
**Criminal Justice & Corrections
Committee**

HB 2059

Brief Description: Clarifying that manslaughter is a lesser included offense of murder in the second degree.

Sponsors: Representatives Flannigan, O'Brien, Darneille, Kagi, Moeller, Veloria, Gombosky, Edwards, Upthegrove and Wood.

Brief Summary of Bill

- Provides that manslaughter is a lesser included offense of murder in the second degree.

Hearing Date: 3/4/03

Staff: Jim Morishima (786-7191).

Background:

Murder in the Second Degree

A person can commit murder in the second degree in two main ways:

- A person commits murder in the second degree if, with the intent to cause the death of another person, he or she causes the death of such person or a third person; and
- A person also commits murder in the second degree if he or she (or another participant in the crime) causes the death of another person (other than another participant) in furtherance of any felony except robbery in the first or second degree, burglary in the first degree, arson in the first or second degree, or kidnapping in the first or second degree (in which case the crime is murder in the first degree). This type of murder is often called felony murder.

Murder in the second degree is a class A felony with a seriousness level of XIV.

Manslaughter

A person commits manslaughter in the first degree if he or she recklessly causes the death of

another person or intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child. Manslaughter in the first degree is a class A felony with a seriousness level of XI. A person is guilty of manslaughter in the second degree if he or she causes the death of another with criminal negligence. Manslaughter in the second degree is a class B felony with a seriousness level of VIII.

Lesser Included Offenses

A lesser included offense is an offense that is composed of some, but not all, the elements of a greater offense. When a defendant is charged with an offense, he or she has a statutory right to have any lesser included offenses presented to the jury, in which case the jury may find the defendant guilty of the lesser included offense instead of the charged offense. RCW 10.61.006.

Courts use a two prong test to determine whether a lesser included offense must be presented to a jury. First, each of the elements of the lesser offense must be a necessary element of the charged offense, and second, the evidence in the case must support an inference that the lesser crime was committed. *State v. Workman*, 90 Wn.2d 443, 447-48 (1978). The first prong is, at least in part, based on Article I, Section 22 of the Washington Constitution, which provides the accused in a criminal trial the right to be informed of the nature and cause of the offense for which he or she is being tried. *See, State v. Berlin*, 133 Wn.2d 541, 546 (1997).

Using this test, the Washington Supreme Court has ruled that manslaughter in the first and second degrees are lesser included offenses of intentional murder in the second degree. *Berlin*, 133 Wn.2d at 551. However, manslaughter in the first and second degrees are not lesser included offenses of felony murder in the second degree. *State v. Tamalini*, 134 Wn.2d 725, 730 (1998).

Summary of Bill:

Manslaughter in the first and second degrees are lesser included offenses of both intentional and felony murder in the second degree.

Appropriation: None.

Fiscal Note: Requested on February 25, 2003.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.