Michael J. O'Neill *Legislative Service Commission*

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(As Passed by the Senate)

Sens. Latta, Oelslager, Fingerhut, Blessing, Drake

BILL SUMMARY

- Clarifies that other sentencing criteria, in addition to mandatory prison terms, limit a court in its general discretion to determine the most effective way to sentence a felon in compliance with Ohio's purposes and principles of sentencing.

- Revises one of the factors that the court must consider in sentencing an offender for a felony of the fourth or fifth degree to require it to consider whether the offender committed the offense while under a community control sanction or while on probation and adds a new factor to require it to consider whether the offender committed the offense while in possession of a firearm.

- Specifies that an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the involved controlled substance is an offense of the same degree as the drug abuse offense attempted would be if it had been committed and involved an amount or number of unit doses of the controlled substance within the next lower range of controlled substance amounts and requires the sentencing court, when considering sentencing factors in relation to an offense of that nature to consider the factors applicable to the felony category that the drug abuse offense attempted would be if it had been committed and involved that next lower amount or number of unit doses.

- Requires the sentencing court, when considering sentencing factors in relation to an attempt to commit an offense that is not a drug abuse offense of the type described in the prior paragraph to consider the factors applicable to the felony category of the attempt instead of those applicable to the felony category of the offense attempted.

- Permits certain mandatory prison terms imposed for having a firearm while committing a felony to be imposed regardless of whether a prison term is imposed for the underlying felony and specifies how those mandatory prison terms must be served.

- Specifies that, if an offender who is sentenced to one or more community control sanctions absconds or otherwise leaves the jurisdiction of the court in which the offender resides without permission, or if the offender is confined in any institution for the commission of an offense while under a community control sanction, the period of the community control sanction ceases to run until the offender is brought before the court for further action.

- Redefines "economic loss" for the purpose of the Criminal Sentencing Law, as used in the law governing financial sanctions for felonies, to mean any economic detriment suffered by a victim as a result of the commission of a felony and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the commission of the felony.

- Changes the maximum amount that the court may impose upon a felon as a financial sanction of reimbursement of all or part of the costs of confinement to not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing or the actual cost of the confinement.

- Provides that imposition of a financial sanction and execution on the financial sanction as a judgment does not preclude any other power of the court to impose or enforce sanctions on the offender.

- Extends "credit for time served" to felons sentenced under a community residential sanction to either a jail or a community-based correctional facility.

- Specifically requires the reduction of a prisoner's mandatory prison sentence by the time served by the prisoner in jail prior to delivery of the prisoner into the custody of the Department of Rehabilitation and Correction (DRC).

- Modifies the definition of repeat violent offender, regarding the convictions that count as prior convictions.

- Requires the imposition of a mandatory prison term for certain third degree felonies (attempts to commit specified second degree felonies) that qualify a person as a repeat violent offender if the person previously has been convicted of or pleaded guilty to specified offenses in the definition of "repeat violent offender."

- Provides that a defendant may appeal as a matter of right a sentence that consists of an additional prison term of ten years imposed on a repeat violent offender.

- Limits the conditions under which a defendant may appeal as a matter of right a sentence that consists of or includes the maximum prison term allowed for an offense.

- Revises the notices that a court must provide to a convicted felon upon whom it imposes a prison term.

- Provides that if a DRC prisoner's stated prison term is five years and the prisoner is an eligible offender, the eligible offender may file a motion for judicial release after the eligible offender has served four years of the stated prison term and clarifies the time periods within which other categories of offenders may file such a motion.

- Redefines who qualifies as an "eligible offender" for purposes of applying for and being granted a judicial release.

- Modifies, streamlines, and simplifies certain procedures under the judicial release law.

- Requires a court to consider a warden's report when considering a DRC prisoner for judicial release.

- Modifies the conditions with which misdemeanor offenders must comply when placed on probation or when their sentences are otherwise suspended and removes a specific firearms law-compliance condition.

- Requires a court sentencing a felony offender to one or more nonresidential sanctions to impose as a condition of the sanction that

during the period of the sanction the felony offender must abide by the law and may not leave the state without the permission of the court or the offender's probation officer and removes a specific firearms law-compliance condition.

- Requires the sentencing court to determine at the time of sentencing if an offender is eligible for placement in a DRC program of shock incarceration or sentenced to prison for a felony for placement in a DRC intensive program prison.

- Permits the sentencing court to recommend an eligible offender for placement in a DRC program of shock incarceration or intensive program prison, disapprove placement of the offender in a program or prison of that type, or make no recommendation on placement of the offender.

- Requires DRC to notify the sentencing court of the offender's disposition if the court recommended an offender for placement in a DRC program of shock incarceration or intensive program prison.

- Requires the preparation and submission of a warden's report with the Adult Parole Authority's (APA's) notice to the court of common pleas of the pending transfer of a DRC prisoner to transitional control.

- Extends from ten to 30 days the time period for a sentencing court to notify the APA of its disapproval of the transfer of a DRC prisoner to transitional control.

- Reclassifies the offense of "contaminating a substance for human substance or use," in certain circumstances.

- Designates a violation of R.C. 2937.99, which pertains to a failure to appear after being released on recognizance, as the offense of "failure to appear" and modifies the penalty for the offense.

- Eliminates from the "prescription drug" exemption to the drug possession offenses the requirement that the prescription drug be in the original container in which it was dispensed to the person who obtained it under a prescription.

- For all drug trafficking offenses, all drug possession offenses, and the offense of "illegal cultivation of marihuana," redesignates the minimums and the maximums that delineate the ranges of controlled substance amounts that are used in determining the penalty for the particular violation.

- For the offenses of "trafficking in heroin" and "possession of heroin," includes references to unit doses as well as to grams in the ranges of controlled substance amounts used in determining the penalty for a particular violation.

- Modifies the elements of "aggravated funding of drug trafficking," "funding of drug trafficking," and "funding of marihuana trafficking" to provide that the offense is committed by providing money or other items of value to purchase a controlled substance for the purpose of selling or offering to sell the controlled substance only if the amount of the controlled substance equals or exceeds a specified amount.

- Modifies, and clarifies the application of, the major drug offender sentencing provisions of the Criminal Sentencing Law, and includes as a major drug offender a person who commits drug trafficking or drug possession offenses involving specified amounts of heroin in unit dose form or specified amounts of liquid L.S.D.

- Increases the penalty in specified circumstances for permitting drug abuse and applies the nuisance law to the involved premises.

- Reclassifies "illegal processing of drug documents" as a felony of the fifth degree in specified cases.

- Specifies that, if a convicted felon violates the conditions of a community control sanction imposed for the felony solely by possessing or using a controlled substance or solely by reason of producing positive results on a drug test, the court, as punishment for the violation of the sanction, cannot order the offender imprisoned unless it makes specified determinations on the record.

- Repeals existing "treatment in lieu of conviction" provisions for persons charged with a crime who are drug dependent or in danger of becoming drug dependent and replaces them with new provisions for "intervention

in lieu of conviction" for persons charged with a criminal offense when the court has reason to believe that drug or alcohol usage by the person was a factor leading to the person's criminal behavior.

- Specifies that the appeal as a matter of right that is granted, in certain circumstances, to defendants who are convicted of a felony and who are sentenced to the maximum prison term allowed for the offense does not apply when the maximum prison term imposed is required for the felony pursuant to the Drug Offenses Law or pursuant to any other Revised Code provision.

- Provides that the restriction against the Adult Parole Authority granting a final release earlier than one year after a felony prisoner is released from an institution under post-release control applies only in relation to mandatory periods of post-release control.

- Specifies that, when a prisoner is released under post-release control or when a prisoner who under post-release control violates its sanctions or conditions, the conditions that the Parole Board or APA may impose relative to the post-release control or to the violation include any other community residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose in sentencing the offender under the Criminal Sentencing Law.

- Specifies that any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or a division of a section of the Revised Code must be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of Ohio, another state, or the United States or under an existing or former municipal ordinance.

- Consolidates and relocates in the Criminal Code existing prohibitions against discharging a firearm upon or over a cemetery or within 100 yards of a cemetery, discharging a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or an inhabited dwelling, the property of another, or a charitable institution, and discharging a firearm upon or over a public road or highway.

- Revises the arrest and law enforcement powers of cemetery company or association watchmen, superintendents, gardeners, and agents, railroad union terminal company officers and agents, railroad conductors, ticket agents, and special policemen.

- Expands the existing "keeping a habitual resort for thieves, burglars, or robbers" provisions to also cover persons involved in specified types of felonious conduct.

- Repeals the existing prohibitions against fighting a duel, being a second to a person who fights a duel, challenging another to fight a duel, accepting a challenge to fight a duel, or knowingly being the bearer of a challenge to fight a duel.

- Repeals the existing Revised Code chapter that governs bridge companies incorporated to construct a bridge over a stream of water in Ohio and bridge companies incorporated to construct a bridge over the Ohio River.

- Changes the name of the State Criminal Sentencing Council to the State Criminal Sentencing Commission.

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CONTENT AND OPERATION

General discretion of sentencing court

Existing law

R.C. 2929.12 provides that, unless a mandatory prison term is required by R.C. 2929.13(F) or R.C. 2929.14 (see "***Mandatory prison terms relating to firearms specifications***," "***Jail time credit for felons receiving mandatory prison terms***," and "***Repeat violent offenders (RVOs)***," below), a court that imposes a sentence under the Criminal Sentencing Law upon an offender for a felony has discretion to determine the most effective way to comply with Ohio's purposes and principles of sentencing. The court's discretion is "guided," though, in that it must consider specified factors, presumptions, and criteria in determining the sentence to impose. (R.C. 2929.12.)

Operation of the bill

The bill expands the language that currently limits a court's discretion to determine a felony offender's sentence in circumstances in which a mandatory prison term is required. Under the bill, a court that imposes sentence under the Criminal Sentencing Law upon an offender for a felony has discretion to determine the most effective way to comply with Ohio's purposes and principles of sentencing *unless otherwise required by R.C. 2929.13 or 2929.14*. This expansion recognizes that R.C. 2929.13 and 2929.14 contain limitations on a sentencing court's discretion, in addition to mandatory prison terms. (R.C. 2929.12(A).)

Sentencing guidelines

Guidelines for third and fourth degree felonies

Existing law. R.C. 2929.13 specifies guidelines for a court to use in imposing a sentence upon a convicted felon. R.C. 2929.13(B) provides that, except in regards to specified offenses and circumstances for which a prison term is required to be imposed, in sentencing an offender for a felony of the fourth or

fifth degree, the sentencing court must determine whether any of the following apply: (1) in committing the offense, the offender caused physical harm to a person, (2) in committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon, (3) in committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person, (4) the offender held a public office or position of trust, and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others, (5) the offender committed the offense for hire or as part of an organized criminal activity, (6) the offense is a fourth or fifth degree violation of specified sex offenses, (7) the offender previously served a prison term, and (8) the offender previously was subject to a community control sanction, and the offender committed another offense while under the sanction.

If the court makes a finding described in the preceding paragraph and if the court, after considering other specified factors to be considered in felony sentencing, finds that a prison term is consistent with the state's purposes and principles of sentencing and finds that the offender is not amenable to an available community control sanction, the court must impose a prison term upon the offender. If the court does not make a finding described in the preceding paragraph and if the court, after considering other specified factors to be considered in felony sentencing, finds that a community control sanction or combination of community control sanctions is consistent with the state's purposes and principles of sentencing, the court must impose a community control sanction or combination of community control sanctions upon the offender. (R.C. 2929.13(B).)

Operation of the bill. The bill revises the eighth factor, as described above, that the court must consider in sentencing an offender for a felony of the fourth or fifth degree. Under that factor as contained in the bill, the court must consider whether the offender committed the offense while under a community control sanction or while on probation. The bill also adds a ninth factor, which requires the court to consider whether the offender committed the offense while in possession of a firearm. (R.C. 2929.13(B)(1)(h) and (i) and (2), 2929.19(B)(2)(a), and 2953.08(A)(2).)

Guidelines for attempts

Drug abuse offenses. The bill enacts new law regarding the offense classification of an attempt to commit certain drug abuse offenses. Under the bill,

an attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. When considering sentencing factors in relation to an offender who is convicted of or pleads guilty to an attempt to commit a drug abuse offense of that type, the sentencing court must consider the factors applicable to the felony category that the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. (R.C. 2923.02(E) and (F) and 2929.13(J)(2) and (K).)

Other offenses. The bill requires the sentencing court, when considering sentencing factors in relation to an offender who is convicted of or pleads guilty to an attempt to commit an offense other than a drug abuse offense of the type described in the preceding paragraph, to consider the factors applicable to the felony category of the attempt instead of the factors applicable to the felony category of the offense attempted (R.C. 2929.13(J)(1)).

Mandatory prison terms relating to firearms specifications

Existing law

Generally, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to certain firearms specifications, the court must impose on the offender one of the following additional prison terms (R.C. 2929.14(D)(1)(a)(i)):

(1) An additional prison term of six years if the specification charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony;

(2) An additional prison term of three years if the specification charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(3) An additional prison term of one year if the specification charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

In imposing the additional prison term described above, the court must impose it after imposing a prison term on the offender for the felony. The additional prison term must not be reduced pursuant to judicial release, for participation in certain educational, vocational, or treatment programs, or under any other provision of the Parole and Probation Laws or the Department of Rehabilitation and Correction Laws. A court must not impose more than one additional firearm prison term on an offender for felonies committed as part of the same act or transaction. If a court, under a separate provision, imposes an additional prison term of five years as a result of the offender being convicted of or pleading guilty to a specification of the type that charges the offender with committing the offense by discharging a firearm from a motor vehicle, the court is not precluded from imposing an additional prison term of the type described in paragraph (1), (2), or (3), above. (R.C. 2929.14(D)(1)(a)(i).)

The court is not permitted to impose any of the additional firearm prison terms described in paragraphs (1), (2), or (3), above, or an additional prison term for committing any one of a group of specified felonies by discharging a firearm from a motor vehicle upon an offender for a conviction of the offense of having weapons under a disability unless the offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree and unless less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense. (R.C. 2929.14(D)(1)(b).)

If a mandatory prison term is imposed upon an offender for having a firearm on or about the offender's person or under the offender's control while committing a felony or if a mandatory prison term is imposed upon an offender for committing any one of a group of specified felonies by discharging a firearm from a motor vehicle, the offender must serve the mandatory prison term consecutively to and prior to the prison term imposed for the underlying felony and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender (R.C. 2929.14(E)(1)).

Operation of the bill

The bill removes the requirement that the mandatory prison terms relating to the firearms specifications described in paragraphs (1), (2), or (3), above, under "***Existing law***" be imposed as additional prison terms after the court imposes the prison term on an offender for the underlying felony. Thus, a prison term relating

to any of those firearms specifications can be imposed under the bill even if no prison term is imposed for the underlying offense. The bill refers to these mandatory prison terms as "prison terms" rather than as "additional prison terms."

The prison term imposed as a result of the offender being convicted of or pleading guilty to a specification of the type that charges the offender with committing any one of a group of specified offenses by discharging a firearm from a motor vehicle continues to be designated as an "additional prison term" to be imposed after the prison term for the underlying offense.

The bill clarifies that if a mandatory prison term is imposed upon an offender for having a firearm on or about the offender's person or under the offender's control while committing a felony and also for committing any one of a group of specified offenses by discharging a firearm from a motor vehicle, the offender must serve any of those mandatory prison terms consecutively to any other mandatory prison term of either of those types and must serve all mandatory prison terms of those types consecutively to and prior to any prison term imposed for the underlying felony and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender (R.C. 2929.14(D)(1) and (E)(1)).

The bill makes technical revisions of a nonsubstantive nature to the provision relating to mandatory prison terms for persons convicted of the above-described firearms specifications (R.C. 2929.14(D)(1)(a), 2941.141, 2941.144, 2941.145, and 2941.146).

