

FINAL BILL REPORT

HB 1544

C 352 L 99

Synopsis as Enacted

Brief Description: Making corrections to sentencing laws.

Sponsors: Representatives O'Brien, Ballasiotes, Kastama, Cairnes and Keiser; by request of Sentencing Guidelines Commission.

House Committee on Criminal Justice & Corrections
Senate Committee on Judiciary

Background:

Technical Corrections.

- The Crimes of Murder in the Second Degree and Setting off Explosives. The 1997 Legislature enacted two bills affecting sentencing at seriousness level XIII. The unintended interaction of the two bills has created an inconsistency in the state's statute.

Senate Bill 5938 (Chapter 365 of the Laws of 1997) brought the upper end of the sentence range for second degree murder closer to the lower end of the sentence range for first degree murder, reflecting the sometimes slight difference in mental state between the two degrees (premeditation). However, where the maximum term of a standard sentence range is more than one year, the minimum term in the range cannot be less than 75 percent of the maximum term. The minimum term of the new range created by the 1997 Legislature in Senate Bill 5938 was less than 75 percent of the maximum and, as a result, Senate Bill 5938 was amended to allow that in the particular case of second degree murder, the minimum term must be no less than 50 percent of the maximum term.

In the same year, the Legislature also passed Substitute House Bill 1069 (Chapter 120 of the Laws 1997) which amended felony statutes relating to explosives and placed the new explosive offenses at a seriousness level XIII with second degree murder. However, the Legislature did not change the sentence ranges for the explosive offenses in level XIII to comply with the 75 percent rule where the maximum term of a standard sentence range is more than one year, then the minimum term in the range cannot be less than 75 percent of the maximum term.

Because Senate Bill 5938 exempted second degree murder from the 75 percent width rule within seriousness level XIII, that ratio continues to apply to the two

explosive offenses (malicious explosion 2 and malicious placement of an explosive 1). Since all three crimes (murder 2, malicious explosion 2, and malicious placement of an explosive 1) are placed in the same level XIII seriousness level, the unintended interaction of several of the bills passed in 1997 has created an inconsistency with the state's current statute.

- Distribution of Methamphetamine to Persons under 18 Years Old. The 1996 Legislature enacted Substitute House Bill 2339 (Chapter 205 of the Laws of 1996), which increased the penalty for distributing methamphetamine to persons under age 18. However, the Legislature did not to amend the Sentencing Reform Act grid to change the seriousness level for the offense from a seriousness level IX to a seriousness level X, which is necessary to allow for imposition of the appropriate sentence range for that offense.
- Sex Offender and Kidnapper Registration. In 1997, the Legislature passed legislation requiring certain kidnappers to register and made it a felony not to register. However, since the registration procedure that had applied before only related to sex offenders, failure to register was itself a sex offense. As a result, a kidnapper who now fails to register is deemed to have committed a sex offense, irrespective of whether the kidnapping was sexually motivated.
- Manslaughter as a Serious Violent Offense. Under the Sentencing Reform Act, manslaughter in the first degree is committed when a person recklessly causes the death of another person or intentionally and unlawfully kills an unborn child by assaulting the mother. In 1997, first degree manslaughter was increased from a class B felony to a class A felony and it was also added to the list of "serious violent offenses."

"Serious violent offense" is a subcategory of violent offense and, prior to 1997, the list of serious violent offenses included the following eight crimes: aggravated murder in the first degree; homicide by abuse; murder in the second degree; manslaughter in the first degree; assault in the first degree; kidnapping in the first degree, or rape in the first degree; assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense.

The Sentencing Reform Act states that prior convictions of any of the "serious violent" offenses listed above count as three points in the offender score when the current offense is one of the eight "serious violent" offenses. The 1997 law made manslaughter in the first degree a "serious violent" offense, but did not require scoring this serious violent offense as three points on the sentencing grid which is required in all other cases. As a result, prior convictions of first degree manslaughter do not count as three points in the offender score when the current

offense is one of the eight enumerated "serious violent" offenses, and conversely, prior convictions of any of the eight enumerated "serious violent" offenses do not count as three points in the offender score when sentencing first degree manslaughter as the current offense.

- DUI-related Vehicular Homicides. In 1998, the Legislature enacted Engrossed Substitute Senate Bill 6166 (Chapter 211 of the Laws of 1998) to increase the penalties for DUI (driving while under the influence). The bill amended the motor vehicle statute to add a two-year enhancement for each prior DUI-related offense when the current offense is vehicular homicide while under the influence.

The same bill also amended the Sentencing Reform Act statute to exclude prior DUI-related convictions from consideration in the computation of the offender score when the current offense is vehicular homicide while under the influence (because each prior DUI-related conviction should already result in a two-year sentence enhancement). The bill had an unintended effect of preventing the consideration of prior non-DUI-related serious traffic offenses when computing the score for the current offense of vehicular homicide while under the influence. The result is that some offenders convicted of vehicular homicide while under the influence will find it to their advantage if they have a DUI-related conviction in their criminal history.

- Multiple Weapon Offenses. In 1998, the Legislature enacted Engrossed Senate Bill 5695 (Chapter 235 of the Laws of 1998), clarifying how sentences for weapon-related offenses are to be served, with relation to concurrent and consecutive sentences, to sentence enhancements, to earned early release time, and to statutory maximum sentences. The bill amended the Sentencing Reform Act to provide that sentences must be served consecutively for the multiple offenses of unlawful possession of a firearm in the first or second degree and possession of a stolen firearm or theft of a firearm, but that current weapon-related offenses may not be considered in criminal history when calculating the offender score to determine the sentence range. The language of the bill had an unintended effect of preventing the consideration of any current offense when calculating the offender score.

