

**SENATE BILL REPORT**

**SB 5875**

**AS PASSED SENATE, MARCH 13, 1991**

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

**SPONSORS:** Senators Niemi, Nelson, Madsen, Thorsness and Rasmussen; by request of Sentencing Guidelines Commission.

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** Do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, L. Kreidler, Madsen, Newhouse, Rasmussen, and A. Smith.

**Staff:** Jon Carlson (786-7459)

**Hearing Dates:** March 6, 1991

**BACKGROUND:**

Under the Sentencing Reform Act, selling a schedule I drug for profit 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).

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.

Manufacturing or delivering drugs in prison carries an 18-month enhancement to the otherwise applicable presumptive sentence. Selling for profit in prison does not.

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 areas does not.

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 recommended changes to provide for more consistency in the way the crime of selling a controlled substance is treated.

**SUMMARY:**

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

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

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

This measure corrects the disparity in sentencing between selling for profit and manufacturing or delivering a controlled substance. Related statutes are similarly adjusted to eliminate confusion in the current sentencing provisions.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Don Moore, Executive Officer, Sentencing Guidelines Commission; David Fallen, Research Director, Sentencing Guidelines Commission