

SENATE BILL REPORT

SB 6067

As Reported by Senate Committee On:
Judiciary, February 25, 2009

Title: An act relating to delayed sentencing for offenders with a standard range under one year.

Brief Description: Imposing delayed sentencing for offenders with a standard range under one year.

Sponsors: Senator Kline.

Brief History:

Committee Activity: Judiciary: 2/25/09 [DP, DNP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Hargrove, Kohl-Welles and Tom.

Minority Report: Do not pass.

Signed by Senator Carrell.

Staff: Lidia Mori (786-7755)

Background: Current law requires the court to impose a sentence within 40 days following a defendant's conviction, unless either party makes a showing of good cause or the court on its own motion extends the time period for conducting the sentencing hearing.

When a person is convicted of a crime, the court must generally sentence the offender within a standard range determined by the person's criminal history and the seriousness level of the crime. Offenders ordered to serve more than one year in total confinement generally serve their sentence in a Department of Corrections (DOC) facility. Offenders ordered to serve less than one year in total confinement may serve their sentence in a county jail.

Alternatives to total confinement are available for offenders with sentences of one year or less. The court may impose sentence conditions as substitutes for total confinement. One day of partial confinement may be substituted for one day of total confinement, and for offenders convicted of nonviolent offenses, eight hours of community service may be substituted for one day of total confinement with a maximum conversion limit of 240 hours

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

or 30 days. For nonviolent and nonsex offenders, the court may authorize county jails to convert jail confinement to an available county supervised community option and may require the offender to perform affirmative conduct.

Summary of Bill: A delayed sentencing option is created (option). An offender is eligible for the option if that offender:

- is convicted of a nonviolent and nonsex offense that is not subject to a firearm or deadly weapon sentence enhancement;
- is not convicted of a felony driving while under the influence or felony physical control of a vehicle;
- has no current or prior convictions for a sex offense;
- has no current or prior convictions for a violent offense within ten years before conviction for the current offense;
- is not subject to deportation; and
- has a standard sentence range of one year or less and would otherwise serve his or her sentence in a county jail.

Upon entry of a plea of guilty, if the court determines the option is appropriate, it must continue the sentencing hearing for a period up to one year and order presentence release conditions. The court must impose the following conditions:

- comply with crime-related prohibitions, including a condition not to use illegal controlled substances;
- submit to urinalysis or other testing;
- provide a signed release of information authorizing any treatment provider to notify the court, defense counsel, and prosecutor of the offender's noncompliance;
- remain within the county while sentencing is pending;
- commit no criminal law violations;
- update the prosecutor, defense counsel, and treatment provider of any change of address, employment, or phone number;
- make monthly payments set by the court or county clerk on restitution, pay any fees assessed by the clerk, and pay the costs of treatment and testing, including urinalysis, unless provided at public expense;
- stay out of prescribed geographical boundaries if designated by the court; and
- any other crime-related conditions the court may require.

The court may impose a period of inpatient or outpatient substance abuse, domestic violence, or mental health treatment in a program approved by the Department of Social and Health Services. Along with submission of periodic status reports to the court, defense counsel, and prosecutor, the treatment provider must notify the court, prosecutor, and defense counsel of any noncompliance by the offender within 72 hours. If the court finds by a preponderance of the evidence that the offender violated the conditions of the delayed sentencing order or is failing to make satisfactory progress in treatment, it may revoke the option and sentence the offender to a term of total confinement or county-approved alternative to total confinement.

An offender participating in the option is subject to the rules relating to earned release time with respect to any period served in post-conviction treatment under the option. An offender must receive one day credit for each day of participation in treatment.

Costs of examinations and preparation of treatment plans may be paid, at the county's option, from funds provided to the county from the Criminal Justice Treatment Account (CJTA).

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill will save short-term money and will protect the public by filling a void from the cessation of supervision by DOC. We have had a residential-based Drug Offender Sentence Alternative (DOSA) program that has a great success rate and this is a step before residential-based DOSA. We have looked at what has occurred in the juvenile arena, they used to have over 1,500 people in their institutions and now its 684. We believe we will be able to show this same improvement in the adult system. We believe recidivism will go down. It is unrefuted that if someone gets a day in treatment rather than a day in jail, it is a savings to counties. There won't be multiple review hearings. The court will have the ability to delay sentencing for up to one year, and one reason for this is that in smaller counties, there is a waiting time before people can get into treatment. These are people who have pled guilty. This legislation is long overdue and it provides needed flexibility. This bill would provide day for day credit for treatment against jail time. This option should also apply to people who go to trial and lose.

CON: We can already convert any jail sentence under one year to an alternative. It hasn't happened as much as anyone would like because of a resource issue in the counties and liability concerns. We don't have juvenile court administrators for adult system. This bill allows the CJTA to have money taken out of it. On the ground, there is not the personnel to supervise. Whether this is a good idea or not, it can't exist without creating the foundation to support it. If court orders supervision, there isn't immunity from liability downstream. Treatment providers are closing their doors because funding is going away. There aren't going to be the beds available for these people. There is concern about using the CJTA money that's supposed to go to drug courts. This bill would place a burden on the treatment providers. They are terribly underfunded already and now this bill adds case management, reporting to court, prosecuting attorneys, defense counsel, and we're not allowed to bill for that. There is a counselor/clinician shortage in Washington now. There is no structure in counties or superior courts to make this work. It's a good idea but there is no funding for the treatment and supervision in the bill. Now they get a standard range sentence and while they're incarcerated there is zero recidivism. There is no supervision for these low-level offenders. Counties aren't going to pick up the cost.

Persons Testifying: PRO: Judge Gordon Godfrey, Judge Debra Fleck, Superior Court Judges Association; Robert Quillian, Washington Association of Criminal Defense Lawyers, Washington Defender Association.

CON: Al Sweeten, Seattle Indian Health Board; Melissa Johnson, Association of Alcoholism and Addictions Programs; Tom McBride, Washington Association of Prosecuting Attorneys; Don Pierce, Washington Association of Sheriffs & Police Chiefs.