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Bill Analysis
Legislative Service Commission

S.B. 73*

127th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

Sens. R. Miller, Smith, Mason, Goodman

BILL SUMMARY

- Eliminates the distinction between crack cocaine and cocaine that is not crack cocaine in the penalties for "trafficking in cocaine" and "possession of cocaine" and uses the drug quantity thresholds that currently are specified for the crack cocaine penalties as the basis for determining the penalties for those offenses for all types of cocaine.
- In the element of the offense of "aggravated funding of drug trafficking" that specifies the threshold amount of cocaine that must be involved in the funding conduct in order for the offense to have occurred, eliminates the distinction between crack cocaine and cocaine that is not crack cocaine and for all types of cocaine uses the drug quantity threshold that currently is specified for crack cocaine as the basis for determining whether the offense has occurred.
- In the definition of "major drug offender" that applies in the Criminal Sentencing Law, eliminates the distinction between crack cocaine and cocaine that is not crack cocaine and for all types of cocaine uses the drug quantity threshold that currently is specified for crack cocaine as the basis for determining whether an offender is a major drug offender.

CONTENT AND OPERATION

The bill eliminates the distinction between "crack cocaine" and "cocaine that is not crack cocaine" that existing law makes in certain provisions:

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

(1) Currently, the penalties for the state's drug trafficking offenses and drug possession offenses vary, depending upon the type and amount of the drug involved, and the circumstances of the offense. If the drug involved is cocaine, the offenses are "trafficking in cocaine" and "possession of cocaine," and two distinct sets of penalties are provided--one set applies to cocaine that is crack cocaine, and the other applies to cocaine that is not crack cocaine. The bill eliminates the penalty distinctions between the two forms of cocaine and uses the drug quantity thresholds currently specified for the crack cocaine penalties as the basis for determining the penalties, regardless of the form of the cocaine involved. (R.C. 2925.03(C)(4) and 2925.11(C)(4).)

(2) Currently, one of the elements of the offense of "aggravated funding of drug trafficking" specifies a threshold amount of the Schedule I or II drug that must be involved in the funding conduct in order for the offense to have occurred. If the drug involved is cocaine, the element specifies two distinct amounts that must be involved--one amount applies to cocaine that is crack cocaine, and the other applies to cocaine that is not crack cocaine. The bill eliminates the distinction between the two forms of cocaine that currently is made in the element and uses the drug quantity threshold currently specified for crack cocaine as the basis for determining whether the offense has occurred, regardless of the form of the cocaine involved in the conduct. (R.C. 2925.05(A)(3).)

(3) Currently, under the special sentencing mechanism that applies when a person who is being sentenced for a felony is a major drug offender, the definition of "major drug offender" specifies a threshold amount for each drug that must be involved in the offender's conduct in order for the offender to be within the definition. If the drug involved is cocaine, the definition specifies two distinct amounts that must be involved--one amount applies to cocaine that is crack cocaine, and the other applies to cocaine that is not crack cocaine. The bill eliminates the distinction between the two forms of cocaine that currently is made in the definition and uses the drug quantity threshold currently specified for crack cocaine as the basis for determining whether the offender is a major drug offender, regardless of the form of the cocaine involved. (R.C. 2929.01(X).)

Trafficking in cocaine

Existing law

Existing law prohibits a person from knowingly: (1) selling or offering to sell a controlled substance, or (2) 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. The name of, and penalties for, a violation of the prohibition vary, depending upon the type and amount of the drug involved and the circumstances of the offense. 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 trafficking in cocaine 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 (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 (R.C. 2925.03(C)(4)):

Amount of cocaine involved (not crack cocaine) and location of offense (see COMMENT 2)	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term (see COMMENT 2)
(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 (R.C. 2925.03(C)(4)):

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

Amount of crack cocaine involved and location of offense (see COMMENT 2)	Degree of offense	Option 1 or 2, presumption for prison term, and mandatory prison term (see COMMENT 2)
(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 in the penalty provisions to "crack cocaine" and "cocaine that is not crack cocaine" and establishes one range of offense classifications and penalties for trafficking in cocaine. Those offense classifications and penalties are the same as the offense classifications and penalties in existing law that apply when the offense involves 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. The name of, and penalties for, a violation vary, depending upon the type and amount of the drug involved and the circumstances of the offense. If the drug 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 possession of cocaine 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 (see **COMMENT 1**).

If the cocaine is not crack cocaine, the classification and penalty for possession of cocaine are as set forth in the following chart (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 (see COMMENT 2)
(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 (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 (see COMMENT 2)
(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 in the penalty provisions to "crack cocaine" and "cocaine that is not crack cocaine" and establishes one range of

offense classifications and penalties for possession of cocaine. Those offense classifications and penalties are the same as the offense classifications and penalties in existing law that apply when the offense involves crack cocaine. (R.C. 2925.11(C)(4).)

