
**Criminal Justice & Corrections
Committee**

HB 1393

Brief Description: Expanding the first-time offender waiver.

Sponsors: Representatives O'Brien, Moeller, Delvin, Sullivan, Kagi, Cooper, Simpson, McIntire, Flannigan and Darneille.

Brief Summary of Bill

- Expands the first-time offender waiver program to include all first-time offenders convicted of drug offenses who the court feels to be in need of treatment.
- Authorizes the re-sentencing of certain drug offenders currently serving prison terms who would have otherwise been eligible for the first-time offender waiver program had the new eligibility requirements been in effect at the time of their sentencing.

Hearing Date: 2/5/03

Staff: Yvonne Walker (786-7841).

Background:

A first-time offender is considered any person who has no prior convictions for a felony and is eligible for the first-time offender waiver. The "First Time Offender Waiver" is an alternative sentencing option to the standard range for certain first-time offenders.

An offender may qualify for the first-time offender waiver if he or she has not participated in a program of deferred prosecution for a felony in the past and he or she has not been convicted of :

- A violent or sex offense;
- Manufacturing, delivering, or possessing with intent to manufacture or deliver a schedule I or II controlled substance that is a narcotic drug (e.g., opium or cocaine) or flunitrazepam classified in schedule IV;
- Manufacturing, delivering, or possessing with intent to manufacture or deliver methamphetamine, its salts, or isomers; or
- Selling for profit any controlled substance or counterfeit substance classified in Schedule I

(e.g., heroin), except leaves and flowering tops of marihuana.

In sentencing a first-time offender the court may waive the imposition of a sentence within the standard range and may impose an alternative sentence. Choices available to the court include:

- Imposing up to 90 days of confinement in a facility operated or utilized under contract by the county;
- Requiring that the offender refrain from committing new offenses;
- Requiring up to one-year of community supervision which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following: (1) devoting time to a specific employment or occupation; (2) undergoing available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense; (3) pursuing a prescribed, secular course of study or vocational training; (4) remaining within prescribed geographical boundaries and notifying the court or a community corrections officer prior to any change in the offender's address or employment; (5) reporting as directed to the court and a community corrections officer; and (6) paying all court-ordered financial obligations or performing some community service work.

If an ongoing treatment program continues after the first year of the offender's community supervision, supervision may continue until the end of treatment. In total, community supervision under the first-time offender waiver may not exceed two years.

A court's decision to impose the "First-Time Offender Waiver" on a first-time offender cannot be appealed by the prosecutor or defendant.

Summary of Bill:

The first-time offender waiver program is expanded to generally include any first-time offender convicted of a drug offense who the court feels to be in need of treatment.

The court may waive imposition of the standard sentence for a first-time drug offender and may impose the first-time offender waiver if the court deems that the offender is in need of treatment for the drug offense and the offender is convicted of:

- Manufacturing, delivering, or possessing with intent to manufacture or deliver a schedule I or II controlled substance that is a narcotic or non-narcotic drug; or
- Selling for profit of any schedule I controlled substance or counterfeit substance.

In addition, the court may also impose the first-time offender waiver to any offender who:

- Is determined by the court not to be in need of treatment for drug abuse;
- Is otherwise eligible for the first-time offender option, and
- The court determines that he or she had a minimal role in the offense, acted under duress not constituting a defense, or that there were other strong mitigating circumstances leading to his or her crime.

Any offender currently serving a prison term since July 1, 1988, and who would have been eligible for the expanded first-time offender waiver under the new terms, had it been in affect at the time of sentencing, may request review by the sentencing court. The request for

review must include a presentation of an appropriate proposed course of treatment. The offender may be re-sentenced to the first-time offender waiver option with a drug treatment program that is acceptable to the court.

Offenders convicted of a violent offenses or a sex offense continue to be ineligible for the first-time offender waiver.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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