Community control sanctions

Existing law

Under the existing Criminal Sentencing Law, if in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions. Community control sanctions include community residential sanctions under R.C. 2929.16 (e.g., a term in a jail, a term in a halfway house, or a term in an alternative residential facility), nonresidential sanctions under R.C. 2929.17 (e.g., a term of day reporting, a term of electronically monitored house arrest, a term of up to 500 hours of community service, a term in a drug treatment program, a term of intensive or basic supervision, a term of monitored time, a curfew, etc.), and financial sanctions under R.C. 2929.18 (see "***Financial sanctions***," below). The duration of all community control sanctions cannot exceed five years.

Existing law sets forth procedures for supervision under the community control sanctions and procedures for enforcing the sanctions. If an offender who is sentenced to one or more community control sanctions violates a condition of the sanctions, the sentencing court may impose a longer time under the sanction if the total time under the sanctions does not exceed the five-year limit, may impose a more restrictive sanction, or may impose a prison term on the offender (the prison term must be from the range of prison terms available for the offender for which the sanctions initially were imposed. If an offender, for a significant period of time, fulfills the conditions of a community control sanction in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction. (R.C. 2929.15.)

Operation of the bill

The bill specifies that, if an offender who is sentenced to one or more community control sanctions absconds or otherwise leaves the jurisdiction of the court in which the offender resides without obtaining permission from the court or the offender's probation officer to leave the court's jurisdiction, or if the offender is confined in any institution for the commission of an offense while under a community control sanction, the period of the community control sanction ceases to run *until the offender is brought before the court for further action* (R.C. 2929.15(A)).

Financial sanctions

Restitution

Existing law. Under the existing Criminal Sentencing Law (R.C. Chapter 2929.), the court imposing sentence for a felony may require the offender to make restitution to the victim or any survivor of the victim in an amount based on the victim's *economic loss* (see below). The court must order that the restitution be made to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court, except that it may include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense. The court may not require an offender to repay an insurance company for any amounts the company paid on behalf of the offender pursuant to a policy of insurance. At sentencing, the court must determine the amount of restitution to be made by the offender. All restitution payments must be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. The order to make restitution is a judgment in favor of the victim of the offender's criminal

act, and existing law specifies the methods by which the judgment may be enforced. (R.C. 2929.18(A)(1) and (D).)

"Economic loss" means any economic detriment suffered by a victim as a result of "criminally injurious conduct" (see below) and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the criminally injurious conduct (existing R.C. 2929.01(N)).

"Criminally injurious conduct" means either of the following (R.C. 2929.01(G), and R.C. 2743.51(C)(1) and (2)--not in the bill):

(1) Generally, any conduct that occurs or is attempted in Ohio; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of Ohio.

(2) Generally, any conduct that occurs or is attempted in another state, district, territory, or foreign country; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of the state, district, territory, or foreign country in which the conduct occurred or was attempted.

(3) Any terrorism, as defined in R.C. 2743.51(R), that occurs within or outside the territorial jurisdiction of the United States.

Criminally injurious conduct described above in (1) and (2) does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies: (a) the person engaging in the conduct intended to cause personal injury or death, (b) the person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the applicable law, (c) the person engaging in the conduct was using the vehicle in a manner that constitutes an OMVI violation, or (d) the conduct occurred on or after July 25, 1990, the person engaging in the conduct was using the vehicle in a manner that constitutes the offense of aggravated vehicle assault or a violation of any law that is substantially similar to the offense of aggravated vehicular homicide.

Operation of the bill. The bill revises the definition of "economic loss" to mean any economic detriment suffered by a victim as a result of *the commission of*

a felony (rather than *as a result of criminally injurious conduct*) and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of *the commission of the felony*. It removes the definition of "criminally injurious conduct" from the definitional provisions for the Criminal Sentencing Law, because it is no longer used in that Law. (R.C. 2929.01(G) and (M) and cross-reference change in R.C. 2967.141(B).)

Reimbursement

Existing law. The existing Criminal Sentencing Law authorizes the court imposing a sentence upon an offender for a felony to sentence the offender to the financial sanction of reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following (R.C. 2929.18(A)(4)(a)):

(1) All or part of the costs of implementing any community control sanction;

(2) All or part of the costs of confinement under a sanction imposed for a felony, provided that the amount of reimbursement ordered pursuant to this provision must not exceed $10,000 or the total amount of reimbursement the offender is able to pay as determined at a hearing, whichever amount is greater.

A financial sanction generally is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the sanction is the judgment debtor. A financial sanction of reimbursement of the costs of confinement imposed upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and a financial sanction of reimbursement imposed upon an offender for costs incurred by a private provider of sanctions is a judgment in favor of the private provider. Existing law specifies the methods by which the judgment may be enforced. (R.C. 2929.18(D).)

Operation of the bill. The bill changes the maximum amount that the court may impose as the financial sanction of reimbursement of all or part of the costs of confinement. Under existing law, the maximum amount of reimbursement is $10,000 or the total amount of reimbursement the offender is able to pay as determined at a hearing, *whichever amount is greater*. Under the bill, the maximum amount of reimbursement cannot exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and cannot exceed the actual cost of the confinement. (R.C. 2929.18(A)(4)(a)(ii).)

The bill provides that imposition of a financial sanction and execution on the financial sanction as a judgment does not preclude any other power of the court to impose or enforce sanctions on the offender, and clarifies that, in relation to all financial sanctions imposed, the offender is the judgment debtor (R.C. 2929.18(D)).

The bill also makes changes of a technical nature regarding reimbursement (R.C. 2929.223).

Jail time credit for time served

Jail time credit for felons sentenced to a jail or community-based correctional facility

Existing law. Pursuant to R.C. 2967.191, the Department of Rehabilitation and Correction (hereafter, DRC) must reduce the stated prison term of a convicted felon or, if the felon is serving a prison term that includes parole eligibility, must reduce the minimum and maximum terms or the parole eligibility date of the felon by the total number of days that the felon was confined prior to the felon's arrival at the place where the felon is to serve the prison term. The number of days to be subtracted from the felon's sentence include all days the felon was confined for any reason arising out of the offense for which the felon was convicted and sentenced, including, but not limited to, the following: confinement in lieu of bail while awaiting trial, confinement for examination to determine the felon's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the felon is to serve the felon's prison term. (R.C. 2967.191--not in the bill.) Existing law does not specifically require that a felon serving a community residential sanction (e.g., a term in a jail or community-based correctional facility) receive credit for time served prior to serving the felon's sanction. Misdemeanants sentenced to a term of imprisonment in a jail or workhouse receive a credit, similar to that prescribed in R.C. 2967.191, for time served prior to the delivery of the misdemeanant into the custody of the jailer (R.C. 2949.08(C)).

Operation of the bill. The bill requires that a person who is convicted of or pleads guilty to a felony and is sentenced to a community residential sanction in a jail or community-based correctional facility pursuant to existing R.C. 2929.16 receive credit for time served prior to the delivery of the felon into the custody of the jailer, administrator, or keeper in charge of the jail or facility. Under the bill, the number of days to be subtracted from the felon's community residential sanction in the jail or facility include all days the felon was confined for any reason arising out of the offense for which the felon was convicted and sentenced, including, but not limited to: confinement in lieu of bail while awaiting trial, confinement for examination to determine the felon's competence to stand trial or

sanity, and confinement while awaiting transportation to the place where the felon is to serve the felon's community residential sanction. The record of the prisoner's conviction delivered to the jail or facility must specify the number of days the prisoner was so confined. Calculation of the credit for time served for felons sentenced to a jail or community-based correctional facility parallels the existing calculation of credit for time served for felons sentenced to a state correctional facility and the existing calculation of credit for time served for misdemeanants sentenced to a jail or workhouse. (R.C. 2949.08.)

As used in the above provisions, "jail" and "community-based correctional facility" have the same meanings as under the existing Criminal Sentencing Law (R.C. 2949.08(E) by reference to R.C. 2929.01). This definition of "jail" includes workhouses, so the bill removes existing references to "workhouses" (R.C. 2949.08(A) and (C)).

Jail time credit for felons receiving mandatory prison terms

Existing law. Under existing law, a court must impose a mandatory prison term or terms for any of the following offenses and, except for the two exceptions noted below, may not reduce the term (R.C. 2929.13(F)): (1) aggravated murder when death is not imposed or murder, (2) rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape by force when the victim is under 13 years of age, (3) gross sexual imposition or sexual battery, if the victim is under 13 years of age, if the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the previous offense was under 13 years of age, (4) aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault when it is a felony and imposition of a prison term is required by the section containing the offense, (5) a first, second, or third degree felony drug offense for which the section containing the offense requires a mandatory prison term, (6) any other first or second degree felony if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to one of those offenses, (7) any offense, other than carrying concealed weapons, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to the portion of the sentence imposed for having the firearm, (8) corrupt activity when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree, (9) any sexually violent offense for which the offender also is convicted of or pleads guilty to a sexually violent predator specification, and (10) an offense under R.C. 2921.36

involving conveyance of deadly weapons, dangerous ordnance, or drugs of abuse into a detention facility or a specified mental health or mental retardation facility, if the offender is an officer or employee of DRC.

There are two exceptions to the prohibition against reducing a mandatory prison term imposed for any of the above offenses--a court may reduce a mandatory prison term for one of the offenses when a reduction is specifically provided for in R.C. 2929.20 (judicial release) or when parole is authorized for the offense under R.C. 2967.13. Otherwise, a court is specifically prohibited from reducing a mandatory prison term imposed for any of the above offenses pursuant to R.C. 2929.20 (judicial release), 2967.193 ("earned credit"), or any other provision of Chapter 2967. or Chapter 5120. (R.C. 2929.13(F).)

Operation of the bill. The bill creates an additional exception to the existing prohibition against reducing mandatory prison terms for the above enumerated offenses. The new exception is for reductions under the existing provision that requires DRC to reduce a felon's stated prison sentence pursuant to R.C. 2967.191 by the amount of time the felon was confined prior to the delivery of the felon into the custody of DRC. (Fully discussed above under "***Jail time credit for felons sentenced to jail***.") (R.C. 2929.13(F) and, by reference, 2967.191--not in the bill.)

Repeat violent offenders (RVOs)

Definition

Existing law. Existing law defines "repeat violent offender," for purposes of the Criminal Sentencing Law, as a person to whom both of the following apply: (1) the person has been convicted of or has pleaded guilty to, and is being sentenced for committing, for complicity in committing, or for an attempt to commit, aggravated murder, murder, involuntary manslaughter, a felony of the first degree other than one set forth in the Drug Offenses Law, a felony of the first degree set forth in the Drug Offenses Law that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, or a felony of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, and (2) the person either previously was convicted of or pleaded guilty to, and served a prison term for aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, complicity in or an attempt to commit any of the previously listed offenses, an offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to any of the previously listed

offenses, or previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been any of the previously listed offenses, the person was committed to the Department of Youth Services (hereafter DYS) for that delinquent act, and the juvenile court in which the person was adjudicated a delinquent child made a specific finding that the adjudication should be considered a conviction for purposes of a determination in the future pursuant to Chapter 2929. as to whether the person is a repeat violent offender (R.C. 2929.01(EE)).

Operation of the bill. The bill modifies the "prior offense" portion of the existing definition of repeat violent offender, as set forth in clause (2) of the preceding paragraph. Under the bill, that portion of the definition reads as follows (R.C. 2929.01(DD)(2)):

> (2) Either of the following applies:
>
> (a) The person previously was convicted of or pleaded guilty to, and served a prison term for, any of the following:
>
> (i) Aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed under section 2907.12 of the Revised Code prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;
>
> (ii) An offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to an offense listed under division (DD)(2)(a)(i) of this section ***and that resulted in the death of a person or in physical harm to a person*** (added by the bill).
>
> (b) The person previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been an offense listed in division (DD)(2)(a)(i) or (ii) of this section, the person was committed to the department of youth services for that delinquent act, and the juvenile court in which the person was adjudicated a delinquent child made a specific finding that the adjudication should be

> considered a conviction for purposes of a determination in the future pursuant to this chapter as to whether the person is a repeat violent offender.

Mandatory prison terms

Existing law. R.C. 2929.13(F) requires a court to impose a mandatory prison term or terms for certain specified offenses or categories of offenses. The offenses and categories of offenses for which a mandatory prison term is required are listed in the "***Existing law***" portion of "***Jail time credit for felons receiving mandatory prison terms***," above. Except when judicial release is specifically authorized or when parole is authorized for the offense (note that, as described above, the bill expands this exception), a court may not reduce the mandatory term or terms by judicial release, stated prison term reduction for participation is specified programs, or any other provision of R.C. Chapter 2967. or Chapter 5120. (R.C. 2929.13(F).)

Operation of the bill. The bill expands the above list of offenses for which a mandatory prison term is required by requiring the court to impose a mandatory prison term for any third degree felony that is listed in R.C. 2929.01(DD)(1) if the offender previously was convicted of or pleaded guilty to any offense listed in R.C. 2929.01(DD)(2)(a)(i) or (ii). The references to R.C. 2929.01(DD) are to the definition of repeat violent offender. The only felonies of the third degree listed in R.C. 2929.01(DD)(1) are "attempts to commit felonies of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person." Therefore, the bill requires the imposition of a mandatory prison term for any "attempt to commit a felony of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person" if the offender previously was convicted of or pleaded guilty to "aggravated murder, murder, involuntary manslaughter, rape, felonious sexual penetration as it existed prior to September 3, 1996, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses or an offense under an existing or former law of Ohio, another state, or the United States that is or was equivalent to any of those offenses and resulted in the death of a person or in physical harm to a person." (R.C. 2929.13(F)(7) and 2929.01(DD).)

Appealable maximum sentences--repeat violent offenders

Existing law. R.C. 2953.08(A) provides that 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 five grounds: (1) the sentence consisted of or included the maximum prison term allowed for the offense and was

not imposed pursuant to R.C. 2929.14(D)(3)(b), and the court imposed it for only one offense, or court imposed it for two or more offenses arising out of a single incident and 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 is a felony of the fourth or fifth degree or is a felony drug offense that is a violation of a provision of R.C. Chapter 2925. and that is specified as being subject to division (B) of R.C. 2929.13 (sentencing factors for felonies of the fourth and fifth degree) for purposes of sentencing, and the court did not specify at sentencing that it found one or more factors specified in R.C. 2929.13(B)(1)(a) to (h) to apply relative to the defendant (if the court specifies that it found one or more of those factors to apply, the defendant is not entitled to appeal as a matter of right the sentence imposed), (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 pursuant to R.C. 2971.03(A)(3) of the Sexually Violent Predators Law, if the minimum term of the indefinite term imposed is the longest term available for the offense from among the range of terms listed in R.C. 2929.14 (general list of prison terms for felonies), (4) the sentence is contrary to law, or (5) the sentence consisted of an additional prison term of ten years imposed pursuant to R.C. 2929.14(D)(3)(b) (major drug offenders and other specified offenders).

This right to appeal the sentence is in addition to any other right of appeal. The sentence is not subject to review pursuant to the above provision 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. Additionally, a sentence imposed for aggravated murder or murder is not subject to review pursuant to the above provision. (R.C. 2953.08(A) and (D).)

A more detailed description of the sentence appeal provisions is set forth below in "***Appeal of felony sentence***."

Operation of the bill

The bill adds a new ground upon which a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed. The bill provides that the defendant may appeal the sentence as a matter of right if the sentence consisted of an additional prison term of ten years imposed pursuant to the existing provision that applies regarding repeat violent offenders, set forth in R.C. 2929.14(D)(2)(b)). (R.C. 2953.08(A)(5).) Existing law contains a similar appeal provision for the additional term received by a major drug offender, but contains no language regarding repeat violent offenders. The bill also modifies the first ground for an appeal that is listed above so that it applies only if the maximum

sentence imposed by the court was not required for the offense by R.C. Chapter 2925. or any other R.C. provision (R.C. 2953.08(A)(1)).

