the violation described in the first dot point is determined by reference to a different mandatory prison term table than for one of the drugs involved in the relevant conduct, provides a method by which a court, in the situation described in the first dot point, may convert into equivalent amounts of marihuana.
- Authorizes the State Board of Pharmacy to prescribe by rule a drug equivalency table that converts specified amounts of compounds, mixtures, preparations, or substances subject for which the bill imposes a mandatory prison term, other than marihuana, into equivalent specified amounts of marihuana.

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CONTENT AND OPERATION

Existing law

Drug trafficking offenses

R.C. 2925.03(A) prohibits a person from knowingly selling or offering to sell a controlled substance. Under R.C. 2925.03(C), the name and degree of the offense committed by violating this prohibition depends on the type and amount of the controlled substance involved. Depending upon the controlled substance involved, a violation of the prohibition is the offense of "aggravated trafficking in drugs" (if a schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish is involved), "trafficking in drugs" (if a schedule III, IV, or V controlled substance is involved), "trafficking in marihuana," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," or "trafficking in hashish." The existing penalties for the drug trafficking offenses are set forth in **COMMENT 1**.

This prohibition does not apply to any of the following (R.C. 2925.03(B)):

(1) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with specified laws;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States Food and Drug Administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

Drug possession offenses

R.C. 2925.11(A) prohibits a person from knowingly obtaining, possessing, or using a controlled substance. Under R.C. 2925.11(C), the name and degree of the offense committed by violating this prohibition depends on the type and amount of the controlled substance involved. Depending upon the controlled substance involved, a violation of the prohibition is the offense of "aggravated

possession of drugs" (if a schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish is involved), "possession of drugs" (if a schedule III, IV, or V controlled substance is involved), "possession of marihuana," "possession of cocaine," "possession of L.S.D.," "possession of heroin," or "possession of hashish." The existing penalties for the drug possession offenses are set forth in **COMMENT 2**.

This prohibition does not apply to any person in an exempted category described under "**Drug trafficking offenses**" or to any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs (R.C. 2925.11(B)).

It is an affirmative defense to a charge of a fourth degree felony violation of this prohibition that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. But, if the accused sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense, the accused may be prosecuted for and may plead guilty to or be convicted of a misdemeanor violation (if the drug is a schedule III, IV, or V controlled substance) or a fifth degree felony violation (if the drug is cocaine, L.S.D., or heroin). (R.C. 2925.11(F).)

Illegal manufacture of drugs or cultivation of marihuana

R.C. 2925.04(A) prohibits a person from knowingly cultivating marihuana or knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance. Under R.C. 2925.04(C), the name and degree of the offense committed by violating this prohibition depends on the type and amount of the controlled substance involved. A violation of the prohibition that involves a controlled substance other than marihuana is "illegal manufacture of drugs." A violation of the prohibition that involves marihuana is "illegal cultivation of marihuana." The existing penalties for illegal manufacture of drugs and illegal cultivation of marihuana are set forth in **COMMENT 3**.

This prohibition does not apply to any person described in an exempted category described under "**Drug trafficking offenses**" to the extent and under the circumstances described in that provision (R.C. 2925.04(B)).

Also, it is an affirmative defense to a charge of a fifth degree felony violation of the prohibition comprising illegal cultivation of marihuana that the marihuana that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a

manner, or is possessed or cultivated under any other circumstances that indicate that the marihuana was solely for personal use. But, if a person who is charged with a violation of that prohibition that is a felony of the fifth degree sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense, the person may be prosecuted for and may be convicted of or plead guilty to a misdemeanor violation of illegal cultivation of marihuana. (R.C. 2925.04(F).)

Operation of the bill

The bill provides an alternate sentencing structure that, except as described below, must be used in sentencing a person who is convicted of a felony drug trafficking offense, drug possession offense, illegal manufacture of drugs, or illegal cultivation of marihuana when the prosecution proves that the offense constituted, or was committed as part of, a "jointly undertaken criminal activity" that included the offender, that the jointly undertaken criminal activity included "relevant conduct" in addition to the offense, and an amount of the controlled substance or controlled substances involved in the relevant conduct that was reasonably foreseeable in connection with the jointly undertaken criminal activity. Although the bill is not completely clear in this regard, its alternate sentencing structure does not apply when a person is convicted of one of the specified offenses in circumstances in which it involves a schedule III, IV, or V controlled substance. (R.C. 2925.03(C), 2925.04(C), 2925.11(C), and 2925.39(A).)

