HOUSE BILL REPORT
E2SHB 1006

As Amended by the Senate

Title: An act relating to sentencing for crimes involving drugs or alcohol.

Brief Description: Revising sentencing options for drug and alcohol offenders.

Sponsors: By House Committee on Criminal Justice & Corrections (Originally sponsored by Representatives Ballasiotes, O'Brien, Benson, Radcliff, Quall, Mitchell, Dickerson, Cairnes, Hurst, Alexander and Lambert).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/19/99, 2/17/99 [DPS];
Appropriations: 3/1/99, 3/3/99 [DP2S(w/o sub CJC)].

Floor Activity:

Passed House: 3/11/99, 96-0.
Senate Amended.
Passed Senate: 4/12/99, 43-3.

Brief Summary of Engrossed Second Substitute Bill

- Authorizes courts to order offenders to perform affirmative acts.
- Authorizes courts to order chemical dependency screenings as part of an offender's pre-sentence report.
- Expands the eligibility for the Drug Offender Sentencing Alternative program.
- Changes the eligibility criteria for the Work Ethic Camp.
- Creates a community custody option for nonviolent/nonsex offenders in local jails.
- Authorizes counties to establish & operate drug courts.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

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 Criminal Justice & Corrections. Signed by 32 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Alexander, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Barlean; Benson; Boldt; Carlson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Tokuda and Wensman.

Staff: Dave Johnson (786-7154).

Background:

Community Supervision. "Community supervision" is a technical term in the Sentencing Reform Act and includes up to one year in the county jail and one year of supervision in the community. The court may often subject the offender to limited crime-related prohibitions. Violations of community supervision conditions may result in up to 60 days in jail. Courts usually do not impose affirmative conditions (such as drug treatment) on an offender sentenced to community supervision.

Affirmative Conditions. Sentencing conditions known as crime-related prohibitions are commonly imposed by courts on offenders who are placed on community supervision, community placement, partial confinement, or the sex offender sentencing alternative. These conditions prohibit conduct that directly relates to the circumstances of the crime for which the offender was convicted, such as requiring a drug offender to not unlawfully possess or use controlled substances.

Current law states that crime-related prohibitions cannot direct an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.

Trial courts are currently authorized to impose affirmative acts as conditions in specified circumstances, such as for sex offenders, who can be ordered to participate in crime-related treatment or counseling.

Pre-sentence Reports. Before imposing a sentence upon an offender, the court usually conducts a pre-sentence hearing. At that time, the court may order the Department of Corrections (DOC) to complete a pre-sentence report to assist the trial court in sentencing an offender after he or she has been convicted. Pre-sentence reports usually include prior convictions, prior arrests, employment history, education history, and family and social background.

Drug Offender Sentencing Alternative. The Drug Offender Sentencing Alternative (DOSA) allows a judge to waive imposition of an offender's sentence within the standard range. The judge may impose a sentence that must include confinement in a state facility for one-half of the midpoint of the standard range. While in confinement, the offender must complete a substance abuse assessment and receive substance abuse treatment and counseling.

The court must also impose one year of concurrent community custody and community supervision, which must include outpatient substance treatment and crime-related prohibitions. Courts usually do not impose other conditions such as affirmative conditions as part of the offender's sentence.

A first-time offender convicted of an drug offense may be eligible for the DOSA program if the current offense only involved a small quantity of drugs as determined by the court. An offender is prohibited to participate in this program if the offender has any prior convictions for a sex or violent felony offense.

If an offender violates any of the DOSA sentencing conditions, the DOC may impose sanctions administratively and any violation hearings and subsequent sanctions must be held by the court.

An offender with a deportation order or detainer is eligible for the DOSA program.

Work Ethic Camp. The Work Ethic Camp (WEC) is an alternative sentencing program that consists of at least 120 days and no more than 180 days of confinement, including a two-week period of transition training. This program allows a successful offender completing the program to convert the period of WEC confinement at the rate of one day of WEC confinement to three days of total standard confinement.

Although drug offenders, after special review of their circumstances, are eligible for the WEC, an offender with prior convictions for any sex offenses or violent offenses is not eligible to participate in this particular program. An offender participating in a WEC must be referred by the court and have received a sentencing term of total confinement ranging from a minimum of 16 months to a maximum of 36 months.

Some offenders are eligible for both the DOSA program and the WEC. Alien offenders may also participate in WEC.

County Supervised Community Option. Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement: (1) one day of partial confinement may be substituted for one day of total confinement; (2) in addition, for offenders convicted of nonviolent offenses only, eight hours of community service may be substituted for one day of total confinement, with a maximum conversion limit of 240 hours or 30 days. Community service hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed 24 months, pursuant to a schedule determined by the department.

Drug Courts. Drug Court is a program that removes drug offenders from standard criminal procedures and forces them into treatment. There are currently drug courts in several counties including King, Pierce, Spokane, and Thurston counties.

The courts diverge from traditional courts by diverting non-violent drug criminals into court-ordered treatment programs rather than prison. The program allows people arrested for drug possession to choose an intensive, heavily supervised rehabilitation program in lieu of incarceration. In Drug Court, defendants agree to the facts of their arrest, then are required to participate in drug treatment, counseling, find work, meet with parole officers, attend weekly visits with a judge, and meet conditions set by a judge.

If they complete the program, the charges can be dropped. If a defendant fails, he or she can ultimately be sentenced at the top of the sentencing range and be jailed, but the courts typically give drug defendants more than one chance to reform.

