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## Synopsis of House Committee Amendments

(This synopsis does not address amendments that may have been adopted on the House Floor.)

### S.B. 3 of the 133<sup>rd</sup> General Assembly

#### House Criminal Justice Committee

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### Measurement of drug amounts

Generally, returns threshold quantities for subjecting a person to penalties specified under existing drug trafficking offenses to existing law levels for felonies of the first, second, and third degree, except as follows:

- For third degree felonies, removes the presumption for a prison term unless the quantities exceed increased threshold amounts in the bill for each corresponding felony;
- For aggravated trafficking in cocaine involving 20-27 grams of the drug, a second degree felony, the bill eliminates the mandatory prison term and instead allows for the court to impose a prison term of 2, 3, 4, 5, 6, 7, or 8 years with no presumption for a prison term;
- For aggravated trafficking in cocaine involving 20-27 grams of the drug and committed in the vicinity of a school, lowers the penalty from a first degree felony to a second degree felony, but still requires a mandatory prison term for the offense;
- For aggravated trafficking in cocaine involving 27-50 grams of the drug, a first degree felony, eliminates the mandatory prison term and instead allows the court to impose a prison term of 3, 4, 5, 6, 7, 8, 9, 10, or 11 years except that the mandatory prison term continues to apply if the offense occurred in the vicinity of a school;
- For aggravated trafficking in heroin involving between 100 unit doses or 10 grams and 300 unit doses or 30 grams of the drug, a second degree felony, eliminates the mandatory prison term and instead allows for the court to impose a prison term of 2, 3, 4, 5, 6, 7, or 8 years with no presumption for a prison term;
- For aggravated trafficking in heroin involving the above amount committed in the vicinity of a school, the bill lowers the penalty from a first degree felony to a second degree felony, but still requires a mandatory prison term for the offense;
- For major trafficking involving an unclassified schedule I or II drug in an amount that equals or exceeds five times the bulk amount, the bill eliminates the mandatory prison

term and instead allows for the court to impose a prison term of 2, 3, 4, 5, 6, 7, or 8 years with no presumption for a prison term.

## **Equal to or exceeding clarification**

In the context of drug threshold amounts that qualify an offender to varying levels of a drug trafficking or possession offense or that constitute a “bulk amount” of a controlled substance, clarifies that “equal to or exceeding” in those cases applies to any measurement of the amount, be it a unit dose measurement, a weighted measurement, or a volume measurement of the controlled substance.

## **Computerization fees**

Increases from \$10 to \$20, the amount a municipal court or county court may impose as an extra filing fee or similar fee for use in computerizing the office of the court’s clerk.

## **Jurisdiction for plea agreements**

Specifies that the bill’s placement of jurisdiction for a reclassified misdemeanor drug possession offense in the common pleas court does not limit or restrict a prosecutor from accepting a plea agreement to a felony drug possession offense that reduces the offense to a misdemeanor or accepting a plea agreement to a reclassified misdemeanor drug possession offense or any other misdemeanor to a misdemeanor of a lesser degree.

## **Possession charges held in abeyance**

Clarifies that a prosecutor’s continuing with prosecution against a person who does not comply with treatment under the abeyance mechanism may include authorizing the person charged to apply for intervention in lieu of conviction if it appears that the person is eligible.

For the treatment program under the abeyance mechanism, requires the court to place the offender under the general control and supervision of the probation department or other entity that provides probation services to the court, rather than requiring the court to place the offender under the general control and supervision of the county probation department, Adult Parole Authority (APA), or another appropriate local probation or court services agency.

## **Supervision of unclassified misdemeanants**

Designates the following entity as the supervisory entity of an offender convicted of possession of a controlled substance when the offense is an unclassified misdemeanor, if the offense, prior to the bill’s effective date, would have been a felony, and if the offender is sentenced to treatment as a sanction or is sentenced to any other community control sanction under the Misdemeanor Sentencing Law that requires supervision of the offender:

- The county probation department that serves the court;
- The APA when there is no department of probation in the county and the court has entered an agreement with the APA under continuing law;
- Another entity that provides probation services by contract under existing law.

Specifies that existing provisions regarding Department of Rehabilitation and Correction (DRC) conveyance and reception of convicted felons apply to unclassified misdemeanants sentenced to a prison term under the bill and specifies that all provisions of law that pertain to an offender sentenced to or serving a stated prison term for a fourth degree felony apply to an unclassified misdemeanor serving a prison term under the bill as if the unclassified misdemeanor had been sentenced to and is serving the term for a fourth degree felony, except as is clearly inapplicable, impossible, or infeasible.

## **Unclassified misdemeanor possession offense sentencing**

### **Presumption for treatment**

Modifies the presumption for treatment when an offender is convicted of an unclassified misdemeanor for a possession offense to specify that the presumption does not apply with respect to an offender if *the jury or judge as trier of fact* determines that the offender, in committing the offense or related in any way to the offense, has made threats of violence to any person and adds that the presumption does not apply if all of the following apply with respect to the offender and the unclassified misdemeanor offense:

- The prosecution of the offender for the violation that resulted in the unclassified misdemeanor conviction had been held in abeyance under the bill's abeyance mechanism;
- The court determined that the offender failed to comply with any term or condition imposed under the abeyance mechanism as part of the offender's drug treatment program, and continued with the prosecution of the violation that was held in abeyance; and
- At any time prior to imposing sentence, the court determined that the offender's failure described in the above bullet point consisted of or included the offender's articulated or demonstrated refusal to participate in the drug treatment program or any of its terms or conditions, and the refusal demonstrated to the court that the offender had abandoned the objects of the treatment program.

