

SENATE BILL REPORT

SB 5695

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, February 15, 2017

Title: An act relating to the development of a juvenile special sex offender disposition alternative treatment court.

Brief Description: Concerning the development of a juvenile special sex offender disposition alternative treatment court.

Sponsors: Senators Darneille and Hunt.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/13/17, 2/15/17 [DP, w/oRec].

Brief Summary of Bill

- Authorizes a juvenile court to operate a treatment court for first-time offenders who are 15 years old or younger and qualify for a special sex offender disposition alternative (SSODA) .
- Requires the offender to agree to a finding of guilt and standard range disposition if they fail to qualify for treatment court or are terminated from treatment court for non-compliance with court-imposed conditions.
- Defers entry of a disposition order and waives sex offender registration while waiting for treatment court admission and while participating in treatment court.
- Vacates the conviction, dismisses the charges with prejudice, and waives sex offender registration when the offender successfully completes all SSODA treatment court requirements.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: Do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Carlyle, Hunt and Walsh.

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.

Minority Report: That it be referred without recommendation.

Signed by Senator Padden.

Staff: Melissa Burke-Cain (786-7755)

Background: In 2000, updated sentencing laws included a treatment option for a convicted adult sex offender under the special sex offender sentencing alternative (SSOSA). An SSOSA could be granted in lieu of a prison sentence under certain conditions, with some jail time, outpatient treatment, and supervision. An offender qualifies for an SSOSA based on statutory criteria, and an expert assessment of the offender's amenability to treatment.

Adult SSOSA Criteria. Criteria is as follows:

- not convicted for Rape 1 or Rape 2;
- no prior convictions for felony sex offenses in any state;
- standard sentencing range for the offense includes less than 11 years of possible confinement;
- no prior violent offenses within five years of the current offense;
- no substantial bodily harm to the victim from the current offense; and
- an established relationship between the offender and victim.

Before authorizing an SSOSA, the court must also consider the victim's opinion, whether the offense included multiple victims, the relative community risk, and whether an SSOSA is too lenient given the crime's circumstances.

In 2011, a similar alternative was enacted for juvenile offenders. Juveniles could be eligible for a special sex offender disposition alternative (SSODA) authorizing a court to impose a disposition for a juvenile offender found to have committed a sex offense, but suspend executing the disposition of confinement if the juvenile offender met certain conditions.

Juvenile SSODA Criteria. Criteria is as follows:

- not convicted of a serious violent sex offense; and
- no history of a prior sex offense.

Before authorizing an SSODA, the court directs an expert assessment to determine whether the juvenile is amenable to treatment, whether the relative risk to the community is acceptable, and to identify the juvenile's other co-morbid problems. The assessment develops a proposed treatment plan, and makes monitoring recommendations regarding living conditions, lifestyle requirements, and supervision by family members, guardians, or others. The court may seek a second opinion evaluation, must consider the victim's opinion, and must consider whether the community and the offender would benefit from the SSODA. If the court approves an SSODA treatment, the court enters findings that the offender committed the offense. The court imposes a disposition within the offense's standard range unless the disposition would result in a manifest injustice. The court may suspend the execution of the disposition on conditions that include up to 30 days of confinement, community supervision for at least two years, and other conditions such as up to two years of outpatient sex offender treatment or inpatient sex offender treatment that does not exceed standard range confinement for the offense. The court sets the treatment review schedule. If the offender violates any of the SSODA conditions, or fails to make adequate progress in treatment, the court may revoke the suspended disposition, execute it, and impose a confinement penalty up to 30 days of confinement.

A Health Impact Review of this legislation was requested and is available at the Washington State Board of Health's website, <http://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2017-16-SB5695.pdf>.

Summary of Bill: County juvenile courts are authorized to operate a treatment court for juveniles who qualify for an SSODA. The SSODA treatment courts may order early, continuous, and judicially-supervised outpatient sex offender treatment as an alternative to confinement. A county SSODA treatment court may set requirements beyond the minimum statutory qualifications for an SSODA.

Before a juvenile is admitted to the treatment court, the juvenile must:

- stipulate to the admission of facts in the police report;
- acknowledge that the report will be in evidence and used by the court to support a finding of guilt and to impose a standard range disposition if the juvenile fails to qualify for entry into the treatment court, or fails to comply with all the requirements imposed by the treatment court and their participation terminates;
- waive the right to a speedy disposition and the right to call and confront witnesses; and
- be found guilty by the court—if an adjudication occurs, the only evidence permitted is a reading of the court's record.

