

HOUSE BILL REPORT

HB 2028

*As Reported By House Committee on:
Judiciary*

Title: An act relating to controlled substances.

Brief Description: Updating the uniform controlled substances act.

Sponsor(s): Representatives Appelwick and Paris.

Brief History:

Reported by House Committee on:
Judiciary, February 26, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 2028 be substituted therefor, and the substitute bill do pass.*
Signed by 17 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; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Bill Perry (786-7123).

Background: Illicit drug activity is generally governed by the state's version of the Uniform Controlled Substances Act (UCSA). This act is modeled in part after federal law on the same subject, and is one of the uniform laws produced by the National Conference of Commissioners on Uniform State Laws. The commission periodically reviews uniform laws and makes recommendations to the states for updates and revisions. The commission has recommended various changes in UCSA.

Washington's UCSA is divided into articles dealing with definitions, standards and schedules, regulation of manufacturers, offense and penalties, and enforcement. The standards and schedules portion of the act actually lists the various substances which are "controlled." There are five schedules of drugs, each with a set of standards to be used in classifying candidates for inclusion. Schedule I drugs are those generally considered to be the most dangerous and likely to be abused and of the least accepted

legitimate value. Among the schedule I drugs are opiates, hallucinogens and marijuana. Schedule V drugs, on the other hand, are those considered to be of relatively low potential for abuse and relatively high accepted legitimate medical use. Among the schedule V drugs are narcotics containing dilutions of codeine or opium. Generally, the penalties for violating UCSA descend in order with respect to which schedule is involved in the violations. Other factors, such as the quantity involved, type of transaction, location of transaction, and prior history also affect the severity of punishment. Many of these factors are controlled by the sentencing reform act.

Generally, controlled substances cannot be possessed, manufactured, distributed, or sold except as provided in UCSA. The act directs the State Board of Pharmacy to regulate the manufacture and distribution of controlled substances. Only persons who have registered under the act may legally make, distribute or dispense controlled substances, and then only to the extent the act specifically allows.

The State Board of Pharmacy is given enforcement authority under UCSA. This authority includes using administrative warrants to inspect the records and premises of persons registered under the act. Warrants may be issued by a judge upon a showing by the board of probable cause of a valid public interest in enforcing the act. Illegally possessed drugs, along with any property used in illegal drug activity, may be seized by the board or by law enforcement agencies.

UCSA and the Sentencing Reform Act provide varying penalties for proscribed activities involving 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 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.

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 Substitute Bill: Portions of the recommendations of the Uniform Law Commission for amendment to UCSA are adopted, as are the amendments proposed by the Sentencing Guidelines Commission.

Several definitional updates are made, in part to conform to terminology used in federal legislation. All of the schedules of controlled substances are amended to include the latest substances listed under federal law.

"Research" is added to medical, scientific or industrial uses as an acceptable form of dissemination of controlled substances to be considered when a manufacturer or distributor applies for registration. Convictions under drug laws of foreign nations are to be considered by the board when a person applies for registration as a manufacturer or distributor.

A new provision is added allowing for the seizure of controlled substances owned or possessed by a registrant whose registration has expired or who has stopped operations. Seizure under this provision is to be for the benefit of the registrant, or the registrant's successor in interest. Notice to the registrant is required, and the seized property must be held for at least 180 days before it may be disposed of. Costs of seizure, holding and disposition may be deducted, but otherwise proceeds from disposition will go to the registrant.

Pharmacists are granted immunity from civil and criminal liability under UCSA when they fill a prescription reasonably believing that it is legitimate.

A program is established to track and prevent the diversion of drugs from legal to illegal channels of distribution or use.

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.

Substitute Bill Compared to Original Bill: The substitute clarifies that pharmacist immunity granted by the bill extends only to potential liability under UCSA.

Fiscal Note: Not requested.

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

Testimony For: The bill makes necessary updates in terminology and substance scheduling to allow better administration of UCSA.

Testimony Against: None.

Witnesses: Don Williams, State Board of Pharmacy (in favor); and Lori Engles Highland (expressed concerns).