

HOUSE BILL REPORT

HB 2073

*As Passed House
March 13, 1991*

Title: An act relating to selling controlled or counterfeit substances for profit.

Brief Description: Increasing the penalties for selling controlled substances for profit.

Sponsor(s): Representatives Padden, Morris, Silver, Winsley, Casada, Bowman, Vance, Broback, Fuhrman, P. Johnson, Morton, Wynne, Moyer, Edmondson, Van Luven and Mitchell.

Brief History:

Reported by House Committee on:
Judiciary, February 26, 1991, DP;
Passed House, March 13, 1991, 91-0.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass.* Signed by 18 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Paris, Assistant Ranking
Minority Member; Belcher; Broback; Forner; Hargrove; Inslee;
R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate;
Vance; and Wineberry.

Staff: Bill Perry (786-7123).

Background: The Uniform Controlled Substances Act classifies various drugs into five "schedules." Generally, schedule I drugs are the most dangerous and least likely to have medical uses, while schedule V drugs are the least likely to be abused and the most likely to have legitimate uses. That act and the Sentencing Reform Act also provide varying penalties for proscribed activities involving these scheduled drugs.

Selling a schedule I drug for profit generally carries a less severe penalty than manufacturing or delivering the same drug. The only exception to this general rule is selling heroin for profit, which carries the same penalty as manufacturing or delivering heroin. This disparity in punishment manifests itself in four ways:

- o Seriousness level ranking. The presumptive sentence under the Sentencing Reform Act is less for selling for profit than for manufacturing or delivering.
- o First-time offender waiver. First-time offenders who are convicted of manufacturing or delivering are ineligible for more lenient sentences generally available to first-time offenders. Offenders convicted of selling for profit can still be eligible for first-time status.
- o Correctional facility enhancement. Manufacturing or delivering drugs in prison carries an 18-month enhancement on the otherwise applicable presumptive sentence. Selling for profit in prison does not.
- o Protected zones enhancement. Manufacturing or delivering drugs near schools, parks, or certain other facilities carries a potential enhanced penalty of double the otherwise applicable maximum sentence. Selling for profit in these protected zones does not.

The crime of selling heroin for profit, as noted above, is treated somewhat differently from selling other schedule I drugs for profit. Selling heroin for profit is already ranked at the same seriousness level as manufacturing or delivering. With respect to first-time offender status and the enhancements identified above, selling heroin is in the same position as selling other drugs for profit.

As a practical matter, a person who sells for profit will often also "deliver," or possess with intent to "deliver." The number of persons charged with selling for profit is very small. The concern has been raised, however, that a person who actually sold drugs for profit, but has been charged with delivery, might argue that he or she must be charged with selling instead, and hence face a lesser penalty.

The Sentencing Guidelines Commission has the responsibility for suggesting improvements to the criminal sentencing laws of the State. The commission has recommended changes to provide for more consistency in the way the crime of selling a controlled substance is treated.

Summary of Bill: The crime of selling a schedule I controlled substance is given the same seriousness level ranking under the Sentencing Reform Act as the crimes of manufacturing or delivering controlled substances.

Conviction for the crime of selling a schedule I controlled substance makes the offender ineligible for first-time offender status. Selling a schedule I controlled substance

in a correctional facility or in a protected zone such as a school or park subjects the offender to the same sentencing provisions as does manufacturing or delivering a drug in those places.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will provide more proportionate treatment of various drug offenses by removing the current anomalies in sentencing provisions.

Testimony Against: None.

Witnesses: Dave Fallen, Sentencing Guidelines Commission (in favor).