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## Human Services Committee

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### HB 1791

**Brief Description:** Clarifying certain community custody and drug offender sentencing alternative sentencing provisions.

**Sponsors:** Representatives Dickerson, O'Brien, Hurst, Green, Dammeier, Morrell, Orwall, Walsh and Wood; by request of Department of Corrections.

#### Brief Summary of Bill

- Clarifies the length of community custody for a prison-based treatment program under the Drug Offender Sentencing Alternative.
- Establishes a term of community custody for an unranked felony offense for which an exceptional sentence has been imposed.

**Hearing Date:** 2/9/09

**Staff:** Linda Merelle (786-7092)

#### **Background:**

Drug Offender Sentencing Alternative (DOSA).

If a defendant is charged with an offense under the Violation of the Uniform Controlled Substances Act (VUCSA) or any other felony and the court finds that the offender has a chemical dependency that contributed to the crime, the offender may be eligible for and move the court for a DOSA, if the following criteria are met:

- the standard sentence range for the offense is more than one year;
- the offender has not previously received a DOSA more than once in the last ten years;
- no prior sex offenses and the current offense is not a sex offense;
- the current offense is not violent and no prior violent offenses in the past ten years;
- the current offense is not a felony offense of driving under the influence (DUI) or physical control (a DUI or physical control becomes a felony if the offender has four or more prior offenses within the past 10 years or if the defendant has a prior conviction of

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vehicular homicide or vehicular assault as a result of driving under the influence of alcohol);

- no deadly weapon or firearms enhancement applies to the current offense;
- the defendant is not subject to a federal immigration detainer or deportation order; and
- the offense involved a small amount of drugs as determined by the court.

The Court must consider four factors in its determination of whether a DOSA is appropriate for the offender:

- whether the offender suffers from a drug addiction;
- whether that addiction makes it probable that criminal behavior will occur in the future;
- whether effective treatment for that addiction is available; and
- whether the offender and the community will benefit from the sentencing alternative.

If the court imposes a DOSA instead of the sentence range, the sentence shall consist of either a prison-based alternative or a residential chemical dependency treatment-based alternative. If the offender is sentenced to a prison-based alternative, he or she must spend a period of total confinement in a state facility equal to one-half the midpoint of the standard range, or 12 months, whichever is greater. For example, if the standard sentence range is 13 - 17 months, the midpoint of the standard range would be 15 months. One-half of the midpoint would be 7.5 months. Under a prison-based DOSA, the offender would be required to serve 12 months in total confinement. The offender would be placed on community custody for the "remainder of the midpoint."

#### **Summary of Bill:**

##### Community Custody for Prison-Based DOSA.

Upon completion of a term of one-half of the midpoint or 12 months (whichever is greater) in total confinement, the offender must serve one-half of the midpoint of the standard range as a term of community custody. This clarifies how much time the offender must actually serve under community custody.

##### Community Custody for Exceptional Sentence for Unranked Offenses.

A term of community custody is established for an unranked felony offense for which there has not been an established standard sentence range, and for which the court has imposed a sentence that exceeds 12 months based upon a finding that such an exceptional sentence is justified pursuant to special allegations that have been pled and proven.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on August 1, 2009.