Unranked Offenses. The act makes a number of technical corrections to the state's sentencing laws as well as provides seriousness level ranking for several felony offenses that are currently unranked under the Sentencing Reform Act.

The state's sentencing guidelines provide a classification of most felonies by their "seriousness level," from level I, punishable by 0 days to 29 months imprisonment, to level XV, punishable by life imprisonment without parole or by death. An adult offender is also assigned an "offender score," based on a number of factors, including prior convictions. The seriousness level of the crime and the offender score

determine what sentence the offender will receive, unless the court determines that the conditions for imposing an exceptional sentence are met.

"Unranked" felonies are those offenses that are not assigned a seriousness level. The standard sentence range for an unranked felony is 0-12 months, unless the court finds that there are substantial and compelling reasons for imposing an exceptional sentence. In 1997, the Legislature directed the Sentencing Guidelines Commission to review conviction data for the previous 10 years and submit a proposed bill that appropriately ranked all unranked felony offenses for which there had been convictions. Legislation was proposed, but not enacted, in 1998.

Other Issues.

- Malicious Injury to Railroad Property. The crime of malicious injury to railroad property occurs when a person endangers the safety of any railroad property or person thereon, and is punishable by up to 25 years imprisonment. Because it is considered a class A felony, it also falls within the definition of "most serious offense" for the purposes of the persistent offender ("3 strikes") legislation.
- Incendiary Devices. A person who knowingly possesses, manufactures, or disposes of an incendiary device is guilty of a felony, punishable by up to 25 years imprisonment. Because it is considered a class A felony, it also falls within the definition of "most serious offense" for the purposes of the persistent offender ("3 strikes") legislation.
- Theft of Rental or Leased Property. Theft of rental, leased, or lease-purchased property is a class B felony (ranked seriousness level II) if the property is valued at \$1,500 or more and a class C felony (ranked seriousness level I) if the property is valued between \$250 and \$1,500.
- Alphabetization. The crimes within each seriousness level in the Sentencing Reform Act are not listed in any particular order.

Summary:

Technical Corrections.

The following are technical corrections to the state's sentencing laws.

- Murder in the Second Degree. A conflict is resolved between two 1997 laws (Chapter 365 and 120) by creating a new seriousness level in the sentencing grid for Murder 2 with the same range set in 1997.

A new seriousness level XIV is created for Murder 2 with the same ranges set in 1997, but separate from the new (explosive) crimes added to level XIII in 1997. This clarifies the Sentencing Reform Act rule that requires the minimum term of a presumptive range to be no less than 75 percent of the maximum term except in cases of murder in the second degree. In these particular cases the minimum term must be no less than 50 percent of the maximum term.

- Distribution of Methamphetamine to Persons under 18 Years Old. Delivering methamphetamine to someone under the age of 18 is included in the Sentencing Reform Act grid at a seriousness level X allowing it to be consistent with legislation passed in 1996.
- Sex Offender and Kidnapper Registration. The failure of a kidnapping offender to register will not be a sex offense unless the kidnapping was sexually motivated.
- Manslaughter as a Serious Violent Offense. The triple scoring rule is applied to manslaughter in the first degree, the same rule that applies to other serious violent offenses. Rather than listing the offenses individually, a general reference is made to "serious violent offenses," so that triple-scoring will be automatic for any crimes added to the "serious violent" list in the future. The new wording will ensure that any other offenses added to the "serious violent" category in the future will score three points in the offender's history when determining the sentence range.
- DUI-related Vehicular Homicides. Prior DUI-related convictions may not be considered when computing the offender score for the current offense of vehicular homicide while under the influence (because a two-year sentence enhancement will result from each prior DUI-related offense), but other prior non-DUI-related serious traffic offenses will continue to be included in the offender score when the current offense is vehicular homicide while under the influence.
- Multiple Weapon Offenses. All current offenses, other than current weapon-related offenses, are considered as prior offenses when calculating an offender's score to determine the sentences for multiple weapon-related offenses.

Unranked Offenses. The following unranked felony offenses are ranked at the seriousness levels noted:

- Level VII (15-116 months): Use of a Machine Gun in the Commission of a Felony
- Level V (6-96 months): Stalking (effective on and after July 1, 2000)

No-Contact Order Violation: Domestic Violence Pretrial Condition (effective on and after July 1, 2000)

No-Contact Order Violation: Domestic Violence Sentence Condition (effective on and after July 1, 2000)

Protection Order Violation: Domestic Violence Civil Action (effective on and after July 1, 2000)

- Level IV (3-84 months): Indecent Exposure to Person Under Age Fourteen (subsequent sex offense)
- Level III (1-68 months): Maintaining a Dwelling or Place for Controlled Substances

Malicious Injury to Railroad Property

Possession of Incendiary Device

Possession of Machine Gun or Short-Barreled Shotgun or Rifle

Telephone Harassment (subsequent conviction or threat of death)

Unlawful Use of Building for Drug Purposes

Other Issues.

- Malicious Injury to Railroad Property. The penalty for malicious injury to railroad property is reduced from a maximum of 25 years to a maximum of 10 years imprisonment, which also removes it from the definition of "most serious offense."
- Incendiary Devices. The penalty for the felony of possessing, manufacturing, or disposing of an incendiary device is reduced from a maximum of 25 years to a maximum of 10 years imprisonment, which also removes it from the definition of "most serious offense."
- Theft of Rental or Leased Property: The designations for the crime of theft of rental, leased, or lease-purchased property (class B and C felonies) are modified to make them easier to locate. The seriousness levels are not changed.
- Alphabetization. The Code Reviser is required to alphabetize the offenses within each seriousness level.

Votes on Final Passage:

House 97 0

Senate 49 0 (Senate amended)

House 96 0 (House concurred)

Effective: July 25, 1999