Definitions

Jointly undertaken criminal activity. "Jointly undertaken criminal activity" means a criminal plan, scheme, endeavor, or enterprise that is undertaken by a person in concert with one or more other persons, regardless of whether any of the other persons is charged with or convicted of a criminal offense and regardless of whether any of the participants in the plan, scheme, endeavor, or enterprise is charged with a conspiracy relative to the plan, scheme, endeavor, or enterprise (R.C. 2925.01(HH)).

Relevant conduct. "Relevant conduct" means, in relation to a felony violation of a drug trafficking or drug possession offense, illegal manufacture of drugs, or illegal cultivation of marihuana that constituted, or was committed as part of, a jointly undertaken criminal activity that included the offender, all conduct of a specified type that the prosecution, at the sentencing hearing conducted in relation to the violation, proves by a preponderance of the evidence was included in the jointly undertaken criminal activity. The specified type of conduct must consist of one or more additional sales, offers for sale, cultivations, manufactures, productions, obtainings, possessions, or uses of one or more

controlled substances that were within the scope of and in furtherance of that jointly undertaken criminal activity. (R.C. 2925.01(II) and 2925.39(A)(2).)

Sentencing hearing

Introduction of evidence. Under the bill, if an offender is convicted of or pleads guilty to a felony violation of a drug trafficking offense, a drug possession offense, illegal manufacture of drugs, or illegal cultivation of marihuana, at the sentencing hearing for that violation, the prosecution may introduce evidence of all of the following (R.C. 2925.39(A)):

(1) That the violation for which sentence is being imposed constituted, or was committed as part of, a jointly undertaken criminal activity that included the offender;

(2) That, in addition to the violation for which sentence is being imposed, the jointly undertaken criminal activity also included one or more additional sales, offers for sale, cultivations, manufactures, productions, obtainings, possessions, or uses of one or more controlled substances that were within the scope of and in furtherance of that jointly undertaken criminal activity;

(3) The type of each controlled substance involved in the additional conduct described in paragraph (2) that was reasonably foreseeable in connection with the jointly undertaken criminal activity, and the amount of each of those controlled substances that was so involved;

(4) The amount of marihuana determined by converting assets of the offender (see "**Types of evidence the prosecution may introduce,**") that constitute, or that are derived directly or indirectly from, any proceeds of the additional conduct that is described in paragraph (2) and that was reasonably foreseeable in connection with the jointly undertaken criminal activity.

Types of evidence the prosecution may introduce. For purposes of determining under the bill's sentencing structure the sentence to be imposed for a drug trafficking offense, drug possession offense, illegal manufacture of drugs, or illegal cultivation of marihuana and related relevant conduct, the prosecution may introduce evidence at the sentencing hearing for the offense of all of the following (R.C. 2925.39(F)(1)):

(1) The fact that specified assets of the offender constitute, or are derived directly or indirectly from, any proceeds of the additional conduct described in paragraph (2) under "**Introduction of evidence,**" above, that was reasonably foreseeable in connection with the jointly undertaken criminal activity;

(2) The monetary value of the assets described in the preceding paragraph;

(3) The amount of marihuana that, if sold, would produce a monetary value equal to the monetary value described in the preceding paragraph. To arrive at this amount of marihuana, the prosecution and court may consider all relevant factors, including, but not limited to, the price generally obtained for marihuana, relevant financial or other records of any person, similar transactions in marihuana or other controlled substances by the offender, and the size or capabilities of any laboratory involved in the violation and relevant conduct in question.

If the prosecution, at the sentencing hearing for the offense, proves by a preponderance of the evidence all of the preceding facts, monetary values, and amounts, the marihuana determined under paragraph (3), above, must be the marihuana amount to be used in sentencing the offender under "**Imposition of sentence**," below, and the mandatory prison term tables set forth in "**Mandatory prison term tables**," below, or "**Reduction of mandatory prison term**," below, for the violation and the related relevant conduct (R.C. 2925.39(F)(2)).

Imposition of sentence

If, at the sentencing hearing for the offense, the prosecution introduces evidence and proves by a preponderance of the evidence that the violation constituted, or was committed as part of, a jointly undertaken criminal activity that included the offender, that the jointly undertaken criminal activity included relevant conduct in addition to the violation, and an amount of the controlled substance or controlled substances involved in the relevant conduct that was reasonably foreseeable in connection with the jointly undertaken criminal activity, the court must do a number of things.

