



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 251

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(As Reported by H. Judiciary)

Reps. Barborak, Conditt, O'Brien, Pillich, Rogers, Butler, Celebrezze

BILL SUMMARY

- Generally provides that in determining whether to impose a prison term as a sanction for any felony of the fourth or fifth degree, the sentencing court must comply with the purposes and principles of sentencing and the statutory factors relating to the seriousness of the crime, the likelihood of the offender's recidivism, and the offender's military service.
 - Eliminates the special sentencing mechanism for felonies of the fourth or fifth degrees that are not offenses of violence or that are "qualifying assault offenses," that generally require the court to sentence the offender to a community control sanction of at least one year's duration unless any of the listed special factors apply.
 - Requires the sentencing court to comply with the purposes and principles of sentencing and the seriousness of crime, recidivism, and military service factors in determining whether to impose a prison term for certain drug offenses that are felonies of the fourth or fifth degree, instead of applying certain special factors under current law.
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CONTENT AND OPERATION

Sentencing for felonies generally

Under continuing law, with certain specified exceptions and unless a specific sanction is required to be imposed or is precluded from being imposed pursuant to law, a court that imposes a sentence upon an offender for a felony may impose on the offender any sanction that may be a definite prison term or a community control

sanction or combination of sanctions that are provided for in the Felony Sentencing Law.¹ The sanction imposed on a felony depends on the degree of the felony.

Imposition of sentence for felonies of the fourth or fifth degree – the bill

The bill repeals the provisions in current law that generally require a community control sanction of at least one year's duration to be imposed for the sentencing of a felony of the fourth or fifth degree, unless the offense is an offense of violence or is not a "qualifying assault offense" (see "**Definition**"). Subject to certain exceptions under current law, in determining whether to impose a prison term as a sanction for a felony of the fourth or fifth degree, the bill requires the sentencing court to comply with the purposes and principles of sentencing and the statutory factors relating to the seriousness of the conduct, the likelihood of the offender's recidivism, and the offender's service in the Armed Forces (hereafter, "purposes and principles of sentencing and the seriousness of crime, recidivism, and military service factors").²

Continuing law specifies that the overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court must consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both. A sentence imposed for a felony must be reasonably calculated to achieve these two overriding purposes, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders. A court that imposes a sentence upon an offender for a felony must not base the sentence upon the race, ethnic background, gender, or religion of the offender.³

Continuing law lists several factors that courts must apply regarding:⁴

- The offender, the offense, or the victim, as indicating that the offender's conduct is more serious or is less serious than conduct normally constituting the offense.

¹ R.C. 2929.13(A).

² R.C. 2929.13(B).

³ R.C. 2929.11, not in the bill.

⁴ R.C. 2929.12, not in the bill.



- The offender, as indicating that the offender is likely to commit future crimes or is not likely to commit future crimes.
- The offender's military service record and whether the offender has an emotional, mental, or physical condition traceable to the offender's service in the Armed Forces.

Imposition of sentence for felonies of the fourth or fifth degree – current law

Generally, under current law, in determining whether to impose a prison term for a felony offense of the fourth or fifth degree, the sentencing court must comply with the purposes and principles of sentencing and the seriousness of crime, recidivism, and military service factors.⁵ If the felony offense of the fourth or fifth degree is not an offense of violence or is a qualifying assault offense, a special sentencing mechanism applies in which the court generally must impose a community control sanction of at least one year's duration if certain conditions apply.⁶

Community control sanction of at least one year

Except when the court has discretion to impose a prison term, if an offender is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense, current law requires the court to sentence the offender to a community control sanction of at least one year's duration if all of the following apply:⁷

(1) The offender previously has not been convicted of or pleaded guilty to a felony offense.

(2) The most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree.

(3) If requested by the court, the Department of Rehabilitation and Correction (DRC) provided it with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court within 45 days after receiving the request.

⁵ R.C. 2929.13(B)(2).

⁶ R.C. 2929.13(B)(1).

⁷ R.C. 2929.13(B)(1)(a).

(4) The offender previously has not been convicted of or pleaded guilty to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed.

A sentencing court may impose an additional penalty upon an offender sentenced to a community control sanction if the offender violates the conditions of the sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer. The additional penalty may be a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit for community control sanctions, a more restrictive community control sanction, or a prison term.⁸

Discretion to impose prison term; special factors

Under current law, the court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense if any of the following applies:⁹

(1) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.

(2) If the offense is a qualifying assault offense, the offender caused serious physical harm to another person while committing the offense, and, if the offense is not a qualifying assault offense, the offender caused physical harm to another person while committing the offense.

(3) The offender violated a term of the conditions of bond as set by the court.

(4) The court requested the DRC for the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court, and the DRC did not provide the information within 45 days after receipt of the request.

(5) The offense is a sex offense that is a fourth or fifth degree felony violation of the Sex Offenses Law.

(6) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person with a deadly weapon.

⁸ R.C. 2929.13(B)(1)(d) and R.C. 2929.15(B), not in the bill.

⁹ R.C. 2929.13(B)(1)(b).



