

HOUSE BILL REPORT

HB 2763

As Passed House:

February 7, 2008

Title: An act relating to the drug offender sentencing alternative.

Brief Description: Concerning the drug offender sentencing alternative.

Sponsors: By Representatives O'Brien, Goodman, Rodne and Hurst; by request of Department of Corrections.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/30/08 [DP].

Floor Activity:

Passed House: 2/7/08, 94-1.

Brief Summary of Bill

- Clarifies the requirement that offenders participating in the prison-based Drug Offender Sentencing Alternative program must spend one-half of the midpoint of the standard sentencing range on community custody following incarceration.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Kirby.

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. There are two types of DOSA programs: prison-based DOSA and residential-based DOSA. Courts have the option to sentence a nonviolent offender with a substance abuse addiction to either of the DOSA programs.

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.

An offender is eligible for the prison-based DOSA program if:

- the offender has not been convicted of a violent offense in the last 10 years;
- the offender has no current or prior convictions for a sex offense;
- the offender has no current convictions for a driving under the influence offense;
- the standard sentence range for the current offense is greater than one year for the offense that the offender is charged with;
- the offender is not subject to a deportation detainer or order;
- the offender has not received a DOSA sentence more than once in the prior 10 years before the current offense; and
- the offender has committed a Violation of the Uniform Controlled Substance Act where the offense only involves a small quantity of drugs as determined by the court.

If the court determines that a DOSA sentence is appropriate for an offender then it may impose an alternative 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 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.

The courts have been inconsistent in how much community custody is ordered following an offender's period of incarceration. For example, in the case where the mid-point of the standard sentencing range is 12 months, an offender would be required to spend 12 months in confinement (the statute requires one-half of the midpoint of the standard range in confinement or 12 months, whichever is greater). Following incarceration, an offender is required to spend the "remainder of the midpoint" of the standard sentencing range in community custody. Some courts are interpreting this to mean six months on community custody. Other courts are interpreting this as no community custody because "the remainder" of one-half of the midpoint of the standard sentencing range (six months) was used to raise the offender's confinement time up to the 12 months.

Summary of Bill:

The provision governing the imposition of community custody for offenders on a prison-based DOSA is amended and clarified. Following an offender's period of incarceration, he or she must spend one-half of the midpoint (instead of the "remainder" of the midpoint) of the standard sentencing range on community custody.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is intended to fix and clarify the activities and sentencing for the courts. The current language is unclear which is why judges were interpreting the statute differently around the state. The Drug Court professionals would also support any further clarifying amendments and any amendments to the bill that would require 12 months of supervision so that a full aftercare program can be put in place for these offenders.

(Opposed) None.

Persons Testifying: Representative O'Brien, prime sponsor; and Martha Harden-Cesar, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.