First, the court must impose on the offender, from the appropriate table set forth below in "**Mandatory prison term tables**" or in accordance with the provisions of "**Reduction of mandatory sentence**," below, when those provisions apply, a mandatory prison term for the violation and for the relevant conduct. The mandatory prison term to be so imposed generally must be based on the violation and on the total of the amount of the controlled substance involved in that violation and the amount of all controlled substances involved in the relevant conduct that the prosecution so proved to be reasonably foreseeable in connection with the jointly undertaken criminal activity.

Second, if the prosecution proves by a preponderance of the evidence at the sentencing hearing that the offender has assets that constitute, or are derived directly or indirectly from, any proceeds of the violation or of the relevant conduct that was reasonably foreseeable in connection with the jointly undertaken criminal activity, the court must convert those assets into an amount of marihuana to be used in imposing sentence under the preceding paragraph.

Third, in relation to the violation, the court must impose upon the offender a fine pursuant to the mandatory fine provisions in those offenses, or, if a mandatory fine is not required for the violation under any of those provisions, may impose upon the offender a fine pursuant to the Felony Sentencing Law. The court also must revoke or suspend the offender's driver's or commercial driver's license or permit in accordance with the driver's license revocation and suspension provisions in those offenses. If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the Supreme Court in compliance with its prescribed and published rules, the court must comply with specified professional licensing entity notification provisions. And, except for these sanctions, the court is prohibited from otherwise sentencing the offender under the penalty provisions of the drug trafficking offenses, drug possession offenses, illegal manufacture of drugs, or illegal cultivation of marihuana or impose upon the offender any other sanction authorized or required under any of those provisions. (R.C. 2925.39(B).)

Mandatory prison term tables

In imposing a mandatory prison term on an offender under the bill's sentencing structure, unless it imposes a reduced mandatory prison term in accordance with "**Reduction of mandatory prison term**," below, the court must impose a mandatory prison term from one of the following tables, as appropriate, for the drug trafficking offense, the drug possession offense, illegal manufacture of drugs, or illegal cultivation of marihuana and the relevant conduct (R.C. 2925.39(C)).

Schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish. If the drug involved in both the violation and the relevant conduct is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, the mandatory prison term for the violation and the relevant conduct is one of the following (R.C. 2925.39(C)(1)):

Total amount of controlled substance involved in both the violation and the relevant conduct	Mandatory prison term
Exceeds 100 times bulk amount but does not exceed 150 times bulk amount--	25 years to life
Exceeds 150 times bulk amount but does not exceed 500 times bulk amount--	30 years to life
Exceeds 500 times bulk amount--	Life imprisonment with parole eligibility after serving a term of 35 full years of imprisonment

Marihuana other than hashish. If the drug involved in both the violation and the relevant conduct is marihuana or a compound, mixture, preparation, or

substance containing marihuana other than hashish, the mandatory prison term for the violation and the relevant conduct is one of the following (R.C. 2925.39(C)(2)):

Total amount of marihuana other than hashish involved in both the violation and the relevant conduct	Mandatory prison term
Exceeds 227,000 grams but does not exceed 454,000 grams--	15 years
Exceeds 454,000 grams but does not exceed 2,270,000 grams--	20 years
Exceeds 2,270,000 grams--	25 years to life

Cocaine. If the drug involved in both the violation and the relevant conduct is cocaine or a compound, mixture, preparation, or substance containing cocaine, the mandatory prison term for the violation and the relevant conduct is one of the following (R.C. 2925.39(C)(3)):

Total amount of cocaine involved in both the violation and the relevant conduct	Mandatory prison term
Exceeds 1,000 grams but does not exceed 5,000 grams of cocaine that is not crack cocaine or exceeds 100 grams but does not exceed 500 grams of crack cocaine--	15 years
Exceeds 5,000 grams but does not exceed 10,000 grams of cocaine that is not crack cocaine or exceeds 500 grams but does not exceed 1,000 grams of crack cocaine--	25 years to life
Exceeds 10,000 grams but does not exceed 50,000 grams of cocaine that is not crack cocaine or exceeds 1,000 grams but does not exceed 5,000 grams of crack cocaine--	30 years to life
Exceeds 50,000 grams of cocaine that is not crack cocaine or exceeds 5,000 grams of crack cocaine--	Life imprisonment with parole eligibility after serving a term of 35 full years of imprisonment

L.S.D. If the drug involved in both the violation and the relevant conduct is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., the mandatory prison term for the violation and the relevant conduct is one of the following (R.C. 2925.39(C)(4)):

