



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

Substitute Bill Comparative Synopsis

Sub. H.B. 166

134th General Assembly

House Criminal Justice

Sarah A. Maki, Attorney

This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
Appellate review – authorization for appeals	
No provision.	Provides that the appellate review changes in the bill apply to all appeals of sentences imposed upon a defendant who is convicted of or pleads guilty to a felony. Except for constitutional challenges, no appeal of a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony may be filed unless authorized by the bill. <i>(R.C. 2953.08(B).)</i>

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
Appellate review – defendant right to appeal	
<p>Retains current law that specifies that in addition to any other right to appeal, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant on one of the following grounds (<i>R.C. 2953.08(B)</i>):</p> <ol style="list-style-type: none"> 1. The sentence consisted of or included the maximum definite prison term allowed for the offense, or, with respect to a nonlife felony indefinite prison term, the longest minimum prison term allowed for the offense, the maximum definite prison term or longest minimum prison term was not required for the offense, and the court imposed the sentence under one of the following circumstances: (1) the sentence was imposed for only one offense, or (2) the sentence was imposed for two or more offenses arising out of a single incident, and the court imposed the maximum definite prison term or longest minimum prison term for the offense of the highest degree. 2. The sentence consisted of or included a prison term and the offense for which it was imposed is a fourth or fifth degree felony or is a felony drug offense that is subject to community control sanctions. If the court specifies that it found one or more factors for community control sanctions to apply relative to the defendant, the defendant is not entitled to appeal as a matter of right the sentence imposed upon the offender. 3. The person was convicted of or pleaded guilty to a violent sex offense or designated homicide, assault, or kidnapping offense, was adjudicated a sexually violent predator in relation to that offense, and was sentenced to an indefinite prison term consisting of a minimum fixed by the court, but not less than two years, and a maximum term of 	<p>Same provision (<i>R.C. 2953.08(C)</i>).</p> <ol style="list-style-type: none"> 1. No provision. 2. No provision. 3. No provision.

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
<p>life imprisonment, if the minimum term of the indefinite term is the longest term available for the offense from among the range of definite prison terms or, with respect to a nonlife felony indefinite prison term, the longest minimum prison term allowed for the offense.</p>	
<p>4. The sentence consisted of an additional prison term of ten years.</p>	<p>4. No provision.</p>
<p>5. The sentence is “contrary to law,” a defined term (see “Appellate review – definitions,” below).</p>	<p>5. The sentence is not “authorized by law,” a defined term (see “Appellate review – definitions,” below).</p>
<p>6. No provision.</p>	<p>6. The sentence was imposed for an offense and was not imposed concurrently or consecutively with another sentence.</p>
<p>7. No provision.</p>	<p>7. The sentence was imposed for an offense and was not imposed concurrently or consecutively with another sentence, and there is a presumption against a prison term for the offense.</p>
<p>8. No provision.</p>	<p>8. The sentence was imposed concurrently with another sentence for an offense.</p>
<p>9. No provision.</p>	<p>9. The sentence was imposed concurrently with another sentence for an offense, and there is a presumption against a prison term for the offense.</p>
<p>10. No provision.</p>	<p>10. The sentence was imposed consecutively with another sentence for an offense, and the sentencing court did not make the required findings for a consecutive sentence to overcome the presumption for a concurrent sentence.</p>
<p>11. No provision.</p>	<p>11. The sentence was imposed consecutively with another sentence for an offense, and the sentencing court made the required findings for a consecutive sentence to overcome the presumption for a concurrent sentence.</p>

