

HOUSE BILL REPORT

HB 2314

As Reported by House Committee On:

Public Safety
Appropriations

Title: An act relating to drug offender sentencing alternatives for offenders convicted of driving or control of a vehicle while under the influence.

Brief Description: Concerning drug offender sentencing alternatives for offenders convicted of driving or control of a vehicle while under the influence.

Sponsors: Representatives Lovick, Orwall, Davis, Wylie and Goodman.

Brief History:

Committee Activity:

Public Safety: 1/13/20, 1/23/20 [DPS];
Appropriations: 2/3/20, 2/8/20 [DP2S(w/o sub PS)].

Brief Summary of Second Substitute Bill

- Creates a new Drug Offender Sentencing Alternative for persons convicted of felony impaired driving offenses.

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; Davis, Vice Chair; Appleton, 2nd Vice Chair; Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Without recommendation. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member.

Minority Report: Do not pass. Signed by 1 member: Representative Graham.

Staff: Omeara Harrington (786-7136).

Background:

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.

Felony Impaired Driving.

A person may be convicted of impaired driving under either the Driving Under the Influence (DUI) statute or the Actual Physical Control of a Vehicle While Under the Influence (PC) statute. A person is guilty of DUI if he or she drives while under the influence of intoxicating liquor, marijuana, or any drug, and is guilty of PC if he or she has actual physical control of a vehicle while under the influence of intoxicating liquor, marijuana, or any drug.

A DUI or PC offense is punishable as a gross misdemeanor if the person has two or fewer prior impaired driving offenses within the previous seven years. However, a DUI or PC offense becomes a felony offense if the defendant has three or more prior impaired driving offenses within the previous 10 years, or has previously been convicted of felony DUI or PC, or of Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug.

Felony DUI is classified as a class B felony. Felony PC is classified as a class C felony. The statutory maximum sentence for a class B felony is 10 years in prison, a fine of \$20,000, or both imprisonment and a fine; and for a class C felony is five years in prison, a fine of \$10,000, or both imprisonment and a fine. The standard range sentence for a DUI or PC offense for a person with three prior impaired driving offenses is 13 to 17 months of incarceration, followed by one year of community custody.

Sentencing Alternatives.

When a person is convicted of a felony offense, a sentencing court is generally required to impose a term of confinement based on a standard range provided in statute. In some circumstances, sentencing courts have discretion to order sentencing alternatives. Sentencing alternatives generally result in a person serving a shorter term of confinement, and sometimes serving no term of confinement. Instead, the person may be required to participate in certain programs or treatment, or to submit to a form of partial confinement.

Drug Offender Sentencing Alternative.

The Drug Offender Sentencing Alternative, or "DOSA," either reduces or eliminates incarceration time in exchange for the offender participating in supervision and treatment. A person convicted of a felony is eligible for a DOSA if certain criteria are met, including that:

- the conviction is for an offense that is not a felony impaired driving offense, a violent offense, or a sex offense, and the violation does not involve a firearm or deadly weapon sentence enhancement;
- the offender has no current or prior convictions for a sex offense at any time, and no violent offense within the 10 years before conviction of the current offense;
- if the offense is a violation of the Uniform Controlled Substances Act (a drug violation), it 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;
- the end of the standard sentence range for the current offense is greater than one year; and
- the offender has not received a DOSA more than once in the prior 10 years before the current offense.

In determining eligibility, the court may order the Department of Corrections (DOC) to complete either a risk assessment report or a substance abuse disorder screening report, or both. If the court determines that the offender is eligible for the alternative, it must waive imposition of the standard-range sentence and impose a sentence consisting of either a prison-based alternative or a residential substance use disorder treatment-based alternative.

Under the prison-based alternative, the offender is sentenced to a term of incarceration equal to one-half the midpoint of the standard range or 12 months, whichever is greater, and one-half the midpoint of the standard range as a term of community custody. The incarceration and community custody terms must include substance abuse treatment.

Under the residential substance use disorder treatment-based alternative, the offender is sentenced to 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 substance use disorder treatment for a period set by the court between three and six months. The term of community custody must also include a condition to participate in treatment.