Total amount of L.S.D. involved in both the violation and the relevant conduct	Mandatory prison term
Exceeds 5,000 unit doses but does not exceed 7,500 unit doses of solid L.S.D. or exceeds 500 grams but does not exceed 750 grams of liquid L.S.D.--	25 years to life

Exceeds 7,500 unit doses but does not exceed 10,000 unit doses of solid L.S.D. or exceeds 750 grams but does not exceed 1,000 grams of liquid L.S.D.--	30 years to life
Exceeds 10,000 unit doses of solid L.S.D. or exceeds 1,000 grams of liquid L.S.D.--	Life imprisonment with parole eligibility after serving a term of 35 full years of imprisonment

Heroin. If the drug involved in both the violation and the relevant conduct is heroin or a compound, mixture, preparation, or substance containing heroin, the mandatory prison term for the violation and the relevant conduct is one of the following (R.C. 2925.39(C)(5)):

Total amount of heroin involved in both the violation and the relevant conduct	Mandatory prison term
Exceeds 250 grams but does not exceed 500 grams--	25 years to life
Exceeds 500 grams but does not exceed 1,000 grams--	30 years to life
Exceeds 1,000 grams--	Life imprisonment with parole eligibility after serving a term of 35 full years of imprisonment

Hashish. If the drug involved in both the violation and the relevant conduct is hashish or a compound, mixture, preparation, or substance containing hashish, the mandatory prison term for the violation and the relevant conduct is one of the following (R.C. 2925.39(C)(6)):

Total amount of hashish involved in both the violation and the relevant conduct	Mandatory prison term
Exceeds 4,540 grams but does not exceed 6,810 grams in any form--	15 years
Exceeds 6,810 grams but does not exceed 9,080 grams in any form--	20 years
Exceeds 9,080 grams in any form--	25 years to life

The drug involved in the violation is in a different mandatory prison term table than a drug involved in the relevant conduct

If the drug involved in the violation is any compound, mixture, preparation, or substance identified in the "**Mandatory prison term tables**," above, and if the relevant conduct involves a single type or more than one type of drug that is a compound, mixture, preparation, or substance included in a different mandatory prison term table than is the drug involved in the violation, the court must sentence

the offender in accordance with whichever of the following is applicable (R.C. 2925.39(C)(7) and (8)):¹

(1) If the State Board of Pharmacy has adopted a drug equivalency table as described below under "**Drug Equivalency Table**," the court must use the table to convert all amounts of the drug involved in the violation and all amounts of the drug or drugs involved in the relevant conduct to an equivalent amount of marihuana and must sentence the offender as if the drug involved in both the violation and all of the drugs involved in the relevant conduct had been marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish. The mandatory prison term for the violation and the relevant conduct must be one of the terms set forth above under "**Mandatory prison term tables -- Marihuana other than hashish**," as appropriate.

(2) If the State Board of Pharmacy has not adopted a drug equivalency table as described below under "**Drug Equivalency Table**," the court must add together all amounts of the drug involved in the violation and all amounts of the drug or drugs involved in the relevant conduct, must use the total so determined to sentence the offender, and must sentence the offender, using that total amount, as if the drug involved in both the violation and all of the drugs involved in the relevant conduct had been marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish. The mandatory prison term for the violation and the relevant conduct must be one of the terms set forth above under "**Mandatory prison term tables -- Marihuana other than hashish**," as appropriate.

Reduction of mandatory prison term

Upon the motion of the prosecution in the case stating that an offender who is required to be sentenced to a mandatory prison term under the bill's sentencing provisions has provided substantial assistance in the investigation or prosecution of one or more other persons who have committed a criminal offense, the court, to the extent described below, may reduce the mandatory prison term that otherwise would apply to the offender for the violation and the relevant conduct, as determined under the tables set forth in "**Mandatory prison term tables**," above.

A court that reduces a mandatory prison term under this provision is prohibited from reducing the mandatory prison term to a specified number of

¹ *In sentencing an offender under this provision when multiple types of drugs are involved in the relevant conduct, the court may not include any amount of a drug involved in the relevant conduct unless the drug is a compound, mixture, preparation, or substance identified in the "**Mandatory prison term tables**," above (R.C. 2925.39(C)(8)(b)).*

months or years that is less than the maximum prison term that is permitted or required for the commission of the drug trafficking offense, drug possession offense, illegal manufacture of drugs, or illegal cultivation of marihuana of which the offender has been convicted or to which the offender pleaded guilty and in relation to which the sentence is being imposed.

