

HOUSE BILL ANALYSIS

HB 2563

Brief Description: Penalizing drug crimes around children.

Sponsors: Representatives Carrell and Dickerson.

Hearing: January 25, 2000

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

BACKGROUND:

Under the state Uniform Controlled Substances Act, the degree of control exercised over a controlled substance is dependent on the potential for abuse and the degree of psychological or physical dependency which may be caused by the substance. Substances are placed in five schedules to reflect the amount of control necessary, with Schedule I being the most controlled, and Schedule V being the least controlled. The penalty for violations involving a controlled substance varies depending on the schedule on which the substance is placed.

Manufacture, Deliver, or Possession of a Controlled Substance. It is unlawful to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. Violation of this law is a class B felony with respect to Schedule I or II narcotic drugs, or flunitrazepam (a Schedule IV drug). The maximum penalty for violating this law is 10 years in prison, a fine of not more than \$25,000, or both, if the crime involved less than two kilograms of the drug. If the crime involved two kilograms or more, the maximum penalty is 10 years in prison, a fine of not more than \$100,000 for the first two kilograms and not more than an additional \$50 for each gram in excess of two kilograms, or both imprisonment and the fine.

It is a class B felony to manufacture, deliver, or possess with intent to manufacture or deliver amphetamine and methamphetamine, both which are Schedule II drugs. The maximum penalty for violating this law is 10 years in prison, a fine of not more than

\$25,000, or both, if the crime involved less than two kilograms of the drug. If the crime involved two kilograms or more, the maximum penalty is 10 years in prison, a fine of not more than \$100,000 for the first two kilograms and not more than an additional \$50 for each gram in excess of two kilograms, or both imprisonment and the fine.

A person violating the law with respect to any other controlled substance classified in Schedule I, II, III, IV (with the exception of flunitrazepam), or V is a class C felony offense and may be imprisoned for not more than five years, fined not more than \$10,000, or both.

Selling a Schedule I controlled Substance. Any person convicted of selling for profit any controlled substance or counterfeit substance classified in Schedule I (with the exception of leaves and flowering tops of marijuana) is guilty of a class C felony. The maximum penalty for this offense is five years in prison for the first offense. Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, shall receive a mandatory sentence of five years in prison.

Drug-Free Zones. An additional two years must be added on to the presumptive sentence for any violation of the Uniform Controlled Substances Act when it is committed in a drug-free zone. Drug-free zones include such areas as schools, school buses, public transit vehicles, and public parks.

Exposing a Child to Methamphetamine Manufacture. Washington does not have a criminal statute specifically relating to exposing a child to methamphetamine manufacture.

SUMMARY OF BILL:

Enhanced penalties, doubling the maximum fines and confinement times, is created for any person who unlawfully sells, manufactures, delivers, or possess with intent to manufacture, or deliver a controlled substance, in the presence of a child under the age of 16 years old. In addition, new sections are added to the Uniform Controlled Substance Act, creating two new crimes: exposing a child to methamphetamine manufacture in the first and second degree.

Manufacture, Deliver, or Possession of a Controlled Substance. It is unlawful to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in the presence of a child under the age of 16 years old. It is a class A felony for violating this law, with respect to Schedule I or II narcotic drugs, or flunitrazepam (a schedule IV drug). The maximum penalty for violating this law is 20 years in prison, a fine of not more than \$50,000, or both, if the crime involved less than two kilograms of

the drug. If the crime involved two kilograms or more, the maximum penalty is 20 years in prison, a fine of not more than \$200,000 for the first two kilograms and not more than an additional \$100 for each gram in excess of two kilograms, or both imprisonment and the fine.

It is a class A felony to manufacture, deliver, or possess with intent to manufacture or deliver amphetamine and methamphetamine, both which are Schedule II drugs, in the presence of a child under the age of 16 years old. The maximum penalty for violating this law is 20 years in prison, a fine of not more than \$50,000, or both, if the crime involved less than two kilograms of the drug. If the crime involved two kilograms or more, the maximum penalty is 20 years in prison, a fine of not more than \$200,000 for the first two kilograms and not more than an additional \$100 for each gram in excess of two kilograms, or both imprisonment and the fine.

A person violating the law with respect to any other controlled substance classified in Schedule I, II, III, IV (with the exception of flunitrazepam), or V, in the presence of a child under the age of 16 years old, is a class B felony offense and may be imprisoned for not more than 10 years, fined not more than \$20,000, or both.

Selling a Schedule I controlled Substance. Any person convicted of selling for profit any controlled substance or counterfeit substance classified in Schedule I (with the exception of leaves and flowering tops of marijuana), in the presence of a child under the age of 16 years old, is guilty of a class B felony. The maximum penalty for this offense is 10 years in prison for the first offense. Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, shall receive a mandatory sentence of 10 years in prison.

Drug-Free Zones. An additional two years must be added on to the presumptive sentence for any violation of the Uniform Controlled Substances Act when it is committed in a drug-free zone or in the presence of a child under the age of 16 years old. If the offender commits a violation of the Uniform Controlled Substances Act both within a drug-free zone and in the presence of a child under the age of 16 years old then the two year enhancements for each violation must run consecutively.

Exposing a Child to Methamphetamine Manufacture.

First Degree. A parent of a child is guilty of exposing a child to methamphetamine manufacture in the first degree if he or she:

- Fails to take immediate steps reasonably calculated to remove the child from a building in which he or she knows or reasonably should know methamphetamine is being manufactured upon learning that the child is in the building; or

- Fails to take immediate steps reasonably calculated to prevent the child from entering a building in which he or she knows or reasonably should know methamphetamine is being manufactured upon learning that the child is about to enter the building.

Exposing a child to methamphetamine manufacture in the first degree is a seriousness level X, class B felony offense. The violation shall be punishable by up to 10 years in prison or a fine of not more than \$25,000, or both such imprisonment and fine. A first-time offender's presumptive range is 51 to 68 months in prison.

Second Degree. A person is guilty of exposing a child to methamphetamine manufacture in the second degree if a child is inside a building where methamphetamine is being manufactured, and the person is, or has been, a participant in the manufacture of methamphetamine, either as a principle or as an accomplice. Exposing a child to methamphetamine manufacture in the second degree is a seriousness level VIII, class B felony offense and shall be punishable by up to 10 years in prison or a fine of not more than \$25,000, or both such imprisonment and fine. A first-time offender's presumptive range is 21 to 27 months in prison.

FISCAL NOTE: Requested on January 19, 2000.

EFFECTIVE DATE: Ninety days after adjournment of a session in which bill is passed.