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
<p>Generally retains current law that specifies that in addition to the right to appeal a sentence, a defendant who is convicted of or pleads guilty to a felony may appeal (instead of “may seek leave to appeal”) a sentence imposed upon the defendant on the basis that the sentencing judge has imposed consecutive sentences and that the consecutive sentences exceed the maximum definite prison term allowed for the most serious offense of which the defendant was convicted or, with respect to a nonlife felony indefinite prison term, exceed the longest minimum term allowed for the most serious offense. Upon the filing of a motion, the court of appeals may grant leave to appeal the sentence if the court determines that the allegation included as the basis of the motion is true (R.C. 2953.08(D)(1)).</p> <p>Generally retains current law that specifies that a defendant may appeal (instead of “may seek leave to appeal”) an additional sentence imposed upon a defendant if the additional sentence is for a definite prison term that is longer than five years (R.C. 2953.08(D)(2)).</p>	<p>No provision.</p> <p>No provision.</p>
Appellate review – prosecutor right to appeal	
<p>Retains current law that specifies that in addition to any other right to appeal and subject to the exception described below under “Appellate review – sentences not subject to review,” a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or the modification of a sentence imposed upon such a defendant on any of the following grounds (R.C. 2953.08(C)):</p>	<p>Specifies that, subject to the exception described below under “Appellate review – sentences not subject to review,” a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony on any of the following grounds (R.C. 2953.08(D)):</p>

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
<ul style="list-style-type: none"> ▪ The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in R.C. 2929.13 or R.C. Chapter 2925. ▪ The sentence is “contrary to law,” a defined term (see “Appellate review – definitions,” below). ▪ The sentence is a modification of a sentence that was imposed for a first or second degree felony. ▪ No provision. 	<ul style="list-style-type: none"> ▪ The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed. ▪ The sentence is not “authorized by law,” a defined term (see “Appellate review – definitions,” below). ▪ Same provision. ▪ The sentence is suspended, and the sentence was imposed for a first or second degree felony.
Appellate review – sentences not subject to review	
<p>Provides that a sentence imposed upon a defendant is not subject to review if all of the following apply (<i>R.C. 2953.08(E)(1)</i>):</p> <ul style="list-style-type: none"> ▪ The sentence is authorized by law. ▪ The sentence, sentencing range, a minimum aggregate term of imprisonment, or a maximum aggregate term of imprisonment has been jointly recommended by the defendant and the prosecution in the case. ▪ The sentence imposed upon the defendant is consistent with that recommendation. ▪ No provision. 	<p>Same provision (<i>R.C. 2953.08(E)</i>):</p> <ul style="list-style-type: none"> ▪ Same provision, but note that “authorized by law” is a defined term (see “Appellate review – definitions,” below). ▪ Same provision. ▪ Same provision. ▪ The sentence is imposed by a sentencing judge.

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
Retains current law that specifies that, except as provided above, an additional prison term imposed on a defendant is not subject to review under R.C. 2953.08 (<i>R.C. 2953.08(E)(2)</i>).	No provision.
Retains current law that specifies that a sentence imposed on a defendant for aggravated murder or murder is not subject to review under R.C. 2953.08 (<i>R.C. 2953.08(E)(3)</i>).	No provision.
Appellate review – time limits for appeal	
Retains current law that requires a defendant, prosecuting attorney, city director of law, village solicitor, or chief municipal legal officer to file an appeal of a sentence to a court of appeals within the time limits provided in the Rules of Appellate Procedure. The time limits must not commence running until the court grants the motion that makes the sentence modification in question. A sentence appeal must be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing. (<i>R.C. 2953.08(F)</i> .)	No provision.
Appellate review – record to be reviewed	
Retains current law that provides that on appeal of a sentence the record to be reviewed must include all of the following (<i>R.C. 2953.08(G)</i>): <ul style="list-style-type: none"> ▪ A presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. ▪ The trial record in the case in which the sentence was imposed. 	Same provision (<i>R.C. 2953.08(F)(1)</i>): <ul style="list-style-type: none"> ▪ Same provision. ▪ Same provision.

<p style="text-align: center;">H.B. 166 (As Introduced)</p>	<p style="text-align: center;">Sub. H.B. 166 (I_134_0658-3)</p>
<ul style="list-style-type: none"> ▪ Any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed. ▪ Any written findings of fact that the court was required to make in connection with the modification of the sentence pursuant to judicial release. ▪ No provision. <p>No provision.</p> <p>No provision.</p> <p>Requires the appellate court to review the record, including the findings underlying the sentence or modification given by the sentencing court <i>(R.C. 2953.08(H)(2))</i>.</p>	<ul style="list-style-type: none"> ▪ Same provision. ▪ Same provision. ▪ An agreed statement of the record to be reviewed, as applicable. <p>Requires that the record to be reviewed must be made available to all parties <i>(R.C. 2953.08(F)(2))</i>.</p> <p>Requires the appellant, when filing the appeal, to specify the grounds for the appeal and specifically reference the record that is the basis of the appeal <i>(R.C. 2953.08(G))</i>.</p> <p>Same provision, except also requires the appellate court to consider, when reviewing a sentence that was imposed consecutively with another sentence, the aggregate length of all the sentences imposed <i>(R.C. 2953.08(H)(1))</i>.</p>