Specifies that the presumption is a *rebuttable* presumption and that the presumption is rebutted if the court determines, by clear and convincing evidence, based on evidence before the court, that either of the following applies to the offender and the offense:

- The offender is unwilling to participate in a certified treatment program or has signed a statement stipulating that the offender is unwilling to enroll in a certified treatment program;
- The court conducts a review, based on the single validated risk assessment tool selected by DRC under existing law and using the specified evidence or information, as to whether the person poses a risk to society that is sufficiently high enough so that the presumption should not apply and, based on that review, determines that the offender poses a risk to society that is sufficiently high enough so that the presumption should not apply.

Specifies that the court may sentence an offender for whom the presumption was rebutted under the same sentencing provisions currently in the bill that apply regarding an offender to whom the presumption does not apply.

### **Sanctions when presumption does not apply**

Allows the court to impose the bill's term of up to 364 days for an unclassified misdemeanor offense as either a jail term or a prison term, except that if, at the time of the sentencing, DRC has certified to the court that the county in which the person is being sentenced is unable to house the defendant in a facility that is operating at or under 90% of the facility's capacity, the term must be a prison term.

Specifies that a court may sentence the offender to six months in a community-based correctional facility or halfway house, rather than allowing that sentence only to a community-based correctional facility.

Specifies that DRC must treat an offender sentenced to a community-based correctional facility or halfway house under the provision as an "eligible offender" for purposes of admission to the facility as if the offender was an eligible felony offender.

### **Immunity for drug offenses – Good Samaritan**

Expands existing law immunity from prosecution for minor drug possession offenses to include drug paraphernalia offenses.

### **Felony community control and nonresidential sanctions**

Makes several changes regarding the general terms and conditions of community control sanctions including allowing for drug testing, rather than only allowing for random drug testing, and expanding professional assessment of offenders eligible for community control to include offenders who have mental illness or an addiction, rather than only allowing such an assessment if the person is drug addicted.

If a professional assessment under continuing law, expanded as referenced in the row above, indicates that the offender is addicted or has mental illness, and the treatment is recommended, generally requires the court to impose on the offender a community control sanction with treatment to be known as "recovery sentencing."

Makes several changes regarding the supervision of a person under a community control sanction, including references to the existing law entity with supervisory authority over an offender generally as the "supervising entity," allowing a supervisory entity to take appropriate action upon violation of a term of a community control sanction as determined by the seriousness of the violation and risk presented by the offender, and allowing, rather than requiring, the supervisory entity to report the violation to the sentencing court according to a graduated response policy adopted by the supervisory entity.

Requires that the length and intensity of supervision or monitoring as a nonresidential sanction for a felony be determined only as indicated by the results of a risk and needs assessment.

Specifically allows for a nonresidential sanction imposed for a felony to include drug testing other than random drug testing.

Allows for a court to require an offender to complete a cognitive-behavioral intervention designed to address dynamic criminogenic risk factors, as a nonresidential sanction for a felony offense.

Makes several changes regarding the supervision of a person under a misdemeanor community control sanction, including requiring the probation department or officer who receives a report of a violation of a community control sanction to take appropriate action based on the seriousness of the violation and the risk presented by the offender and may report the violation to the sentencing court according to a graduated response policy and specifying that if an offender violates a condition, the sentencing court may not punish the offender again for the offense for which the community control sanction was imposed and that any penalty imposed for the violation must be commensurate with the seriousness of the violation in light of the offender's history of crimes and violations.

Prohibits a court from imposing a term in a drug treatment program as a sanction for a misdemeanor until after considering an assessment by a properly credentialed treatment professional, if available.

Prohibits a court from determining the level of intensity of supervision as a sanction for a misdemeanor except as indicated by the results of a risk and needs assessment.

Allows the court to require that an offender complete a cognitive-behavioral intervention designed to address dynamic criminogenic risk factors as a misdemeanor sanction, replacing a current law provision that allowed the court to require the offender to obtain counseling under certain circumstances.

Eliminates the authority for a misdemeanor to make a financial contribution in lieu of previously imposed community service.

## **Misdemeanor residential sanctions**

Allows a court that sentences a misdemeanor to a community residential sanction to permit the offender to serve the sentence on house arrest, or on GPS monitoring.

## **LSC corrective amendment: T-CAP**

Includes within the Targeting Community Alternatives to Prison (T-CAP) program sanctions imposed on an offender for an unclassified misdemeanor drug possession offense under the bill's provisions committed on or after the bill's effective date and provides for county use of T-CAP funding for the cost of those sanctions.

## **LSC corrective amendment: restraining or confining a woman or child in the criminal justice or delinquent child system during pregnancy or postpartum recovery**

Adds provisions to the bill that prohibit restraining or confining a woman or child who is a charged, convicted, or adjudicated criminal offender or delinquent child at certain points

during pregnancy or postpartum recovery, and that require the Attorney General to provide training materials to law enforcement, court, and corrections officials on those provisions.

**Effective date**

Specifies that the provisions of the bill are to take effect on July 1, 2021.