In determining the amount of the reduction of a mandatory prison term that it will make under this provision, the court must consider all relevant information and factors, including, but not limited to, the following: (1) the court's evaluation of the significance and usefulness of the offender's assistance, taking into consideration the prosecution's evaluation of the assistance the offender rendered, (2) the truthfulness, completeness, and reliability of any information or testimony provided by the offender, (3) the nature and extent of the offender's assistance, (4) any injury suffered by, or any danger or risk of injury to, the offender or the offender's family resulting from the offender's assistance, and (5) the timeliness of the offender's assistance. (R.C. 2925.39(D).)

Parole

A prisoner serving a sentence of imprisonment for life or a sentence of imprisonment consisting of a specified minimum term to life that is imposed under the bill's sentencing provisions is not entitled to any earned credit against the prisoner's sentence and becomes eligible for parole as follows (R.C. 2967.13(A)(1) and (6)):²

(1) If the sentence of imprisonment consists of a specified minimum term to life was imposed, at the expiration of the prisoner's minimum term;

(2) If the sentence is imprisonment for life, after serving a term of 35 full years' imprisonment.

Post-release control

Each sentence to a definite prison term for a felony violation of a drug trafficking offense, a drug possession offense, illegal manufacture of drugs, or illegal cultivation of marihuana, in relation to which the offender was sentenced pursuant to the bill's sentencing provisions must include a requirement that the offender be subject to a five-year period of post-release control imposed by the Parole Board after the offender's release from imprisonment. Under provisions of existing law unchanged by the bill, at any time during the period of post-release

² A prisoner serving consecutively two or more sentences in which an indefinite term of imprisonment is imposed becomes eligible for parole upon the expiration of the aggregate of the minimum terms of the sentences (R.C. 2967.13(C)).

control, the Adult Parole Authority may review the releasee's behavior under the post-release control sanctions and may determine, based upon the review and in accordance with statutorily specified standards, that a more restrictive or a less restrictive sanction is appropriate, and may impose a different sanction. It, however, may not reduce the duration of the period of post-release control. (R.C. 2967.28(B)(1) and (D).)

Notification of release

Under the bill, at least two weeks before any convict who is serving a sentence imposed under the bill's sentencing provisions is released from confinement in any state correctional institution pursuant to a pardon, commutation of sentence, parole, or completed prison term, the Adult Parole Authority must send notice of the release to the prosecuting attorney of the county in which the indictment of the convict was found. Similar notice must be given under existing law before any convict who is serving a sentence for committing a felony of the first, second, or third degree is released from confinement in a state correctional institution.

The notice may be contained in a weekly list authorized by existing law of all felons of the first, second, or third degree who are scheduled for release. The notice must contain all of the following: (1) the name of the convict being released, (2) the date of the convict's release, (3) the offense for the violation of which the convict was convicted and incarcerated, (4) the date of the convict's conviction pursuant to which the convict was incarcerated, (5) the sentence imposed for that conviction, (6) the length of any supervision that the convict will be under, (7) the name, business address, and business phone number of the convict's supervising officer, and (8) the address at which the convict will reside.

The preceding provisions do not apply to the release from confinement of an offender if the offender is serving a prison term imposed under the Sexually Violent Offender Laws, if the court modifies the requirement that the offender serve that entire term in a state correctional institution, and if the release from confinement is pursuant to that modification. In a case of that type, other notification provisions apply. (R.C. 2967.121.)

Drug equivalency table

The bill authorizes the State Board of Pharmacy to prescribe by rule adopted under the Administrative Procedure Act a drug equivalency table to be used under the bill's sentencing provisions that converts specified amounts of compounds, mixtures, preparations, or substances identified in the "**Mandatory prison term tables**," other than marihuana, into equivalent specified amounts of marihuana. The State Board of Pharmacy may base any equivalency table it adopts under this authority on the drug equivalency table adopted by the United

States Sentencing Commission for use in sentencing under federal law. (R.C. 2925.39(E).)

Miscellaneous changes

The bill makes a number of changes to incorporate the bill's provisions into existing law's sentencing provisions and definitions and to otherwise reflect the bill's provisions (R.C. 2925.03(C), (D), and (E)(2), 2925.04(C) and (D), 2925.11(C) and (E), 2929.01(Z), (HH), and (NN), 2929.13(E)(1) and (F)(11), 2929.14(A) and (J), and 2929.19(B)(2) and (4)).

