

HOUSE BILL REPORT

HB 1624

As Reported By House Committee On:
Judiciary

Title: An act relating to decriminalizing certain misdemeanors.

Brief Description: Decriminalizing certain misdemeanors.

Sponsors: Representative Appelwick.

Brief History:

Reported by House Committee on:
Judiciary, March 2, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; and Tate.

Minority Report: Do not pass. Signed by 1 member: Representative Wineberry.

Staff: Bill Perry (786-7123).

Background: Prohibited activities may be classified either as crimes or as civil infractions.

Because of state and federal constitutional provisions, more stringent procedural protections are necessary for persons charged with crimes than is true for persons charged with an infraction. For example, a person charged with a crime is entitled to a jury trial and an attorney. A person charged with an infraction is not. At the same time, the state has a lesser burden of proof in the case of an infraction. That is, a person can be liable for a civil penalty upon a showing "by a preponderance of the evidence" that he or she committed the prohibited act, whereas a conviction for a crime requires proof "beyond a reasonable doubt."

The main distinguishing characteristic of a crime is the defendant's exposure to possible incarceration. However,

some court decisions have suggested that other factors, such as the "stigma" associated with having been found to have committed certain acts may make an offense a "crime," even if the Legislature removes incarceration as a penalty or calls the offense an "infraction."

A large number of traffic offenses were decriminalized several years ago. In addition, violations of many natural resources regulations have been made infractions. There is also a general procedural statute covering other civil infractions.

Under the provisions creating traffic infractions, the state Supreme Court sets the monetary penalty to be imposed for violations.

Under the general procedural statute covering other infractions, offenses are classified with a statutory fine set for each class. The classes and maximum fines under this general statute are as follows:

- o For a class 1 infraction, the maximum fine is \$250.
- o For a class 2 infraction, the maximum fine is \$125.
- o For a class 3 infraction, the maximum fine is \$50.
- o For a class 4 infraction, the maximum fine is \$25.

Generally, a person given a notice of an infraction may respond in one of three ways. First, the person may pay the fine without contesting it. Second, the person may ask for a hearing to explain any mitigating circumstances. Third, the person may ask for a hearing to contest the infraction.

The Washington State Advisory Group On Indigent Defense issued a report in November 1991 recommending the decriminalization of certain misdemeanor offenses. The group's main concern was the growing cost of providing publicly funded defense attorneys for indigent criminal defendants.

Summary of Substitute Bill: The following misdemeanor crimes are made civil infractions:

1. Soliciting to be called for jury duty is made a class 1 infraction.
2. Destruction of plants, wildlife, or property on a state park, or violation of State Parks' Commission rules is made a class 2 infraction.

3. Unlawful use of disabled parking, or unlawful obtaining of disabled parking privileges, is made a traffic infraction.
4. Failure to surrender a driver's license following license suspension under financial responsibility requirements is made a traffic infraction.
5. Advertising illegal speed attainment in vehicle sales is made a traffic infraction.
6. Amendments are made to the traffic infraction law to remove exceptions for the crimes being decriminalized by this act.
7. A car dealer's failure to display or disclose the asking price on a used vehicle for sale is made a traffic infraction.
8. Operating a commercial vehicle without proper registration under the proportional registration law is made a traffic infraction.
9. Illegal stopping, parking, or making a U-turn on a limited access highway is made a class 2 infraction.
10. Littering is made a class 2 infraction.
11. Operating for compensation as a common carrier of property without a permit from the state Utilities and Transportation Commission is made a class 2 infraction.
12. Operating for compensation as a carrier to perform transportation services without a required Interstate Commerce Commission permit is made a class 2 infraction.
13. Owning or operating a boat without required registration or display of a valid decal is made a class 2 infraction.

Substitute Bill Compared to Original Bill: The substitute removes provisions that would have decriminalized various offenses relating to liquor and drug laws, criminal trespass, motor vehicles, and false advertising.

Fiscal Note: Not requested.

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

Testimony For: Many of these offenses are relatively minor and are not being enforced now. Given the overloading of the criminal justice system, the streamlined approach of infractions should be tried.

Testimony Against: Many of these offenses are too serious to be decriminalized. Infractions are not taken seriously and have little deterrent effect.

Witnesses: Melanie Stewart, Washington Municipal and District Court Judges Association (pro); Kurt Sharar, Washington Association of Counties (pro); Matt Thomas, Washington Association of Prosecuting Attorneys (con, original bill); Jan Gee, Washington Retail Association (con); and Steve Aldrich, Hotel and Restaurant Employees (con).