

# SENATE BILL REPORT

## SB 5573

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As of January 12, 2022

**Title:** An act relating to drug offender sentencing alternatives for offenders convicted of driving or control of a vehicle while under the influence.

**Brief Description:** Concerning drug offender sentencing alternatives for offenders convicted of driving or control of a vehicle while under the influence.

**Sponsors:** Senators Lovick, Dhingra, Wellman and Wilson, C..

**Brief History:**

**Committee Activity:** Law & Justice: 1/13/22.

**Brief Summary of Bill**

- Creates a new drug offender sentencing alternative for individuals convicted of felony impaired driving offenses.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Joe McKittrick (786-7287)

**Background:** Felony Impaired Driving. A person may be convicted of impaired driving under either the Driving Under the Influence (DUI) statute or the Actual Physical Control of a Vehicle While Under the Influence (PC) statute. A person is guilty of DUI if they drive while under the influence of intoxicating liquor, marijuana, or any drug. A person is guilty of PC if they have actual physical control of a vehicle while under the influence of intoxicating liquor, marijuana, or any drug.

A DUI or PC offense is punishable as a gross misdemeanor if the person has two or fewer prior impaired driving offenses within the previous ten years. However, a DUI or PC offense becomes a felony offense if the defendant has three or more prior impaired driving offenses within the previous ten years or has previously been convicted of felony DUI or

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PC, vehicular homicide, or vehicular assault while under the influence of intoxicating liquor or any drug.

Felony DUI is classified as a class B felony, the statutory maximum sentence for which is ten years in prison, a fine of \$20,000, or both. Felony PC is classified as a class C felony, the statutory maximum sentence for which is five years in prison, a fine of \$10,000, or both. The standard sentence range for a DUI or PC offense for a person with three prior impaired driving offenses is 13 to 17 months of incarceration, followed by one year of community custody.

Sentencing Alternatives. When a person is convicted of a felony offense, a sentencing court is generally required to impose a term of confinement based on a standard range provided by statute. In some circumstances, sentencing courts have discretion to order sentencing alternatives. Sentencing alternatives generally result in a person serving a shorter term of confinement, and sometimes serving no term of confinement. Instead, the person may be required to participate in certain programs or treatment, or to submit to a form of partial confinement.

Drug Offender Sentencing Alternative. The drug offender sentencing alternative (DOSA) either reduces or eliminates incarceration time in exchange for the offender participating in supervision and treatment. A person convicted of a felony is eligible for a DOSA if certain criteria are met, including:

- the conviction is for an offense that is not a felony impaired driving offense, a violent offense, or a sex offense, and the violation does not involve a firearm or deadly weapon sentence enhancement;
- the offender has no current or prior convictions for a sex offense at any time, and no violent offense within the ten years before conviction of the current offense;
- if the offense is a violation of the Uniform Controlled Substances Act, a drug violation, it involved only a small quantity of the particular substance as determined by the judge;
- the offender is not subject to a federal immigration deportation detainer or order;
- the end of the standard sentence range for the current offense is greater than one year; and
- the offender has not received a DOSA more than once in the prior ten years before the current offense.

When determining eligibility, the court may order the Department of Corrections (DOC) to complete either a risk assessment report or a substance abuse disorder, or both. If the court determines the offender is eligible for the alternative, it must waive imposition of the standard-range sentence and impose a sentence consisting of either a prison-based alternative or a residential substance use disorder treatment-based alternative.

Under the prison-based alternative, the offender is sentenced to a term of incarceration equal to one-half the midpoint of the standard range or 12 months, whichever is greater, and

one-half the midpoint of the standard range as a term of community custody. The incarceration and community custody terms must include substance abuse treatment.

Under the residential substance use disorder treatment-based alternative, the offender is sentenced to a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential substance use disorder treatment for a period set by the court between three and six months. The term of community custody must also include a condition to participate in treatment.

The court may bring an offender serving a DOSA back to court at any time to monitor progress or determine whether there have been violations of the conditions of sentence. If the offender has violated the conditions or has not satisfactorily progressed in treatment, the court may modify the conditions of community custody or impose other sanctions, including ordering the person to serve a term of total confinement within the standard range for the offense.

Partial Confinement. For certain offenders, a term of total confinement may be converted to partial confinement. Partial confinement is confinement up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Home detention is a program of partial confinement in which the offender is confined in a private residence 24 hours a day, unless otherwise authorized by the court or other supervising agency, and is subject to electronic monitoring. Work release is a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or DOC. If the offender violates the rules of the partial confinement program, the offender may be required to serve the remainder of the term in total confinement.