COMMENT

1. Under existing law, the penalty for the various drug trafficking offenses is determined as set forth in the following tables (R.C. 2925.03(C) and (D)). "Mandatory prison term," when used in a chart, means a prison term that a court is required to impose, selected from the range of prison terms authorized for a felony of the appropriate level; in some cases, the court must impose the maximum term from the range, specified in the tables. "Permissive additional prison term of one to ten years," when used in a chart, means an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years that a court is authorized to 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," when used in a chart, mean that the penalty for an offense involving a certain amount of a controlled substance is enhanced when the offense is committed in the vicinity of a school or in the vicinity of a juvenile. If "school" or "juvenile" do not appear in a chart, the penalty listed for the offense applies regardless of the location of the offense.

Aggravated trafficking in drugs (R.C. 2925.03(C)(1)):

Amount of controlled substance involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than bulk amount-- School or juvenile--	F4 F3	No presumption No presumption
(2) Equals or exceeds bulk amount and is less than 5 times bulk amount-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(3) Equals or exceeds 5 times bulk amount and is less than 50 times bulk amount-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term

Amount of controlled substance involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(4) Equals or exceeds 50 times bulk amount and is less than 100 times bulk amount--	F1	Mandatory prison term
(5) Equals or exceeds 100 times bulk amount--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Trafficking in drugs (R.C. 2925.03(C)(2)):

Amount of controlled substance involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than bulk amount-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds bulk amount and is less than 5 times bulk amount-- School or juvenile--	F4 F3	Presumption for Presumption for
(3) Equals or exceeds 5 times bulk amount and is less than 50 times bulk amount-- School or juvenile--	F3 F2	Presumption for Presumption for
(4) Equals or exceeds 50 times bulk amount-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term

Trafficking in marihuana (R.C. 2925.03(C)(3)):

Amount of marihuana involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 200 grams-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds 200 grams and is less than 1,000 grams-- School or juvenile--	F4 F3	No presumption No presumption
(3) Equals or exceeds 1,000 grams and is less than 5,000 grams-- School or juvenile--	F3 F2	No presumption Presumption for

Amount of marihuana involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(4) Equals or exceeds 5,000 grams and is less than 20,000 grams-- School or juvenile--	F3 F2	Presumption for Presumption for
(5) Equals or exceeds 20,000 grams-- School or juvenile--	F2 F1	Mandatory 8-year prison term Mandatory 10-year prison term

If the offense involved a gift of 20 grams or less of marihuana, it is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense, provided that, if the offense was committed in the vicinity of a school or a juvenile, it is a misdemeanor of the third degree.

Trafficking in cocaine (R.C. 2925.03(C)(4)):

Amount of cocaine involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 5 grams of cocaine that is not crack cocaine or less than one gram of crack cocaine-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds 5 grams of cocaine that is not crack cocaine or one gram of crack cocaine and is less than 10 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine-- School or juvenile--	F4 F3	Presumption for Presumption for

Amount of cocaine involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(3) Equals or exceeds 10 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine and is less than 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(4) Equals or exceeds 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine and is less than 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Equals or exceeds 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine and is less than 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F1	Mandatory prison term
(6) Equals or exceeds 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Trafficking in L.S.D. (R.C. 2925.03(C)(5)):

Amount of L.S.D. involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 10 unit doses of solid L.S.D. or less than 1 gram of liquid L.S.D.-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds 10 unit doses of solid L.S.D. or 1 gram of liquid L.S.D. and is less than 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D.-- School or juvenile--	F4 F3	Presumption for Presumption for
(3) Equals or exceeds 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D. and is less than 250 unit		

Amount of L.S.D. involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
doses of solid L.S.D. or 25 grams of liquid L.S.D.-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(4) Equals or exceeds 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D. and is less than 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D.-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Equals or exceeds 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D. and is less than 5,000 unit doses of solid L.S.D. or 500 grams of liquid L.S.D.--	F1	Mandatory prison term
(6) Equals or exceeds 5,000 unit doses of solid L.S.D. or 500 grams of liquid L.S.D.--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Trafficking in heroin (R.C. 2925.03(C)(6)):

Amount of heroin involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 10 unit doses or one gram-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds 10 unit doses or one gram and is less than 50 unit doses or 5 grams-- School or juvenile--	F4 F3	Presumption for Presumption for
(3) Equals or exceeds 50 unit doses or 5 grams and is less than 100 unit doses or 10 grams-- School or juvenile--	F3 F2	Presumption for Presumption for
(4) Equals or exceeds 100 unit doses or 10 grams and is less than 500 unit doses or 50 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term

