

SENATE BILL REPORT

SHB 1791

As Reported by Senate Committee On:
Human Services & Corrections, March 24, 2009

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

Committee Activity: Human Services & Corrections: 3/19/09, 3/24/09 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Shani Bauer (786-7468)

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. Offenders are eligible for DOSA if they:

- are convicted of a felony that is not a sex or violent offense, if the violation does not involve a sentence enhancement;
- are convicted of a felony that is not a felony driving under the influence of liquor or a drug;
- have no current or prior convictions for a sex offense or a violent offense within ten years of the current offense;
- would receive a standard sentence range for the current offense which is greater than one year;
- are not subject to a deportation detainer or order;
- have committed a violation of the Uniform Controlled Substance Act where the offense only involves a small quantity of drugs; and

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.

- have not received a DOSA sentence in the prior ten years.

If an offender is eligible for a DOSA sentence, the court may order an examination of the offender. Contents of the examination report are specified, including an evaluation of the offender, a proposed treatment plan, a proposed monitoring plan, and recommended conditions of sentence.

If a court determines a DOSA sentence is appropriate for an offender, the court may order the offender to a prison-based DOSA sentence or a residential chemical dependency treatment-based alternative DOSA sentence. The residential alternative is only available if the midpoint of the standard range is 24 months or less. If the offender is sentenced to the residential alternative, the recommendations in the examination report are incorporated into the offender's sentence. If the offender is sentenced to a prison-based alternative, the offender is reevaluated by the Department of Corrections once in the facility.

When sentencing an offender to a prison-based DOSA, the court must sentence an offender to confinement for one-half the midpoint of the standard sentence range or 12 months, whichever is greater, and a community custody term for the remainder of the midpoint of the standard sentence range.

If one-half of the midpoint is less than 12 months, courts take two different approaches in sentencing community custody. Some subtract the 12 months confinement from the midpoint to get to a term of community custody. Others sentence the offender to a community custody term of one-half the midpoint regardless of the term of confinement.

For example, assume an offender is convicted of delivery or possession with intent to deliver methamphetamine and has an offender score of one. One-half the midpoint of the sentence range is eight months. If the court sentences an offender to prison-based DOSA, the court must sentence the offender to 12 months confinement. In this situation, some courts will sentence the offender to four months of community custody. Other courts will sentence the offender to a period of eight months community custody.

Summary of Bill (Recommended Amendments): Technical changes are made to clarify the appropriate term of community custody for unranked felonies.

When the court is considering a prison-based alternative, the court may order a presentence chemical dependency screening to inform the court of the offender's likelihood to be chemically dependent. The court may order an examination of the offender when it is considering ordering a residential chemical dependency treatment-based DOSA alternative. The examination report must include an evaluation of the offender, a proposed monitoring plan, and recommended conditions of sentence. If the court orders the residential alternative, the treatment provider must provide the court with a treatment plan within 30 days of the date that the offender begins treatment.

When sentencing a prison-based DOSA offender to a term of community custody, the term must be equal to one-half the midpoint of the sentencing range.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): The permissible standard sentence range for an offender to participate in a DOSA program is clarified to reference the end of the standard sentence range. The court may order a presentence chemical dependency screening to inform the court of the offender's likelihood to be chemically dependent when the court is considering a prison-based alternative. Provisions are reorganized for clarity.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: PRO: Since we testified before you on this bill's companion, we've had more conversation with partners in the community. Concerns have been expressed that the pre-screen for offenders being considered for a prison-based DOSA alternative is being eliminated. We are therefore offering an amendment to continue to allow the court to order a pre-screen for those offenders.

Persons Testifying: PRO: Patty Noble, Department of Corrections.