

HOUSE BILL REPORT

HB 2334

As Reported by House Committee On:
Public Safety

Title: An act relating to drug offender sentencing.

Brief Description: Concerning drug offender sentencing.

Sponsors: Representatives Davis, Macri, Wylie, Goodman and Appleton.

Brief History:

Committee Activity:

Public Safety: 1/20/20, 1/30/20 [DPS].

Brief Summary of Substitute Bill

- Modifies eligibility criteria for the Drug Offender Sentencing Alternative (DOSA).
- Changes the content of and requirements related to certain court-requested DOSA eligibility assessments.
- Provides that a person ordered to participate in the residential treatment-based DOSA may be initially confined in a county facility in order to facilitate direct transfer to a residential treatment facility, and that residential treatment may be "up to" six months (rather than three to six months).
- Provides that treatment completion and continued care for residential treatment-based DOSA sentences must be in accordance with Department of Health rulemaking, taking into account American Society of Addiction Medicine criteria.
- Limits credit toward a total confinement sentence for time served on community custody prior to DOSA revocation.
- Requires the Washington State Institute for Public Policy to report on the effectiveness of the DOSA program.
- Makes various other changes to the statutes governing the DOSA.

HOUSE COMMITTEE ON PUBLIC SAFETY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Omeara Harrington (786-7136).

Background:

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.

Eligibility.

A person convicted of a felony is eligible for a DOSA if certain criteria are met, including that:

- the current 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 use disorder screening report, or both. At a minimum, the examination must address:

- whether the offender suffers from a drug addiction, and whether the addiction is such that there is a probability that criminal behavior will occur in the future;
- whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the Department of Health (DOH); and
- whether the offender and the community will benefit from the use of the alternative.

The examination report must contain: a proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and recommended crime-related prohibitions and affirmative conditions.

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.

Prison-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. The treatment services in the DOC must be designed by the Division of Alcohol and Substance Abuse of the Department of Social and Health Services, in cooperation with the DOC.

Residential Substance Use Disorder Treatment-Based Alternative.

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 residential substance use disorder treatment-based alternative is only available if the midpoint of the standard range sentence is 24 months or less.

Enforcement.

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.

An offender who is terminated from the DOSA and is ordered to serve a term of total confinement receives credit for any time previously served under the DOSA. However, in serving a term of community custody imposed upon termination from the DOSA, the offender does not receive credit for time served in community custody prior to termination.

Summary of Substitute Bill:

Various changes are made to the provisions governing the DOSA.

Eligibility.

The offense history disqualifying a person from participating in the DOSA is modified. A current or prior sex offense conviction disqualifies a person from the DOSA only if the offense is one for which there is a current duty or a possible future duty to register as a sex offender. The window of disqualification for an offense history involving a violent offense is narrowed from 10 years to seven years prior to the current conviction when the prior offense was Robbery in the second degree that did not involve a firearm and was not plead down from Robbery in the first degree.

The requirement that the standard range sentence for the current offense must be greater than one year in order to participate in the DOSA is removed; however, in order to impose a prison-based DOSA, the high end of the standard sentence range for the current offense must be greater than one year.

Prison-Based Alternative.

Substance use disorder treatment during the community custody portion of a prison-based DOSA must be in a program approved and licensed by the DOH, rather than the Department of Social and Health Services.

Residential Substance Use Disorder Treatment-Based Alternative.

The maximum standard range sentence for eligibility for the residential substance use disorder treatment-based alternative is increased. A person may participate in the residential program if the midpoint of his or her standard range sentence is 26 months or less, rather than 24 months or less.

When the court orders the DOC to examine an offender for consideration of a residential treatment-based alternative, the examination must be performed by an agency certified by the DOH to provide substance use disorder services. The requirement to include a proposed monitoring plan and recommended crime-related prohibitions and affirmative conditions is removed.

Residential substance use disorder treatment may be for a term of up to six months, rather than three to six months. Treatment completion and continued care must be delivered in accordance with rules adopted by the DOH. In adopting rules, the DOH must consider the American Society of Addiction Medicine (ASAM) criteria. The sentence may include 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.

Terminology referring to "drug addiction" and "substance abuse" is changed to "substance use disorder."