The court may bring an offender serving a DOSA back to court at any time to monitor progress or determine whether there have been violations of the conditions of sentence. If conditions have been violated or there is unsatisfactory progress in treatment, the court may modify the conditions of community custody or impose other sanctions, including ordering the person to serve a term of total confinement within the standard range for the offense.

Partial Confinement.

For certain offenders, a term of total confinement may be converted to partial confinement. Partial confinement is confinement for up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Home detention is a program of partial confinement in which the offender is confined in a private residence 24 hours a day, unless otherwise authorized by the court or other supervising agency, and is subject to electronic monitoring. Work release is a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the DOC. If the offender violates the rules of the partial confinement program, the offender may be required to serve the remainder of the term in total confinement.

Community Custody.

Community custody is a portion of an offender's sentence served in the community, subject to conditions imposed by the court and the DOC. Courts must order community custody for offenders convicted of certain crimes or in accordance with a sentencing alternative. If an offender violates the conditions of community custody, he or she may be subject to confinement or nonconfinement-based sanctions.

Summary of Substitute Bill:

The Drug Offender Sentencing Alternative for Driving Under the Influence (impaired driving DOSA) is created.

Eligibility for the Impaired Driving DOSA.

An offender is eligible for the impaired driving DOSA if the offender is convicted of felony DUI or felony PC and does not have a prior conviction for Vehicular Homicide, Vehicular Assault, felony DUI, or felony PC. A motion for an impaired driving DOSA may be made by the court, the offender, or the state if the midpoint of the standard sentence range is 26 months or less. If an offender has a higher midpoint, a joint agreement of the state and offender is required.

If the sentencing court determines that the offender is eligible for an impaired driving DOSA, and that the alternative sentence is appropriate, the court must waive imposition of the standard sentence and:

- if the low end of the standard range sentence is greater than 24 months, impose a prison-based DOSA; or
- if the low end of the standard range sentence is 24 months or less, impose a residential treatment-based alternative specific to impaired driving offenders.

To assist the court in making its determination as to eligibility, the court may order the DOC to complete a risk assessment report, a substance use disorder screening report, or both. If the court is considering imposing a sentence under the residential treatment-based alternative, the court may also order the DOC to examine the offender and assess: whether the offender suffers from a substance use disorder; whether the substance use disorder is such that there is a probability that criminal behavior will occur in the future; whether effective treatment for the offender's substance use disorder is available from a licensed or certified provider; and whether the offender and the community will benefit from the use of the alternative sentence.

Impaired Driving DOSA Requirements.

When the court imposes a prison-based impaired driving DOSA, the court must impose a sentence equivalent to, and subject to the same requirements and restrictions as, the traditional prison-based DOSA program already established in statute.

An offender who is eligible for a residential treatment-based alternative is sentenced to all of the following:

- if necessary, an indeterminate term of confinement of no more than 30 days in a county facility in order to facilitate direct transfer to a residential substance use disorder treatment facility;
- treatment in a certified residential substance use disorder treatment program for a period set by the court up to six months, with treatment completion and continued care delivered in accordance with rules established by the Department of Health (DOH). In establishing rules, the DOH must consider criteria established by the American Society of Addiction Medicine (ASAM) criteria;
- 24 months of partial confinement to consist of 12 months work release followed by 12 months of home detention with electronic monitoring; and
- 12 months of community custody.

The court must impose treatment and other appropriate conditions during the periods of partial confinement and community custody. In addition, an offender may be required to pay \$30 per month while on community custody to offset the cost of monitoring for alcohol or controlled substances. Within available resources, the DOC must make substance use disorder assessment and treatment services available to the offender.

Monitoring and Enforcement.

When an offender is sentenced to the residential treatment-based alternative DOSA, the treatment provider must send the treatment plan to the court within 30 days of the offender's arrival to the residential program. The court must schedule a progress hearing during the period of treatment and a treatment termination hearing for three months before the expiration of the term of community custody. Before these hearings, the treatment provider and the DOC must submit written reports to the court and parties regarding compliance with treatment and monitoring requirements and recommendations regarding termination from treatment.