When the juvenile makes the required stipulations, acknowledgements, and waivers, and enters a plea or is found guilty, the court defers entry of the disposition and defers mandatory sex offender registration.

The juvenile must participate for sex offender treatment as required and participate in the treatment court for 24 months even if treatment is not required for that long. The treatment court decides which other conditions apply, including mental health or chemical dependency treatment or both. The juvenile must comply with all monitoring and reporting requirements, and may not attend the same school the victim attends. When all treatment court requirements are successfully completed, any convictions entered in the case are vacated and all charges are dismissed with prejudice. The juvenile does not have to meet any other conditions after they satisfy the treatment court requirements. The juvenile court records remain unsealed until the records qualify for sealing under other laws, including administrative sealing.

A juvenile may only be admitted to SSODA treatment court once. If the juvenile fails to enter juvenile treatment court, or is terminated from the treatment court, the conviction remains and the court enters the disposition order. The juvenile is also ordered to register as a sex offender. SSODA treatment court participation cannot be extended past the juvenile's 21st birthday. If the treatment court requirements are not completed by the time the offender turns 21 years old, the offender is deemed to have failed completion and an order of disposition is executed. After the offender turns 21 years old, the court may retain jurisdiction to enforce financial obligations and restitution.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days following the adjournment of the session in which the bill is passed

Staff Summary of Public Testimony: PRO: Having a juvenile 15 years old or younger be charged, but not found guilty, would be an alternative way to approach a treatment court for SSODA juveniles than the approach this bill takes. The young person has engaged in conduct that someone of that age would not be expected to do. As a result, the young offender could face a lifetime of sex offender status even for something he or she did as a very young child. This bill would allow rehabilitation without having the lifelong sex offender designation. If the juvenile has no additional offense, they are not publicly exposed as a sex offender. Because there is a finding of guilt, the disposition is self-executing without need for a trial if the alternative disposition to treatment fails. When representing adult criminal defendants, it is not uncommon to learn that their first encounter with the system was in connection with a juvenile sex offense. Once registered as a sex offender, his or her life is messed-up. The majority of young juvenile sex offenders are not predatory. The behavior is inappropriate, and still a crime, but the hammer of being designated as a sex offender is very harsh at such a young age. The bill would allow the individual to obtain the treatment and counseling that is needed and that the young offender should have. Often these behaviors occur within a family, and no one wants the individual prosecuted. A prosecutor may address the harshness of the sex offense charge by dismissing the charge, or reducing the charge to a non-sex offense crime. The problem with doing that is the individual never gets the treatment that is needed. Under this bill, the court retains the jurisdiction and ability to monitor progress on a frequent basis through the treatment court. For an adult who has a SSOSA, there is still a conviction; but for juveniles under this program, the SSODA treatment court options allows significant court monitoring but without the sex offender label if treatment and conditions are successfully completed.

CON: The bill's objective is good given the malleability of the juvenile mind, and the juvenile's amenability to treatment and re-education. But, this option should be pre-adjudicative rather than post-adjudicative. If pre-adjudicative, the accused stipulates to the facts of the crime, all proceedings are suspended during treatment, and the same result is obtained after successful completion of treatment. In contrast, if post-adjudicative, the initial finding may still be on the Internet forever even if the charge is ultimately vacated and dismissed with prejudice after the treatment alternative is successfully completed. There is no assurance that the adjudication, even when superseded by successful completion of treatment and conditions, will not show up again in a public record at a future time via the internet. There should be no requirement to register as a sex offender unless the treatment alternative disposition fails; only then should sex offender registration be required.

OTHER: The juvenile is not required to register as a sex offender while the treatment process goes forward, that should be changed. It would be better if the decision about sex offender registration could be made by the judge at the successful completion of the program. A better approach to foregoing sex offender registration is to revisit the public nature of sex offender registration.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor; Tina Robinson, Kitsap County Prosecutor.

CON: Bob Cooper, WA Association of Criminal Defense Lawyers, WA Defender Association.

OTHER: James McMahan, WA Assn. Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.