Procedures to be followed prior to imposition of a prison term for a felony

Existing law

If an offender is convicted of or pleads guilty to a felony, existing law requires the court to hold a sentencing hearing before imposing a sentence on the offender (R.C. 2929.19(A)(1)). Subject to specified provisions that apply when the offender has been adjudicated as being a sexually violent predator (not described in this analysis), if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court must do all of the following (R.C. 2929.19(B)(3)):

(1) Impose a stated prison term;

(2) Notify the offender that the Parole Board may extend the stated prison term if the offender commits any criminal offense while serving the prison term, that the extension will be administrative, be part of the offender's sentence, and be for 30, 60, or 90 days for each violation, that all extensions of any stated prison term for all violations may not exceed one-half of the term's duration, and that the sentence so imposed automatically includes any extension of the stated prison term by the Parole Board;

(3) Notify the offender that a period of post-release control will be imposed following the offender's release from prison if the offender is being sentenced for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person;

(4) Notify the offender that a period of post-release control may be imposed following the offender's release from prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to the provision described in the preceding paragraph;

(5) Notify the offender that if the offender violates a post-release control sanction imposed as a component of post-release control, all of the following apply: (a) the Adult Parole Authority (hereafter APA) or the Parole Board may impose a more restrictive post-release control sanction, (b) the Parole Board may increase the duration of the post-release control subject to a specified maximum, (c) the more restrictive sanction the Board imposes may consist of a prison term

that cannot exceed nine months, and the maximum cumulative prison term so imposed for all violations of post-release control cannot exceed one-half of the stated prison term originally imposed upon the offender, and (d) if the violation of the sanction is a felony, the offender may be prosecuted for the felony, and, in addition to any sentence it imposes on the offender for the new felony, the court may impose a prison term, subject to a specified maximum, for the violation.

Operation of the bill

The bill modifies the above-described duties imposed upon a sentencing court. Under the bill subject to specified provisions that apply when the offender has been adjudicated as being a sexually violent predator (not described in this analysis), if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court must do all of the following (R.C. 2929.19(B)(3)):

(1) Impose a stated prison term;

(2) Notify the offender that, *as part of the sentence*, the Parole Board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term;

(3) Notify the offender that the offender will be supervised under the Post-release Control Law after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony of the third degree in the commission of which the offender caused or threatened to cause physical harm to a person;

(4) Notify the offender that the offender may be supervised under the Post-release Control Law after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to the provision described in the preceding paragraph;

(5) Notify the offender that, if a period of supervision is imposed following the offender's release from prison, and if the offender violates that supervision, the Parole Board may impose a prison term *as part of the sentence*, of up to one-half of the stated prison term originally imposed upon the offender.

Judicial release

Existing law

Pursuant to existing R.C. 2929.20, a sentencing court may reduce an "eligible offender's" (see below) stated prison term through a judicial release upon

the filing of a motion by the eligible offender or upon its own motion. An eligible offender may file the motion for judicial release with the sentencing court within one of the following four time periods: (1) if the stated prison term was imposed for a felony of the fourth or fifth degree, the eligible offender must file the motion at any time between 30 and 90 days after the offender is delivered to a state correctional institution, (2) except as otherwise provided in (3) below, if the stated prison term was imposed for a felony of the first, second, or third degree, the eligible offender must file the motion not earlier than 180 days after the offender is delivered to a state correctional institution, (3) if the stated prison term is five years or more and less than ten years, the eligible offender must file the motion after the eligible offender has served five years of the stated prison term, (4) if the offender was sentenced to a mandatory prison firearms term pursuant to R.C. 2929.14(D)(1), as described above, and a consecutive prison term other than a mandatory prison term that is ten years or less, the offender must file the motion within the time authorized under (1), (2), or (3), above, for the felony that the prison term other than the mandatory prison term was imposed, but the time for filing the motion does not begin to run until after the expiration of the mandatory prison term. (R.C. 2929.20(B).)

A court may not grant a judicial release to an eligible offender imprisoned for a felony of the first or second degree, or for certain Drug Abuse or Controlled Substance Law offenses, unless it makes certain specified findings regarding the appropriateness of the judicial release (R.C. 2929.20(H)).

A court may schedule a hearing on a motion for judicial release. The court may deny the motion without a hearing but may not grant the motion without a hearing. If a court denies a motion without a hearing, the court may consider a subsequent judicial release for that eligible offender on its own motion or a subsequent motion for judicial release filed by that eligible offender. If a court denies a motion after a hearing, the court may not consider a subsequent motion for judicial release for that offender. The court may hold only one hearing for any eligible offender.

If a court schedules a hearing on a motion for judicial release, it must notify the eligible offender of the hearing, and the eligible offender promptly must serve a copy of the notice to the head of the state correctional institution in which he or she is confined. If the court schedules a hearing, it promptly must give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted, and the prosecuting attorney must notify the victim of the offense or the victim's representative of the hearing. (R.C. 2929.20(C) and (D).)

At the hearing on a motion for judicial release, the court may order the eligible offender to attend, and the court must provide the eligible offender, the

eligible offender's counsel, the prosecuting attorney, the victim or the victim's representative, and any other person likely to present additional information an opportunity to present written information relevant to the motion and, if present, to present oral information relevant to the motion. The court must consider any statement of a victim made pursuant to the Crime Victims Rights Law provisions in R.C. 2930.14 and 2930.17 and any victim impact statement prepared pursuant to R.C. 2947.051. After ruling on the motion for judicial release, the court must notify the victim of the ruling. (R.C. 2929.20(F) and (G).)

If the court grants a motion for judicial release, the court must order the release of the eligible offender and must place the eligible offender under an appropriate community control sanction, under a mandatory firearm law-compliance condition of the type described in R.C. 2967.131(A), and under the supervision of the department of probation serving the court. The court must reserve the right to reimpose the reduced sentence if the offender violates the sanction. If the court reimposes the reduced sentence, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation. The period of the community control sanction cannot be longer than five years. The court, in its discretion, may reduce the period of the community control sanction by the amount of time the eligible offender spent in jail for the offense and in prison. (R.C. 2929.20(I).)

Existing law defines "eligible offender" for purposes of the judicial release procedures to mean any of the following: (1) a person who has been convicted of or pleaded guilty to a felony, who is serving a stated prison term of ten years or less, and who is not serving a mandatory prison term, (2) a person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term and another prison term of ten years or less, and who has served the mandatory prison term, or (3) a person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory firearms prison term pursuant to R.C. 2929.14(D)(1), as described above, and another prison term of ten years or less, who is required to serve the mandatory prison term and the other prison term consecutively, and who has served the mandatory prison term. "Eligible offender" does not include any of the following: (1) a person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to R.C. 2929.14(D)(2) or (3) (repeat violent offenders and major drug offenders) and another prison term of ten years or less, and who is required to serve the mandatory prison term and the other prison term consecutively, whether or not the person has served the mandatory prison term, and (2) a person who has been convicted of or pleaded guilty to a felony, who was sentenced to a mandatory prison term pursuant to R.C. 2929.14(D)(1) and (2), or R.C. 2929.14(D)(3) and another prison term of ten years or less, and who is

required to serve any of the mandatory prison terms and the other prison term consecutively, whether or not the person has served the mandatory prison terms. (R.C. 2929.20(A).)

Operation of the bill

The bill continues to permit a sentencing court to reduce an eligible offender's stated prison term through a judicial release upon the filing of a motion by the eligible offender or upon its own motion, and additionally provides that the court may not reduce the stated prison term of an offender who is not an eligible offender (R.C. 2929.20(B)). To cover certain eligible offenders who are not specifically covered by existing law, the bill adds the following time periods within which an eligible offender may file a motion for judicial release with the sentencing court (R.C. 2929.20(B)(1)(b) and (c)):

(1) If the stated prison term is five years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.

(2) If the stated prison term is more than five years and less than ten years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

The bill also modifies the provision of existing law that sets the time period when the stated prison term is five years or more and less than ten years. Under existing law, the eligible offender must file the motion after the eligible offender has served five years of the stated prison term; in effect, this requires someone sentenced to exactly five years to serve the whole term before being eligible for early release. The bill provides that if the stated prison term is five years, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term, and, if the stated prison term is more than five years and less than ten years, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term. (R.C. 2929.20(B)(3) and renumbered 2929.20(B)(4).)

Additionally, the bill restructures existing R.C. 2929.20(B)(4) (renumbered in the bill as R.C. 2929.20(B)(5)) to state that, if the offender's stated prison term includes a mandatory prison term, the offender must file the motion " . . . within the time authorized under division (B)(1), (2), (3), or (4) of this section for the

nonmandatory portion of the prison term, but the time for filing the motion does not begin to run until after the expiration of the mandatory portion of the prison term."

The bill requires the eligible offender to promptly *give* (instead of *serve* as under existing law) a copy of the notice of a scheduled hearing on a motion for judicial release to the head of the state correctional institution in which the offender is confined (R.C. 2929.20(D)). The bill requires the court to enter a ruling on a motion within ten days after a hearing on the motion if it *holds* (instead of *schedules* as under existing law) a hearing on the motion (R.C. 2929.20(C)).

The bill continues the existing requirement that a court consider statements made by the victim and victim impact statements when considering a judicial release, and also requires the court to consider the warden's report as well. (R.C. 2929.20(G).) The bill requires the court to place an offender who is given a judicial release under *appropriate community control conditions* instead of under a mandatory condition that the releasee abide by the law including the firearms and dangerous ordnance laws (R.C. 2929.20(I)).

Finally, the bill replaces the existing definition of "eligible offender" with the following definition (R.C. 2929.20(A)):

> "Eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies:
>
> (1) The stated prison term does not include a mandatory prison term.
>
> (2) The stated prison term includes a mandatory prison term, and the person has served the mandatory prison term.

The bill removes the provisions that state what "eligible offender" does not include (repeal of existing R.C. 2929.20(A)(2)).

The bill makes further changes to R.C. 2929.20 that are intended to streamline and simplify existing language, as well as changes of a technical nature.

Minimum terms of probation, sentence suspension, nonresidential sanction, post-release control, or other release

Misdemeanor offenders

Existing law. Under existing law, when a misdemeanor offender is placed on probation or the sentence of a misdemeanor offender otherwise is suspended, the probation or other suspension must be at least on condition that, during the period of probation or other suspension, the offender must abide by the law. "Abiding by the law" specifically includes, but is not limited to, complying with the provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance. In addition to abiding by the law, the misdemeanor offender must not leave the state without the permission of the court or the offender's probation officer. In the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender, including but not limited to, requiring the offender to make restitution for all or part of the property damage that is caused by the offender's offense and for all or part of the value of the property that is the subject of any theft offense that the offender committed. Compliance with the additional requirements, also is a condition of the offender's probation or other suspension. (R.C. 2951.02(C).)

Operation of the bill. The bill continues to require that when a misdemeanor offender is placed on probation or a misdemeanor offender's sentence otherwise is suspended that the probation or other suspension be at least on the condition that, during the period of probation or other suspension, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The bill removes the specific statement that "abiding by the law" specifically includes, but is not limited to, complying with the provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance. "Abiding by the law" still includes obeying the firearms laws; however, the bill removes the explicit reference to those laws in relation to a misdemeanor offender's probation or sentence suspension. (R.C. 2951.02(C)(1).)

Felony offenders

Existing law. Existing law provides that when a felony offender is sentenced to a nonresidential sanction the court must impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender must abide by the law, including, but not limited to, complying with the provisions of

R.C. Chapter 2923. identified above. It also requires the court to notify the offender of the ramifications of violating this condition, prohibits the court from eliminating this condition, and refers to it as the "mandatory condition imposed under R.C. 2951.02(C)(1)(b)." (R.C. 2929.15, 2929.17, 2929.19(B)(5), and 2951.02(C)(1)(b).)

Existing law further provides that the APA or, in the case of a conditional pardon, the Governor must include in the terms and conditions of a conditional pardon, parole, transitional control, other form of authorized release, or post-release control the condition that the individual or felon abide by the law, including, but not limited to, complying with the provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance during the period of the individual's or felon's conditional pardon, parole, transitional control, other form of authorized release, or post-release control. The condition that the individual or felon "abide by the law" is in addition to any other terms and conditions of a conditional pardon or parole, of transitional control, or of another form of authorized release from confinement in a state correctional institution that is granted to an individual and that involves the placement of the individual under the supervision of the adult parole authority, and in addition to any other sanctions of post-release control imposed on a felon. The post-release control provisions refer to this "abide by the law" condition as the "mandatory condition described in R.C. 2967.131(A)" and prohibit the Parole Board and the APA from eliminating the "mandatory condition." (R.C. 2967.131(A) and 2967.28.)

Operation of the bill. The bill removes the requirement that when a felony offender is sentenced to a nonresidential sanction the court must impose as a condition of the sanction that, during the period of the nonresidential sanction, the offender must abide by the law, including, but not limited to, complying with the firearms provisions of R.C. Chapter 2923. identified above (R.C. 2951.02(C)(1)(b)). It also removes all references to the "mandatory condition imposed under R.C. 2951.02(C)(1)(b)" and removes the prohibition against a court eliminating the "mandatory condition." (R.C. 2929.15, 2929.17, and 2929.19(B)(5).)

In the provisions of existing law dealing with conditional pardons, parole, transitional control, other forms of release, and post-release control, the bill removes the specific statement that abiding by the law includes, but is not limited to, complying with the firearms provisions of R.C. Chapter 2923. relating to the possession, sale, furnishing, transfer, disposition, purchase, acquisition, carrying, conveying, or use of, or other conduct involving, a firearm or dangerous ordnance.

It also removes the prohibition against the APA and the Parole Board eliminating the "mandatory condition" described in R.C. 2967.131(A) and all references to the "mandatory condition." (R.C. 2967.131(A) and 2967.28(D) and (E).)

The bill substitutes for the deleted requirements provisions requiring the following:

(1) A court sentencing a felony offender to one or more nonresidential sanctions must impose as a condition of the sanction that, during the period of the sanction, the felony offender must abide by the law and may not leave the state without the permission of the court or the offender's probation officer (R.C. 2929.15(A)(1) and 2929.17).

(2) If a felony offender sentenced to a community control sanction commits a violation of the conditions of the community control sanction or of any law or leaves the state without the permission of the court or the offender's probation officer, the court may impose a longer time under the same sanction, may impose a more restrictive sanction, or may impose a prison term on the offender; the court must notify the offender of these possible ramifications (R.C. 2929.15(B) and 2929.19(B)(5)).

(3) A court sentencing a felony offender to any community control sanction or combination of community control sanctions must place the offender under the general control and supervision of a department of probation in the county that serves the court for purposes of reporting to the court a violation of any "condition" of the sanctions, a violation of law, or the departure of the offender from this state without permission of the court or the offender's probation officer. If the offender resides in another county and a county department of probation has been established in that county or that county is served by a multicounty probation department, the court may request the court of common pleas of that county to receive the offender into the general control and supervision of that county or multicounty department of probation for those reporting purposes, subject to the jurisdiction of the trial judge over and with respect to the person of the offender, and to the rules governing that department of probation. If there is no department of probation in the county that serves the court, regardless of the offender's county of residence, the court must place the offender under the general control and supervision of the APA for those reporting purposes. (R.C. 2929.15(A)(2)(a).)

(4) The APA, the Parole Board, and the Governor must include in the terms and conditions of a conditional pardon, parole, transitional control, other form of release, or post-release control the condition that the individual or felon not leave the state without the permission of the court or the individual's or felon's parole

officer and that the individual or felon abide by the law (R.C. 2967.131(A) and 2967.28(D)(1)).

(5) The Parole Board is prohibited from modifying a releasee's post-release control sanctions to permit the releasee to leave the state without the permission of the court or the releasee's parole or probation officer (sec. 2967.28(D)(2)).

