

COMMITTEE BILL ANALYSIS

Bill: House Bill 396

Printer's No.: 1525

Sponsor: Representative O'Neill

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Synopsis: This bill amends section 2506 of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, relating to the offense of drug delivery resulting in death, to reduce the grading of the offense from murder of the third degree to a felony of the first degree, and section 9714 of the Judicial Code, Title 42, relating to sentences for second and subsequent offenses, to add drug delivery resulting in death to the definition of "crime of violence."

Summary:

Crimes Code

Section 2506 is amended to make it a felony of the first degree if a person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes a controlled substance in violation of law and another person dies as a result of using the substance. A person convicted of this offense shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

Judicial Code

Section 9714 is amended to include 18 Pa.C.S. §2506, relating to drug delivery resulting in death, on the list of crimes that are defined as a "crime of violence."

Effective date

This act takes effect in 60 days.

Background: The House of Representatives passed House Bill 396 on May 3, 2011 by a vote of 192 to 0.

Ludwig

Currently under 18 Pa.C.S. §2506, drug delivery resulting in death is graded as murder of the third degree. In Commonwealth v. Ludwig, 874 A.2d 623 (2005) the Pennsylvania Supreme Court ruled that with the grading of murder of the third degree, the prosecution must prove that the defendant acted with “malice.” This ruling made crimes under section 2506 very difficult to prosecute.

Mandatory

Graded as murder of the third degree, section 2506 carried with it a five-year mandatory minimum prison sentence. When the General Assembly attempted to address the Ludwig decision in earlier sessions by reducing the grading of the offense to a felony of the first degree, members raised the issue of whether a five-year mandatory minimum sentence was still appropriate. In House Bill 396, the mandatory minimum sentence is repealed but the court is given the discretion of a longer maximum sentence of up to 40 years. Normally, for a first degree felony, 20 years is the maximum sentence.

Crime of violence

By adding 18 Pa.C.S. §2506, relating to drug delivery resulting in death, to the definition of “crime of violence,” the provisions of Pennsylvania’s two and three strikes law apply to drug delivery resulting in death. Any person who is convicted of a crime of violence, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence, shall be sentenced to a minimum sentence of at least ten years. Where the person had at the time of the commission of the current offense previously been convicted of two or more crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years. If it determines that 25 years is insufficient to protect the public safety, the court may sentence the offender to life imprisonment without parole.

Other “crimes of violence” include murder of the third degree, voluntary manslaughter, aggravated assault, rape, involuntary deviate sexual intercourse, aggravated indecent assault, incest, sexual assault, arson, kidnapping, burglary in certain situations, certain robberies, and robbery of a motor vehicle.

Because third degree murder is considered a crime of violence, when drug delivery resulting in death was graded as third degree murder, drug delivery resulting in death was considered a crime of violence; now that drug delivery resulting in death is being graded as a felony, the amendment of 42 Pa.C.S. §9714 keeps the crime on the list of crimes of violence.