(7) In committing the offense, the offender attempted to cause or made an actual threat of physical harm to a person, and the offender previously was convicted of an offense that caused physical harm to a person.

(8) The offender held a public office or position of trust, and the offense related to that office or position; the offender's position obliged the offender to prevent the offense or to bring those committing it to justice; or the offender's professional reputation or position facilitated the offense or was likely to influence the future conduct of others.

(9) The offender committed the offense for hire or as part of an organized criminal activity.

(10) The offender at the time of the offense was serving, or the offender previously had served, a prison term.

(11) The offender committed the offense while under a community control sanction, while on probation, or while released from custody on a bond or personal recognizance.

Request to DRC for available community control program information

If a court that is sentencing an offender who is convicted of or pleads guilty to a felony of the fourth or fifth degree that is not an offense of violence or that is a qualifying assault offense believes that no community control sanctions are available for its use that, if imposed on the offender, will adequately fulfill the overriding principles and purposes of sentencing, current law requires the court to contact the DRC and ask it to provide the court with the "names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court" (hereafter, "available community control program information"). Not later than 45 days after receipt of such a request, the DRC must provide the court with the available community control program information, if any. Upon making a request that relates to a particular offender, a court must defer sentencing of that offender until it receives from the DRC the available community control program information or for 45 days, whichever is the earlier.

If the DRC provides the court with the available community control program information within the 45-day period, current law requires the court to impose upon the offender a community control sanction, except that the court may impose a prison term if a factor described in either (1) or (2) in "**Discretion to impose prison term; special factors**," above, applies. If the DRC does not provide the court with the available

community control program information within the 45-day period, the court may impose a prison term upon the offender.¹⁰

Definition

Under current law, "qualifying assault offense" means either of the following felonies of the fifth degree:¹¹

(1) The offense of assault if: (a) the victim is a health care professional, health care worker, or security officer of a hospital whom the offender knows or has reasonable cause to know is a such a person, (b) the victim is engaged in the performance of the victim's duties, (c) the hospital offers de-escalation or crisis intervention training for such professionals, workers, or officers, and (d) the offender previously has been convicted of or pleaded guilty to one or more assault or homicide offenses committed against hospital personnel;

(2) The offense of assault if: (a) the victim is a judge, magistrate, prosecutor, or court official or employee whom the offender knows or has reasonable cause to know is such a person, (b) the victim is engaged in the performance of the victim's duties, and (c) the offender previously has been convicted of or pleaded guilty to one or more assault or homicide offenses committed against justice system personnel.

Applicability to specified felony drug offenses of the fourth or fifth degree

The bill requires the sentencing court to comply with the purposes and principles of sentencing and the seriousness of crime, recidivism, and military service factors in determining whether to impose a prison term for certain fourth or fifth degree felony drug offenses. These specific drug offenses are listed in the table below. Under current law, in determining whether to impose a prison term for those felony drug offenses of the fourth or fifth degree, there is a presumption that a community control sanction of at least one year's duration be imposed, unless the special factors listed above in "**Discretion to impose prison term; special factors**," apply.

R.C. section	Drug offense	Specified circumstance	Penalty
2925.02(C)(3)	Corrupting another with drugs	Drug involved is marihuana or synthetic cannabinoids commonly known as K2 or Spice	F 4

¹⁰ R.C. 2929.13(B)(1)(c).

¹¹ R.C. 2929.13(K)(2), by reference to R.C. 2903.13(C)(7)(b) or (C)(8)(b), not in the bill.



R.C. section	Drug offense	Specified circumstance	Penalty
2925.03(C)(2)(a)	Trafficking in drugs (Schedule III, IV, or V controlled substance)		F 5 generally
2925.03(C)(2)(c)	Trafficking in drugs (Schedule III, IV, or V controlled substance)	Amount of drug equals or exceeds bulk amount but is less than 5 times bulk amount	F 4
2925.03(C)(3)(a)	Trafficking in marihuana		F 5 generally
2925.03(C)(3)(b)	Trafficking in marihuana	Committed in vicinity of school or juvenile	F 4
2925.03(C)(3)(c)	Trafficking in marihuana	Amount involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana	F 4
2925.03(C)(4)(a)	Trafficking in cocaine		F 5 generally
2925.03(C)(4)(c)	Trafficking in cocaine	Amount involved equals or exceeds 5 grams but is less than 10 grams of cocaine	F 4
2925.03(C)(5)(a)	Trafficking in L.S.D.		F 5 generally
2925.03(C)(5)(c)	Trafficking in L.S.D.	Amount involved equals or exceeds 10 unit doses but is less than 50 unit doses of L.S.D. in solid form or equals or exceeds 1 gram but is less than 5 grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form	F 4
2925.03(C)(6)(a)	Trafficking in heroin		F 5 generally
2925.03(C)(6)(c)	Trafficking in heroin	Amount involved equals or exceeds 10 unit doses but is less than 50 unit doses or equals or exceeds 1 gram but is less than 5 grams of heroin	F 4
2925.03(C)(7)(a)	Trafficking in hashish		F 5 generally
2925.03(C)(7)(b)	Trafficking in hashish	Committed in vicinity of school or juvenile	F 4

