

HOUSE BILL REPORT

SHB 1791

As Passed Legislature

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: House Committee on Human Services (originally sponsored by 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].

Floor Activity:

Passed House: 2/27/09, 94-0.

Senate Amended.

Passed Senate: 4/14/09, 47-0.

House Concurred.

Passed House: 4/18/09, 97-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Permits the court to order the Department of Corrections (DOC) to complete a risk assessment report and/or a chemical dependency screening report to assist it in making a determination of whether to order a residential-based treatment alternative when a defendant is sentenced to the Drug Offender Sentencing Alternative (DOSA).
- Permits the court to order the DOC to conduct an examination of the offender if the Court is considering imposing the residential treatment-based alternative.
- Requires the residential treatment program to send a copy of the offender's treatment plan to the court within 30 days of the offender's arrival at the program if the court orders residential-based treatment.

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.

- Creates new and separate sections in Chapter 9.94A regarding prison-based and residential-based treatment.

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 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.

To assist the court in determining whether it should impose community-based or prison-based treatment, the court may order the Department of Corrections (DOC) to complete a risk assessment or a chemical dependency screening report or both.

Residential Chemical Dependency Treatment-Based Alternative.

If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the DOC. If the court imposes a sentence under this subsection, then the treatment provider will be required to send the treatment plan to the court within 30 days of the offender's arrival to the residential chemical dependency treatment program.

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, except Section 2, relating to the eligibility for the special drug offender sentencing alternative, which takes effect immediately.

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.