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Substitute Bill Comparative Synopsis

Sub. S.B. 3

133rd General Assembly

In Senate Judiciary

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This table summarizes how the latest substitute version of S.B. 3 (I_133_0567-3) differs from the immediately preceding version (I_133_0567-2). It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same. References in this table to the bill's controlled substance trafficking offenses or the bill's controlled substance possession offenses mean the controlled substance trafficking offenses or possession offenses as they are amended by, or enacted in, the bill.

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| Jurisdiction over felony drug offense reclassified as misdemeanor | |
| Specifies that a municipal court or county court does not have jurisdiction to hear any charge of a "reclassified misdemeanor drug possession offense" (see below) unless the particular court operates a drug court. If a municipal court or county court operates a drug court, the drug court is required to hear all charges of any reclassified drug possession offense that is committed within the municipal court's or county court's territory. The common pleas court is required to hear all charges of any reclassified misdemeanor drug possession offense committed within the territory of a municipal court or county court that does not have a drug court. (R.C. 1901.20 and 1907.02.) | Specifies that, in addition to all other jurisdiction granted a municipal court or county court, those courts have concurrent jurisdiction with the court of common pleas of the county in which the municipal court or county court is located in all criminal actions or proceedings that pertain to a charge of a "reclassified misdemeanor drug possession offense" (see below) that is committed within the territory of the municipal court or county court, provides that the "appropriate prosecuting authorities" (see below) determine where the case is to be heard, and specifies that the court that is hearing the case decides whether to put it in a specialized docket court or program (R.C. 1901.186, 1901.20, and 1907.02). |

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| <p>Defines “reclassified misdemeanor drug possession offense” for purposes of the provisions above as a violation of current R.C. 2925.11 committed prior to the bill’s effective date and to which both of the following apply: (1) at the time of the commission of the violation, the violation was a felony under the version of R.C. 2925.11 that then was in effect, and (2) on the bill’s effective date, the offense classification of the felony violation was reduced to a misdemeanor under the bill’s version of R.C. 2925.11 or 2925.111 that takes effect on that date. <i>(R.C. 1901.20 and 1907.02.)</i></p> <p>No provision.</p> | <p>Defines “reclassified misdemeanor drug possession offense” for purposes of the provisions as a violation of a prohibition under the bill’s version of R.C. 2925.11, 2925.111, or 2925.112 committed on or after the bill’s effective date, or of a prohibition under the current version of R.C. 2925.11 committed prior to the bill’s effective date, and to which all of the following apply: (1) prior to the bill’s effective date, the violation was a felony under the current version of R.C. 2925.11, (2) on the bill’s effective date, the offense classification of the felony violation referred to in clause (1) was reduced to a misdemeanor under the bill’s version of R.C. 2925.11, 2925.111, or 2925.112 that takes effect on that date, and (3) if the offense is a violation of a prohibition under current R.C. 2925.11 and was committed prior to the bill’s effective date, the penalty, forfeiture, or punishment for that violation has not been imposed as of that date. <i>(R.C. 1901.186, 1901.20, and 1907.02.)</i></p> <p>Defines “appropriate prosecuting authorities” for purposes of the provision as the county prosecuting attorney who would handle the case in the common pleas court and the village solicitor, city director of law, or similar chief legal officer who would handle the case in the municipal or county court, whichever is applicable <i>(R.C. 1901.186, 1901.20, and 1907.02).</i></p> |
| <p>Application of trafficking and possession provisions to offenses occurring prior to effective date (i.e., transition provisions)</p> | |
| <p>No provisions expressly addressing this topic.</p> | <p>Clarifies that the bill’s controlled substance trafficking and possession provisions will apply to charges involving conduct committed before the bill’s effective date, if either: (1) the charges are pending on that date, or (2) the offender has not yet been sentenced as of that date and the changes the bill’s provisions make result in a reduction in penalty <i>(R.C. 2925.03(S) and 2925.11(J))</i>.</p> |