The bill also provides that, if a felony offender sentenced to community control sanctions violates any condition of the sanctions, violates any law, or departs from Ohio without permission of the court or the offender's probation officer, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction must report the violation or departure directly to the sentencing court or to the county or multicounty department of probation with general control and supervision over the offender, the officer of that department who supervises the offender, or, if there is no such department with general control and supervision over the offender under that division, the APA. If the public or private person or entity reports the violation or departure to the county or multicounty department of probation or the APA, the department's or APA's officers may treat the offender as if the offender were on probation and in violation of the probation and must report the violation of the condition of the sanction, the violation of law, or the departure from Ohio without permission of the court or the offender's probation officer to the sentencing court. (R.C. 2929.15(A)(2)(b).)

Notices for judicial vetoes of placement or release

Shock incarceration (boot camp) and intensive program prisons

Existing law. The Director of DRC is required to establish a pilot program of shock incarceration (commonly referred to as a "boot camp") that may be used for eligible offenders who are sentenced to serve a term of imprisonment under the custody of DRC and whom DRC, subject to the approval of the sentencing judge, may permit to serve their sentence as a sentence of shock incarceration. Prisoners disqualified from potential participation in an intensive program prison (see the next paragraph) are not "eligible offenders" for shock incarceration. *Subject to disapproval by the sentencing judge*, if an eligible offender is sentenced to a term of imprisonment under the custody of DRC, DRC may permit the eligible offender to serve the sentence as a sentence of shock incarceration. At least three weeks prior to permitting an eligible offender to serve a sentence of shock incarceration, DRC must notify the sentencing judge of the proposed shock incarceration and of the fact that the judge may disapprove it. If the sentencing judge disapproves shock incarceration for the eligible offender, the judge must notify DRC of the disapproval within ten days after receipt of the notice, and DRC may not permit

the eligible offender to serve a sentence of shock incarceration. If the judge does not timely disapprove shock incarceration for the eligible offender, DRC may proceed with plans for the shock incarceration. (R.C. 5120.031(A)(4), (B)(1), and (C)(1).)

Existing law also requires the DRC to develop and implement intensive program prisons for eligible male and female prisoners. Certain categories of prisoners are disqualified from potential participation in such a prison. The intensive program prisons must include institutions at which imprisonment of the type described in the Shock Incarceration Law is provided and prisons that focus on educational achievement, vocational training, alcohol and other drug abuse treatment, community service and conservation work, and other intensive regimens or combinations of intensive regimens. DRC may place an eligible prisoner in an intensive program prison *subject to the approval of the sentencing judge*. At least three weeks prior to placing a prisoner in an intensive program prison, DRC must give notice of the placement and of the fact that the judge may disapprove the placement. If the judge disapproves the placement, the judge must notify DRC of the disapproval within ten days after receipt of the notice. If the judge timely disapproves the placement, DRC may not proceed with it. If the judge does not timely disapprove of the placement, DRC may proceed with plans for it. (R.C. 5120.032(A) and (B).)

Operation of the bill. The bill revises the procedures governing the placement of a felon in a program of shock incarceration in an intensive program prison. It requires the court that sentences an offender for a felony, at the time of sentencing, to determine if the offender is eligible for placement in a program of shock incarceration or is eligible for placement in an intensive program prison and make a finding that gives its reasons for its determination. Under existing law, the court may disapprove of such a placement by DRC, but it does not make any determination of eligibility at the sentencing hearing. The bill provides that the court may recommend the offender for placement in a program of shock incarceration, if eligible, or for placement in an intensive program prison, if eligible, disapprove placement of the offender in a program of shock incarceration or in an intensive program prison, regardless of eligibility, or make no recommendation on placement of the offender. If the court disapproves placement of the offender in a program or prison of that nature, DRC may not place the offender in any program or prison of that nature.

If the court approves placement of the offender in a program of shock incarceration or in an intensive program prison, DRC must notify the court if the offender is subsequently placed in the recommended program or prison and must include with the notice a brief description of the placement. If the court approves

either type of placement and DRC does not subsequently place the offender in the recommended program or prison, DRC must send a notice to the court indicating why the offender was not placed in the recommended program or prison. If the court does not make a recommendation under this provision with respect to an eligible offender, DRC must screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If the offender is suited and there is an available program of shock incarceration or an intensive program prison, at least three weeks before placing the offender in the program or prison, DRC must notify the court of the proposed placement of the offender and must include with the notice a brief description of the placement. The court has ten days from receipt of the notice to disapprove the placement. As under existing law, if the court disapproves, DRC may not make the placement, but if the court does not timely disapprove, DRC may proceed with the placement. (R.C. 2929.14(K), 2929.19(D), 5120.031(C)(1), and 5120.032(B)(1)(a).)

Transitional control

Existing law. DRC is authorized to establish by rule a transitional control program for the purpose of closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement. Under the program, the APA: (1) may transfer eligible prisoners to transitional control status under the program during the final 180 days of their confinement and under the terms and conditions established by DRC, (2) must provide for the confinement of each transferred eligible prisoner, and (3) must supervise each transferred eligible prisoner in one or more community control sanctions. Each eligible prisoner transferred to transitional control status under the program must be confined in a suitable licensed facility or must be confined in a residence DRC has approved for this purpose and be monitored pursuant to an electronic monitoring device. The rules must include criteria that define eligible prisoners, include criteria for approval as a residence for confinement of prisoners under the program, and procedures for DRC to approve those residences.

Existing law additionally provides that at least three weeks prior to transferring a prisoner to transitional control, the APA must give notice of the pending transfer to the court of common pleas of the county in which the indictment against the prisoner was found and include with that notice the fact that the court may disapprove the transfer to transitional control. If the court disapproves of the transfer to transitional control, it must notify the APA within ten days after receipt of the notice of intent to transfer. If the court timely disapproves the transfer to transitional control, the APA may not proceed with the transfer. If the court does not timely disapprove the transfer to transitional control,

the APA may transfer the prisoner to transitional control. (R.C. 2967.26(A)(1) and (2).)

Operation of the bill. Under the bill, the APA continues to be required to give notice of the pending transfer of a prisoner to transitional control to the appropriate court of common pleas and include notice that the court may disapprove the transfer to transitional control. The bill expands existing law to additionally require the notice to include a report prepared by the head of the state correctional institution where the prisoner is confined. The head of that institution, upon the request of the APA, must provide to the APA for inclusion in the notice sent to the court, a report on the prisoner's conduct in the institution and in any institution from which the prisoner may have been transferred. The report must cover the prisoner's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the prisoner.

Additionally, the bill extends from ten to 30 days the time period within which a court must notify the APA of it's disapproval of the transfer of a prisoner to transitional control. (R.C. 2967.26(A)(2).)

Contaminating a substance for human consumption or use

Existing law

Existing R.C. 2927.24 generally prohibits a person from knowingly mingling a poison or other harmful substance with a food, drink, nonprescription drug, prescription drug, or pharmaceutical product, and from knowingly placing a poison or other harmful substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person. There are several exceptions for acts in compliance with prescriptions, laws, rules, and water safety procedures.

Whoever violates the above prohibitions is guilty of "contaminating a substance for human consumption or use," a felony of the first degree. If the offense involved an amount of poison or other harmful substance sufficient to cause death if ingested or used by a person or if the offense resulted in serious physical harm to another person, commission of the offense is "an aggravated felony of the first degree," and the offender must be imprisoned for life. (R.C. 2927.24.)

Operation of the bill

The bill reclassifies "contaminating a substance for human consumption or use" when the offense involves an amount of poison or other harmful substance sufficient to cause death if ingested or used by a person or results in serious physical harm to another person from an aggravated felony of the first degree with life imprisonment to life imprisonment with parole eligibility after serving 15 years of imprisonment. Existing law, as a result of changes enacted by Am. Sub. S.B. 2 of the 121st G.A., no longer includes "aggravated" felony classifications. (R.C. 2927.24(E)(1) and 2967.13(A)(6).)

Failure to appear

Existing law

Under existing R.C. 2937.99, whoever is arrested and fails to appear as required after having been released on his or her own recognizance pursuant to R.C. 2937.29 must be sentenced as follows: (1) if the release was in connection with a felony or pending appeal after conviction of a felony, a fine of not more than $5,000, imprisonment in a state correctional institution for not less than one nor more than five years, or both, or (2) if the release was in connection with a misdemeanor or for appearance as a witness, a fine of not more than $1,000, imprisonment for not more than one year, or both. These penalties generally do not apply to misdemeanors and related ordinance offenses arising under the Motor Vehicle Licensing and Titling Laws, Driver's Licensing Laws, Financial Responsibility Law, traffic offenses and laws, Motor Vehicle Dealers Law, motor vehicle crimes, or Highway Load Limit Law; however, they do apply to OMVI and failing to stop after a motor vehicle accident. (R.C. 2937.99.)

Operation of the bill

The bill designates a violation of R.C. 2937.99 as the offense of "failure to appear." The bill further provides that failure to appear is a felony of the fourth degree if the release on recognizance was in connection with a felony or pending appeal after conviction of a felony. Therefore, the bill reduces the potential prison term and the potential fine for the offense (the potential prison term for a felony of the fourth degree is 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months and the potential fine is a maximum of $5,000). The bill also provides that failure to appear is a misdemeanor of the first degree if the release on recognizance was in connection with a misdemeanor or for appearance as a witness. The bill, therefore, does not change the potential fine for the offense committed under these circumstances but reduces the maximum potential prison term to six months. (R.C. 2937.99.)

Penalties for drug trafficking offenses

Redesignation of ranges of controlled substance amounts for determining penalty for drug trafficking offenses

Existing law. Existing law prohibits a person from knowingly selling or offering to sell a controlled substance (R.C. 2925.03(A)). 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" (see **COMMENT** 1 for existing penalties for the drug trafficking offenses).

Operation of the bill. For all of the drug trafficking offenses, the bill redesignates the ranges of controlled substance amounts that are used in determining the penalty for the particular violation. Each of those ranges consists of a specified minimum amount and a specified maximum amount. Under existing law, if the amount of the controlled substance involved in the particular violation *exceeds* the specified minimum amount for a particular range *but does not exceed* the specified maximum amount for that range, the penalties that correspond to that range apply to the violation. The bill changes this to specify that, if the amount of the controlled substance involved *equals or exceeds* the specified minimum amount for that range *but is less than* the specified maximum amount for that range, the penalties for that range apply to the violation.

As an example, under existing law, if the amount of the drug involved in an "aggravated trafficking in drugs" violation *exceeds* the bulk amount *but does not exceed* five times the bulk amount, the violation generally is a felony of the third degree. However, under the bill, if the amount of the drug involved in an "aggravated trafficking in drugs" violation *equals or exceeds* the bulk amount *but is less than* five times the bulk amount, the violation generally is a felony of the third degree. (R.C. 2925.03(C)(1)(c) to (f), (2)(c) to (e), (3)(c) to (f), (4)(c) to (g), (5)(c) to (g), (6)(c) to (g), and (7)(c) to (f).)

Trafficking in heroin--unit dose ranges for determining penalty

For the offense of "trafficking in heroin," the bill modifies the existing ranges of controlled substance amounts that are used in determining the penalty for a particular violation to include references to *unit doses* as well as to *grams*, as follows (R.C. 2925.03(C)(6)) (see **COMMENT** 1 for a summary of the terms used in the following table):

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 1 gram-- School or juvenile--	F5 F4	No presumption No presumption
(2) Equals or exceeds *10 unit doses* or one gram but 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 but 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 but is less than *500 unit doses* or 50 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Equals or exceeds *500 unit doses* or 50 grams but 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

For purposes of the Drug Offenses Law (R.C. Chapter 2925.), existing R.C. 2925.01(E) defines a "unit dose" as an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and is in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

Classification of certain trafficking offenders as "major drug offenders"

For the offenses of "aggravated trafficking in drugs," "trafficking in cocaine," "trafficking in L.S.D.," and "trafficking in heroin," in circumstances in which existing law specifies that the offense is a felony of the first degree, requires the sentencing court to impose a mandatory prison term that consists of the maximum term prescribed for a felony of the first degree (i.e., ten years), and authorizes the court to impose an additional prison term prescribed for a major drug offender, the bill specifies that the offender is classified in those circumstances as a major drug offender (see "***Major drug offender sentencing***," below) (R.C. 2925.03(C)(1)(f), (4)(g), (5)(g), and (6)(g)).

Drug possession offenses--exemption and penalties

Generally

Existing law prohibits a person from knowingly obtaining, possessing, or using a controlled substance (R.C. 2925.11(A)). 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" (see **COMMENT** 2 for existing penalties for the drug possession offenses).

Exemption from drug possession offenses for prescription drugs

Existing law. Existing law provides exemptions from the drug possession offenses for certain specified types of conduct. Among the exemptions is a provision that specifies that the offenses do not apply to any person who obtained the controlled substance in question pursuant to a prescription issued by a licensed health care professional authorized to prescribe drugs, *where the drug is in the original container in which it was dispensed to the person*. The other exemptions are provided for manufacturers, licensed health care professionals authorized to prescribe drugs, pharmacists, pharmacy owners, and other persons acting in accordance with the Controlled Substance and Pharmacy Laws and, in relation to anabolic steroids, persons conducting a federal government-approved steroid research project and persons who sell, prescribe, administer, etc., steroids for livestock use in accordance with federal law. (R.C. 2925.11(B).)

Operation of the bill. The bill eliminates from the existing "prescription exemption" the requirement that the controlled substance in question be in the original container in which it was dispensed to the person who obtained it. Thus, under the bill, the possession offenses do not apply to any person who obtained the controlled substance in questions pursuant to a prescription issued by a licensed health care professional. (R.C. 2925.11(B)(4).)

Redesignation of ranges of controlled substance amounts for determining penalty for drug possession offenses

For all of the drug possession offenses, the bill redesignates the ranges of controlled substance amounts that are used in determining the penalty for the particular violation. Each of those ranges consists of a specified minimum amount and a specified maximum amount. Under existing law, except for the lowest

ranges provided for possession of marihuana or possession of hashish, if the amount of the controlled substance involved in the particular violation *exceeds* the specified minimum amount for a particular range *but does not exceed* the specified maximum amount for that range, the penalties that correspond to that range apply to the violation. The bill changes the ranges so that all of them specify that, if the amount of the controlled substance involved *equals or exceeds* the specified minimum amount for that range *but is less than* the specified maximum amount for that range, the penalties for that range apply to the violation.

As an example, under existing law, if the amount of the drug involved in an "aggravated possession of drugs" violation *exceeds* the bulk amount *but does not exceed* five times the bulk amount, the violation is a felony of the third degree. Under the bill, though, if the amount of the drug involved in an "aggravated possession of drugs" violation *equals or exceeds* the bulk amount *but is less than* five times the bulk amount, the violation is a felony of the third degree. (R.C. 2925.11(C)(1)(b) to (e), (2)(b) to (d), (3)(b) to (f), (4)(b) to (f), (5)(b) to (f), (6)(b) to (f), and (7)(b) to (f).)

Possession of heroin--unit dose ranges for determining penalty

For the offense of "possession of heroin," the bill modifies the existing ranges of controlled substance amounts that are used in determining the penalty for a particular violation to include references to *unit doses* as well as to *grams*, as follows (R.C. 2925.11(C)(6)) (see **COMMENT** 1 for a summary of the terms used in the following table):

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

Amount of heroin involved	Degree of offense	Presumption for or against prison term and 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

See "***Trafficking in heroin--unit dose ranges for determining penalty***," above for definition of "unit dose."

Classification of certain drug possession offenders as "major drug offenders"

The bill specifies that an offender who commits "aggravated possession of drugs," "possession of cocaine," "possession of L.S.D.," or "possession of heroin" is a major drug offender when the offense is a felony of the first degree, the sentencing court must impose a mandatory prison term that consists of the maximum term for a felony of the first degree, and the court may impose an additional prison term prescribed for a major drug offender (see "***Major drug offender sentencing***," below) (R.C. 2925.11(C)(1)(e), (4)(f), (5)(f), and (6)(f)).