Enforcement.

When a total confinement sentence is imposed following a violation of conditions or failure to make satisfactory progress in treatment, the credit for any time previously served in community custody on the DOSA is limited to 50 percent.

Reporting.

The Washington State Institute for Public Policy (WSIPP) must submit a report to the Governor and the Legislature by November 1, 2022, analyzing the effectiveness of the DOSA

in reducing recidivism among various offender populations. The WSIPP must submit an additional report by November 1, 2028, and every five years thereafter. The WSIPP may coordinate with the DOC and the Caseload Forecast Council in guiding data-tracking efforts and preparing the report.

Substitute Bill Compared to Original Bill:

Offenses involving specified impaired driving-related felony enhancements are removed from the list of DOSA-disqualifying offenses.

Current law is reinstated placing the responsibility with the DOC, rather than the DOH, to complete examinations of offenders who are being considered for a residential DOSA. Examinations must be performed by an agency certified by the DOH to provide substance use disorder services. 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. Statutory language indicating that the costs of DOSA examinations and preparing recommended service delivery plans may be paid, at the option of the county, from funds provided through the Criminal Justice Treatment Account is removed.

The primary responsibility for reporting on the effectiveness of the DOSA is shifted to the WSIPP (from than the DOC), and the due date of the second report is changed to November 1, 2028 (from November 1, 2027).

The Sentencing Reform Act's definition of the DOSA is amended to align with other provisions of the bill. Other minor changes are made for clarity.

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) The DOSA program helps people recover from the addiction that is at the root of their criminogenic behavior. If the goal of our justice system is rehabilitation, we are failing, as a third of the incarcerated population returns to incarceration. A key component of moving from mass incarceration to rehabilitation is treatment. Substance use disorder is a treatable brain disease from which people can recover if they have proper care, and the DOSA is an effective treatment program that has placed many people into recovery.

The bill strikes a balance between expanding DOSA eligibility and addressing prosecutor concerns. The bill allows people with a standard range sentence of 22-29 months to participate in the residential DOSA. It also removes barriers for offenders with a history of

certain Robbery in the second degree offenses older than seven years, while keeping violent offenders from participating within 10 years. The conduct underlying these Robbery offenses was not violent, and this is the same offense that was just removed from the three strikes list. It also allows participation of persons with a sex offense history who have reached the very difficult milestone of not having to register as a sex offender. Discretion for treatment providers in terms of the length of treatment is necessary, and current law is not in compliance with ASAM criteria. The bill also limits credit toward a revocation sentence for time previously spent on community custody to 50 percent, which is a significant consequence. Also, it allows local facilities to hold a person while they are awaiting a bed. This will prevent walk-aways and re-offense before the DOSA starts. In some jurisdictions, 40 percent of people never make it to residential treatment because they returned to the street.

This is a crime reduction bill that will decrease incarceration, save taxpayer money, and carry other benefits. The residential DOSA statutes unnecessarily shut the door on many offenders who want treatment. Currently, these people go to prison and are released with the same disorder that led to the underlying criminal behavior. Under current law, a person has to have committed enough felonies to have at least a standard range sentence of a year to qualify for residential DOSA, so people with more criminal history get to go to treatment, and lower level offenders go to incarceration without treatment.

(Opposed) None.

(Other) The DOSA creates an alternative for individuals facing incarceration who should be treated. Moving the eligibility to a midpoint standard range sentence of 26 months, and allowing a 30-day hold are good components. There are concerns, however, in that removing the one year floor for participation will add people to the community supervision caseload who would not otherwise be supervised. This will make the current wait list longer for limited beds. Also, there are concerns about the DOH conducting clinical examinations of offenders. The DOH licenses providers, but it does not provide treatment services. The bill could be amended to allow an agency licensed by the DOH to perform the evaluation.

Persons Testifying: (In support) Representative Davis, prime sponsor; Ramona Brandes, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; Joel Merkel, King County Prosecutor's Office; and Stephen Warning, Superior Court Judges Association.

(Other) Christie Spice, Department of Health; and Melena Thompson, Department of Corrections.

Persons Signed In To Testify But Not Testifying: None.