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**Criminal Justice & Corrections  
Committee**

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**HB 2492**

**Brief Description:** Recalculating sentences for felony drug offenders.

**Sponsors:** Representative Sommers; by request of Office of Financial Management.

**Brief Summary of Bill**

- Retroactively applies 2SHB 2338 to any offender convicted of a drug offense and serving a term under the Sentencing Reform Act (SRA) grid.
- Requires the Department of Corrections (Department) and local jails to recalculate the sentences and release dates for felony drug offenders based upon the Drug Offense Sentencing Grid.

**Hearing Date:** 1/27/04

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

**Background:**

A controlled substance is generally defined as a drug, substance, or immediate precursor that is included in the Uniform Controlled Substance Act and listed in various schedules with regard to its potential for abuse.

Generally, under the Uniform Controlled Substance Act, it is illegal for any person to possess, sell, manufacture, or deliver controlled substances. In 2002, the Legislature passed 2SHB 2338, which changed the manner in which most future drug crimes will be sentenced. The legislation made a number of changes including: 1) Eliminating double and triple scoring for certain drug offenses; 2) Instituting a new Drug Offense Sentencing Grid instead of the standard Sentencing Reform Act felony grid for the purpose of sentencing offenders convicted of drug crimes committed on or after July 1, 2004; and 3) Redirecting a portion of the savings resulting from the sentencing changes back to local communities to fund treatment for drug offenders. A year later, the Legislature passed legislation (ESSB 5990) which moved up the effective date of the drug grid changes from July 1, 2004 to July 1, 2003.

Drug Sentence Reform. Prior to the passage of 2SHB 2338, under the SRA grid, most violations of the Uniform Controlled Substance Act (VUSCA) were ranked from a seriousness level I to a level X depending upon the offense. For example, the crime of possessing marijuana was a

seriousness III felony offense. A first time offender (a person with a zero offender score) convicted of this crime would generally receive a presumptive sentence range of one to three months in jail.

After the passage of 2SHB 2338, VUSCA offenses were ranked from a seriousness level I to a level III on the Drug Offense Sentencing Grid depending upon the offense. For example, the crime of possessing marijuana is a seriousness I felony offense. A first time offender convicted of this crime would generally receive a presumptive sentence range of zero to six months in jail.

Drug Offender Sentencing Alternative (DOSA). An offender is eligible for the DOSA program if the offender: 1) is convicted of a felony that is not a violent offense or sex offense; 2) the offender has no current or prior convictions for a sex offense or violent offense; 3) for VUSCA offenses, the offense involved only a small quantity of drugs as determined by the judge; and 4) the offender is not subject to a deportation detainer or order. The DOSA program authorizes a judge to waive imposition of an offender's prison sentence within the standard range. An offender participating in the DOSA program spends a portion (one-half of the midpoint of the standard sentence range) of his or her sentence in prison and the remainder of his or her sentence in the community participating in a mandatory alcohol and substance abuse treatment program.

### **Summary of Bill:**

The Drug Offense Sentencing Grid (2SHB 2338 established in 2002) is applied retroactively to any offender convicted of a felony drug offense and serving a term under the SRA grid.

Drug Sentence Reform. The Department and local jails must calculate the term of confinement that corresponds to the same relative point within the standard range under the Drug Offense Sentencing Grid that the term imposed by the court occupied within the standard SRA grid. The newly calculated term should correspond to the originally imposed term as a percentage of the interval between the top and bottom of the applicable range.

For example, suppose a person with an offender score of four (having four prior convictions) received a 48-month sentence under the SRA grid for selling heroin. The crime of selling heroin was a seriousness level VIII offense which carried a standard sentencing range of 41-54 months. The sentence of 48 months is seven months above the bottom of the range and six months below the top of the range, or approximately 54 percent of the 13-month interval. Under the new Drug Offense Sentencing Grid, the crime of selling heroin is a seriousness level II offense carrying a 20 to 60 month sentence, for a person with an offender score of four. The range or interval of the 20 to 60 month sentence is 40 months wide. Fifty-four percent of the 40 month interval is 21.6 months. As a result, the new sentence would be 41.6 months in prison (the top of the range representing 20 months plus 21.6 months). This person would be released 6.4 months (original sentence of 48 months minus 41.6 months) earlier (excluding any good time or credit for time served).

For any offender that received a sentence enhancement (for a deadly weapon, firearm, an offense committed while incarcerated, a VUSCA offense in a drug-free zone, or manufacturing methamphetamine with a child on the premises), the Department must recalculate the offender's sentence in the same manner and then add the duration of the enhancement as imposed by the court.

The Department and the local jails must redetermine the release dates for offenders whose newly calculated terms of confinement are less than the terms originally imposed by the court and release those offenders accordingly. In the case where an offender's newly calculated term of confinement is the same or greater than the sentence term originally imposed by the court, the new calculation will have no effect on the inmate's sentence.

DOSA. In the case where an offender is serving a DOSA sentence under the SRA grid, the Department must calculate the term of confinement based on one-half of the midpoint of the applicable standard range under the Drug Offense Sentencing Grid (instead of the SRA grid).

Place of Confinement. If the new calculation for a sentence under the Drug Offense Sentencing Grid or under the DOSA program results in a term of confinement of 12 months or less for an offender who is in the custody of the Department, the offender must continue to serve the remainder of the newly calculated term in the custody of the Department.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.