Penalties for illegal manufacture of drugs and illegal cultivation of marihuana

Existing law

Existing law prohibits a person from knowingly cultivating marihuana or knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance (R.C. 2925.04(A)).

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

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 or more and *does not exceed* 200 grams--	M4	
(3) *Exceeds* 200 grams but *does not exceed* 1,000 grams--	F5	Presumption against
(4) *Exceeds* 1,000 grams but *does not exceed* 5,000 grams--	F3	No presumption
(5) *Exceeds* 5,000 grams but *does not exceed* 20,000 grams--	F3	Presumption for
(6) *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 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. Further, for the offense of illegal manufacture of drugs, the major drug offender sentencing provisions, as described below in "***Major drug offender sentencing***," apply. (R.C. 2925.04(A), (C), (D), and (E).)

Operation of the bill

The bill changes the sentencing provisions for the offenses of illegal manufacture of drugs and illegal cultivation of drugs in the following ways:

(1) For illegal cultivation of marihuana, it redesignates the ranges of marihuana amounts that are used in determining the penalty for the violation. Each of those ranges consists of a specified minimum amount and a specified maximum amount. Under existing law, except for the lowest range, if the amount of the marihuana involved in the violation *exceeds* the specified minimum amount for a particular range *but does not exceed* the specified maximum amount for that range, the penalties that correspond to that range apply to the violation. The bill changes the ranges so that all of them specify that, if the amount of the marihuana involved *equals or exceeds* the specified minimum amount for that range *but is less than* the specified maximum amount for that range, the penalties for that range apply to the violation. For example, under existing law, if the amount of the marihuana involved *exceeds* 200 grams *but does not exceed* 1,000 grams, the

violation is a felony of the fifth degree; however, under the bill, if the amount of the marihuana involved *equals or exceeds* 200 grams *but is less than* 1,000 grams, the violation is a felony of the fifth degree. (R.C. 2925.04(C)(4).)

(2) For illegal manufacture of drugs, it clarifies the application of the major drug offender sentencing provisions (see "***Major drug offender sentencing***," below) (R.C. 2925.04(E)).

Funding of drug trafficking offenses

Existing law

Existing law prohibits a person from knowingly providing money or other items of value to another person with the purpose that the recipient of the money or items of value use them to obtain any controlled substance for the purpose of selling or offering to sell the controlled substance or for the purpose of committing the offense of illegal manufacture of drugs or illegal cultivation of marihuana in violation of R.C. 2925.04.

A violation of the prohibition that involves a Schedule I or II controlled substance, with the exception of marihuana, is the offense of "aggravated funding of drug trafficking." The offense is a felony of the first degree, and the court generally is required to impose a mandatory prison term consisting of one of the prison terms prescribed for a felony of the first degree. A violation of the prohibition that involves a Schedule III, IV, or V controlled substance is the offense of "funding of drug trafficking." The offense is a felony of the second degree, and the court is required to impose a mandatory prison term consisting of one of the prison terms prescribed for a felony of the second degree. A violation of the prohibition that involves marihuana is the offense of "funding of marihuana trafficking." The offense is a felony of the third degree, and the court is required to impose a mandatory prison term consisting of one of the prison terms prescribed for a felony of the third degree. (R.C. 2925.05(A) and (C).)

For all three of the 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. Further, for the offense of aggravated funding of drug trafficking, the major drug offender sentencing provisions, as described below in "***Major drug offender sentencing***," apply. (R.C. 2925.05(D) and (E).)

Operation of the bill

The bill modifies the elements of the prohibition that comprises the offenses of "aggravated funding of drug trafficking," "funding of drug trafficking," and "funding of marihuana trafficking" as they relate to the provision of money or other items of value to a person with the purpose that the recipient use them to obtain a controlled substance for the purpose of selling or offering to sell the controlled substance. Under the bill, the prohibition prohibits a person from knowingly providing money or other items of value to another person with the purpose that the recipient of the money or items of value use them to obtain any controlled substance for the purpose of committing the offense of illegal manufacture of drugs or illegal cultivation of marihuana in violation of R.C. 2925.04 or *for the purpose of selling or offering to sell the controlled substance in the following amount* (R.C. 2925.05(A)):

(1) If the drug to be sold or offered for sale 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, any amount of the drug;

(2) If the drug to be sold or offered for sale is any compound, mixture, preparation, or substance included in Schedule III, IV, or V, an amount of the drug that equals or exceeds the bulk amount of the drug;

(3) If the drug to be sold or offered for sale is marihuana or a compound, mixture, preparation, or substance other than hashish containing marihuana, an amount of the marihuana that equals or exceeds 200 grams;

(4) If the drug to be sold or offered for sale is cocaine or a compound, mixture, preparation, or substance containing cocaine, an amount of the cocaine that equals or exceeds five grams if the cocaine is not crack cocaine or equals or exceeds one gram if the cocaine is crack cocaine;

(5) If the drug to be sold or offered for sale is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., an amount of the L.S.D. that equals or exceeds ten unit doses of solid L.S.D. or equals or exceeds one gram of liquid L.S.D.;

(6) If the drug to be sold or offered for sale is heroin or a compound, mixture, preparation, or substance containing heroin, an amount of the heroin that equals or exceeds ten unit doses or equals or exceeds one gram;

(7) If the drug to be sold or offered for sale is hashish or a compound, mixture, preparation, or substance containing hashish, an amount of the hashish

that equals or exceeds ten grams of solid hashish or equals or exceeds two grams of liquid hashish.

The bill generally retains the existing penalties for all three of the offenses. However, for aggravated funding of drug trafficking, it clarifies the application of the major drug offender sentencing provisions (see "***Major drug offender sentencing***," below) (R.C. 2925.05(C) to (E)).

Major drug offender sentencing

Existing law

In general. The existing Criminal Sentencing Law provides that, except when an offender commits aggravated murder or rape and the penalty imposed for the offense is life imprisonment or commits murder, *if the offender commits a drug trafficking offense, the offense of illegal manufacture of drugs or illegal cultivation of marihuana, or a drug possession offense and the involved R.C. section requires the imposition of a ten-year prison term on the offender* or *if a court imposing a sentence upon an offender for a felony finds that the offender is guilty of a specification that the offender is a "major drug offender"* (see "***Definition of major drug offender***," below), the court is required to impose upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant to a judicial release or any other provision of law (R.C. 2929.14(D)(3)(a)).

A court that imposes a prison term on an offender under the provision described in the preceding paragraph may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term imposed under the provision described in the preceding paragraph and, if applicable, under the existing provisions requiring the imposition of firearms prison terms or repeat violent offender prison terms (see R.C. 2929.14(D)(1) and (2)), makes both of the following findings: (1) the terms so imposed are inadequate to punish the offender and protect the public from future crimes, because the applicable factors under a separate provision (R.C. 2929.12) of the Criminal Sentencing Law indicating a greater likelihood of recidivism outweigh the applicable factors under that provision indicating a lesser likelihood of recidivism, and (2) the terms so imposed are demeaning to the seriousness of the offense because one or more of the factors under that provision indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that provision indicating that the offender's conduct is less serious than conduct normally constituting the offense (R.C. 2929.14(D)(3)(b)).

Specific Drug Offenses Law, Controlled Substances Law, and Pharmacy Law provisions. Existing law specifies that, for various violations of the Drug Offenses Law, the law governing controlled substances (R.C. Chapter 3719.), and the law governing pharmacies and pharmacists (R.C. Chapter 4729.), notwithstanding the prison term otherwise authorized or required for the violation, if the violation involves the sale, offer to sell, or possession of a Schedule I or II controlled substance, *with the exception of marihuana*, and if the offender, as a result of the violation is a "major drug offender" (see "***Definition of major drug offender***," below), the court, in lieu of the prison term that otherwise is authorized or required, must impose upon the offender the mandatory prison term specified in the second preceding paragraph and may impose an additional prison term under the provision described in the immediately preceding paragraph. The provision described in this paragraph applies regarding the Drug Offenses Law offenses of "corrupting another with drugs," "illegal manufacture of drugs," "aggravated funding of drug trafficking," and "illegal dispensing of drug samples," felony violations of R.C. 3719.07, 3719.08, 3719.16, 3719.161, and 3719.172(C) or (D), and felony violations of R.C. 4729.37, 4729.51(C), 4729.54(J), and 4729.61. (R.C. 2925.02(E), 2925.04(E), 2925.05(E), 2925.36(E), 2929.14(D)(3), 3719.99(D)(1), and 4729.99(E)(2).)

Definition of major drug offender. Existing law defines "major drug offender," for purposes of the Criminal Sentencing Law, 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: (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 drug trafficking offense under R.C. 2925.03, a drug possession offense under R.C. 2925.11, illegal manufacture of drugs, illegal cultivation of marihuana, aggravated funding of drug trafficking, funding of drug trafficking, funding of marihuana trafficking, or illegal administration of anabolic steroids, which offense is a felony of the third degree and is based on the possession of, sale of, or offer to sell the controlled substance (R.C. 2929.01(Y)).

Major drug offender specification. Existing law provides that courts are to determine the issue of whether an offender is a major drug offender, and that the determination by a court that an offender is a major drug offender is precluded unless the indictment, count in the indictment, or information charging the offender specifies that the offender is a major drug offender. The specification must be stated at the end of the body of the indictment, count, or information, in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender is a major drug offender)." (R.C. 2941.1410.)

Operation of the bill

The bill modifies, and clarifies the application of, the major drug offender sentencing provisions of the Felony Sentencing Law as follows:

(1) It modifies the provisions to clarify that, if an offender is convicted of a drug trafficking offense or a drug possession offense and the applicable section classifies the offender as a major drug offender and requires the imposition of a ten-year prison term on the offender, the court must impose upon the offender for the felony violation a ten-year prison term that cannot be reduced, and the court may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the ten-year term and, if applicable, under the existing provisions requiring firearms prison terms or repeat violent offender prison terms imposed on the offender, makes the findings specified under existing law. Related to this change, the bill clarifies that, in circumstances in which an offender is convicted of a drug trafficking offense or a drug possession offense and the applicable section currently requires the imposition of a ten-year prison term on the offender, the offender, as a result of the conviction, is classified as a major drug offender, and a major drug offender specification is not required. The bill also removes an erroneous reference to illegal manufacture of drugs and illegal cultivation of marihuana from the provision that refers to offenses in which the specified Revised Code section requires the imposition of a ten-year sentence, because a ten-year sentence never is required for those offenses. (R.C. 2925.03(C)(1)(f), (4)(g), (5)(g), and (6)(g), 2925.11(C)(1)(e), (4)(f), (5)(f), and (6)(f), 2929.01(X), 2929.14(D)(3), and 2941.1410.)

(2) It modifies the provisions to clarify that, if an offender commits a felony offense of "corrupting another with drugs," "illegal manufacture of drugs," "aggravated funding of drug trafficking," "funding of drug trafficking," or "illegal dispensing of drug samples" under the Drug Offenses Law, a felony violation of R.C. 3719.07, 3719.08, 3719.16, 3719.161, or 3719.172(C) or (D), or a felony violation of R.C. 4729.37, 4729.51(C), 4729.54(J), or 4729.61 that includes the sale, offer to sell, or possession of a Schedule I or II controlled substance other than marihuana, and the court imposing *sentence upon the offender finds that the offender is guilty of a specification as described in R.C. 2941.1410 charging that the offender is a major drug offender* (see "***Major drug offender specification***," above), the court, in lieu of any other prison term provided, is required to impose

upon the offender for the felony violation a ten-year prison term that cannot be reduced pursuant, and the court may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the ten-year term and, if applicable, under the existing provisions requiring firearms prison terms or repeat violent offender prison terms (see R.C. 2929.14(D)(1) and (2)), makes both of the findings required under existing law. (R.C. 2925.02(E), 2925.04(E), 2925.05(E), 2925.36(E), 2929.14(D)(3), 2941.1410, 3719.99(D)(1), and 4729.99(E)(2).)

(3) It expands the definition of "major drug offender" to incorporate language referring to drug trafficking and drug possession offenses that involve *unit doses of heroin* or *L.S.D. in a liquid form*. This change is consistent with the bill's changes that provide penalties for the trafficking offenses and the possession offenses when they involve unit doses of heroin, as described above in "***Trafficking in heroin--unit dose ranges for determining penalty***" and "***Possession of heroin--unit dose ranges for determining penalty***" (the former discussion also includes a definition of "unit dose") and with existing trafficking penalties involving L.S.D. in a liquid form. Under the bill, a "major drug offender" includes, in addition to the offenders specified under existing law, an offender who is convicted of or pleads guilty to the possession, sale of, or offer to sell, any drug, compound, mixture, preparation, or substance that consists of or contains at least 2,500 unit doses of heroin or at least 500 grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form. (R.C. 2929.01(X).)

Penalties for permitting drug abuse

The bill increases the penalty for the existing offense of "permitting drug abuse," in certain circumstances. Under existing law, the offense generally is a misdemeanor of the first degree but is a felony of the fifth degree if the felony drug abuse offense that the offender permitted to occur on his or her premises is the offense of corrupting another with drugs under R.C. 2925.02 or one of the drug trafficking offenses under R.C. 2925.03 that was committed in the vicinity of a school or in the vicinity of a juvenile. The bill eliminates the existing requirement that the offense be committed in the vicinity of a school or in the vicinity of a juvenile in order to be a felony. Under the bill, permitting drug abuse is a felony of the fifth degree if the felony drug abuse offense that the offender permitted to occur on his or her premises is the offense of corrupting another with drugs under R.C. 2925.02 or one of the drug trafficking offenses under R.C. 2925.03 regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile.

The bill also enacts a new provision that specifies that any premises or real estate that is permitted to be used for the offense of permitting drug abuse in

circumstances in which it involves premises or real estate constitutes a nuisance subject to abatement under the state's existing Nuisance Law. (R.C. 2925.13(F).)

Penalties for illegal processing of drug documents

Existing law

Existing law contains a series of prohibitions that pertain to the processing or use of specified drug documents. The prohibitions prohibit a person from doing any of the following (R.C. 2925.23(A) to (D)):

(1) Knowingly making a false statement in any prescription, order, report, or record required under the Controlled Substances Law or the Pharmacy Law;

(2) Intentionally making, uttering, or selling, or knowingly possessing a false or forged prescription, uncompleted preprinted prescription blank used for writing a prescription, official written order, license for a terminal distributor of dangerous drugs required under R.C. 4729.60, or registration certificate for a wholesale distributor of dangerous drugs required under R.C. 4729.60;

(3) By theft, acquiring any prescription, uncompleted preprinted prescription blank used for writing a prescription, official written order, blank official written order, license or blank license for a terminal distributor of dangerous drugs required under R.C. 4729.60, or registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs required under R.C. 4729.60;

(4) Knowingly making or affixing any false or forged label to a package or receptacle containing any dangerous drugs.

A violation of any of the prohibitions is the offense of "illegal processing of drug documents." If the drug involved in the offense is a compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana, the offense is a felony of the fourth degree, and there is no presumption for or against imposing a prison sentence. If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana, the offense is a felony of the fifth degree, and there is no presumption for or against imposing a prison sentence. The court, in addition to any other sanction imposed for the offense, must suspend the offender's driver's or commercial driver's license or permit and comply with specified professional licensing entity notification provisions. (R.C. 2925.23(F) and (G).)

Operation of the bill

The bill modifies the penalties for the offense of illegal processing of drug documents. Under the bill, if the offender violates the prohibition set forth above in paragraph (2) of "***Existing law***" based on the making, uttering, selling, or possession of an uncompleted prescription blank, a license for a terminal distributor of dangerous drugs, or a registration certificate for a wholesale distributor of dangerous drugs, or violates the prohibition set forth above in paragraph (3) of "***Existing law***" based on the acquisition by theft of an uncompleted preprinted prescription blank, a blank official written order, a license or blank license for a terminal distributor of dangerous drugs, or a registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs, the offense is a felony of the fifth degree. In all other circumstances, the bill retains the penalties provided under existing law. (R.C. 2925.23(F) and (G).)