R.C. section	Drug offense	Specified circumstance	Penalty
2925.03(C)(7)(c)	Trafficking in hashish	Amount involved equals or exceeds 10 grams but is less than 50 grams of hashish in solid form or equals or exceeds 2 grams but is less than 10 grams of hashish in liquid concentrate, liquid extract, or liquid distillate form	F 4
2925.03(C)(8)(c)	Trafficking in a controlled substance analog	Amount involved equals or exceeds 10 grams but is less than 20 grams	F 4
2925.11(C)(1)(a)	Aggravated possession of drugs	Drug involved is Schedule I or II controlled substance, except marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analog	F 5 generally
2925.11(C)(3)(c)	Possession of marihuana	Amount involved equals or exceeds 200 grams but is less than 1,000 grams	F 5
2925.11(C)(4)(a)	Possession of cocaine		F 5 generally
2925.11(C)(4)(b)	Possession of cocaine	Amount involved equals or exceeds 5 grams but is less than 10 grams	F 4
2925.11(C)(5)(a)	Possession of L.S.D.		F 5 generally
2925.11(C)(6)(a)	Possession of heroin		F 5 generally
2925.11(C)(7)(c)	Possession of hashish	Amount involved equals or exceeds 10 grams but is less than 50 grams of hashish in solid form or equals or exceeds 2 grams but is less than 10 grams of hashish in liquid concentrate, liquid extract, or liquid distillate form	F 5

R.C. section	Drug offense	Specified circumstance	Penalty
2925.11(C)(8)(a)	Possession of controlled substance analog		F 5 generally

Possession of controlled substance analog

The bill provides that in determining whether to impose a prison term for the fourth degree felony offense of possession of a controlled substance analog, if the amount of the drug involved equals or exceeds 10 grams but is less than 20 grams, the court must comply with the purposes and principles of sentencing and the seriousness of crime, recidivism, and military service factor. Under current law, there is a presumption for a prison term for the offense.¹²

Illegal processing of drug documents

The bill requires the court to comply with the purposes and principles of sentencing and the seriousness of crime, recidivism, and military service factors in determining whether to impose a prison term for the fifth degree felony offense of illegal processing of drug documents if the offender does either of the following:¹³

- Intentionally makes, utters, or sells, or knowingly possesses a false or forged: (1) uncompleted preprinted prescription blank used for writing a prescription, (2) license for a terminal distributor of dangerous drugs, or (3) registration certificate for a wholesale distributor of dangerous drugs;
- By theft, acquires: (1) an uncompleted preprinted prescription blank used for writing a prescription, (2) a blank official written order, (3) a license or blank license for a terminal distributor of dangerous drugs, or (4) a registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs.

Changes in cross references

The bill changes the cross references, but otherwise does not substantively change, provisions that, under current law, require the sentencing court to comply with the purposes and principles of sentencing and the seriousness of crime, recidivism, and

¹² R.C. 2915.11(C)(8)(b).

¹³ R.C. 2925.23(F).

military service factors in determining whether to impose a prison term for the applicable felony drug offenses of the fourth or fifth degree.¹⁴

Grounds for appeal as a matter of right

The bill provides that a defendant is not entitled to appeal as a matter of right a sentence of a prison term for a felony of the fourth or fifth degree or a felony drug offense in which the court specified that it found one or more of the special factors (see "**Discretion to impose prison term; special factors**," above) to apply relative to the defendant, if the sentence was imposed for an offense committed prior to the bill's effective date.¹⁵

The bill also provides that the court hearing an appeal must remand the case to the sentencing court and instruct it to state, on the record, the required findings if the sentencing court was required to make the findings required by the special sentencing mechanism as it applied *prior to the bill's effective date* relative to the imposition or modification of the sentence and if the sentencing court failed to state the required findings on the record.¹⁶

Finally, the bill provides that the appellate court may increase, reduce, or otherwise modify an appealed sentence or may vacate the sentence and remand the matter to the sentencing court for resentencing if it clearly and convincingly finds that the record does not support the sentencing court's findings under the special sentencing mechanism as it applied *prior to the bill's effective date*.¹⁷

HISTORY

ACTION	DATE
Introduced	08-21-13
Reported, H. Judiciary	03-13-14

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¹⁴ R.C. 2925.02(C)(3), 2925.03(C)(1)(a), (2)(b), (4)(b), (5)(b), (6)(b), and (8)(a) and (b), 2925.06(C), 2925.11(C)(2)(b), (5)(b), and (6)(b), 2925.22(B)(1), (2)(a), and (3)(a) and (b), 2925.23(C)(3), 2925.23(F)(1) and (2), 2925.36(C)(2)(a) and (b), and 2925.37(H), (I), (J), and (K).

¹⁵ R.C. 2953.08(A)(2).

¹⁶ R.C. 2953.08(G)(1).

¹⁷ R.C. 2953.08(G)(2)(a).