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| Definition of “sexual assault-enabling drug” | |
| <p>Defines the term “sexual assault-enabling drug” for use in its controlled substance trafficking provisions as meaning any of the following (<i>R.C. 2925.01(PP)(1) to (5)</i>): (1) Gamma hydroxybutyric acid, (2) Flunitrazepam, (3) Clonazepam, (4) Alprazolam, or (5) Ketamine.</p> | <p>Expands the bill’s definition of “sexual assault-enabling drug” used in its controlled substance trafficking provisions to include, in addition to the five drugs specifically identified in the prior version, a drug that a person possessed illegally if (<i>R.C. 2925.01(PP)(6)</i>): (1) the person was convicted of any of the bill’s controlled substance trafficking or possession offenses, (2) the person used the drug in question to prevent another person’s resistance to sexual activity by substantially impairing the other person’s judgment or control by administering the drug surreptitiously or by force, threat, or deception, and (3) the person, after administering the drug, engaged in sexual activity with the other person.</p> |
| Penalties for trafficking offenses committed in vicinity of a school | |
| <p>Regarding the penalties for the bill’s controlled substance trafficking and possession offenses (<i>R.C. 2925.03, 2925.031, 2925.032, 2925.11, and 2925.111</i>):</p> <ol style="list-style-type: none"> 1. Changes the controlled substance threshold amounts that determine the penalties for the offenses; 2. Modifies the penalties for the offenses, except (subject to the change described in clause (3)) when the violation involves a sexual assault-enabling drug or a fentanyl-related compound; and 3. Eliminates the increased penalties under existing law for controlled substance trafficking offenses involving any drug when the offense is committed in the vicinity of a school or in the vicinity of a juvenile. | <p>Same (<i>R.C. 2925.03, 2925.031, 2925.032, 2925.11, and 2925.111</i>), except that it also returns to the increased penalties under existing law for controlled substance trafficking offenses involving any drug when the offense is committed in the vicinity of a school. It does not return to the increased penalties under existing law for a trafficking offense involving any drug when committed in the vicinity of a juvenile. (<i>R.C. 2925.03(C)(1)(a), (D)(1), (E)(1), (F)(1), (I), (J), and (K)(1), 2925.031(C)(1)(b) and (c), and 2925.032(B)(1)(a)(ii), (B)(2)(a)(i), (B)(3), (B)(4), (B)(5)(a) and (b), (B)(8)(a)(ii) and (iii), (B)(8)(b)(ii), (B)(9), and (B)(10)(a)(ii) and (b)(ii).</i>)</p> |

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| Possession of a controlled substance trace amount | |
| <p>Modifies the current offenses that pertain to controlled substance trafficking or possession by (<i>R.C. 2925.03, 2925.031, 2925.032, 2925.11, and 2925.111</i>): (1) relocating the current prohibitions into five Revised Code sections (instead of the current two sections), (2) redesignating the offenses as aggravated trafficking offenses, major trafficking in drugs, trafficking offenses, possession of a controlled substance, and possession of marijuana or possession of hashish, (3) treating possession of high amounts of a controlled substance as an aggravated trafficking offense or as major trafficking in drugs, (4) including a new prohibition that treats possession of relatively low amounts of a controlled substance as trafficking if the person possessing the controlled substance does so with purpose to distribute or sell it, (5) providing a new unclassified misdemeanor penalty for its controlled substance possession offenses, other than when the offense involves a fentanyl-related compound, a sexual assault-enabling drug, marijuana, or hashish, and (6) eliminating the criminal prohibitions and penalties for possession of or trafficking in amounts of a controlled substance, other than a fentanyl-related compound or a sexual assault-enabling drug, that are less than a specified minimum threshold for the <i>R.C. 2925.031</i> or <i>2925.11</i> trafficking and possession offenses.</p> | <p>Same (<i>R.C. 2925.03, 2925.031, 2925.032, 2925.11, and 2925.111</i>), except that</p> <ol style="list-style-type: none"> 1. Instead of the change described in clause (6) under the column discussing the prior version, it adds the new offenses of “possession of a controlled substance trace amount” and “possession of a trace amount of marijuana or hashish” that pick up possession of an amount that is less than the specified minimum threshold for the bill’s <i>R.C. 2925.11</i> and <i>2925.111</i> possession offenses and makes the new offense a minor misdemeanor if it involves marijuana or hashish and an unclassified misdemeanor if it involves any other controlled substance covered by the offense, with the unclassified misdemeanor being punished in the same manner as unclassified misdemeanors under the bill’s <i>R.C. 2925.11</i> possession offense (<i>R.C. 2925.112, and conforming changes made in numerous other statutes</i>); 2. It relocates the current prohibitions into six Revised Code sections, with the additional section containing the trace amount offenses described in clause (1). |
| Abeyance procedures | |
| <p>Enacts procedures pursuant to which a court may hold a prosecution of a misdemeanor controlled substance possession offense in abeyance. Under the provisions (<i>R.C. 2925.11(D) and 2925.111(H)</i>):</p> <ol style="list-style-type: none"> 1. If a person is charged with a misdemeanor violation of the bill’s offense of possession of a controlled substance, or the bill’s offense of possession of marijuana or possession | <p>Modifies the abeyance procedures of the prior version by (<i>R.C. 2925.11(D), 2925.111(H), and 2925.112(G)</i>):</p> <ol style="list-style-type: none"> 1. Extending the procedures to also apply to the bill’s offenses pertaining to possession of a trace amount of a controlled substance. 2. Changing the “prior conviction” disqualifying factor described in (1)(a) |