Drug or alcohol treatment, or imprisonment, as a sanction for a violation of a community control sanction imposed for a felony drug offense or felony offense

Existing law

Existing law provides that, if an offender who was convicted of a felony drug offense in violation of a provision of the Drug Offenses Law, the Controlled Substance Law, or the Pharmacy Law violates the conditions of a community control sanction imposed for the offense solely by possessing or using a controlled substance and if the offender has not failed to meet the conditions of any drug treatment program in which the offender was ordered to participate as a sanction for the offense, the court, as punishment for the violation of the sanction, must order that the offender participate in a drug treatment program or in alcoholics anonymous, narcotics anonymous, or a similar program if the court determines that an order of that nature is consistent with the purposes and principles of sentencing set forth in the Criminal Sentencing Law. If the court determines that an order of that nature would not be consistent with those purposes and principles or if the offender violated the conditions of a drug treatment program in which the offender participated as a sanction for the offense, the court may impose on the offender a sanction authorized for the violation of the sanction, including a prison term. (R.C. 2929.13(E)(2).)

Operation of the bill

The bill replaces the above-described provisions with provisions that specify that, if an offender who was convicted of *any felony* violates the conditions of a community control sanction imposed for the offense solely by possessing or using a controlled substance or solely by reason of producing positive results on a

drug test, the court, as punishment for the violation of the sanction, *cannot* order that the offender be *imprisoned* unless the court determines on the record either of the following: (1) the offender had been ordered as a sanction for the felony to participate in a drug treatment program, in a drug education program, or in narcotics anonymous or a similar program, and the offender continued to use illegal drugs after a reasonable period of participation in the program, or (2) the imprisonment of the offender for the violation is consistent with the purposes and principles of sentencing set forth in the Criminal Sentencing Law (R.C. 2929.13(E)(2)).

Treatment or intervention in lieu of conviction

Existing law

Existing law provides that, if a court has reason to believe that an offender charged with a felony or misdemeanor is a drug dependent person or is in danger of becoming a drug dependent person, the court must accept, prior to the entry of a plea, that offender's request for *treatment in lieu of conviction*. If the offender requests treatment in lieu of conviction, the court must stay all criminal proceedings pending the outcome of the hearing to determine whether the offender is eligible for treatment in lieu of conviction and, at the conclusion of the hearing, must enter its findings and accept the offender's plea.

An offender who requests treatment in lieu of conviction is eligible for that treatment if the court finds that: (1) the offender's drug dependence or danger of drug dependence was a factor leading to the criminal activity with which the offender is charged, and rehabilitation through treatment would substantially reduce the likelihood of additional criminal activity, (2) the offender has been accepted into a program licensed by the Department of Alcohol and Drug Addiction Services, a program certified by the Department, a public or private hospital, the Veterans Administration or another agency of the federal government, private care or treatment rendered by a physician or a psychologist licensed in the state, or another appropriate drug treatment facility or program, (3) if the offender is convicted of a misdemeanor, the offender would be eligible for probation, provided an R.C. 2951.02(D) criterion does not apply to the offender, or, if the offender is convicted of a felony, the offender would be eligible for a community control sanction, (4) the offender is not a repeat offender or dangerous offender, and (5) the offender is not charged with the offense of corrupting another with drugs, illegal manufacture of drugs, or illegal cultivation of marihuana, a drug trafficking offense, or a drug possession offense that is not a minor drug possession offense. Upon a finding of that nature and if the offender enters a plea of guilty or no contest, the court may stay all criminal proceedings and order the offender to a period of rehabilitation. If a plea of not guilty is entered, a trial must

precede further consideration of the offender's request for treatment in lieu of conviction.

The offender and the prosecuting attorney must be afforded the opportunity to present evidence to establish eligibility or ineligibility for treatment in lieu of conviction, and the prosecuting attorney may make a recommendation to the court concerning whether the offender should receive treatment in lieu of conviction. Upon the offender's request and to aid the offender in establishing the offender's eligibility for treatment in lieu of conviction, the court may refer the offender for medical and psychiatric examination to the Department of Mental Health, to a state facility designated by the Department, to a psychiatric clinic approved by the Department, or to a facility or program described in clause (2) of the preceding paragraph.

An offender found to be eligible for treatment in lieu of conviction and ordered to a period of rehabilitation must be placed under the control and supervision of the county probation department or the APA, as if the offender were on probation or were under a community control sanction. The court must order a period of rehabilitation to continue for any period that the judge or magistrate determines. The period of rehabilitation may be extended, but the total period cannot exceed three years. The period of rehabilitation must be conditioned upon the offender's voluntary entrance into an appropriate drug treatment facility or program, faithful submission to prescribed treatment, and any other conditions the court orders. Treatment of a person ordered to such a period of rehabilitation may include hospitalization under close supervision or otherwise, release on an outpatient status under supervision, and other treatment or after-care that the appropriate drug treatment facility or program considers necessary or desirable to rehabilitate that person. Persons released from hospitalization or treatment but still subject to the ordered period of rehabilitation may be rehospitalized or returned to treatment at any time it becomes necessary for their treatment and rehabilitation.

If the appropriate drug treatment facility or program reports to the probation officer that the offender has successfully completed treatment and is rehabilitated, the court may dismiss the charges pending against the offender. If the facility or program reports to the probation officer that the offender has successfully completed treatment and is rehabilitated or has obtained maximum benefits from treatment and has completed the period of rehabilitation and other conditions ordered by the court, the court must dismiss the charges pending against the offender. If the facility or program reports to the probation officer that the offender has failed treatment, has failed to submit to or follow the prescribed treatment, or has become a discipline problem, if the offender does not satisfactorily complete the rehabilitation period or the other conditions ordered by

the court, or if the offender violates the conditions of the rehabilitation period, the offender must be arrested and removed from the facility or program, and the court immediately must hold a hearing to determine if the offender failed treatment, failed to submit to or follow the prescribed treatment, did not satisfactorily complete the rehabilitation period or any other condition ordered by the court, or violated any condition of the rehabilitation period. If the court so determines, it immediately must enter an adjudication of guilt and impose upon the offender a term of imprisonment.

At any time and for any appropriate reason, the offender, the offender's probation officer, the authority or department that has the duty to control and supervise the offender, or the facility or program may petition the court to reconsider, suspend, or modify its order for treatment concerning that offender. The appropriate drug treatment facility or program must report to the authority or department that has the duty to control and supervise the offender at any periodic reporting period the court requires and whenever the offender is changed from an inpatient to an outpatient, is transferred to another treatment facility or program, fails treatment, fails to submit to or follow the prescribed treatment, becomes a discipline problem, does not satisfactorily complete the rehabilitation period or other conditions ordered by the court, has violated the conditions of the period of rehabilitation, is rehabilitated, or obtains the maximum benefit of treatment.

If, on the motion of an offender ordered to a rehabilitation period, the court finds that the offender has successfully completed the rehabilitation period ordered by the court, is rehabilitated, is no longer drug dependent or in danger of becoming drug dependent, and has completed all other conditions, the court must dismiss the proceeding against the offender. Successful completion of a rehabilitation period under this provision must be without adjudication of guilt and is not a criminal conviction for purposes of disqualifications or disabilities imposed by law and upon conviction of a crime, and the court may order the sealing of records in the manner provided in the existing Conviction Records Sealing Law.

An offender who is charged with a drug abuse offense, other than a minor misdemeanor offense involving marihuana, and who otherwise is eligible for treatment in lieu of conviction may request and may be ordered to a period of rehabilitation even though certain specified findings that otherwise would be required for eligibility are not made. An order to rehabilitation under this provision is subject to the conditions that the court requires but cannot be conditioned upon entry into an appropriate drug treatment facility or program. (R.C. 2951.041.)

Operation of the bill

The bill repeals the existing "treatment in lieu of conviction" provisions described above and replaces them with new "intervention in lieu of conviction" provisions. Under the bill, if an offender is charged with a criminal offense and the court has reason to believe that drug or alcohol usage by the offender *was a factor* leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for *intervention in lieu of conviction*. The request must include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment, and arraignment, unless the hearing, indictment, or arraignment already has occurred. The court may reject an offender's request without a hearing. If the court elects to consider an offender's request, it must conduct a hearing to determine whether the offender is eligible for intervention in lieu of conviction and must stay all criminal proceedings pending the outcome of the hearing. If the court schedules a hearing, it must order an assessment of the offender for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan. The victim notification provisions of existing R.C. 2930.08(C) apply in relation to any hearing held under this provision.

Under the bill, an offender is eligible for intervention in lieu of conviction if the court finds all of the following: (1) the offender previously has not been convicted of or pleaded guilty to a felony, previously has not been through intervention in lieu of conviction or any similar regimen, and is charged with a felony for which the court, upon conviction, would impose sentence under a provision of the existing Criminal Sentencing Law that requires in certain circumstances the imposition of a community control sanction or with a misdemeanor, (2) the offense is not an offense of violence, is not state OMVI or a violation of a substantially similar municipal ordinance, and is not an offense for which a sentencing court is required to impose a mandatory prison term, a mandatory term of local incarceration, or a mandatory term of imprisonment in a jail, (3) the offender is not charged with the offense of corrupting another with drugs, illegal manufacture of drugs, illegal cultivation of marihuana, or illegal administration of anabolic steroids, a drug trafficking offense, or a drug possession offense when the offense is a felony of the first, second, or third degree, (4) the offender is not charged with a drug possession offense that is a felony of the fourth degree, or the offender is charged with such an offense that is a felony of the fourth degree, and the prosecutor in the case has recommended that the offender be classified as being eligible for intervention in lieu of conviction under this provision, (5) the offender has been assessed by an appropriately licensed provider, certified facility, or licensed and credentialed professional, including, but not

limited to, a program licensed by the Department of Alcohol and Drug Addiction Services, a program certified by that Department, a public or private hospital, the United States Department of Veterans Affairs, another appropriate agency of the United States government, or a licensed physician, psychiatrist, psychologist, independent social worker, professional counselor, or chemical dependency counselor for the purpose of determining the offender's eligibility and recommending an appropriate plan, (6) the offender's drug or alcohol usage *was a factor* leading to the criminal offense with which the offender is charged, intervention in lieu of conviction would not demean the seriousness of the offense, and intervention would substantially reduce the likelihood of any future criminal activity, and (7) the offender is willing to comply with all terms and conditions imposed by the court, as described below.

At the conclusion of the hearing, the court must enter its determination as to whether the offender is eligible for intervention in lieu of conviction and as to whether to grant the offender's request. If the court finds that the offender is eligible and grants the offender's request, it must accept the offender's plea of guilty and waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment, and arraignment, unless the hearing, indictment, or arraignment has already occurred. In addition, the court then may stay all criminal proceedings and order the offender to comply with all terms and conditions imposed by the court as described below. If the court finds that the offender is not eligible or does not grant the offender's request, the criminal proceedings against the offender must proceed as if the offender's request for intervention in lieu of conviction had not been made.

If the court grants an offender's request for intervention in lieu of conviction, it must place the offender under the general control and supervision of the county probation department, the 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 as a sentence for a felony under the Criminal Sentencing Law or was on probation under that Law. The court must establish an intervention plan for the offender, the terms and conditions of which must require the offender, for at least one year from the date on which the court grants the order of intervention in lieu of conviction, to abstain from the use of illegal drugs and alcohol and to submit to regular random testing for drug and alcohol use and may include any other treatment terms and conditions, or terms and conditions similar to community control sanctions, that are ordered by the court.

If the court grants an offender's request for intervention in lieu of conviction and finds that the offender has successfully completed the intervention plan for the offender, including the requirement that the offender abstain from using drugs and

alcohol for a period of at least one year from the date on which the court granted the order of intervention in lieu of conviction and all other terms and conditions ordered by the court, the court must dismiss the proceedings against the offender. Successful completion of the intervention plan and period of abstinence must be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime. The court may order the sealing of records related to the offense in question in the manner provided in the existing Conviction Records Sealing Law.

If the court grants an offender's request for intervention in lieu of conviction and the offender fails to comply with any term or condition imposed as part of the intervention plan for the offender, the supervising authority for the offender promptly must advise the court of this failure, and the court must hold a hearing to determine whether the offender failed to comply with any term or condition imposed as part of the plan. If the court determines that the offender has failed to comply with any of those terms and conditions, it must enter a finding of guilty and impose an appropriate sanction under the portions of the existing Criminal Sentencing Law that set forth community residential sanctions, nonresidential sanctions, and financial sanctions for felonies or, if the offense in question was a misdemeanor, a sentence under the portions of that Law that pertain to misdemeanor sentencing. (R.C. 2951.041 and repeal of existing R.C. 2951.041 by Section 2.)

The bill modifies a few existing provisions to conform their terminology to the changes described above (R.C. 2935.36(A)(4), 3719.121(C), 3719.70(B)(2), 4715.30(F), 4730.25(G), and 4731.22(I)).

Appeal of felony sentence

Existing law

Defendant's right to appeal. Existing law provides that, in addition to any other right to appeal and except as described to the contrary below, 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 (R.C. 2953.08(A)):

(1) The sentence consisted of or included the maximum prison term allowed for the offense by the Criminal Sentencing Law provision contained in R.C. 2929.14(A) and was not imposed pursuant to a portion of that Law that permits the imposition of the maximum term (R.C. 2929.14(D)(3)(b)), and either the court imposed the sentence for only one offense, or the court imposed the

sentence for two or more offenses arising out of a single incident and 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 is a felony of the fourth or fifth degree or is a felony drug offense that is a violation of the Drug Offenses Law and that is specified as being subject to R.C. 2929.13(B) for purposes of sentencing, and the court did not specify at sentencing that it found one or more factors specified in R.C. 2929.13(B)(1)(a) to (h) to apply relative to the defendant. If the court specifies that it found one or more of those factors to apply relative to the defendant, the defendant is not entitled under this provision to appeal as a matter of right the sentence imposed upon the offender.

(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 pursuant to R.C. 2971.03(A)(3), if the minimum term of the indefinite term imposed pursuant to that provision is the longest term available for the offense from among the range of terms listed in R.C. 2929.14.

(4) The sentence is contrary to law.

(5) The sentence consisted of an additional prison term of ten years imposed pursuant to R.C. 2929.14(D)(3)(b), including the major drug offender sentencing provisions.

In addition to the above-described right to appeal a sentence, 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 under R.C. 2929.14(E)(3) or (4) and that the consecutive sentences exceed the maximum prison term allowed by division (A) of that section 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. (R.C. 2953.08(C).)

Prosecution's right to appeal. In addition to any other right to appeal and except as described to the contrary below, a prosecuting attorney, a city director of law, village solicitor, or similar municipal chief legal officer, 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 or, in the circumstances described below in paragraph (3), the modification of a sentence imposed upon such a defendant, on any of the following grounds (R.C. 2953.08(B)):

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in R.C. 2929.13 or R.C. Chapter 2925.

(2) The sentence is contrary to law.

(3) The sentence is a modification under the existing provision governing judicial releases (R.C. 2929.20) of a sentence that was imposed for a felony of the first or second degree.

Exception to right of appeal. A sentence imposed upon a defendant is not subject to review under the above-described 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 the above-described provisions. (R.C. 2953.08(D).)

Appeal procedures. Existing law specifies procedures to be followed regarding an appeal of a sentence and the actions that a court hearing an appeal may take if it makes specified findings.

Existing law contains special provisions that apply regarding an appeal of a modification of a sentence made pursuant to a judicial release. A judgment or final order of a court of appeals regarding a sentence appeal under the above-described provisions may be appealed, by leave of court, to the Supreme Court. (R.C. 2953.08(F) to (H).)