Amount of heroin involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(5) Equals or exceeds 500 unit doses or 50 grams and is less than 2,500 unit doses or 250 grams--	F1	Mandatory prison term
(6) Equals or exceeds 2,500 unit doses or 250 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Trafficking in hashish (R.C. 2925.03(C)(7)):

Amount of hashish involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than ten grams of solid hashish or less than 2 grams of liquid hashish-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds 10 grams of solid hashish or 2 grams of liquid hashish and is less than 50 grams of solid hashish or 10 grams of liquid hashish-- School or juvenile--	F4 F3	No presumption No presumption
(3) Equals or exceeds 50 grams of solid hashish or 10 grams of liquid hashish and is less than 250 grams of solid hashish or 50 grams of liquid hashish-- School or juvenile--	F3 F2	No presumption Presumption for
(4) Equals or exceeds 250 grams of solid hashish or 50 grams of liquid hashish and is less than 1,000 grams of solid hashish or 200 grams of liquid hashish-- School or juvenile--	F3 F2	Presumption for Presumption for
(5) Equals or exceeds 1,000 grams of solid hashish or 200 grams of liquid hashish-- School or juvenile--	F2 F1	Mandatory 8-year prison term Mandatory 10-year prison term

For all of those trafficking offenses, in specified circumstances, the court, in addition to any other sanction imposed for the offense, must impose upon the offender a mandatory fine as specified in existing R.C. 2929.18(B)(1), revoke or

suspend the offender's driver's or commercial driver's license or permit, and comply with specified professional licensing entity notification provisions.

2. Under existing law, the penalty for the various drug possession offenses is determined as set forth in the following tables (R.C. 2925.11(C) and (E)). "Mandatory prison term" and "permissive additional prison term of one to ten years" have the same meanings as described in **COMMENT 1**.

Aggravated possession of drugs (R.C. 2925.11(C)(1)):

Amount of controlled substance involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than bulk amount--	F5	Presumption against
(2) Equals or exceeds bulk amount and is less than 5 times bulk amount--	F3	Presumption for
(3) Equals or exceeds 5 times bulk amount and is less than 50 times bulk amount--	F2	Mandatory prison term
(4) Equals or exceeds 50 times bulk amount and is less than 100 times bulk amount--	F1	Mandatory prison term
(5) Equals or exceeds 100 times bulk amount--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Possession of drugs (R.C. 2925.11(C)(2)):

Amount of controlled substance involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than bulk amount-- Prior drug abuse conviction--	M3 M2	
(2) Equals or exceeds bulk amount and is less than 5 times bulk amount--	F4	No presumption
(3) Equals or exceeds 5 times bulk amount and is less than 50 times bulk amount--	F3	Presumption for
(4) Equals or exceeds 50 times bulk amount--	F2	Mandatory prison term

Possession of marihuana (R.C. 2925.11(C)(3)):

Amount of marihuana involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 100 grams--	Minor misdemeanor	
(2) Equals or exceeds 100 grams and is less than 200 grams--	M4	
(3) Equals or exceeds 200 grams and is less than 1,000 grams--	F5	Presumption against
(4) Equals or exceeds 1,000 grams and is less than 5,000 grams--	F3	No presumption
(5) Equals or exceeds 5,000 grams and is less than 20,000 grams--	F3	Presumption for
(6) Equals or exceeds 20,000 grams--	F2	Mandatory 8-year prison term

Possession of cocaine (R.C. 2925.11(C)(4)):

Amount of cocaine involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 5 grams of cocaine that is not crack cocaine or 1 gram of crack cocaine--	F5	Presumption against
(2) Equals or exceeds 5 grams of cocaine that is not crack cocaine or 1 gram of crack cocaine and is less than 25 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine--	F4	Presumption for
(3) Equals or exceeds 25 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine and is less than 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine--	F3	Mandatory prison term
(4) Equals or exceeds 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine and is less than 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine--	F2	Mandatory prison term

Amount of cocaine involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(5) Equals or exceeds 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine and is less than 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F1	Mandatory prison term
(6) Equals or exceeds 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Possession of L.S.D. (R.C. 2925.11(C)(5)):

