

HOUSE BILL REPORT

HB 1549

As Reported By House Committee On:
Corrections

Title: An act relating to treatment-oriented sentences for offenders convicted of manufacture, delivery, or possession with intent to deliver a narcotic from Schedule I or II.

Brief Description: Creating a sentencing alternative for drug offenders.

Sponsors: Representatives Ballasiotes, Morris, Wolfe, Campbell, Quall, Backlund, Dyer and Blanton; by request of Sentencing Guidelines Commission.

Brief History:

Committee Activity:

Corrections: 2/10/95, 2/22/95 [DPS].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole; Dickerson; Koster; Radcliff; K. Schmidt and Schoesler.

Staff: Rick Neidhardt (786-7841).

Background: A person commits a felony by manufacturing, delivering, or possessing with intent to manufacture or deliver a Schedule I or II narcotic drug. Schedule I or II narcotic drugs include cocaine and heroin.

The sentence for this felony is governed by the Sentencing Reform Act (SRA). Under the SRA, the length of this offender's sentence depends primarily on two factors: the seriousness level of the offense and the extent of the offender's criminal history. These factors determine the offender's standard sentence range of confinement.

A sentencing judge may impose a sentence within the standard range. The judge may instead impose a sentence above or below the standard range if the judge finds substantial and compelling reasons to justify departing from the standard range.

Offenders who manufacture, deliver, or possess with intent to deliver a Schedule I or II narcotic drug might be eligible for the work ethic camp. Eligibility depends on whether the offense is classified as a "violent offense," which in turn depends on the exact circumstances of the offense and the offender's criminal history.

Offenders committing this felony are not eligible for the first-time offender waiver. The first-time offender waiver is available, however, for offenders who commit the different offense of manufacturing, delivering, or possessing with intent to deliver methamphetamine.

Offenders who manufacture, deliver or possess with intent to deliver a Schedule I or II narcotic drug are eligible to participate in a prison work release program during their final six months of confinement.

Offenders committing this felony receive a mandatory one-year period of community placement following their incarceration. Community placement is a form of community supervision. Throughout the period of community placement, the offender is subject to further penalties for violating sentence conditions. A portion of the time on community placement can be spent under the more restrictive conditions of community custody.

Summary of Substitute Bill: A new Drug Offender Sentencing Alternative (DOSA) is established for offenses involving the manufacture or delivery of Schedule I or II narcotic drugs. For eligible offenders this alternative provides treatment-oriented sentences involving shorter periods of prison confinement.

Eligibility. An offender is eligible to be considered for the special drug alternative if:

- (1) the offender is convicted of manufacturing, delivering, or possessing with intent to manufacture or deliver Schedule I or II narcotics, or a felony anticipatory offense (attempt, solicitation, or conspiracy) to commit such an offense;
- (2) the sentence does not include a deadly weapon enhancement;
- (3) the offender has no prior felony convictions;
- (4) the offense involved only a small amount of drugs, as determined by the judge;
- (5) the judge determines that the offender and the community will benefit from imposing the special alternative; and
- (6) the mid-point of the offender's standard range must exceed one year.

Discretion to Impose Sentencing Alternative. The sentencing judge has discretion to sentence an eligible offender under this drug offender sentencing alternative. The sentencing judge, however, is not required to use this alternative. The sentencing

judge still has authority to punish the offender with a standard sentence, an exceptional sentence, or an applicable sentencing alternative.

Confinement. An offender being sentenced under the special drug offender sentencing alternative is sentenced to total confinement in a state facility for a period equal to one-half of the mid-point of the offender's standard sentence range. For example, an offender whose standard range is 21-27 months would be confined in a state facility for 12 months (one-half of the range's mid-point of 24 months).

In-prison assessment/treatment. While in prison the offender will undergo substance abuse assessment and will receive, within available resources, appropriate treatment services. The treatment services will be designed by the Division of Alcohol and Substance Abuse, in cooperation with the Department of Corrections.

Work release. If the mid-point of the offender's standard range is 24 months or less, then work release is limited to a maximum of three months.

Community Custody. Offenders receive one year of concurrent community custody and community supervision, which must contain crime-related prohibitions, including a requirement to undergo outpatient substance abuse treatment, a condition not to use illegal controlled substances and a requirement to submit to drug testing to monitor that status. The monitoring may be performed by the Department of Corrections or a Treatment Alternative to Street Crime (TASC), or a program similar to TASC's. The offender may be required to pay \$30 to offset these monitoring costs. The judge must also impose three or more of the following conditions:

- (1) hold a particular job or undergo training;
- (2) remain in a certain geographical area and report changes in address or employment;
- (3) report to a community corrections officer;
- (4) pay court-ordered legal financial obligations;
- (5) perform community service work;
- (6) stay away from locations designated by the judge.

Violations. The Department of Corrections, with notice to the prosecutor and sentencing court, will impose administrative sanctions on offenders who violate the conditions of sentence. If the prosecutor or the court is not satisfied with the sanctions, a court hearing may be held to address the violation. If the court finds the offender willfully violated the conditions, the court may impose confinement of up to the remaining one-half of the mid-point of the standard range.

Impact Analysis. The sentencing guidelines commission shall evaluate the impact of the drug offender sentencing alternative. The evaluation shall include analysis of the changes in sentencing practices, the effect on the state prison population, the

effectiveness of treatment services, the savings in state resources, and the effect on recidivism rates.

Methamphetamine. The first-time offender waiver is no longer an available sentencing option for an offender who manufactures, delivers or possesses with intent to deliver methamphetamine.

Additional technical corrections are made.

Substitute Bill Compared to Original Bill: The original bill differed in the conditions that could be imposed on an offender being released from confinement: the original bill authorized, but did not require, the judge to impose outpatient drug treatment services; the original bill allowed the judge to impose day fines or day reporting; and the original bill allowed judges more discretion in the number of conditions to impose. The original bill also used the term "community custody" rather than "concurrent community custody and community supervision."

The substitute bill added the authority for drug-use monitoring to be performed through TASC, or similar programs. The substitute bill added the Sentencing Guidelines Commission's duty to analyze the effectiveness of drug treatment services provided under this sentencing alternative. The substitute bill added the provision excluding methamphetamine offenses from the first-time offender waiver.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: This sentencing alternative is an appropriate and reasonable response to the needs and responsibilities of the taxpayers. It represents a proven solution to the problem of increasing crime. This is a tough approach that demands more of drug offenders than simply sitting in a prison cell. The treatment programs should be designed or approved by the Division of Alcohol and Substance Abuse. This gives addicted drug offenders one chance to kick their addiction. Without this alternative, judges are not able to order treatment for these drug offenders. Studies show drug treatment works, even when the treatment is mandated. The shorter prison sentence frees up prison beds for more violent offenders. An offender who does not follow through with treatment during the community custody period can be re-incarcerated, so the public is protected and the offender is held accountable.

Testimony Against: None.

Testified: Walter Palmer, Washington Association of Criminal Defense Lawyers (pro); Tom McBride, Washington Association of Prosecuting Attorneys (pro); King County Prosecutor's Office (pro); Judge Ric Martinez, King County Superior Court (pro); and Larry Fehr, Washington Council on Crime and Delinquency (pro).