

HOUSE BILL ANALYSIS

HB 1544

Title: An act relating to sentencing of offenders.

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 AND CORRECTIONS

Staff: Yvonne Walker (786-7841).

Background:

1. *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 with the state's current 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, pursuant to the state's current statute, 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.

Meanwhile, 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) ended up 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.

2. *Distribution of Methamphetamine to Persons under 18 Years Old.* The 1996 Legislature enacted Substitute House bill 2339 (Chapter 205 of the Laws of 1996), amending the Uniform Controlled Substances Act to increase the penalty for distributing methamphetamine to persons under age 18. However, the Legislature neglected 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.

3. *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 kidnaping was sexually motivated. The crime of a kidnapper failing to register is a sex offense in all cases.

4. *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; kidnaping 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 currently 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 currently count as three points in the offender score when sentencing first degree manslaughter as the current offense.

5. *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 driving while under the influence. The bill amended the motor vehicle statute to add a two-year enhancement for each prior DUI (driving under the influence)-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 language in 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.

6. *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 shall 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.

Summary:

This bill makes a number of technical corrections to the state’s sentencing laws.

1. *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.

2. *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.

3. *Sex Offender and Kidnapper Registration.* The failure of a kidnaping offender to register will not be a sex offense unless the kidnaping was sexually motivated. This amendment still makes it a felony for a kidnapper not to register, but not as a sex offense (unless the kidnaping was sexually motivated).

4. *Manslaughter as a Serious Violent Offense.* The triple scoring rule is applied to manslaughter in the first degree, the same as the other serious violent offenses. Rather than listing the offenses individually, the bill replaces the list of specific crimes with a reference to "serious violent offenses," so 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.

5. *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 (which are misdemeanors) will continue to be included in the offender score when the current offense is vehicular homicide while under the influence.

6. *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.

Fiscal Note: Requested on February 2, 1999.

Effective Date: Ninety days after adjournment of session in which bill is passed. Sections 6 and 7 of this act take effect immediately.