Amount of L.S.D. involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 10 unit doses of solid L.S.D. or less than 1 gram of liquid L.S.D.--	F5	Presumption against
(2) Equals or exceeds 10 unit doses of solid L.S.D. or 1 gram of liquid L.S.D. and is less than 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D.--	F4	No presumption
(3) Equals or exceeds 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D. and is less than 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D.--	F3	Presumption for
(4) Equals or exceeds 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D. and is less than 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D.--	F2	Mandatory prison term
(5) Equals or exceeds 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D. and is less than 5,000 unit doses of solid L.S.D. or 500 grams of liquid L.S.D.--	F1	Mandatory prison term

Amount of L.S.D. involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(6) Equals or exceeds 5,000 unit doses of solid L.S.D. or 500 grams of liquid L.S.D.--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Possession of heroin (R.C. 2925.11(C)(6)):

Amount of heroin involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 10 unit doses or less than one gram--	F5	Presumption against
(2) Equals or exceeds ten unit doses or one gram and is less than 50 unit doses or 5 grams--	F4	No presumption
(3) Equals or exceeds 50 unit doses or 5 grams and is less than 100 unit doses or 10 grams--	F3	Presumption for
(4) Equals or exceeds 100 unit doses or 10 grams and is less than 500 unit doses or 50 grams--	F2	Mandatory prison term
(5) Equals or exceeds 500 unit doses or 50 grams and is less than 2,500 unit doses or 250 grams--	F1	Mandatory prison term
(6) Equals or exceeds 2,500 unit doses or 250 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Possession of hashish (R.C. 2925.11(C)(7)):

Amount of hashish involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 5 grams of solid hashish or 1 gram of liquid hashish--	Minor misdemeanor	
(2) Equals or exceeds 5 grams of solid hashish or 1 gram of liquid hashish and is less than 10 grams of solid hashish or 2 grams of liquid hashish--	M4	
(3) Equals or exceeds 10 grams of		

Amount of hashish involved	Degree of offense	Presumption for or against prison term and mandatory prison term
solid hashish or 2 grams of liquid hashish and is less than 50 grams of solid hashish or 10 grams of liquid hashish--	F5	Presumption against
(4) Equals or exceeds 50 grams of solid hashish or 10 grams of liquid hashish and is less than 250 grams of solid hashish or 50 grams of liquid hashish--	F3	No presumption
(5) Equals or exceeds 250 grams of solid hashish or 50 grams of liquid hashish and is less than 1,000 grams of solid hashish or 200 grams of liquid hashish--	F3	Presumption for
(6) Equals or exceeds 1,000 grams of solid hashish or 200 grams of liquid hashish--	F2	Mandatory 8-year prison term

For all of those possession offenses, in specified circumstances, the court, in addition to any other sanction imposed for the offense, must impose upon the offender a mandatory fine as specified in existing R.C. 2929.18(B)(1), suspend the offender's driver's or commercial driver's license or permit, and comply with specified professional licensing entity notification provisions.

3. Under existing R.C. 2925.04(C), a violation of the prohibition that involves a controlled substance other than marihuana is "illegal manufacture of drugs." If the drug involved is a schedule I or II controlled substance other than marihuana, the offense is a felony of the second degree, and the sentencing court generally must impose a mandatory prison term from the range of terms prescribed for a felony of the second degree. If the drug involved is a schedule III, IV, or V controlled substance, the offense is a felony of the third degree, and there is a presumption for a prison term. (R.C. 2925.04(C)(1) to (3).)

A violation of the prohibition that involves marihuana is "illegal cultivation of marihuana" and is punished as follows (R.C. 2925.04(C)(4)):

Amount of marihuana involved in offense	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Less than 100 grams--	Minor misdemeanor	
(2) Equals or exceeds 100 grams and is less than 200 grams--	M4	
(3) Equals or exceeds 200 grams and is less than 1,000 grams--	F5	Presumption against
(4) Equals or exceeds 1,000 grams and is less than 5,000 grams--	F3	No presumption
(5) Equals or exceeds 5,000 grams and is less than 20,000 grams--	F3	Presumption for
(6) Equals or exceeds 20,000 grams--	F2	Mandatory 8-year prison term

For both offenses, in specified circumstances, the court, in addition to any other sanction imposed for the offense, must impose upon the offender a mandatory fine as specified in existing law, revoke or suspend the offender's driver's or commercial driver's license or permit, and comply with specified professional licensing entity notification provisions. Further, for the offense of illegal manufacture of drugs, the specified major drug offender sentencing provisions apply. (R.C. 2925.04(A), (C), (D), and (E).)

HISTORY

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