

SENATE BILL REPORT

SB 5702

As of February 13, 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. [Revised for 1st Substitute: Modifying drug offense sentencing alternative sentencing provisions.]

Sponsors: Senators Hargrove, Brandland, Regala, Stevens and Tom; by request of Department of Corrections.

Brief History:

Committee Activity: Human Services & Corrections: 2/13/09.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

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
- 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

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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: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): 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.

The statutory provisions are reorganized for clarity.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This change simply seeks to remove "the remainder of" and replace it with "one-half" in order to clarify the length of a community custody sentence for prison-based DOSA. The other change is to the examination provisions. DOC paid \$311,000 for examinations last biennium when very few of the offenders were sent to residential-based DOSA. The prison-based DOSA offenders already get an assessment when they get to prison. The DOSA protocols committee agrees with this change. This bill seeks to save money and make the process more efficient.

Persons Testifying: PRO: Patty Noble, DOC.