

The Ohio Judicial Conference, through the work of several of its committees, has reviewed SB 3 and has identified several problematic provisions. Generally, reclassifying drug possession crimes from felonies to misdemeanors is not a broadly supported idea within the judiciary. This shift is likely to undermine treatment, increase drug use, and possibly run counter to the stated goals of the bill. Below is a more specific, preliminary list of the Ohio Judicial Conference's concerns:

**Sec. 1901.20: Court Jurisdiction, starting at line 37**

- The language does not appear to be written correctly – is it the intent of the legislation to apply only to violations *committed prior to the effective date of the amendment?* (line 83)
- If the language is meant to limit common pleas courts' jurisdiction:
  - It is unconstitutional. The Ohio Constitution makes courts of common pleas courts of general jurisdiction and thus they have the authority to adjudicate any type of cases brought under Ohio law. The General Assembly cannot statutorily limit the jurisdiction of common pleas courts. (lines 74-75 and 127-128)
  - It is counterproductive. What happens when there are several municipal courts in a county but only one of them has a drug docket? What happens when both the common pleas court and the municipal court have drug dockets? Municipal courts' dockets would swell while common pleas' resources – including successful drug court dockets – would be underutilized.
  - What happens when a misdemeanor is part of a multiple-count charge and there are attendant felony counts (i.e. felony burglary and misdemeanor drug possession or felony OVI and misdemeanor drug possession)? Currently, the misdemeanor is bound over with the felony counts to the common pleas court and could be moved back to the municipal court. SB 3 does not clearly address this possibility.
  - A possible alternative is the system created in 132 HB 354, which granted two courts concurrent authority to operate a drug recovery program. The permissive nature of the HB 354 model lets each county assess and utilize resources available in that county.
  - A “drug court” should be defined (lines 73 and 126) or qualified as “a program certified by the Ohio supreme court as a specialized docket program for drugs.”

**Sec. 2925.03, .031, .032: Aggravated Trafficking, Major Trafficking, Trafficking in Drugs**

- The creation of three different drug trafficking offenses is unnecessarily complicated. Changing amounts and penalties within the existing structure accomplishes the same thing. A presumption of intent to distribute for possession of F4 and higher levels is all that is needed for trafficking offenses.
- If there is a penalty enhancement for some drugs sold near a school, there should be a penalty enhancement for all drugs sold near a school. SB 3 removes that penalty enhancement for trafficking, except in cases of trafficking fentanyl or listed date rape drugs.

**Sec. 2925.11: Prosecution Held in Abeyance**

- A prosecution held in abeyance overlaps significantly with the current ILC provisions.
- Unlike ILC, there is no time limit for how long the treatment plan can continue while the prosecution is being held in abeyance.
- Unlike ILC, there are no provisions for transferring supervision to another county when the defendant is not a resident of the county in which the prosecution is taking place.

**Sec. 2925.11: Good Samaritan Immunity for Seeking Medical Help**

- This section is unchanged in SB 3, but it is currently problematic and should be changed. Because this section is already in the bill, this presents an opportunity to improve the Good Samaritan Law, if only by allowing the Good Samaritan to waive this statutory immunity and get treatment (or be charged) immediately, instead of waiting 30 days, during which time a person who has already overdosed once is at high risk to overdose again, maybe fatally. (starting at line 2375)

**Sec. 2925.11: CBCF Use for Unclassified Misdemeanor Drug Possession**

- By giving a court the authority to impose on a misdemeanant a term in a CBCF, SB 3 appears to allocate to the state the responsibility for funding misdemeanant stays in a CBCF (lines 2921-2926). Currently, most CBCFs only accept felons because felony stays are funded through ODRC. If misdemeanant stays in CBCFs will be funded similarly, that needs to be made clear in Sec. 2929.26.

**Sec. 2929.15: Technical Violations and Prison Stay Caps on Community Control Sanction Violators, starting at line 5210**

- In order for the sentence to be effective, the 90 days or the 180 days that a judge sentences for a community control violation on an underlying F5 or F4, respectively, should be new days. The word “new” could simply be inserted between “ninety” and “days” at line 5374 and between “eighty” and “days” at line 5383. Otherwise, the person on community control can deliberately commit a technical violation to statutorily force a premature end to his community control.
- The definition of a technical violation does not contemplate an omission, such as a refusal to participate in community control sanctions. An articulated refusal to participate or a repeated refusal to participate (i.e. never reporting to treatment) should be exceptions to a technical violation. (lines 5417 – 5427)

**Sec. 2953.31 & .32: Record Sealing & Rights Restoration, starting at line 5518**

- The whole of chapter 2953 could be streamlined considerably, without substantive changes, to make the section possible to understand without having to hire an attorney.

- Does the word “provided” at lines 5623 and 5632 mean “unless” (similar to “except as provided as in ...”)?

**Sec. 5119.93: Involuntary Civil Commitment for Substance Abuse, starting at line 6005**

- Evidence of having overdosed and having been revived at least three times is a fairly high hurdle for participation. (line 6034)
- Documentation of coverage is not the same as knowing something will be covered by insurance. The insurance company can always refuse to cover the expense; a person may have a high deductible; or the person’s insurance can lapse. (lines 6073-6075 and 6086-6088)  
This section is written to benefit only those that are in a financial position to afford good insurance or to pay outright for the treatment.
- Current law requires a medical evaluation within 24 hours (Sec. 5119.94; lines 6122-6125). This requirement is incredibly burdensome, especially for people without the financial resources to have a regular physician, and could be omitted.
- Current law uses Casey’s Law in Kentucky as its model, but unlike Kentucky, does not tie specific treatment to the civil commitment in statute.
- Current law does not have an enforcement mechanism beyond contempt of court to keep people in civil commitment.