Operation of the bill

The bill modifies the first ground for which a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed, as set forth above in paragraph (1) of "***Defendant's right to appeal***." Under the bill, that ground is modified so that it states that "the sentence consisted of or included the maximum prison term allowed for the offense by the Criminal Sentencing Law provision contained in R.C. 2929.14(A), the sentence was not imposed pursuant to a specified portion of that Law that permits the imposition of the maximum term (R.C. 2929.14(D)(3)(b)), *the maximum prison term was not required for the offense pursuant to the Drug Offenses Law or any other provision of the Revised Code*, and either the court imposed the sentence for only one offense, or the court imposed the sentence for two or more offenses arising out of a single incident and it imposed the maximum prison term for the offense of the highest degree. (R.C. 2953.08(A)(1).)

The bill also adds a new ground upon which a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right an additional ten-year prison term imposed under a provision applicable to RVOs, as described above in "***Repeat violent offenders (RVOs)***" (R.C. 2953.08(A)(5)).

Final release of prisoners on post-release control; conditions of release

Existing law

Imposition of a period of post-release control. Existing law specifies that each felon who is sentenced to a prison term for a felony of the first or second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person is subject to a *mandatory period of post-release control* imposed by the Parole Board after the offender's release from imprisonment. Unless reduced by the Board under a specified authorization to do so, a period of post-release control required by this provision is one of the following periods: (1) for a felony of the first degree or for a felony sex offense, five years, (2) for a felony of the second degree that is not a felony sex offense, three years, and (3) for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, three years. (R.C. 2967.28(B).)

Existing law also provides that, if a felon is sentenced to a prison term for a felony of the third, fourth, or fifth degree that is not subject to a mandatory period of post-release control as described in the preceding paragraph, the Parole Board, in accordance with specified procedures, *may determine that a period of post-release control is necessary* for that offender and subject that offender to a period of post-release control of up to three years after the offender's release from imprisonment (R.C. 2967.28(C)).

Conditions of post-release control. If a period of post-release control is required for a prisoner, or if the Parole Board decides to impose a discretionary period of post-release control for a prisoner, before the prisoner is released from imprisonment, the Board must impose upon the prisoner one or more "post-release control sanctions" (see below) to apply during the prisoner's period of post-release control. The Board also must impose the "mandatory condition described in R.C. 2967.131(A)" (see "***Minimum terms of probation, sentences suspension, etc.***" above) and may impose any other conditions of release under the post-release control sanction that the Board considers appropriate. Prior to the release of the prisoner, the Board must review the prisoner's criminal history, all juvenile court adjudications finding the prisoner, while a juvenile, to be a delinquent child, and the record of the prisoner's conduct while imprisoned, and must consider any

recommendation regarding post-release control sanctions for the prisoner made by the office of victims' services. After considering those materials, the Board must determine which post-release control sanction or combination of post-release control sanctions is reasonable under the circumstances. In the case of a prisoner convicted of a felony of the fourth or fifth degree other than a felony sex offense, the Board must presume that monitored time is the appropriate post-release control sanction unless it determines that a more restrictive sanction is warranted. A post-release control sanction takes effect upon the prisoner's release from imprisonment. (R.C. 2967.28(D).)

For purposes of the above-described provisions, "post-release control sanction" means a sanction that is authorized under the Criminal Sentencing Law provisions pertaining to the imposition upon a convicted felon of community residential sanctions, nonresidential sanctions, and financial sanctions and that is imposed upon a prisoner when the prisoner is released from a prison term (R.C. 2967.01(O)--not in the bill).

Final release of prisoner who is under post-release control. Existing law provides that, when a prisoner who has been released from a state correctional institution under a period of post-release control has faithfully performed the conditions and obligations of the released prisoner's post-release control sanctions and has obeyed the APA's rules and regulations that apply to the released prisoner, the APA, upon the recommendation of DRC's Superintendent of Parole Supervision, may enter upon its minutes a final release and, upon the entry of the final release, must issue to the released prisoner a certificate of final release. The APA is prohibited from granting a final release earlier than one year after the released prisoner is released from the institution under a period of post-release control, or, in the case of a released prisoner whose sentence is life imprisonment, earlier than five years after the released prisoner is so released from the institution. A prisoner who has been granted a final release under this provision, or under a similar final release provision that applies regarding prisoners released from an institution on parole (R.C. 2967.16(A)), is restored to the rights and privileges forfeited by a conviction. (R.C. 2967.16(B) and (C).)

Operation of the bill

The bill modifies the final release provision that currently applies regarding prisoners released under post-release control to specify that the existing one-year restriction on granting a final release to a prisoner under post-release control applies *only if the period of post-release control is a mandatory period of post-release control imposed under R.C. 2967.28(B)*, as described above. Under this change, the one-year restriction does not apply regarding a prisoner who is released under a period of post-release control that is imposed in the discretion of

the Parole Board under R.C. 2967.28(C), as described above. The bill does not change the existing five-year limitation on granting a final release to a prisoner whose sentence is life imprisonment and who is released under a period of post-release control. (R.C. 2967.16(B).)

The bill also specifies that the "additional" appropriate conditions of release that the Parole Board may impose upon a prisoner released under a post-release control sanction may include any community residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose in sentencing the offender under the Criminal Sentencing Law (R.C. 2967.28(D)(1)).

Violation of a post-release control sanction

Existing law

Under existing law, if a post-release control sanction is imposed upon an offender, the offender upon release from imprisonment is under the general jurisdiction of the APA and generally is supervised by DRC's Parole Supervision Section parole and field officers, as if the offender had been placed on parole. If the offender violates the post-release control sanction or the "mandatory condition described in R.C. 2967.131(A)" (see "***Minimum terms of probation, sentences suspension, etc.***" above), the public or private person or entity that operates or administers, or comprises, the sanction must report the violation directly to the APA or the APA officer who supervises the offender. The APA's officers may treat the offender as if the offender were on parole and in violation of the parole.

If the APA determines that a releasee has violated a post-release control sanction or the "mandatory condition" imposed upon the releasee and that a more restrictive sanction is appropriate, it may impose a more restrictive sanction upon the releasee, or may report the violation to the Parole Board for a hearing. The APA may not increase the duration of the releasee's post-release control, impose as a post-release control sanction a residential sanction that includes a prison term, or eliminate the "mandatory condition." The Board may hold a hearing on any alleged violation by a releasee of a post-release control sanction or the "mandatory condition" imposed upon the releasee. If after the hearing, the Board finds that the releasee violated the sanction or mandatory condition, it may increase the duration of the releasee's post-release control up to the maximum duration that could have been imposed upon the offender's release or impose a more restrictive post-release control sanction, but in no case may it eliminate the "mandatory condition." When appropriate, the Board may impose as a post-release control sanction a residential sanction that includes a prison term. The Board must consider a prison term as a post-release control sanction imposed for a violation of post-release control when

the violation involves a deadly weapon or dangerous ordnance, physical harm or attempted serious physical harm to a person, or sexual misconduct, or when the releasee committed repeated violations of post-release control sanctions. The period of a prison term imposed as a post-release control sanction under this provision cannot exceed nine months, and the maximum cumulative prison term for all violations cannot exceed one-half of the stated prison term originally imposed upon the offender as part of the sentence. The period of a prison term imposed as a post-release control sanction under this provision cannot count as, or be credited toward, the remaining period of post-release control.

A releasee who has violated any post-release control sanction or the "mandatory condition" imposed upon the releasee by committing a felony may be prosecuted for the new felony, and, upon conviction, the court must impose sentence for the new felony. In addition to the sentence imposed for the new felony, the court may impose a prison term for the violation, and the term imposed for the violation must be reduced by the prison term administratively imposed by the Parole Board or APA as a post-release control sanction. The maximum prison term for the violation is either the maximum period of post-release control for the earlier felony minus any time the releasee has spent under post-release control for the earlier felony or 12 months, whichever is greater. A prison term imposed for the violation is served consecutively to any prison term imposed for the new felony. A prison term imposed for the violation, and a prison term imposed for the new felony, cannot count as, or be credited toward, the remaining period of post-release control imposed for the earlier felony. (R.C. 2967.28(F).)

Operation of the bill

The bill specifies that the "more restrictive appropriate sanction" that the APA may impose upon a releasee who has violated a post-release control sanction or other condition of post-release control may include any other community residential sanction, nonresidential sanction, or financial sanction that the sentencing court was authorized to impose in sentencing the offender under the Criminal Sentencing Law (R.C. 2967.28(F)(2)).

Rule of construction regarding references in the Revised Code to prior convictions

In existing law, numerous sections use as a criterion in conferring a benefit on a person or in imposing a penalty on a person the fact that the person previously had or had not been convicted of or pleaded guilty to a violation of a specified section or sections of the Revised Code. Some, but not all, of those sections also include in that criterion the fact that the person previously had been convicted of or pleaded guilty to a violation of an existing or former municipal ordinance, an

existing or former law of Ohio, any other state, or the United States that is substantially equivalent to the specified section or sections of the Revised Code.

Under the bill, any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or a division of a section of the Revised Code must be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of Ohio, another state, or the United States or under an existing or former municipal ordinance. In addition, the provision in existing law that requires that sections of the Revised Code defining offenses or penalties be strictly construed against the state, and liberally construed in favor of the accused, is made subject to this new provision. (R.C. 2901.04.)

Prohibitions related to the discharge of a firearm

Existing law

Existing law contains a number of prohibitions against the discharge, in specified circumstances, of a firearm. The prohibitions bar a person from doing any of the following:

(1) Without permission from the proper officials, discharging a firearm upon or over a cemetery or within 100 yards of a cemetery unless the person is on his or her land. A violation of the prohibition is a misdemeanor of the fourth degree. (R.C. 3773.05 and 3773.99(A).)

(2) Discharging a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or an inhabited dwelling, the property of another, or a charitable institution; however, this prohibition does not prevent or prohibit the owner of an enclosure from discharging firearms upon the enclosure. A violation of the prohibition is a misdemeanor of the fourth degree. (R.C. 3773.21 and 3773.99(A).)

(3) Discharging a firearm upon or over a public road or highway. A violation of the prohibition is a misdemeanor of the first degree. (R.C. 3773.211 and 3773.99(C).)

(4) Knowingly using, acquiring, having, or carrying a firearm or dangerous ordnance, while under a statutorily specified disability (e.g., being a fugitive from justice, an indicted or convicted felon, or a drug dependent person), unless relieved from the disability as provided by law. A violation of the prohibition is the offense of "having weapons while under disability," a felony of the third or fifth degree. (R.C. 2923.13.)

(5) Using or carrying any firearm or dangerous ordnance while under the influence of alcohol or a drug of abuse. A violation of the prohibition is the offense of "using weapons while intoxicated," a misdemeanor of the first degree. (R.C. 2923.15.)

(6) Knowingly discharging a firearm while in or on a motor vehicle. A violation of the prohibition is the offense of "improperly handling firearms in a motor vehicle," a misdemeanor of the first degree (the offense also contains other non-discharge prohibitions). (R.C. 2923.16.)

(7) Knowingly discharging a firearm in a vessel. A violation of this prohibition is a misdemeanor of the fourth degree (R.C. 1549.69 and 1547.99).

(8) Knowingly, and without privilege to do so, discharging a firearm at or into an occupied structure that is a permanent dwelling or temporary habitation of any individual or at, in, or into a school safety zone. A violation of the prohibition is the offense of "improperly discharging a firearm at or into a habitation or in a school safety zone," a felony of the second degree. (R.C. 2923.161.)

Operation of the bill

The bill repeals existing R.C. 3773.05, 3773.21, and 3773.211, as described above in paragraphs (1) to (3) of "***Existing law***," and enacts a new section in the Criminal Code that contains the prohibitions currently contained in the repealed sections and that is the offense of "discharge of a firearm at or near prohibited premises." The prohibitions contained in the new offense and the penalties applicable to violations of the prohibitions are the same as the prohibitions and penalties under the repealed sections, as described above in paragraphs (1) to (3) of "***Existing law***." (Section 2 of the bill--repeal of R.C. 3773.05, 3773.21, and 3773.211, and R.C. 2923.162 and 3773.99.)

The bill does not change the firearm discharge-related offenses described above in paragraphs (4) to (8) of "***Existing law***."

Law enforcement powers of certain nontraditional law enforcement officers

Cemetery company or association personnel

Existing law. Existing law prohibits a person from violating a bylaw, rule, or regulation adopted by the officers of a cemetery company or association, or by a board of township trustees having charge of township cemeteries, with reference to the protection, good order, and preservation of cemeteries, and the trees, shrubbery, structures, and adornments of the cemeteries. It authorizes watchmen, superintendents, gardeners, or agents of a cemetery company or association to

arrest on view a person found violating the above-described prohibition and bring the person before a judge of a county court or municipal court with jurisdiction for trial. (R.C. 1721.19.)

Operation of the bill. The bill replaces the existing arrest authority of the specified personnel of a cemetery company or association with a new enforcement provision. Under the bill, a watchperson, superintendent, gardener, or agent of a cemetery company or association who has probable cause to believe that a person has violated the above-described existing prohibition may detain the person in a reasonable manner and for a reasonable length of time within the property of the cemetery company or association, for the purpose of recovering any property involved in the violation, causing an arrest to be made by a peace officer, or obtaining an arrest warrant. A watchperson, superintendent, gardener, or agent acting under authority of this provision is prohibited from searching the person detained, searching or seizing any property belonging to the person detained without the person's consent, or using undue restraint upon the person. Any peace officer, as defined in existing R.C. 2935.01 (see **COMMENT** 3), may arrest without a warrant any person who the officer has probable cause to believe has committed any act in violation of the above-described prohibition that also is a violation of law and must make the arrest within a reasonable period of time after the commission of the violation. (R.C. 1721.19.)

Union terminal company personnel

Existing law. Existing law provides that the board of directors of a union terminal company (a type of railroad company established under existing R.C. 4953.01) may pass bylaws, rules, and regulations for its government and for the regulation of the depot and depot grounds and its business, requires the board to appoint such officers and agents as are necessary, and requires the board to adopt and post conspicuously in the passenger depot rules and regulations to control the conduct of all runners, solicitors, hackmen, and drivers of vehicles within the depot and depot grounds. It also provides that the officers and agents of a union terminal company have the same authority to arrest and bring to justice pickpockets, thieves, persons who violate the public peace, persons who violate any rules and regulations posted as described above, and persons who commit crimes and misdemeanors on the depot grounds, as constables possess within their respective townships. (R.C. 4953.07 and 4953.11.)

Operation of the bill. The bill replaces the existing arrest authority of officers and agents of a union terminal company with a new enforcement provision. Under the bill, an officer or agent of a union terminal company who has probable cause to believe that a person is a pickpocket, is a thief, has violated the public peace, has violated any of the posted rules or regulations, or has committed

any crime or misdemeanor on the depot grounds may detain the person in a reasonable manner and for a reasonable length of time within the property of the union terminal company, for the purpose of recovering any property involved in the violation, causing an arrest to be made by a peace officer, or obtaining an arrest warrant. An officer or agent of a union terminal company acting under authority of this provision is prohibited from searching the person detained, searching or seizing any property belonging to the person detained without the person's consent, or using undue restraint upon the person. Any peace officer, as defined in existing R.C. 2935.01 (see **COMMENT** 3), may arrest without a warrant any person who the officer has probable cause to believe is a pickpocket, is a thief, has violated any posted rule or regulation that also is a violation of law, or has committed any crime or misdemeanor on the depot grounds and must make the arrest within a reasonable period of time after the commission of the act or violation that is the basis of the arrest. (R.C. 4953.11.)

Railroad conductors, ticket agents, and certain special police officers

Existing law. Existing law provides that the conductor of every train carrying passengers, and the ticket agent and special policemen employed in or about a railroad or interurban railroad station, have the powers, duties, and responsibilities of police officers while on duty on the train or cars, or in or about the station, and may wear the badge of a special policeman. When a passenger is guilty of an offense on a passenger train or the cars of an interurban railroad carrying passengers, the conductor of the train or cars may arrest and take the passenger before a magistrate having cognizance of the offense in any county in which the train or cars runs, and file an affidavit before the magistrate charging the passenger with the offense; this provision and a separate provision authorizing a conductor to eject passengers for certain conduct do not affect the liability of a railroad company for damages caused by the conductor's conduct. (R.C. 4973.23 and 4973.25.)