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| <p>of hashish other than a minor misdemeanor violation, the court may hold the prosecution in abeyance and stay all criminal proceedings with respect to the violation if: (a) the person has not previously been convicted of any of the bill's controlled substance trafficking or possession offenses, (b) the person agrees to a drug treatment program determined by the court to be appropriate, to comply with all treatment terms and conditions imposed by the court, and to complete the program, and (c) the person waives the right to a speedy trial and any other rights with respect to the time of proceedings related to the violation that otherwise would apply.</p> <p>2. If the court holds a prosecution in abeyance and stays all criminal proceedings against a person with respect to a violation under the procedures: (a) the court must issue an order that establishes terms and conditions of the drug treatment program and requires the person to complete the program, and must place the offender under the control and supervision of a specified supervisory agency or entity, if one exists, as if the offender was subject to a misdemeanor community control sanction, (b) if the court finds that the person has successfully completed the drug treatment program, the court must dismiss the proceedings against the person (successful completion is without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law upon conviction of a crime) and the court may order the sealing of records related to the offense in question, and (c) if the person fails to comply with any</p> | <p>under the column discussing the prior version so that the court may not use the abeyance procedures if the person has previously been convicted of the bill's offense of possession of a controlled substance (this offense does not apply with respect to marijuana or hashish), any of the bill's trafficking offenses, or a current controlled substance possession offense under the possession statute in effect prior to the bill's effective date if the drug that was the basis of the offense was other than marijuana or hashish.</p> <p>3. Adding a provision specifying that if the court determines that a person who was granted abeyance under the procedures has failed to comply with the applicable terms and conditions and issues an order that continues the person under the same treatment program with the same terms and conditions, issues an order that continues the person under the same treatment program with different terms and conditions, or issues an order that subjects the person to a different treatment program and establishes terms and conditions of the program, the court must place the person under the general control and supervision of an agency or entity as if the order was an original order.</p> |

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| <p>treatment program term or condition imposed, the person’s supervising authority must advise the court of the failure, and the court must hold a hearing to determine whether the person failed to comply with any such term or condition.</p> <p>3. If the court, at the hearing described in (2), determines that the person has failed to comply with any of those terms and conditions, it must: (a) issue an order that continues the person under the same treatment program, with the same terms and conditions, (b) issue an order that continues the person under the same treatment program, with different terms and conditions, (c) issue an order that subjects the person to a different treatment program and establishes terms and conditions of the program, or (d) continue with the prosecution of the violation that was held in abeyance.</p> <p>4. A person may not be required to enter a guilty plea to a misdemeanor violation of any of the bill’s controlled substance possession offenses for a court to hold the prosecution in abeyance and stay all criminal proceedings with respect to the violation under these provisions.</p> | |

