

# FINAL BILL REPORT

## E2SHB 1006

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### PARTIAL VETO

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Synopsis as Enacted

**Brief Description:** Revising sentencing options for drug and alcohol offenders.

**Sponsors:** By House Committee on Criminal Justice & Corrections (Originally sponsored by Representatives Ballasiotes, O'Brien, Benson, Radcliff, Quall, Mitchell, Dickerson, Cairnes, Hurst, Alexander and Lambert).

**House Committee on Criminal Justice & Corrections**

**House Committee on Appropriations**

**Senate Committee on Judiciary**

**Senate Committee on Human Services & Corrections**

**Senate Committee on Ways & Means**

**Background:** The Department of Corrections reports that 80 percent of offenders that are sentenced are arrested for a drug offense or a crime that is a result of a chemical dependency. These offenders are usually sentenced to a term of confinement in jail, prison, the Drug Offender Sentencing Alternative, or the Work Ethic Camp. Most offenders, however, cannot be forced to participate in chemical dependency rehabilitation programs as part of their sentence.

Community Supervision. "Community supervision" is a technical term in the Sentencing Reform Act that includes up to one year in the county jail and one year of supervision in the community. The courts may often subject an offender to limited crime-related prohibitions. Violations of community supervision conditions may result in up to 60 days in jail. Courts usually do not impose affirmative conditions (such as drug treatment) on an offender sentenced to community supervision.

Affirmative Conditions. Sentencing conditions known as crime-related prohibitions are commonly imposed by courts on offenders who are placed on community supervision, community placement, partial confinement, or the sex offender sentencing alternative. These conditions prohibit conduct that directly relates to the circumstances of the crime for which the offender was convicted, such as requiring a drug offender to not unlawfully possess or use controlled substances.

However, crime-related prohibitions ordered by the court cannot direct an offender to affirmatively participate in rehabilitative programs, otherwise known as performing affirmative conditions. An exemption is made for trial courts that are authorized to

impose affirmative acts as conditions in specified circumstances, such as for sex offenders, who can be ordered to participate in crime-related treatment or counseling.

Pre-sentence Reports. Before imposing a sentence upon an offender the courts usually conduct a pre-sentence hearing. At that time, courts may order the Department of Corrections (DOC) to complete a pre-sentence report to assist the trial court in sentencing an offender after he or she has been convicted. A pre-sentence report usually includes an offender's prior convictions, prior arrests, employment history, education history, and family and social background.

Drug Offender Sentencing Alternative. The Drug Offender Sentencing Alternative (DOSA) allows a court to waive imposition of a drug offender's sentence within the standard sentencing range. As an alternative the court imposes a sentence that includes confinement in a state facility for one-half of the midpoint of the standard sentencing range. While in confinement, the offender must complete a substance abuse assessment and receive substance abuse treatment and counseling.

In addition, the court must also impose one year of concurrent community custody and community supervision, which must include outpatient substance treatment and crime-related prohibitions. Courts usually do not impose other conditions, such as affirmative conditions, as part of the offender's sentence.

A first-time offender convicted of a drug offense may be eligible for the DOSA program if the current offense only involved a small quantity of drugs as determined by the court. An offender is prohibited from participating in this program if the offender has any prior convictions for a sex or violent felony offense.

If an offender violates any of the DOSA sentencing conditions, the DOC may impose sanctions administratively and any violation hearings and subsequent sanctions must be held by the court.

An offender with a deportation order or detainer is eligible for the DOSA program.

Work Ethic Camp. The Work Ethic Camp (WEC) is an alternative sentencing program that consists of at least 120 days and no more than 180 days of confinement, including a two-week period of transition training. This program allows a successful offender completing the program to convert the period of the WEC confinement at the rate of one day of the WEC confinement to three days of total standard confinement.

Although drug offenders, after special review of their circumstances, are eligible for the WEC, an offender with prior convictions for any sex offenses or violent offenses is not eligible to participate in this particular program. An offender participating in a

WEC must be referred by the court and have received a sentencing term of total confinement ranging from a minimum of 16 months to a maximum of 36 months.

Some offenders are eligible for both the DOSA program and the WEC. Alien offenders may also participate in WEC.

County Supervised Community Option. Alternatives to total confinement are available for offenders with sentences of one year or less. One day of partial confinement may be substituted for one day of total confinement. In addition, for offenders convicted of nonviolent offenses only, eight hours of community service may be substituted for one day of total confinement, with a maximum conversion limit of 240 hours or 30 days. Community service hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed 24 months, pursuant to a schedule determined by the department.

Drug Courts. Drug courts are federally-funded programs that remove drug offenders from standard criminal procedures and required them to participate in treatment. There are currently drug courts in several counties including King, Pierce, Spokane, and Thurston counties.

