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**Criminal Justice & Corrections  
Committee**

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**HB 2015**

**Brief Description:** Changing provisions relating to judicially supervised substance abuse treatment.

**Sponsors:** Representatives Kagi, O'Brien, Hinkle, Fromhold, Darneille, Upthegrove, Tom, Kenney and Dickerson.

**Brief Summary of Bill**

- Expands eligibility for participation in the Drug Offender Sentencing Alternative (DOSA) program.
- Authorizes a motion for a DOSA sentence to be made by the court, the offender, or the state.
- Requires the court to order an examination report of the offender if it finds the offender is eligible for a DOSA sentence.
- Requires the court to impose a term of confinement, regular evaluations, substance abuse treatment, a term of community custody, and a final termination hearing for any offender serving a DOSA sentence.
- Authorizes the court to bring a DOSA offender back into court at any time to evaluate the offender's progress in treatment or to determine whether any of the conditions of the sentence have been violated.
- Requires the Department of Corrections to notify the court when an offender successfully completes a DOSA sentence and requires the offender's record of conviction to be vacated.

**Hearing Date:** 2/22/05

**Staff:** Yvonne Walker (786-7841).

**Background:**

The Drug Offender Sentencing Alternative (DOSA) is an alternative sentencing program that allows a court to waive imposition of an offender's sentence within the standard sentencing range.

Sentence and treatment. 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, within available resources, substance abuse treatment and counseling.

The offender must spend the remainder of the midpoint of the standard sentencing range in community custody following incarceration. The community custody portion of the sentence must include alcohol and substance abuse treatment which has been approved by the Division of Alcohol and Substance Abuse (DASA) of the Department of Social and Health Services. Offenders may also be required to adhere to crime related prohibitions and affirmative conditions as part of their sentence, as well as pay a \$30 per month fee while on community custody to offset the cost of monitoring.

Eligibility. An offender is eligible for the DOSA program if he or she:

- is convicted of a felony that is not a sex or violent offense and the violation does not involve a sentence enhancement;
- has no current or prior convictions for a sex offense;
- has no current or prior convictions for a violent offense;
- would receive a standard sentence range for the current offense which is greater than one year;
- is not subject to a deportation detainer or order; and
- has committed a Violation of the Uniform Controlled Substance Act (VUSCA) where the offense only involves a small quantity of drugs as determined by the court.

Violations and sanctions. If an offender violates or fails to complete the DOSA sentencing conditions, a violation hearing must be held by the Department of Corrections (DOC). If the DOC finds that conditions have been willfully violated, the offender may be reclassified 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.

Records. An offender who complies with the conditions of a DOSA sentence may not have his or her record of conviction vacated.

Serious violent and violent offenses. Serious violent offenses are a subcategory of violent offenses includes murder in the first degree, homicide by abuse, murder in the second degree, manslaughter in the first degree, assault in the first degree, kidnapping in the first degree, rape in the first degree, assault of a child in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies.

### **Summary of Bill:**

The eligibility and treatment requirements for the DOSA program are amended. The act applies to crimes committed on or after October 1, 2005.

Sentence and treatment. If a court determines a DOSA sentence is appropriate for an offender, the court must impose a term of confinement in a state facility for at least 90 days, but no more

than one-half of the midpoint of the standard sentence range. Some or all of the term of confinement imposed, may be served in a licensed or certified DASA community-based residential chemical dependency treatment facility. During the term of incarceration, the offender must undergo a substance abuse assessment and receive, within available resources, substance abuse treatment. An offender serving a term of confinement or residential chemical dependency treatment under the DOSA program is ineligible for earned release time.

The court must also:

- require the offender, after the term of confinement or residential chemical dependency treatment, to complete appropriate inpatient or outpatient substance abuse treatment in the community by a licensed or certified DASA provider;
- impose crime-related prohibitions and affirmative conditions;
- require the offender to submit to urinalysis or other drug testing to ensure that he or she is not using illegal controlled substances;
- impose a term of community custody for the maximum of the standard sentence range or two years, whichever is greater (instead of the offender spending the remainder of the midpoint of his or her standard sentencing range in community custody); and
- schedule a treatment termination hearing three months prior to the anticipated completion date of treatment.

During an offender's term of community custody, the DOC and the treatment provider must submit quarterly reports back to the court regarding the offender's progress in treatment and in the community. The report shall, at a minimum, include: dates of attendance at treatment, the offender's compliance with the conditions of the sentence, treatment activities, the offender's progress in treatment, and any other material specified by the court at sentencing.

Prior to the treatment termination hearing, the treatment provider and the DOC must submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding the offender's termination from treatment. At the treatment termination hearing, the court may modify the conditions of the community custody, terminate treatment, or extend treatment for up to the remaining period of community custody.

*Eligibility.* An offender is eligible for the DOSA program provided that he or she:

- is convicted of a felony that is not a sex or violent offense and the violation does not involve a sentence enhancement;
- has no current or prior convictions for a sex offense;
- has no current or prior convictions for a serious violent offense (instead of a violent offense), other than assault in the third degree, within 10 years of the date of conviction for the current offense;
- would receive a standard sentence range for the current offense which is greater than one year; and
- is not subject to a deportation detainer or order.

The provision that limited participation in the DOSA program to those offenders that committed an offense that involved a "small quantity" of drugs under the VUSCA statute is eliminated.

A motion for a DOSA sentence may be made by the court, the offender, or the state. If the court determines that the offender is eligible for a DOSA sentence, the court may order an examination of the offender. The examination must address whether:

- the offender suffers from drug addiction;
- the addiction is such that there is a probability that criminal behavior will occur in the future;
- effective treatment for the offender's addiction is available from a DASA licensed or certified provider; and
- the offender and the community will benefit from the use of the alternative.

The examination report must contain information on the offender's addiction issues to be addressed and a proposed treatment plan. The treatment plan must contain: 1) a proposed DASA licensed or certified treatment provider; 2) the recommended frequency and length of treatment, including both residential chemical dependency treatment and community-based treatment; 3) a proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and 4) recommended crime-related prohibitions and affirmative conditions. After receipt of the examination report, the court may impose a DOSA sentence if it determines it is appropriate.

*Violations and sanctions.* If the offender violates any of the sentence conditions or is subject to a deportation order, a violation hearing must be held by the DOC unless waived by the offender. If the DOC finds that the conditions have been willfully violated, the DOC may impose an incarceration sanction of up to 60 days in a local jail for each violation. If a sanction is imposed, the DOC must submit within 72 hours a report to the court and the prosecuting attorney outlining the violations and the sanctions imposed. If the DOC finds that the offender is subject to a valid deportation order, the DOC must refer the offender to the court.

The court may bring the offender back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions. The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions of the sentence, if the offender is subject to a valid deportation order, or if the court finds that the offender is failing to make satisfactory progress in treatment. Once an offender has served a term of confinement, he or she is deemed to have completed his or her sentence.

*Records.* If an offender completes the DOSA sentence without being subject to a sanction of total confinement, the DOC must notify the court. After receiving notification from the DOC, the court shall vacate the record of conviction for an offender who has successfully complied with all of the conditions of the sentence.

**Appropriation:** None.

**Fiscal Note:** Requested on February 16, 2005.

**Effective Date:** The bill takes effect on October 1, 2005.