

Senate Bill 3 – Sub Bill summary
Prepared by the Ohio Judicial Conference

The Substitute Bill was accepted March 6, 2019, and per the sponsors, is intended to distinguish those who are more culpable, that is traffickers and dealers, from those considered less culpable (addicts and those in possession for personal use).

The bill seeks to accomplish this by recategorizing drug offenses into four types:

- Aggravated trafficking (F1, F2)
- Major trafficking (F1, F2, F3)
- Trafficking (F3, F4, F5)
- Possession (unclassified misdemeanor)

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.

	Aggravated trafficking¹	Major Trafficking¹	Trafficking²	Possession³
Sched. I or II substance not listed below	≥ 50 times bulk amt	≥ bulk amt but < 50 times bulk amt	≥ .025 g but < bulk amt	≥ .025 g but < bulk amt
Sched. III, IV, or IV	NA	≥ 5 times bulk amt	≥ .025 g but < 5 times bulk amt	≥ .025 g but < 5 times bulk amt
Cocaine	≥ 50 g	≥ 10 g but < 50 g	≥ .025 g but < 10 g	≥ .025 g but < 10 g
L.S.D.	≥ 500 unit doses or 50 g	≥ 50 u/d or 5 g but < 500 u/d or 50 g	≥ ¼ u/d or .025 g but < 50 u/d or 5 g	≥ ¼ u/d or .025 g but < 50 u/d or 5 g
Heroin	≥ 300 u/d or 30 g	≥ 50 u/d or 5 g but < 300 u/d or 30 g	≥ ¼ u/d or .025 g but < 50 u/d or 5 g	≥ ¼ u/d or .025 g but < 50 u/d or 5 g
Fentanyl-related compound	≥100 u/d or 10 g	≥ 50 u/d or 5 g but < 100 u/d or 10 g	≥ ¼ u/d or .025 g but < 50 u/d or 5g	< 50 u/d or 5 g
Marijuana (not hashish)	≥ 40,000 g	≥ 1,000 g but < 40,000 g	≥ .025 g but < 1,000 g	≥ .025 g but < 1,000 g
Hashish	≥ 2,000 g	≥50 g but < 2,000 g	≥.025 g but < 50 g	≥.025 g but < 50 g
Controlled substance analog	≥ 30 g	≥ 20 g but < 30 g	≥ .025 g but < 20 g	≥ .025 g but < 20 g
Sexual assault-enabling substance	*used to establish offense level and sanction but not offense itself	*used to establish offense level and sanction but not offense itself	*used to establish offense level and sanction but not offense itself	Shed. I or II: < bulk amt Sched. III-V: < 5 times bulk amt

The bill decriminalizes the possession of trace amounts of a substance (anything less than .025 g).

¹ No person shall knowingly obtain, possess, sell, or offer to sell, or prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute, a controlled substance in the listed amounts; Sec. 2925.03, starting at line 662 and Sec. 2925.031, starting at line 1740

² No person shall knowingly sell or offer to sell, or obtain or possess with purpose to distribute or sell, or prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance in the listed amounts; Sec. 2925.032, starting at line 1952

³ No person shall knowingly obtain, possess or use a controlled substance in the listed amounts; Sec. 2925.11, starting at line 2253

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The level of felony and corresponding sanction depends upon the amount of drug in question. For example, the breakdown for aggravated trafficking in cocaine⁴, the offense is either a F1 or F2 as follows:

- If ≥ 50 g but < 100 g → F2 with mandatory F2 prison term
- If ≥ 100 g but < 250 g → F1 with mandatory F1 prison term
- If ≥ 150 g → F1, major drug offender, mandatory prison term of 10 or 11 years

All possession offenses are now unclassified misdemeanors, with a presumption of treatment over jailing, unless in committing the offense the offender made threats of violence, in which case the presumption does not apply and the maximum possible sanctions are:

- Jail term of not more than 364 days
- Fine of not more than \$1,000
- Not more than six months in CBCF

Possession of marijuana is treated differently than possession of other controlled substances.

Possession of less than 200g is a minor misdemeanor, and can elevate up to either an M4 or M1 for higher amounts. Arrest or conviction of a minor misdemeanor possession charge “does not constitute a criminal record” and need not be reported by the person in response to any inquiries about the person’s criminal record, including for purposes of employment or licensing.

Judges may hold charges for first-time offenders in abeyance if the offender agrees to seek, comply with, and complete treatment, and waives his/her right to a speedy trial. The offender is not required to enter a guilty plea in order for the court to hold the prosecution in abeyance. Upon successful completion of treatment, judge shall dismiss the charges. If offender fails at treatment, judge may continue the person on the same program with the same or new/additional terms, order the person to a different treatment program, or continue with the prosecution that was held in abeyance.

The unclassified misdemeanor possession offenses can elevate to felonies under some circumstances:

- The offender has two possession offenses in the previous three years (elevates to F5)
- The controlled substance is a sexual-assault-enabling drug (elevates to M1, F5, or F4 depending on amount/schedule of drug and prior offenses)

JURISDICTION OVER DRUG OFFENSES

The bill states that municipal courts (Sec. 1901.20, at line 71) operating a drug court “shall hear all charges of any reclassified drug possession offense.” A parallel section exists for county courts (Sec. 1907.02, at line 124). If a municipal court or county court does not operate a drug court, the court of common pleas in that jurisdiction will hear the charges.

However, the bill goes on to define “reclassified misdemeanor drug possession offense” as one committed before the effective date of the bill, when it was a felony, and heard after the effective date of the bill, when it is a misdemeanor. This seems to apply only to a small interval of time, and may not be the intent of the legislation. (See Sec. 1901.20, starting at line 80).

⁴ Complete breakdown of all felony levels and sanctions have been omitted from this summary. See bill text for full breakdown

PROBATE CIVIL COMMITMENT

The bill changes the current involuntary civil commitment process for substance use disorder in a few ways. First, it waives the filing fee in Sec. 5119.93 (lines 6008-6010). Second, the petition for commitment must be accompanied by either a security deposit covering half the costs (as is current law) or documentation establishing that insurance will cover half the cost (Sec. 5119.93, lines 6073-6075). Lastly, the bill requires, as a criterion for being civilly committed under Chapter 5119, evidence of having overdosed and being revived at least three times, having overdosed in a vehicle, or having overdosed in the presence of a minor (Sec. 5119.93, lines 6033 – 6036).

COMMUNITY CONTROL SANCTIONS REVOCATIONS & “TECHNICAL VIOLATIONS”

The 90- and 180-day caps to technical violation probation revocations are still in the law. The bill narrows use of the caps only to technical violations (not "a violation of law committed while under community control"). The bill includes a definition of "technical violation": a new criminal offense, either felony or misdemeanor, is NOT considered "technical violation." This exclusion does not apply to minor misdemeanors, which are changed elsewhere in the bill (e.g. minor misdemeanor marijuana possession charge currently involves less than 100 grams, the bill makes 200 grams a minor misdemeanor). (Sec. 2929.15, starting at line 5369)

RECORD SEALING

Reclassified misdemeanor drug possession offenses are eligible to be sealed. (Sec. 2953.31, starting at line 5520) A person can petition to have such an offense sealed “at any time after successful completion” of a treatment program or an intervention plan. (Sec. 2953.32.32, starting at line 5615) Any felony that is reclassified into a misdemeanor is to be considered having always been a misdemeanor (starting at line 5658).