Appellate review – review of sentences

<p>Retains current law that provides that for a sentence reviewed under “Appellate review – defendant right to appeal” or “Appellate review – prosecutor right to appeal,” if the sentencing court was required to make the findings for community control sanctions, for a presumption of a prison term, or for the trier of fact, and if the sentencing court failed to state the required findings on the record, the appellate court must remand the case to the</p>	<p>No provision.</p>
--	----------------------

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
<p>sentencing court and instruct the sentencing court to state on the record the required findings (<i>R.C. 2953.08(H)(1)</i>).</p> <p>Provides that for a sentence reviewed under “Appellate review – defendant right to appeal” or “Appellate review – prosecutor right to appeal,” the appellate court may vacate a sentence that is appealed and remand the matter to the sentencing court for resentencing. The appellate court’s standard for review is not whether the court abused its discretion. The appellate court may take action if it clearly and convincingly finds either of the following (<i>R.C. 2953.08(H)(2)</i>):</p> <ul style="list-style-type: none"> ▪ That the record does not support the court’s findings for community control sanctions, for a presumption of a prison term, for an additional definite prison term, for consecutive prison terms, or for judicial release, whichever is relevant. ▪ That the sentence is otherwise “contrary to law,” a defined term (see “Appellate review – definitions,” below). <p>Provides that for a sentence reviewed under “Appellate review – defendant right to appeal” or “Appellate review – prosecutor right to appeal,” above, if a conviction for a qualifying felony is reversed as described above and the reversal would affect the maximum prison term, the appellate court must remand the case for resentencing (<i>R.C. 2953.08(I)</i>).</p> <p>No provision.</p>	<p>No provision.</p> <ul style="list-style-type: none"> ▪ No provision. ▪ No provision. <p>No provision.</p> <p>Provides that for a sentence reviewed under (5) to (10) in “Appellate review – defendant right to appeal” or “Appellate review – prosecutor right to appeal,” above, if the sentence is within the range of prison terms for a felony, there is a presumption that the sentence is proportional and consistent, and the court must vacate and</p>

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
No provision.	<p>remand for resentencing if the defendant or prosecution establishes by clear and convincing evidence that the sentencing court erroneously based its sentence on an error of fact (<i>R.C. 2953.08(H)(2)</i>).</p> <p>Provides that for a sentence reviewed under (11) in “Appellate review – defendant right to appeal,” above, if the aggregate minimum prison term of the consecutive sentence, not including any specification, is equal to or less than the number of years in “Appellate review – aggregate minimum prison terms,” below, there is a presumption that the findings made for consecutive prison terms are supported by the record, and the appellate court must vacate and remand for resentencing if the findings made for consecutive sentences are not clearly and convincingly supported by the record (<i>R.C. 2953.08(H)(3)(a)</i>).</p>
No provision.	<p>Provides that for a sentence reviewed under (11) in “Appellate review – defendant right to appeal,” above, if the aggregate minimum prison term of the consecutive sentence, not including any specification, is greater than the number of years in “Appellate review – aggregate minimum prison terms,” below, there is no presumption that the findings made for consecutive prison terms are supported by the record, and the appellate court must vacate and remand for resentencing if the findings made for consecutive sentences are not clearly and convincingly supported by the record (<i>R.C. 2953.08(H)(3)(b)</i>).</p>
No provision.	<p>Allows the court, in making a determination for a sentence reviewed under (11) in “Appellate review – defendant right to appeal,” above, to consider all of the following (<i>R.C. 2953.08(H)(3)(c)</i>):</p>