Community Custody. Community custody is a portion of an offender's sentence served in the community, subject to conditions imposed by the court and the DOC. Courts must order community custody for offenders convicted of certain crimes or in accordance with a sentencing alternative. If an offender violates the conditions of community custody, they may be subject to confinement or nonconfinement-based sanctions.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** The drug offender sentencing alternative for DUI (impaired driving DOSA) is created.

Eligibility for the Impaired Driving Drug Offender Sentencing Alternative. An offender is

eligible for the impaired driving DOSA if the offender is convicted of a felony DUI or felony PC and does not have a prior conviction for vehicular homicide, vehicular assault, felony DUI, or felony PC. A motion for an impaired driving DOSA may be made by the court, the offender, or the state if the midpoint of the standard sentence range is 26 months or less. If an offender has a higher midpoint, a joint agreement of the state and offender is required.

If the sentencing court determines the offender is eligible for an impaired driving DOSA, and that the alternative sentence is appropriate, the court must waive imposition of the standard sentence and:

- impose a prison-based DOSA if the low end of the standard range sentence is greater than 24 months; or
- impose a residential treatment-based alternative specific to impaired driving offenders if the low end of the standard sentence range is 24 months or less.

To assist the court in making its eligibility determination, the court may order DOC to complete a risk assessment report, a substance use disorder screening report, or both. If the court is considering imposing a sentence under the residential treatment-based alternative, the court may also order DOC to examine the offender and assess:

- whether the offender suffers from a substance use disorder;
- whether the substance use disorder is such that there is a probability that criminal behavior will occur in the future;
- whether effective treatment for the offender's substance use disorder is available from a provider that has been licensed or certified by the Department of Health (DOH); and
- whether the offender and the community will benefit from the use of the alternative sentence.

Impaired Driving Drug Offender Sentencing Alternative Requirements. When the court imposes a prison-based impaired driving DOSA, the court must impose a sentence equivalent to, and subject to the same requirements and restrictions as the traditional prison-based DOSA program already established in statute.

An offender who is eligible for a residential treatment-based alternative is sentenced to all of the following:

- if necessary, an indeterminate term of confinement of no more than 30 days in a county facility, to facilitate direct transfer to a residential substance use disorder treatment facility;
- treatment in a certified residential substance use disorder treatment program for a period set by the court up to six months, with treatment completion and continued care delivered in accordance with rules established by DOH—when establishing rules, DOH must consider criteria established by the American Society of Addiction Medicine criteria;
- 24 months of partial confinement to consist of 12 months work release followed by 12 months of home detention with electronic monitoring; and

- 12 months of community custody.

The court must impose treatment and other appropriate conditions during the periods of partial confinement and community custody. An offender may be required to pay \$30 per month while on community custody to offset the cost of monitoring for alcohol or controlled substances. Within available resources, DOC must make substance use disorder assessment and treatment services available to the offender.

Monitoring and Enforcement. When an offender is sentenced to the residential treatment-based alternative DOSA, the treatment provider must send the treatment plan to the court within 30 days of the offender's arrival to the residential treatment program. The court must schedule a progress hearing during the period of treatment and a treatment termination hearing for three months before the expiration of the term of community custody. Before these hearings, the treatment provider and DOC must submit written reports to the court and parties regarding compliance with treatment and monitoring requirements and recommendations regarding termination from treatment.

At the progress hearing or treatment termination hearing, the court may:

- authorize termination of community custody on the predetermined expiration date;
- continue the hearing, with or without modifying the conditions of partial confinement or community custody; or
- impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody.

Under either the prison-based or residential-based program, the court may bring the offender into court at any time to evaluate treatment progress or determine whether there have been any violations of the conditions of sentence. If the offender violates conditions or is failing to make satisfactory treatment progress, the court may modify the conditions of partial confinement or community custody, or order the offender to serve a term of total confinement within the standard sentencing range of the offender's current offense.

An offender sentenced to total confinement after termination from an impaired driving DOSA is entitled to full credit for any time previously served under the impaired driving DOSA in total confinement or residential treatment, and 50 percent credit for any time previously served in partial confinement or community custody. However, an offender serving a term of community custody following termination from the impaired driving DOSA is granted no credit for time served in community custody prior to termination.

Miscellaneous. Changes are made to clarify that the impaired driving DOSA is separate from the traditional DOSA that exists in current law, and references to the impaired driving DOSA are added to relevant portions of the Sentencing Reform Act.

**Appropriation:** None.

**Fiscal Note:** Requested on January 5, 2022.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2023.