Aggravated funding of drug trafficking

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 use them to obtain any controlled substance for the purpose of committing the offense of "illegal manufacture of drugs" or "illegal cultivation of marihuana" (both set forth in R.C. 2925.04--not in the bill) or for the purpose of selling or offering to sell the controlled substance in an amount that equals or exceeds a specified threshold amount for the particular controlled substance involved in the violation. If the drug to be sold or offered for sale is cocaine or a compound, mixture, preparation, or substance containing cocaine, the specified threshold amount that constitutes the element of the offense is *an amount 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.*

The name of, and penalties for, a violation of the prohibition vary, depending upon the type of drug involved. If the drug involved in the violation is any compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana (under existing R.C. 3719.41, not in the bill, cocaine is included in Schedule II), a person who violates the prohibition is guilty of "aggravated funding of drug trafficking," a felony of the first degree, and, except as described in the next sentence, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. If the court finds that the offender as a result of the violation is a "major drug offender," the court, in lieu of the prison term otherwise authorized or required and pursuant to R.C. 2929.14(D)(3), must impose upon the offender a mandatory ten-year prison term and may impose an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years. (R.C. 2925.05(A), (C), and (E).)

Operation of the bill

The bill abolishes the references to "crack cocaine" and "cocaine that is not crack cocaine" that currently are contained in the element of the offense of "aggravated funding of drug trafficking" that specifies the threshold amount of cocaine that must be involved in the funding conduct in order for the offense to have occurred and establishes one threshold amount for cocaine to be used as the basis for determining whether the offense has occurred. Under the bill, the

threshold amount is the same as the threshold amount specified in existing law that applies when the funding conduct involves crack cocaine. (R.C. 2925.05(A)(3).)

Major drug offender sentencing

Existing law

Sentencing mechanism. Existing law provides a special sentencing mechanism that applies when a person who is being sentenced for a felony is determined to be a "major drug offender." The mechanism specifies that, except when the offense is a violation of R.C. 2903.01 or 2907.02 and the penalty imposed is life imprisonment or when the offense is a violation of R.C. 2903.02, if an offender convicted of a felony commits a drug trafficking offense or drug possession offense under R.C. 2925.03 or 2925.11 and the section classifies the offender as a "major drug offender" (see below) and requires the imposition of a ten-year prison term on the offender, if the offender commits a felony violation of R.C. 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, 4729.61, 3719.172(C) or (D), 4729.51(C), or 4729.54(J) that includes the sale, offer to sell, or possession of a Schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in R.C. 2941.1410 charging that the offender is a "major drug offender" (see below), if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity is a felony of the first degree, or if the offender is guilty of an attempted violation of R.C. 2907.02 and, had the offender completed the violation of that section that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of that section, the court must impose upon the offender for the felony a ten-year prison term that cannot be reduced pursuant to R.C. 2929.20 or R.C. Chapter 2967. or 5120.

The mechanism then provides that the court imposing a prison term on an offender under the provision described in the preceding paragraph may impose an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years, if the court, with respect to the term imposed as described in the preceding paragraph, finds that both of the following apply with respect to the term so imposed: (1) the term so imposed is inadequate to punish the offender and protect the public from future crime, because the applicable factors under R.C. 2929.12 indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism, and (2) the term so imposed is demeaning to the seriousness of the offense, because one or more of the factors under R.C. 2929.12 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 section indicating that the offender's conduct is less

serious than conduct normally constituting the offense. (R.C. 2929.14(D)(3), not in the bill.)

Definition of "major drug offender". For purposes of the special sentencing mechanism described in the preceding two paragraphs, existing law 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 marihuana 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 repeals the existing definition of crack cocaine, which is set forth in **COMMENT 1** (repeal of R.C. 2925.01(GG)), because the term "crack cocaine" no longer will be used in R.C. Chapter 2925. or 2929. The bill, through an oversight, does not repeal a cross-reference to the definition that is contained in R.C. 2929.01(D), but the cross-reference will have no meaning after the definition is repealed.

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, or (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 felony Sentencing Law for felonies of the fourth and fifth degree. The sentencing court must determine whether any one of eight factors of an "aggravating" nature specified in the Sentencing Law applies. If the court finds that none of the factors apply, and, after considering specified factors regarding the seriousness of the offense and factors regarding the likelihood of the offender committing future crimes, finds that a community control sanction or a combination of community control sanctions is consistent with the purposes and principles of felony sentencing, the court must impose a community control sanction or combination of sanctions. If the court finds that one or more of the factors applies, and, after considering the general principles and purposes, finds 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 and certain felony drug offenses that are of another degree but are made subject to this option. In order to determine whether to impose a prison term upon the offender, the court must comply with the purposes and principles of felony sentencing and must consider specified factors regarding the seriousness of the offense and regarding the likelihood of the offender committing future crimes (R.C. 2929.13(C)).

"Presumption for a prison term" means a sentencing procedure specified in that Law for felonies of the first or second degree and certain felony drug offenses that are felonies of another degree but are made subject to the procedure. Under

the procedure, it is presumed that a prison term is necessary to comply with the purposes and principles of felony sentencing, but, notwithstanding the presumption, the court may impose a community control sanction or combination of community control sanctions on the offender instead of a prison term if, based on the specified factors regarding the seriousness of the offense and factors regarding the likelihood of the offender committing future offenses, the court makes specified findings that "overcome" the presumption. (R.C. 2925.01(CC) and 2929.13(D).)

"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 (R.C. 2925.01(FF) and 2929.01(Y)).

"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 (R.C. 2925.01(DD), 2929.01, and 2929.14(D)(3)).

"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. An offense is "committed in the vicinity of a school" if the offender commits it on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises, and an offense is "committed in the vicinity of a juvenile" if the offender commits it within 100 feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within 100 feet of the juvenile, or whether the juvenile actually views the commission of the offense. (R.C. 2925.01(P) and (BB).)

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. Judiciary - Criminal Justice	---

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