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
	<ul style="list-style-type: none"> ▪ The conduct of the defendant. ▪ The age of the defendant. ▪ The harm or lack of harm caused by the offense or offenses. ▪ The defendant’s criminal history or lack of criminal history. ▪ All relevant sentencing factors. ▪ The consistency and proportionality of the sentence. ▪ Any mitigating factors presented at sentencing.
Appellate review – aggregate minimum prison terms	
No provision.	<p>As provided in “Appellate review – review of sentences,” above, requires the court to review the following aggregate minimum prison terms of consecutive sentence (<i>R.C. 2953.08(H)(3)(d)</i>):</p> <ul style="list-style-type: none"> ▪ 15 years when the most serious offense is a first degree felony. ▪ 12 years when the most serious offense is a second degree felony. ▪ Eight years when the most serious offense is a third degree felony. ▪ Three years when the most serious offense is a fourth degree felony.

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
	<ul style="list-style-type: none"> ▪ Two years when the most serious offense is a fifth degree felony.
Appellate review – definitions	
<p>Provides that a sentence is “contrary to law” if it fails to comport with all mandatory, definite, or indefinite sentencing provisions or is not otherwise within the range of prison terms for a felony <i>(R.C. 2953.08(A)(2))</i>.</p> <p>Defines “maximum prison term” as the potential additional prison term imposed as part of a nonlife felony indefinite prison term that must be served by the offender at the conclusion of the offender’s minimum prison term or aggregate minimum prison term to the extent that the presumption of release has been rebutted <i>(R.C. 2953.08(A)(1), by reference to R.C. 2929.01)</i>.</p> <p>Defines “nonlife felony indefinite prison term” as a prison term imposed for a first or second degree felony committed on or after March 22, 2019, that consists of both a minimum prison term and a maximum prison term <i>(R.C. 2953.08(A)(1), by reference to R.C. 2929.01)</i>.</p> <p>Defines “qualifying felony of the first or second degree” as a first or second degree felony committed on or after March 22, 2019 <i>(R.C. 2953.08(A)(3))</i>.</p>	<p>Defines “authorized by law” as a sentence that complies with all mandatory, definite, or indefinite sentencing provisions or is otherwise within the range of prison terms for a felony and any other provision of the Revised Code <i>(R.C. 2953.08(A))</i>.</p> <p>No provision.</p> <p>No provision.</p> <p>No provision.</p>
Indictments, informations, or complaints	
<p>Requires a court imposing a prison term on an offender for one or more qualifying first or second degree felonies contained in a single indictment, information, or complaint to determine a single maximum prison term that is part of the sentence for all of the qualifying first or</p>	<p>Modifies the references to an “indictment, information, or complaint,” to “indictments, informations, or complaints” <i>(R.C. 2929.144(B))</i>.</p>

H.B. 166 (As Introduced)	Sub. H.B. 166 (I_134_0658-3)
<p>second degree felonies contained in the indictment, information, or complaint (<i>R.C. 2929.144(B)</i>).</p> <p>Provides that “most serious qualifying felony being sentenced” means, with respect to an indictment, information, or complaint that contains more than one qualifying first or second degree felony, the qualifying first or second degree felony carrying the highest degree of felony of all the qualifying first or second degree felonies contained within the indictment, information, or complaint for which sentence is being imposed (<i>R.C. 2929.144(A)</i>).</p>	<p>Modifies the references to an “indictment, information, or complaint,” to “indictments, informations, or complaints” (<i>R.C. 2929.144(A)</i>).</p>
Judicial release	
<p>Excludes from eligibility for judicial release any person who on or after the effective date of the bill is serving a stated prison term for a nonlife felony indefinite prison term (<i>R.C. 2929.20(A)(1)(b) and (A)(6)</i>).</p>	<p>Restores eligibility for judicial release to any person who on or after the effective date of the bill is serving a stated prison term for a nonlife felony indefinite prison term (<i>R.C. 2929.20(A)(1)(b) and (A)(6)</i>).</p>
Reagan Tokes Law study	
<p>Requires the State Criminal Sentencing Commission to study the impact of the Reagan Tokes Law and to submit a report containing the results of the study to the General Assembly and Governor on December 31 in every even-numbered year beginning on December 31, 2022 (<i>R.C. 181.26(B)</i>).</p>	<p>Modifies the year the first report must be submitted from 2022 to 2024 (<i>R.C. 181.26(B)</i>).</p>