

FINAL BILL REPORT

HB 2073

C 32 L 91

Synopsis As Enacted

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

By Representatives Padden, Morris, Silver, Winsley, Casada, Bowman, Vance, Broback, Fuhrman, P. Johnson, Morton, Wynne, Moyer, Edmondson, Van Luven and Mitchell.

House Committee on Judiciary
Senate Committee on Law & Justice

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. 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. First-time offenders convicted of selling for profit can still be eligible for the more lenient treatment.
- 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, as most offenders apprehended for selling for profit are charged with a delivery offense. The concern has been raised 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: 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 a schedule I controlled substance.

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.

Votes on Final Passage:

House	91	0
Senate	47	0

Effective: July 28, 1991