

# HOUSE BILL REPORT

## HB 1347

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### As Reported By House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to sentencing for certain criminal acts.

**Brief Description:** Clarifying sentencing requirements for certain crimes.

**Sponsors:** Representatives O'Brien, Ballasiotes, Kastama, Cairnes, Ogden, Radcliff, Kessler and McDonald; by request of Sentencing Guidelines Commission.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/5/99, 2/10/99 [DP].

#### Brief Summary of Bill

- Provides seriousness level ranking for felonies that are currently unranked under the Sentencing Reform Act.
- Decreases maximum penalties for the crimes of malicious injury to railroad property and possession of an incendiary device.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 5 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Lovick, Democratic Vice Chair; Constantine and Kagi.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Cairnes, Republican Vice Chair; B. Chandler and Koster.

**Staff:** Jean Ann Quinn (786-7310).

### Background:

*Unranked Offenses.* The state's sentencing guidelines provide a classification of most felonies by their "seriousness level," from level I, punishable by 0 days to 29 months

imprisonment, to level XV, punishable by life imprisonment without parole or by death. An adult offender is also assigned an "offender score," based on a number of factors, including prior convictions. The seriousness level of the crime and the offender score determine what sentence the offender will receive, unless the court determines that the conditions for imposing an exceptional sentence are met.

"Unranked" felonies are those offenses that are not assigned a seriousness level. The standard sentence range for an unranked felony is 0-12 months, unless the court finds that there are substantial and compelling reasons for imposing an exceptional sentence. In 1997, the Legislature directed the Sentencing Guidelines Commission to review conviction data for the previous 10 years and submit a proposed bill that appropriately ranked all unranked felony offenses for which there had been convictions. The commission proposed a bill in 1998, but the legislation was not enacted.

*Theft of Rental or Leased Property.* Theft of rental, leased, or lease-purchased property is a class B felony (ranked seriousness level II) if the property is valued at \$1,500 or more and a class C felony (ranked seriousness level I) if the property is valued between \$250 and \$1,500.

*Malicious Injury to Railroad Property.* The crime of malicious injury to railroad property occurs when a person endangers the safety of any railroad property or person thereon, and is currently punishable by up to 25 years imprisonment. Because it is considered a class A felony, it also falls within the definition of "most serious offense" for the purposes of the persistent offender ("3 strikes") legislation.

*Incendiary Devices.* An incendiary device is a device or material that is capable of supplying ignition and/or fuel for a fire and is designed to be used as an instrument of wilful destruction. To "dispose of" an incendiary device means to give, give away, loan, offer, offer for sale, sell, or transfer such a device. Anyone who knowingly possesses, manufactures, or disposes of an incendiary device is guilty of a felony, punishable by up to 25 years imprisonment. Because it is considered a class A felony, it also falls within the definition of "most serious offense" for the purposes of the persistent offender ("3 strikes") legislation.

*Alphabetization.* Currently, the crimes within each seriousness level in the Sentencing Reform Act are not listed in any particular order.

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### **Summary of Bill:**

*Unranked Offenses:* The following currently unranked felony offenses are ranked at the seriousness levels noted:

- Level VII (15-116 months): Use of a Machine Gun in the Commission of a Felony (RCW 9A.41.225).
- Level V (6-96 months): Stalking (RCW 9A.46.110).

No-Contact Order Violation: Domestic Violence Pretrial Condition (RCW 10.99.040(4)(b) and (c)).

No-Contact Order Violation: Domestic Violence Sentence Condition (RCW 10.99.050(2)).

Protection Order Violation: Domestic Violence Civil Action (RCW 26.50.110 (4) and (5)).

- Level IV (3-84 months): Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010).
- Level III (1-68 months): Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(a)(6)).

Malicious Injury to Railroad Property (RCW 81.60.070).

Possession of Incendiary Device (RCW 9.40.120).

Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.61.190).

Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230).

Unlawful Use of Building for Drug Purposes (RCW 69.53.010).

*Theft of Rental or Leased Property (technical change only):* Class B Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4)) is redesignated "Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more)" and class C Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4)) is redesignated "Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars)." The seriousness level for each of these crimes is not changed.

*Malicious Injury to Railroad Property.* The penalty for malicious injury to railroad property is reduced from a maximum of 25 years to a maximum of 10 years imprisonment, which also removes it from the definition of "most serious offense."

*Incendiary Devices « Penalty.* The penalty for the felony of possessing, manufacturing, or disposing of an incendiary device is reduced from a maximum of 25 years to a maximum of 10 years imprisonment, which also removes it from the definition of "most serious offense."

*Alphabetization.* The Code Reviser is required to alphabetize the offenses within each seriousness level.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 1999.

**Testimony For:** The bill gives the judiciary an opportunity to do a better job in sentencing offenders convicted of these crimes since they would no longer be restricted by the 12-month limitation. Ranking violations of domestic violence protection orders at level V would send a clear message that domestic violence will not be tolerated. Also, there is a great disparity in sentencing for domestic violence crimes, and this bill would help that problem. By ranking these felonies, the Department of Correction's supervisory ability would also be enhanced, since unranked felonies do not require or permit supervision. There would be a fiscal impact on the state, and a reduction for local government.

**Testimony Against:** None.

**Testified:** (In support) Judge Brian Gain, Sentencing Guidelines Commission; Roger Goodman, Sentencing Guidelines Commission; and Roy Carson, Washington State Coalition Against Domestic Violence.