



Judicial Impact Statement

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S.B. 3 – Drug Sentencing Reform

Am. Sub. S.B. 3
(as amended Dec. 2019)

Sen. Eklund
Sen. O'Brien

Title Information

To amend sections of the Revised Code to modify the controlled substance possession and trafficking prohibitions and penalties, and to modify the drug and alcohol abuse civil commitment mechanism.

Background

In response to the failed attempt to reform Ohio's drug sentencing laws through the proposed State Issue 1 constitutional amendment in the fall of 2018, Ohio lawmakers introduced Senate Bill 3 in early 2019.

The bill's primary component is the reclassification of drug sentencing offenses and to differentiate those who are more culpable, such as traffickers and dealers, from recreational users and those struggling with addiction. The bill attempts to accomplish this by categorizing drug offenses into four categories: aggravated trafficking, major trafficking, trafficking, and possession. The amount of drugs in question is largely what determines which offense applies: aggravated trafficking and major trafficking are established through a sale or intent to sell, OR presumptively based on the amount of drug in question (no need to prove a sale or intent to sell). Trafficking and possession deal with the same amounts, but trafficking specifically requires a sale or intent to sell.

Of particular note is that the new possession offense is an unclassified misdemeanor for all substances, with the exception of fentanyl or fentanyl-related compounds or sexual-assault-enabling drugs (those possession offenses remain a felony). An amendment to the bill, adopted in December of 2019, provides that the unclassified misdemeanor charges are to originate in the municipal/county court but, upon motion by the prosecution, defense, or the court *sua sponte*, the case may be transferred to the common pleas court.

Judicial Impact

SB 3 will undermine effectiveness of drug courts

Ohio's drug courts are effective in helping individuals return to health and lowering recidivism. One of the key elements to drug courts that drive this success is the carrot-and-stick approach: the threat of a felony conviction, and with it, prison time, as a means to encourage treatment and successful program participation and completion. Maintaining substance-abusing offenders in

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

felony-level settings increases the chance of sobriety and adherence to the program, and decreases the chances of recidivism and relapse in a way that misdemeanor sanctions, and local jail time, simply cannot. Additionally, the longer courts can keep someone engaged in treatment, the better the outcome. Misdemeanors by their nature carry shorter possible terms of sanction than felonies, thus shortening the potential oversight a court may exercise over an offender. Reclassifying drug possession offenses to misdemeanors will undermine all of the established, proven progress that Ohio's drug courts have made in crafting programs that work.

Potential to overwhelm municipal court dockets

An amendment adopted in December of 2019 provides that the new misdemeanor drug possession charges are to originate in the municipal or county court, but the judge may transfer the case to the common pleas court upon a motion by either party, or *sua sponte*. Ohio's municipal and county courts already have caseloads that are significantly higher than common pleas courts. Even assuming that some or most of these cases could be transferred to the common pleas court, the originating municipal courts would be overwhelmed with filings they are not currently seeing. As an example, in 2017, Cuyahoga County saw 12,074 indictments brought in the Court of Common Pleas. Of those, 2,141 were drug possession charges no higher than a 4th degree felony, most of which, under S.B. 3, would now originate in the municipal courts of Cuyahoga County. While recognizing that, with multiple municipal courts in Cuyahoga County, the impact of the increase would not be felt solely by one court, it still represents a significant increase to the caseloads of the various municipal courts within that particular county. Counties with fewer municipal courts, or single county-wide municipal or county courts, would likely see a more significant impact, possibly resulting in the need to hire additional staff.

Drug possession offenses should remain within the jurisdiction of the common pleas courts, even if reclassified to misdemeanors. Common pleas courts have access to greater resources than municipal courts, such as more funding, probation departments, established relationships with treatment providers, larger staffs, and less-burdened dockets. Common pleas courts are already handling these cases on a regular basis, and shifting them to municipal courts would disrupt a system that is working, as municipal courts will need time to adapt and expand their already limited resources.