Change of exemptions from trafficking and possession offenses to affirmative defenses

Retains exemptions to the current controlled substance trafficking and possession offenses that currently are provided to certain persons or entities (e.g., manufacturers, medical professionals, and pharmacists acting in accordance with law, certain anabolic steroid research personnel, persons engaged in conduct involving anabolic steroids for animal use, persons who obtained the controlled substance pursuant to a valid prescription, etc.) or for certain conduct, which specify that the current

Changes the current exemptions that specify that the controlled substance trafficking and possession offenses “do not apply” to the specified categories of persons, entities, or conduct to instead specify that proof of being in one of the specified categories or engaging in the specified conduct is “an affirmative defense” to a charge of committing the offense (*R.C. 2925.03(B), 2925.031(B), 2925.032(C), 2925.11(B)(1), and 2925.112(B)*).

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| <p>controlled substance trafficking and possession offenses “do not apply” to the specified persons, entities, or conduct (<i>R.C. 2925.03(B), 2925.031(B), 2925.032(C), and 2925.11(B)(1)</i>).</p> | |
| “Technical violations,” as used regarding prison sanction for community control violation | |
| <p>Existing law, unchanged by the bill, authorizes the use of several types of sanctions a court may impose on a person who violates a community control sanction imposed for a felony. One of the authorized sanctions is a prison term, subject to specified limitations.</p> <p>Currently, the prison term limitations specify that: (1) if the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a fifth degree felony or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term may not exceed 90 days, and (2) if the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a fourth degree felony that is not an offense of violence and is not a sexually oriented offense or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term may not exceed 180 days.</p> <p>The bill modifies the current prison term limitations by (<i>R.C. 2929.15(B)(1) and (4)</i>):</p> <ol style="list-style-type: none"> 1. Clarifying the application of the limitations on the use of a prison term as a sanction to specify that: (a) if the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a fifth degree felony, the prison term may not exceed 90 new days, which are in addition to the period of the community control, and (b) if the prison term is imposed for any technical | <p>Modifies the prison term limitation provisions of the prior version by (<i>R.C. 2929.15(B)(1) and (4)</i>):</p> <ol style="list-style-type: none"> 1. Clarifying that a prison term imposed for a violation of a community control sanction consists of “new” days of imprisonment and is in addition to the period of community control; and 2. Changing the definition of “technical violation” that applies regarding such a possible prison term so that a violation is a technical violation if it is neither: (a) a new felony or a new misdemeanor other than a minor misdemeanor, nor (b) a violation consisting of or including the offender’s articulated refusal to participate, or repeated refusal to participate, in the community control sanction or any of its conditions and the refusal convinces the court that the offender has abandoned the objects of the sanction or condition. |

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| <p>violation of the conditions of a community control sanction imposed for a fourth degree felony that is not an offense of violence and is not a sexually oriented offense, the prison term may not exceed 180 new days.</p> <p>2. Defining a “technical violation” as a violation of the conditions of a community control sanction imposed for a fifth degree felony, or for a fourth degree felony that is not an offense of violence and is not a sexually oriented offense, if the violation does not consist of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor and the violation is committed while under the community control sanction.</p> | |

Alcohol and drug abuse civil commitment mechanism

Modifies the existing mechanism pursuant to which a probate court, in specified circumstances, may order involuntary treatment for a person suffering from alcohol and other drug abuse, by *(R.C. 5119.93(A), (B), and (D) and 5119.94(A) and (D)(1))*:

1. Removing the requirement that the petitioner pay any filing fee to initiate the proceedings for treatment of the respondent;
2. Expanding the requirement that the petition include the petitioner’s belief that the respondent is suffering from alcohol and other drug abuse and presents an imminent danger or imminent threat of danger to self, family, or others if not treated for alcohol or other drug abuse and the factual basis for that belief to also require that the petition include any evidence that the respondent has overdosed and been revived at least three times by an opioid antagonist,

