

HOUSE BILL REPORT

HB 1569

As Reported by House Committee On:
Public Safety

Title: An act relating to improving the drug offender sentencing alternative.

Brief Description: Improving the drug offender sentencing alternative.

Sponsors: Representatives Kagi, Goodman, Hayes, Holy, Fitzgibbon and Ormsby.

Brief History:

Committee Activity:

Public Safety: 2/6/15, 2/20/15 [DPS].

Brief Summary of Substitute Bill

- Expands eligibility for participation in the residential chemical dependency treatment-based alternative program (otherwise known as Residential Drug Offender Sentencing Alternative).

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Goodman, Chair; Orwall, Vice Chair; Hayes, Assistant Ranking Minority Member; Griffey, Moscoso, Pettigrew and Wilson.

Minority Report: Do not pass. Signed by 1 member: Representative Klippert, Ranking Minority Member.

Staff: Yvonne Walker (786-7841).

Background:

For some types of offenses and offenders, sentencing courts have discretion to order alternative sentences. These are statutory alternatives to the standard sentence range for certain offenders who meet the eligibility criteria. One of these alternatives is the Residential Drug Offender Sentencing Alternative (DOSA).

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.

An offender is eligible for the Residential DOSA program if:

- the offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a firearm or deadly weapon sentence enhancement;
- the offender is convicted of a felony that is not a felony Driving While Under the Influence or felony Physical Control of a Vehicle While Under the Influence offense;
- the offender has no current or prior convictions for a sex offense at any time, or violent offense within 10 years before conviction of the current offense;
- for a violation of the Uniform Controlled Substances Act (a drug violation) or a criminal solicitation to commit such a violation, the offense involved only a small quantity of the particular controlled substance as determined by the judge;
- the offender is not subject to a federal immigration deportation detainer or order and does not become subject to a deportation order during the period of the sentence;
- the end of the standard sentence range for the current offense is greater than one year and the midpoint of the standard range is 24 months or less; and
- the offender has not received a DOSA more than once in the prior 10 years before the current offense.

To assist the court in making its determination as to whether Residential DOSA is appropriate, the court may order an examination of the offender by the Department of Corrections. The examination must, at a minimum, address:

- 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 sentencing court determines that the offender is eligible for an alternative sentence and that the alternative sentence is appropriate, the court must waive imposition of a sentence within the standard sentence range, and impose a sentence consisting of either a prison-based DOSA or a Residential DOSA (a residential chemical dependency treatment-based alternative).

The Residential DOSA is only available if the midpoint of the standard range is 24 months or less. A sentence for residential DOSA includes a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment for three to six months as determined by the court.

The court may bring an offender sentenced to Residential DOSA back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions for any violations. The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody, if the offender violates the conditions or requirements of the sentence or, if the offender is failing to make satisfactory progress in treatment. An offender ordered to serve a term of total confinement must receive credit for any time previously served.

Summary of Substitute Bill:

The eligibility for Residential DOSA is expanded. The DOSA program is made available when the midpoint of the standard range of an offender's sentence is 36 months (instead of 24 months) or less.

An offender ordered to serve a term of total confinement due to a DOSA revocation may only receive credit for time previously served in partial or total confinement.

Substitute Bill Compared to Original Bill:

In the case of a DOSA revocation, if an offender is ordered to serve a term of confinement, he or she is limited to only receiving credit for time served in partial or total confinement.

Appropriation: None.**Fiscal Note:** Available.**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.**Staff Summary of Public Testimony:**

(In support) Many years ago the Legislature passed a bill that allow judges to sentence non-violent, non-sex offenders to residential treatment. Such offenders are given an opportunity to go to treatment, but if you violate treatment then you are required to serve your term in incarceration. The DOSA program has been successful in reducing recidivism. Expanding eligibility for admittance in the Residential DOSA program will help divert some offenders from prison beds.

Offenders that are on Residential DOSA are extremely monitored by the court and can be brought back to court at any time and issue sanctions. Increasing eligibility for Residential DOSA from 24 months to 36 months is good public policy. The recidivism rate for offenders receiving treatment is statistically significant over those that do not receive treatment. The Residential DOSA program, which requires three to six months of inpatient treatment, has a 6-percent increase in reducing recidivism over the prison-based DOSA program. Sending offenders to treatment instead of prison is cost-effective and it is also a societal benefit. The amendment suggested by the prosecutors will hinder: (1) needed treatment to mid-level property offenders who have a drug addiction when that treatment is less costly than prison; (2) significant cost savings to the taxpayers; and (3) significant improvement in reducing recidivism.

(Opposed) This bill will only be supported with an amendment. Drug offender sentencing started with prison-based DOSA where a person would get half off a prison term if the person

agreed to enter treatment while in the institution and continue after release. Since that time, the DOSA program has expanded to another program called Residential DOSA which includes no term of incarceration in exchange for the offender participating in inpatient residential treatment and a period of community supervision.

Under current law, when the court decides to revoke someone off of Residential DOSA, the statute states that the person shall receive credit for any time previously served under the section. The courts have interpreted this to mean that every day you are under this Residential DOSA sentence which includes community custody, the person is credited day-for-day for time served. So in reality, there are cases where a person fails to complete treatment and fails to comply with community supervision, the court revokes the Residential DOSA, and there is no sentence to impose because it was all credited against community custody time. The amendment suggested would fix this bill and would ensure that a person would only get credit for time previously served in actual confinement.

Persons Testifying: (In support) Representative Kagi, prime sponsor; and Ramona Brandes, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.