At a progress hearing or treatment termination hearing, the court may: authorize termination of community custody on the predetermined expiration date; continue the hearing, with or without modifying the conditions of partial confinement or community custody; or impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody.

Under either the prison-based or residential-based program, the court may bring the offender into court at any time to evaluate progress in treatment or determine whether there have been any violations of the conditions of sentence. If the offender violates conditions or is failing to make satisfactory progress in treatment, the court may modify the conditions of partial confinement or community custody or order the offender to serve a term of total confinement within the standard range of the offender's current offense.

An offender sentenced to total confinement after termination from an impaired driving DOSA is entitled to full credit for any time previously served under the impaired driving DOSA in total confinement or residential treatment, and 50 percent credit for any time previously served in partial confinement or community custody. However, an offender serving a term of community custody following termination from the impaired driving DOSA is granted no credit for time served in community custody prior to the termination.

Substitute Bill Compared to Original Bill:

The DOC, rather than the DOH, must complete an examination of the offender to assist the court in determining eligibility for the residential treatment-based impaired driving DOSA. The provision stating that treatment completion and continued care for purposes of residential DOSA treatment must be in accordance with ASAM criteria is removed. Instead, treatment completion and continued care must be delivered in accordance with rules established by the DOH, and the DOH must consider ASAM criteria in rulemaking. An offender ordered to serve a term of total confinement following termination from the impaired driving DOSA receives 50 percent credit for time previously served in partial confinement on the impaired driving DOSA. The provision regarding eligibility for a

traditional DOSA is modified to indicate that an impaired driving DOSA sentence within 10 years disqualifies a person from participating in the DOSA program (just as a prior traditional DOSA would).

Changes are made to clarify that the impaired driving DOSA is separate from the traditional DOSA that exists in current law, and references to the impaired driving DOSA are added to relevant portions of the Sentencing Reform Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2021.

Staff Summary of Public Testimony:

(In support) It is time to move in the direction that this bill is going. Based on experience in law enforcement, impaired driving is at the top of the list of issues that needs to be addressed. From the perspective of prosecutors, when dealing with addiction, a broad array of options are needed. This is a distinct group of offenders who clearly have addiction problems that have to be addressed, and at the same time, a balance has to be struck with community safety. An impaired driving prison DOSA requires state agreement, and the impaired driving residential DOSA is more robust than a traditional residential DOSA. Under the impaired driving residential DOSA, up to six months of inpatient treatment is followed by 12 months of work release and 12 months of home detention, during which the person will continue with treatment, but also reenter the community and start to work again. It is appropriate to have evaluations performed by an outside source. Currently, not many people who are convicted of impaired driving are receiving intensive treatment. The program is also limited and does not include repeat felony impaired driving offenders or people who have killed or maimed. This will move the needle toward making our streets safer.

(Opposed) None.

(Other) Under the bill, the court may order the DOH to examine the offender to determine whether the offender has a substance use disorder and other factors. The DOH does not provide any behavioral health clinical services, so it would have to contract for these services. It would make more sense to have an agency that provides the relevant services perform this work.

Persons Testifying: (In support) Representative Lovick, prime sponsor; and Amy Freedheim, King County Prosecutor's Office.

(Other) Christie Spice, Department of Health.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 21 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Steele, Sullivan, Sutherland, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 10 members: Representatives MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick and Ybarra.

Staff: Yvonne Walker (786-7841).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

A technical amendment is made to reference the correct statutes as it relates to the DOSA program.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect on January 1, 2021.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

(Other) The DOSA program is known for assisting individuals with substance abuse issues to get treatment. However, the DOC is concerned that this new DUI DOSA program will allow for offenders to be placed directly in the DOC's work release program, thereby having an effect on their current population. In addition, residential DOSA is currently at capacity and has a wait list. If offenders convicted of impaired driving offenses are authorized to participate in a residential DOSA then the current wait list for obtaining a treatment bed will become even longer.

Persons Testifying: Melena Thompson, Department of Corrections

Persons Signed In To Testify But Not Testifying: None.