



H.B. 133

124th General Assembly

(As Introduced)

Reps. Patton, Beatty, Flowers, Hartnett, Calvert, Strahorn, Sferra, Allen, DePiero, Redfern, Lendrum, Cirelli, Hoops, Boccieri, Barrett, Metelsky, S. Smith, Ford, Otterman, Jones, D. Miller, Perry, Britton, Key, Sulzer

BILL SUMMARY

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

CONTENT AND OPERATION

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

Trafficking in cocaine

Existing law

Existing law prohibits a person from knowingly selling or offering to sell a controlled substance or knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person. If the drug is cocaine or a compound, mixture, preparation, or substance containing cocaine, a

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

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

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

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

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

Amount of crack cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(2) Equals or exceeds 1 gram and is less than 5 grams-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term
(3) Equals or exceeds 5 grams and is less than 10 grams-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(4) Equals or exceeds 10 grams and is less than 25 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Equals or exceeds 25 grams and is less than 100 grams--	F1	Mandatory prison term
(6) Equals or exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years.

Operation of the bill

The bill abolishes the references to "crack cocaine" and "cocaine that is not crack cocaine" and establishes one range of penalties for trafficking in cocaine. Those penalties are the same as the penalties in existing law that apply to crack cocaine. (R.C. 2925.03(C)(4).)

Possession of cocaine

Existing law

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

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

Amount of cocaine involved (not crack cocaine)	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) Less than 5 grams--	F5	Option 1
(2) Equals or exceeds 5 grams and is less than 25 grams--	F4	Presumption for prison term
(3) Equals or exceeds 25 grams and is less than 100 grams--	F3	Mandatory prison term
(4) Equals or exceeds 100 grams and is less than 500 grams--	F2	Mandatory prison term
(5) Equals or exceeds 500 grams and is less than 1,000 grams--	F1	Mandatory prison term
(6) Equals or exceeds 1,000 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

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

Amount of crack cocaine involved	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term
(1) Less than 1 gram--	F5	Option 1
(2) Equals or exceeds 1 gram and is less than 5 grams--	F4	Presumption for prison term
(3) Equals or exceeds 5 grams and is less than 10 grams--	F3	Mandatory prison term
(4) Equals or exceeds 10 grams and is less than 25 grams--	F2	Mandatory prison term
(5) Equals or exceeds 25 grams and is less than 100 grams--	F1	Mandatory prison term
(6) Equals or exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Operation of the bill

The bill abolishes the references to "crack cocaine" and "cocaine that is not crack cocaine" and establishes one range of penalties for possession of cocaine. Those penalties are the same as the penalties in existing law that apply to crack cocaine. (R.C. 2925.11(C)(4).)

Major drug offender

Existing law

Existing law provides additional penalties to be imposed upon a person who is a major drug offender (R.C. 2929.14, and various provisions of R.C. 2925.03, 2925.04, and 2925.11). For this purpose, it defines "major drug offender" as an offender who is convicted of or pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains any of the following (R.C. 2929.01(X)):

- (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 2,500 unit doses or 250 grams of heroin;
- (5) At least 5,000 unit doses of L.S.D. or 500 grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form; or
- (6) At least 100 times the amount of any other schedule I or II controlled substance other than marijuana that is necessary to commit a felony of the third degree pursuant to one of four specified sections of the Revised Code that is based on the possession of, sale of, or offer to sell the controlled substance.

Operation of the bill

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

Other changes

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

COMMENT

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

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

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

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

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

2. As used in the charts:

"Option 1" means a sentencing procedure specified in the existing Sentencing Law for felonies of the fourth and fifth degree. The sentencing court must determine whether any one of eight factors specified in the Sentencing Law applies. If none of the factors apply, and if the court, after considering general sentencing principles and purposes, finds that a community control sanction or a combination of community control sanctions is consistent with the purposes and principles of sentencing, the court must impose a community control sanction or combination of sanctions. If the court finds that one of the factors applies, that a prison term is consistent with the purposes and principles of sentencing, and that the offender is not amenable to an available community control sanction, the court must impose a prison term (R.C. 2929.13(B)).

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

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

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

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

"School" and "juvenile" mean that the penalty for an offense involving a certain amount of cocaine is enhanced when the offense is committed in the vicinity of a school or in the vicinity of a juvenile (defined in R.C. 2925.01(P) and (BB)).

HISTORY

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Introduced	02-27-01	p. 185

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