

HOUSE BILL REPORT

EHB 1067

As Passed House:

March 10, 1999

Title: An act relating to statutory double jeopardy.

Brief Description: Amending statutory double jeopardy provisions.

Sponsors: Representatives O'Brien and Ballasiotes.

Brief History:

Committee Activity:

Judiciary: 2/12/99, 2/22/99 [DPA].

Floor Activity:

Passed House: 3/10/99, 97-0.

Brief Summary of Engrossed Bill

- Allows the state to prosecute a defendant who has already received administrative or nonjudicial punishment from another sovereign.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Jim Morishima (786-7191).

Background:

Under the double jeopardy clauses of the federal and state constitutions, it is unconstitutional for a person to be tried twice for the same crime by the same sovereign. However, there is no constitutional prohibition against successive prosecutions for the same crime by different sovereigns. For example, a Washington court could constitutionally prosecute a defendant who has already been prosecuted

for the same crime in another state or in a military tribunal. This is known as the doctrine of dual sovereignty.

However, many states, including Washington, statutorily override the doctrine of dual sovereignty. In Washington, double jeopardy protections apply to a defendant who has already been criminally prosecuted for the same offense by another sovereign. The Washington Supreme Court has ruled that this includes a person who has been subject to nonjudicial punishment under the Uniform Code of Military Justice.

Summary of Bill:

Double jeopardy protections apply to a defendant who has already been prosecuted for the same offense in *judicial proceedings* conducted under the *criminal laws* of another sovereign. Double jeopardy protections do *not* apply to a defendant who has received administrative or nonjudicial punishment, civilian or military, for the same offense from another sovereign.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) The Washington double jeopardy statute applies to convictions which should not include administrative or nonjudicial punishment. This is because these proceedings do not involve determinations of guilt or innocence. The burdens of proof in administrative or nonjudicial punishment proceedings are often different than in criminal cases. Administrative or nonjudicial punishment is also not listed on a person's criminal record; a person subject to nonjudicial punishment could therefore appear to be a first-time offender to a court trying the person for a subsequent offense.

Testimony Against: None.

Testified: Representative O'Brien, prime sponsor; Jim Stonier, Cowlitz County Prosecuting Attorney and Washington Association of Prosecuting Attorneys; and Jerry Costello, Pierce County Prosecuting Attorney and Washington Association of Prosecuting Attorneys.