Same, except that it modifies existing law and some of the provisions of the prior version regarding the mechanism by *(R.C. 5119.93(A), (B)(7), (C)(1), (D)(1), and (D)(2) and 5119.94(B)(5), (C), (D)(1)(a) to (c), and (D)(2)(b))*:

1. Adding a provision specifying that the petition requesting civil commitment is confidential and disclosure is not permitted except as needed for purposes of the civil commitment provisions or as ordered by a court;
2. Changing the provisions described in (2) and (4) under the column discussing the prior version to: (a) clarify that the provisions regarding evidence of a respondent’s overdosing and being revived by an opioid antagonist apply only with respect to a petition related to a belief that the respondent is suffering from opioid or opiate abuse, and (b) reduce from three to one the number of prior revivals by an opioid antagonist that will suffice as evidence that the

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| <p>overdosed in a vehicle, or overdosed in the presence of a minor;</p> <ol style="list-style-type: none"> 3. Changing the requirement that the petition include a security deposit and a guarantee of payment of the costs of examinations of the respondent to instead require that the petition be accompanied by specified types of security deposits or documentation of insurance, and by a guarantee of payment or documentation of insurance coverage; 4. Specifying that evidence that the respondent has overdosed and been revived at least three times by an opioid antagonist, overdosed in a vehicle, or overdosed in the presence of a minor is sufficient to satisfy the evidentiary requirement that the respondent may reasonably benefit from treatment, that is required as the criterion for the court to order treatment for the respondent; and 5. Specifying that, if the court orders the treatment for the respondent, in addition to ordering the treatment through an entity or person specified under existing law, the court also may order that the respondent submit to periodic examinations by a qualified mental health professional to determine if the treatment remains necessary. | <p>respondent suffers from drug abuse and presents an imminent danger or imminent threat of danger;</p> <ol style="list-style-type: none"> 3. Adding a provision specifying that a physician responsible for admitting persons into treatment who actually examines the respondent may complete the required “physician’s certificate”; 4. Changing the provisions described in (3) under the column discussing the prior version to permit the petitioner to submit evidence to satisfy the court that the petitioner or respondent will be able to cover some of the estimated costs of treatment of the respondent (as an alternative to the security deposit or documentation of insurance); 5. Removing the existing requirement that a physician conduct a physical examination of the respondent before a hearing on the petition; 6. Adding provisions that: <ol style="list-style-type: none"> a. Require that, if a court issues a treatment order, the order must specify the type of treatment, the type of required aftercare, and the duration of the aftercare which must be at least three months and may not exceed six months; b. Provide for a period of up to 72 hours of emergency hospitalization of the respondent if the court makes specified findings; c. Require execution of the emergency hospitalization order as soon as possible, but not later than 72 hours, after issuance; d. Specify that if it is not possible to execute the order within that 72-hour period, the order is good for 60 days (the bill states 60 days, but the |

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| | <p>context of other parts of the amendment imply that the period might be intended to be six months), subject to tolling as described below in (6)(f), and can be executed at any time during that six-month period, subject to extension by tolling;</p> <ul style="list-style-type: none"> e. Specify that the provision requiring release of the respondent within 72 hours of admittance under an emergency hospitalization order does not apply if the respondent voluntarily agrees to remain longer and that a respondent who does so may be hospitalized for the additional period agreed to by the respondent; f. Specify that the six-month period described above in (6)(d) does not run during any time that the respondent purposely avoids execution of the order (see R.C. 2901.13 for the “avoidance” language) and if the six-month period is tolled, the order may be executed during the extended time; and g. Provide for a sanction, including a court appearance or transport to a facility for treatment, if a respondent ordered to undergo treatment fails to do so (the sanction is in addition to the current sanction of contempt of court). |
| State Criminal Sentencing Commission – LEADS agency and reports | |
| No provision. | Designates the State Criminal Sentencing Commission as a Law Enforcement Automated Data System criminal justice agency and requires the Commission to study the impact of the bill and, starting in 2020, to make a report every two years, on December 31, to the General Assembly and Governor regarding the results of the study and recommendations (<i>R.C. 181.27</i>). |

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