

HOUSE BILL REPORT

HB 1791

As Reported by House Committee On:
Human Services

Title: An act relating to clarifying certain community custody and drug offender sentencing alternative sentencing provisions.

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 History:

Committee Activity:

Human Services: 2/9/09, 2/16/09 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

Staff: Linda Merelle (786-7092)

Background:

Drug Offender Sentencing Alternative.

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

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move the court for a Drug Offender Sentencing Alternative (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 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 Substitute 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.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that the judges do not need to order assessments for offenders who will receive the prison-based Drug Offender Sentencing Alternative. Because fewer offenders will take part in residential-based treatment, fewer assessments will be necessary. For offenders who will participate in residential-based programs, the treatment facility where the offender is housed must provide the court with a treatment plan within 30 days of the offender's arrival. The substitute bill also contains provisions that allow the Department of Corrections to impose sanctions under the community custody statutes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on August 1, 2009.

Staff Summary of Public Testimony:

(In support) The current language regarding the length of the period of community custody when an offender was sentenced to a DOSA was causing difficulty in the court, so the language was changed to clarify the provision. Currently, the court orders an examination for all offenders who are considered for a DOSA irrespective of whether their participation in treatment will be prison-based or in a residential facility. Most offenders are serving their DOSA in prison-based treatment. The only time that an assessment is necessary is when the court is considering residential-based treatment.

(Opposed) None.

Persons Testifying: Patty Noble-Desy and Armando Mendoz, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.