Operation of the bill. The bill replaces the existing police powers of railroad conductors, ticket agents, and special police officers with new enforcement provisions (see **COMMENT** 4). Under the bill, the conductor of any train carrying passengers or of the cars of any interurban railroad carrying passengers, and a ticket agent employed in or about a railroad or interurban railroad station, while on duty on the train or cars, or in or about the station, who has probable cause to believe that a person has committed an offense may detain the person in a reasonable manner and for a reasonable length of time within the train, the cars, or the station, for the purpose of recovering any property involved in the offense, causing an arrest to be made by a peace officer, or obtaining an arrest warrant. A conductor or ticket agent acting under authority of this provision

is prohibited from searching the person detained, searching or seizing any property belonging to the person detained without the person's consent, or using undue restraint upon the person. Any peace officer, as defined in existing R.C. 2935.01 (see **COMMENT** 3), may arrest and detain without a warrant any person who the officer has probable cause to believe has committed any violation of law and must make the arrest within a reasonable period of time after the commission of the act or violation that is the basis of the arrest. This provision and a separate existing provision authorizing a conductor to eject passengers for certain conduct (not in the bill) do not affect the liability of a railroad company for damages caused by the conductor's conduct. (R.C. 4973.23 and 4973.25.)

Keeping a resort for thieves, burglars, or robbers

Existing law

Existing law specifies that a house or building that is used or occupied as a habitual resort for thieves, burglars, or robbers is a public nuisance, and the court may order the nuisance abated. It prohibits a person from keeping a house that is a habitual resort for thieves, burglars, or robbers, from letting a house be so kept, or from knowingly permitting a house that the person has let be so kept. A violation of this prohibition is a misdemeanor of the fourth degree. (R.C. 3767.12 and 3767.99(B).)

Operation of the bill

The bill expands the existing "keeping a resort for thieves" provisions to also cover persons involved in specified types of felonious conduct. Under the bill, a house or building that is used or occupied as a habitual resort for thieves, burglars, or robbers, *or for persons who are conspiring or planning to commit, who are fleeing after having committed or after attempting to commit, or who are in hiding after having committed or after attempting to commit, "felonious conduct"* (see below) is a public nuisance, and the court may order the nuisance abated. Under the bill, the existing prohibition is expanded to prohibit a person from keeping a house that is a habitual resort for thieves, burglars, or robbers, *or for persons who are conspiring or planning to commit, who are fleeing after having committed or after attempting to commit, or who are in hiding after having committed or after attempting to commit, "felonious conduct,"* from letting a house be so kept, or from knowingly permitting a house that the person has let be so kept. As under existing law, a violation of this prohibition is a misdemeanor of the fourth degree. For purposes of these provisions, "felonious conduct" means an offense that is a felony or a delinquent act that would be a felony if committed by an adult. (R.C. 3767.12, and R.C. 3767.99(B)--not in the bill.)

Dueling

Existing law

Existing law prohibits a person from fighting a duel, being a second to a person who fights a duel, challenging another to fight a duel, accepting a challenge to fight a duel, or knowingly being the bearer of a challenge to fight a duel. A violation of any of the prohibitions is a felony of the fourth degree. (R.C. 3773.07 and 3773.99(B).)

Operation of the bill

The bill repeals the existing duel-related prohibitions described above (Section 2--repeal of R.C. 3773.07, and R.C. 3773.99).

Bridge companies

Existing law

Existing R.C. Chapter 1741. governs bridge companies incorporated to construct a bridge over a stream of water in Ohio and bridge companies incorporated to construct a bridge over the Ohio River. None of the provisions has been amended since, at the latest, 1953. (R.C. Chapter 1741.)

One of the provisions specifies that a bridge company authorized by its charter to take tolls above certain statutorily specified rates, may charge and receive the following rates, and no more: (1) for each foot passenger, 1¢, (2) for each horse, mule, or ass one year old and upward, 3¢, (3) for each horse and rider, 10¢, (4) for every chaise, chariot, gig, or other two-wheeled or four-wheeled pleasure carriage drawn by one horse, 15¢, (5) for every such vehicle drawn by two horses, 25¢, (6) for every such vehicle drawn by four horses, 30¢, (7) for every sled or sleigh drawn by one horse or other animal, 10¢, plus 3¢ for each additional animal drawing such sled or sleigh, (8) for every wagon drawn by one horse or other animal, 10¢, plus 3¢ for each additional animal drawing such wagon, (9) for every wagon drawn by two horses or other animals, 15¢, plus 3¢ for each additional animal drawing such wagon, (10) for each head of neat cattle, six months old or upward, 1¢, and (11) for each head of sheep, goats, or hogs, ½¢. This provision does not affect any company in whose charter special rates are provided and does not give any power to the General Assembly to alter or amend such a charter. A bridge company, before receiving tolls upon its bridge, must set up and keep in a conspicuous place on its bridge a board on which are written, painted, or printed, in a plain and legible manner, the rates of toll charged at the bridge. (R.C. 1741.02.)

Another provision specifies that a company incorporated to construct a bridge over the Ohio River may fix and collect reasonable rates of toll for all persons, animals, vehicles, and property passing over the bridge, but at no time may the rates exceed those collected at the Covington-Cincinnati bridge. The company must set up and keep in a conspicuous place, at each end of its bridge, a board on which the rates are written, painted, or printed, in a plain and legible manner. (R.C. 1741.08.)

A third provision specifies that a bridge owner or company may make and enforce any rule that it deems necessary to preserve and protect its property and to collect its tolls and may prevent any person from crossing a bridge owned by it on foot or by riding, or from driving a team, a vehicle, or stock on the bridge, who fails to pay the regular fare when it is demanded. The policeman or watchman of the bridge is granted all the powers of policemen of cities, and is authorized to arrest without warrant, at or upon the bridge, any person who violates the law, or the rules of the owner of the bridge, and take the person before the proper civil authority. (R.C. 1741.14.)

Operation of the bill

The bill repeals Chapter 1741., the law governing bridge companies, in its entirety (Section 2 of the bill--repeal of R.C. 1741.01, 1741.02, 1741.03, 1741.04, 1741.05, 1741.06, 1741.07, 1741.08, 1741.09, 1741.10, 1741.11, 1741.12, 1741.13, 1741.14, and 1741.99).

State Criminal Sentencing Commission

The bill renames the State Criminal Sentencing Council as the State Criminal Sentencing Commission. Until 1996, the entity was known as the State Criminal Sentencing Commission. (R.C. 181.21, 181.22, 181.23, 181.24, and 181.25.)

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) Bulk amount or less-- School or juvenile--	F4 F3	No presumption No presumption
(2) *Exceeds* bulk amount and *does not exceed* 5 times bulk amount-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(3) *Exceeds* 5 times bulk amount and *does not exceed* 50 times bulk amount-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(4) *Exceeds* 50 times bulk amount and *does not exceed* 100 times bulk amount--	F1	Mandatory prison term
(5) *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) Bulk amount or less--	F5	No presumption

Amount of controlled substance involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
School or juvenile--	F4	No presumption
(2) *Exceeds* bulk amount and *does not exceed* 5 times bulk amount-- School or juvenile--	F4 F3	Presumption for Presumption for
(3) *Exceeds* 5 times bulk amount and *does not exceed* 50 times bulk amount-- School or juvenile--	F3 F2	Presumption for Presumption for
(4) *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) 200 grams or less-- School or juvenile--	F5 F4	No presumption No presumption
(2) *Exceeds* 200 grams and *does not exceed* 1,000 grams-- School or juvenile--	F4 F3	No presumption No presumption
(3) *Exceeds* 1,000 grams and *does not exceed* 5,000 grams-- School or juvenile--	F3 F2	No presumption Presumption for
(4) *Exceeds* 5,000 grams and *does not exceed* 20,000 grams-- School or juvenile--	F3 F2	Presumption for Presumption for
(5) *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) 5 grams or less of cocaine that is not crack cocaine or one gram or less of crack cocaine-- School or juvenile--	F5 F4	No presumption No presumption
(2) *Exceeds* 5 grams of cocaine that is not crack cocaine or one gram of crack cocaine and *does not exceed* 10 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine-- School or juvenile--	F4 F3	Presumption for Presumption for
(3) *Exceeds* 10 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine and *does not exceed* 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) *Exceeds* 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine and *does not exceed* 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) *Exceeds* 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine and *does not exceed* 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F1	Mandatory prison term
(6) *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) 10 unit doses or less of solid L.S.D. or 1 gram or less of liquid L.S.D.-- School or juvenile--	F5 F4	No presumption No presumption
(2) *Exceeds* 10 unit doses of solid L.S.D. or 1 gram of liquid L.S.D. and *does not exceed* 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) *Exceeds* 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D. and *does not exceed* 250 unit 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) *Exceeds* 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D. and *does not exceed* 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) *Exceeds* 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D. and *does not exceed* 5,000 unit doses of solid L.S.D. or 500 grams of liquid L.S.D.--	F1	Mandatory prison term
(6) *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) One gram or less-- School or juvenile--	F5 F4	No presumption No presumption
(2) *Exceeds* one gram and *does not exceed* 5 grams-- School or juvenile--	F4 F3	Presumption for Presumption for
(3) *Exceeds* 5 grams and *does not exceed* 10 grams-- School or juvenile--	F3 F2	Presumption for Presumption for
(4) *Exceeds* 10 grams and *does not exceed* 50 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) *Exceeds* 50 grams and *does not exceed* 250 grams--	F1	Mandatory prison term
(6) *Exceeds* 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) Ten grams or less of solid hashish or 2 grams or less of liquid hashish-- School or juvenile--	F5 F4	No presumption No presumption
(2) *Exceeds* 10 grams of solid hashish or 2 grams of liquid hashish and *does not exceed* 50 grams of solid hashish or 10 grams of liquid hashish-- School or juvenile--	F4 F3	No presumption No presumption
(3) *Exceeds* 50 grams of solid hashish or 10 grams of liquid hashish and *does not exceed* 250 grams of solid hashish or 50 grams of liquid hashish-- School or juvenile--	F3 F2	No presumption Presumption for
(4) *Exceeds* 250 grams of solid hashish or 50 grams of liquid hashish and *does not exceed*		

Amount of hashish involved and location of offense	Degree of offense	Presumption for or against prison term and mandatory prison term
1,000 grams of solid hashish or 200 grams of liquid hashish-- School or juvenile--	F3 F2	Presumption for Presumption for
(5) *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) Bulk amount or less--	F5	Presumption against
(2) *Exceeds* bulk amount and *does not exceed* 5 times bulk amount--	F3	Presumption for
(3) *Exceeds* 5 times bulk amount and *does not exceed* 50 times bulk amount--	F2	Mandatory prison term
(4) *Exceeds* 50 times bulk amount and *does not exceed* 100 times bulk amount--	F1	Mandatory prison term
(5) *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

Amount of controlled substance involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(1) Bulk amount or less-- Prior drug abuse conviction--	M3 M2	
(2) *Exceeds* bulk amount and *does not exceed* 5 times bulk amount--	F4	No presumption
(3) *Exceeds* 5 times bulk amount and *does not exceed* 50 times bulk amount--	F3	Presumption for
(4) *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 *does not exceed* 200 grams--	M4	
(3) *Exceeds* 200 grams and *does not exceed* 1,000 grams--	F5	Presumption against
(4) *Exceeds* 1,000 grams and *does not exceed* 5,000 grams--	F3	No presumption
(5) *Exceeds* 5,000 grams and *does not exceed* 20,000 grams--	F3	Presumption for
(6) *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) 5 grams or less of cocaine that is not crack cocaine or 1 gram of crack cocaine--	F5	Presumption against
(2) *Exceeds* 5 grams of cocaine that is not crack cocaine or 1 gram of crack cocaine and *does not exceed* 25 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine--	F4	Presumption for
(3) *Exceeds* 25 grams of cocaine that is not crack cocaine or 5 grams of crack cocaine and *does not exceed* 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine--	F3	Mandatory prison term
(4) *Exceeds* 100 grams of cocaine that is not crack cocaine or 10 grams of crack cocaine and *does not exceed* 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine--	F2	Mandatory prison term
(5) *Exceeds* 500 grams of cocaine that is not crack cocaine or 25 grams of crack cocaine and *does not exceed* 1,000 grams of cocaine that is not crack cocaine or 100 grams of crack cocaine--	F1	Mandatory prison term
(6) *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) 10 unit doses or less of solid L.S.D. or 1 gram or less of liquid L.S.D.--	F5	Presumption against
(2) *Exceeds* 10 unit doses of solid L.S.D. or 1 gram of liquid L.S.D. and *does not exceed* 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D.--	F4	No presumption
(3) *Exceeds* 50 unit doses of solid L.S.D. or 5 grams of liquid L.S.D. and *does not exceed* 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D.--	F3	Presumption for
(4) *Exceeds* 250 unit doses of solid L.S.D. or 25 grams of liquid L.S.D. and *does not exceed* 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D.--	F2	Mandatory prison term
(5) *Exceeds* 1,000 unit doses of solid L.S.D. or 100 grams of liquid L.S.D. and *does not exceed* 5,000 unit doses of solid L.S.D. or 500 grams of liquid L.S.D.--	F1	Mandatory prison term
(6) *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) One gram or less--	F5	Presumption against
(2) *Exceeds* one gram and *does not exceed* 5 grams--	F4	No presumption
(3) *Exceeds* 5 grams and *does not exceed* 10 grams--	F3	Presumption for
(4) *Exceeds* 10 grams and *does not exceed* 50 grams--	F2	Mandatory prison term

Amount of heroin involved	Degree of offense	Presumption for or against prison term and mandatory prison term
(5) *Exceeds* 50 grams and *does not exceed* 250 grams--	F1	Mandatory prison term
(6) *Exceeds* 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) 5 grams or less of solid hashish or 1 gram or less of liquid hashish--	Minor misdemeanor	
(2) *Equals or exceeds* 5 grams of solid hashish or 1 gram of liquid hashish and *does not exceed* 10 grams of solid hashish or 2 grams of liquid hashish--	M4	
(3) *Exceeds* 10 grams of solid hashish or 2 grams of liquid hashish and *does not exceed* 50 grams of solid hashish or 10 grams of liquid hashish--	F5	Presumption against
(4) *Exceeds* 50 grams of solid hashish or 10 grams of liquid hashish and *does not exceed* 250 grams of solid hashish or 50 grams of liquid hashish--	F3	No presumption
(5) *Exceeds* 250 grams of solid hashish or 50 grams of liquid hashish and *does not exceed* 1,000 grams of solid hashish or 200 grams of liquid hashish--	F3	Presumption for
(6) *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. Existing R.C. 2935.01 specifies that "peace officer" includes a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to law, metropolitan housing authority police officer, regional transit authority police officer, state university law enforcement officer, Department of Public Safety liquor control investigator or food stamp trafficking agent, Ohio veterans' home policeman, township police constable or police officer, and, for certain specified law enforcement purposes, the Superintendent and troopers of the State Highway Patrol.

4. Separate provisions of existing law, not affected by the bill, authorize the Governor, upon the application of a railroad company, to appoint and commission any persons that the railroad company designates to act as police officers for and on the premises of the railroad company, its affiliates and subsidiaries, or elsewhere, when directly in the discharge of their duties. Police officers so appointed, within the time set by the Ohio Peace Officer Training Commission, must successfully complete a Commission-approved training program and be certified by the Commission. They hold office for three years unless, for good cause shown, their commission is revoked by the Governor or the railroad company, and they have the powers of, and are subject to the liabilities of, municipal police officers while discharging the duties for which they are appointed. (R.C. 4973.17 to 4973.19.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	03-16-99	pp.	204-205
Reported, S. Judiciary	05-19-99	p.	456
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