Drug courts diverge from traditional courts by diverting non-violent drug criminals into court-ordered treatment programs rather than prison. The program allows people arrested for drug possession to choose an intensive, heavily supervised rehabilitation program in lieu of incarceration. In drug court, defendants agree to the facts of their arrest, then are required to participate in drug treatment, counseling, find work, meet with parole officers, attend weekly visits with a judge, and meet conditions set by a judge.

If a defendant completes the program, the charges may be dropped. If a defendant fails, he or she may ultimately be sentenced at the top of the sentencing range and be jailed, but the courts typically give drug defendants more than one chance to reform.

With the incentive of keeping an offender's record clear of drug charges, the court pushes people with substance abuse problems into a year-long program of frequent drug tests and counseling.

The aim of the court is to encourage drug offenders into a productive, drug-free lifestyle.

**Summary:** The eligibility for chemical dependency rehabilitative programs operated by the courts, local jurisdictions, and the Department of Corrections is expanded to allow the placement of more drug offenders into treatment. In addition, the Sentencing Guidelines Commission, in conjunction with the Washington State Institute

for Public Policy, is directed to conduct a five year study on the effect of the changes of the drug sentencing laws.

Community Supervision. The courts are authorized to order an offender, under a term of community supervision, to participate in drug or alcohol treatment if his or her crime is a result of a chemical dependency.

Affirmative Conditions. The courts are authorized, subject to available resources, to require an offender, found to have a chemical dependency which has contributed to his or her crime, to perform affirmative acts. The affirmative acts may include requiring the offender to participate in rehabilitative programs or take drug or polygraph tests as a condition of his or her sentence.

Pre-sentence Reports. Unless waived by the courts, the courts are required to order the Department of Corrections to perform a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a controlled substance offense or where the court finds the offender has a chemical dependency which has contributed to his or her crime.

Drug Offender Sentencing Alternative. The Drug Offender Sentencing Alternative (DOSA) authorizes a judge to waive imposition of an offender's sentence within the standard range.

The offender must spend the remainder of the midpoint of the standard sentencing range in community custody (instead of both community custody and community supervision) following incarceration which must also include some type of alcohol and substance abuse treatment that has been approved by the Division of Alcohol and Substance Abuse. Courts may impose crime-related prohibitions, as well as affirmative conditions, as part of the offender's sentence.

An offender convicted of solicitation of a drug offense or a violation of the Uniform Controlled Substance Act may be eligible for the DOSA program if the current offense only involved a small quantity of drugs as determined by the court. An offender is prohibited from participating in this program if the offender has any prior or current convictions for sex or violent felony offenses.

The DOC is required to develop criteria for an offender's successful completion of the DOSA program by December 31, 1999. If the offender violates or fails to complete the DOSA sentencing conditions he or she will have a violation hearing held by the DOC. If the offender is found guilty then he or she will be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender will be subject to all rules relating to earned early release time.

Alien offenders are ineligible for the DOSA program if they are subject to a deportation detainer or order.

Work Ethic Camp. Offenders convicted of solicitation of a drug offense or with a current violation of the Uniform Controlled Substance Act (a drug offense) are ineligible for the Work Ethic Camp (WEC). The 3:1 (three days of total confinement equals one day of the WEC) conversion is eliminated; however, the sentencing range is expanded to allow offenders to participate in the WEC if they have been referred by the court and have received a sentencing term of total confinement ranging from a minimum of 12 months and one day to a maximum of 36 months.

Offenders who are eligible for the DOSA program are ineligible for the WEC. The DOC is authorized to remove an offender if the offender has a deportation detainer or order; or if the offender has participated in the WEC in the past.

County Supervised Community Option. A local county-supervised option is created for community custody whereby jails may place nonviolent/nonsex offenders into alternative placements augmented by affirmative conditions.

Drug Courts. Counties are authorized to establish drug court programs to accept offenders that have been diverted by the courts from the normal course of prosecution for drug offenses. The term "drug court" is defined as a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

Counties are required to fully exhaust all available federal drug court funding from the Office of National Drug Control Policy before seeking state funds for its county operated drug court program. Counties are required to make a dollar-for-dollar match before seeking state funds for drug court programs.

**Votes on Final Passage:**

House 96 0  
Senate 43 3 (Senate amended)  
House (Refused to concur)  
Senate (Refused to recede)  
House 96 0 (House concurred)

**Effective:** July 25, 1999

**Partial Veto Summary:** A provision is vetoed that authorized district and superior courts to establish drug court programs for offenders that have been diverted by the courts from the normal course of prosecution for drug offenses.