

# HOUSE BILL REPORT

## HB 1392

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### As Reported by House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to controlled substances.

**Brief Description:** Consolidating drug sentencing laws.

**Sponsors:** Representatives Kagi, Delvin, O'Brien, Campbell, Sullivan, Moeller, Cooper, Simpson, McIntire, Flannigan, Murray, Darneille, Conway, Wood, Kenney, Kessler, Schual-Berke, Linville and Upthegrove.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/5/03, 2/14/03 [DP].

#### Brief Summary of Bill

- Moves the crime of endangerment with a controlled substance from the Sentencing Reform Act (SRA) grid to the drug offense grid and reclassifies it as a seriousness level I offense.
- Reduces the crime of possession of counterfeit controlled substances from a seriousness II to a seriousness I on the drug offense grid.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 4 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Kagi and Lovick.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Pearson.

**Staff:** Yvonne Walker (786-7841).

### Background:

*Endangerment with a Controlled Substance.* In 2002 the Legislature created a new crime within the Criminal Mistreatment Act called "endangerment with a controlled substance." A person commits endangerment with a controlled substance if the person knowingly or

intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with:

- methamphetamine; or
- ephedrine, pseudoephedrine, or anhydrous ammonia that are being used in the manufacture of methamphetamine.

Endangerment with a controlled substance is a class B felony and is classified as a seriousness level IV on the SRA grid. A first-time offender with no prior criminal history would receive a presumptive sentence range of three to nine months in jail.

In 2002 the Legislature also created a new sentencing grid for the sole purpose of sentencing offenders convicted of drug crimes. An offender convicted of a drug offense committed on or after July 1, 2004, receives a sentence that is calculated using a drug offense sentencing grid instead of the standard SRA sentencing grid for all felony violations. Violations of the Uniform Controlled Substance Act are ranked from a seriousness level I to a level III on the drug offense sentencing grid, depending upon the offense.

The crime of endangerment with a controlled substance remains on the felony SRA grid and has not been moved over to the drug sentencing grid with all other drug-related crimes.

Possession of a Counterfeit Controlled Substance. Possession of a counterfeit controlled substance is a class B felony and is classified as a seriousness level II on the drug offense sentencing grid. A first-time offender with no prior criminal history would receive a presumptive sentence range of 12 to 20 months in prison.

Other possession-related drug crimes (e.g. possession of heroin, narcotics, and marijuana) are categorized as a seriousness level I on the drug sentencing grid.

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### **Summary of Bill:**

Endangerment with a Controlled Substance. The crime of endangerment with a controlled substance is moved from the felony SRA grid to the drug offense grid. On the drug offense grid it is classified as a seriousness level I offense. A first-time offender with no prior criminal history would receive a presumptive sentence range of zero to six months in jail.

Possession of a Counterfeit Controlled Substance. The seriousness level for the crime of possession of a counterfeit controlled substance is reduced from a seriousness level II to a level I. A first-time offender with no prior criminal history would receive a presumptive sentence range of zero to six months in jail.

Other technical amendments are also made within the bill.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2004.

**Testimony For:** This bill is a clean-up bill that incorporates two recommendations from the Joint Select Committee on Drug Sentencing (Committee) that was established by HB 2338 during the 2002 legislative year. The Committee reviewed the new drug grid and decided to move forward with the grid as well as recommend these two changes: 1) moving the crime of endangerment with a controlled substance from the SRA grid to the drug offense grid reclassifying it as a seriousness level I offense; and 2) moving the crime of possession of counterfeit controlled substances from a seriousness II to a seriousness I on the drug offense grid along with all the other possession crimes.

The question that arose is whether the crime of "endangerment with a controlled substance" is really a drug crime and whether it should be moved to the drug grid. This crime generally covers the drug effect on children. The people who commit this type of crime, the mothers who neglect their children by endangering their lives by putting them in the proximity of the drugs, are doing this because they have drug problems themselves. That is the reason that this particular crime should be on the drug grid. The crime is currently ranked as a level IV on the felony SRA grid which is a three to nine month sentence for a first-time offender. The reason it was moved to the drug grid as a level I is because the sentence overlaps with its current ranking. The sentence for a level I offense on the drug grid is zero to six months.

**Testimony Against:** None.

**Testified:** Representative Kagi, prime sponsor; Russ Hauge, Kitsap County Prosecutor and Washington Association of Prosecuting Attorneys; and Tim McBride, Washington Association of Prosecuting Attorneys.