With the incentive of keeping an offender's record clear of drug charges, the court pushes people with substance abuse problems into a year-long program of frequent drug tests and counseling.

The aim of the court is to encourage drug offenders into a productive, drug-free lifestyle.

Summary of Bill:

Community Supervision. The courts are authorized to order an offender, under a term of community supervision, to participate in drug or alcohol treatment if their crime is a result of a chemical dependency.

Affirmative Conditions. The courts are authorized, subject to available resources, to require an offender, found to have a chemical dependency which has contributed to their

crime, to perform affirmative acts, such as participating in rehabilitative programs or taking drug or polygraph tests, as a condition of his or her sentence.

Pre-sentence Reports. Unless waived by the courts, the courts are required to order the Department of Corrections to perform a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a controlled substance offense or where the court finds the offender has a chemical dependency which has contributed to his or her crime.

Drug Offender Sentencing Alternative. The Drug Offender Sentencing Alternative (DOSA) continues to allow a judge to waive imposition of an offender's sentence within the standard range.

The offender must spend the remainder of the midpoint of the standard range in community custody (instead of both community custody and community supervision) following incarceration which must also include some type of alcohol and substance abuse treatment that has been approved by the Division of Alcohol and Substance Abuse. Courts may continue to impose crime-related prohibitions, as well as other conditions such as affirmative conditions, as part of the offender's sentence.

An offender convicted of a violation of the Uniform Controlled Substance Act may be eligible for the DOSA program if the current offense only involved a small quantity of drugs as determined by the court. An offender is prohibited to participate in this program if the offender has any prior, as well as any "current", convictions for a sex or violent felony offense.

The DOC is required to develop criteria for an offender's successful completion of the DOSA program by December 31, 1999. If the offender violates or fails to complete the DOSA sentence conditions he/she will have a violation hearing held by the DOC. If the offender is found guilty then he/she will be returned to total confinement for the balance of his/her remaining time of confinement (without court interference). The remaining sentence will be subject to all rules relating to earned early release time.

An offender who violates any conditions of supervision as defined by the Department of Corrections will be sanctioned. Sanctions may include, but are not limited to, reclassifying the offender to serve the unexpired term of his or her sentence as ordered by the sentencing judge. If an offender is reclassified to serve the unexpired term of his or her sentence, the offender will be subject to all rules relating to earned early release time.

Alien offenders are ineligible for the DOSA program if they are subject to a deportation detainer or order.

Work Ethic Camp. Offenders with a current violation of the Uniform Controlled Substance Act (a drug offense) are ineligible for the Work Ethic Camp (WEC). The 3:1 conversion is eliminated, however, the sentencing range is expanded to allow offenders to participate in the WEC if they have been referred by the court and have received a sentencing term of total confinement ranging from a minimum of 12 months and one day (instead of 16 months) to a maximum of 36 months.

Offenders who are eligible for the DOSA program are ineligible for the WEC. The DOC is authorized to remove an offender if the offender has a deportation detainer or order; or if the offender has participated in the WEC in the past.

County Supervised Community Option. A local option is created for community custody (or a county supervised community option) whereby jails may place nonviolent/nonsex offenders into alternative placements augmented by affirmative conditions.

Drug Courts. Counties are authorized to establish Drug Court programs to accept offenders that have been diverted by the courts from the normal course of prosecution for drug offenses. The term "drug court" is defined as a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

Counties are required to fully exhaust all available federal drug court funding from the Office of National Drug Control Policy before seeking state funds for its county operated drug court program.

Requires rather than allows the Department of Corrections to impose the underlying sentence for offenders sentenced under the drug offender sentencing alternative (DOSA) if the offender fails to complete or is administratively revoked from the DOSA program. Requires rather than allows all offenders who violate the terms of supervision to be sanctioned.

EFFECT OF SENATE AMENDMENT(S): Offenders convicted of solicitation of drug offenses are specifically made eligible for the Drug Offender Sentencing Alternative program and are specifically made ineligible for the Work Ethic Camp.

The Sentencing Guidelines Commission, in conjunction with the Washington State Institute for Public Policy, is directed to conduct a five year study on the effect of the changes of the drug sentencing laws.

Counties are required to make a dollar-for-dollar match before seeking state funds for drug court programs.

In addition, the null and void clause is restricted to the drug court sections of the bill instead of the entire bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Criminal Justice & Corrections) (Original bill) Over the last several years, drug addiction in many counties has tripled. In fact, trends have shown that a large percentage of state prison beds and 70 percent of local jails beds are filled with offenders who have been convicted of a drug charge or whom a chemical dependency addiction has contributed to their crime. This bill is an attempt to bring some rationality to a system that, in essence, is falling apart.

The Drug Court program, which is a major provision of this bill, is a program that has greatly helped drug offenders to get substance abuse treatment without having a major infraction on their record. Several jurisdictions in Washington have followed the national trend in establishing local drug courts, and even more recently, these courts were established in such places as Snohomish and Thurston counties. The problem is that many counties started drug courts by using a federal grant, however, that grant has ended and state supplemental funding is greatly needed.

There are several provisions of the bill relating to drug courts which need to be clarified. First, there is no provision in current law or the bill to authorize the operation of drug courts. Second, the appropriation should be adjusted to ensure that all counties have the opportunity to establish and maintain drug courts within their districts. Third, the distribution of the drug court appropriation should be clarified to ensure that the entire administrative portion of the appropriation (which is 10 percent of the appropriation) is to be used only for local administrative costs. Lastly, language should be added to allow county jails to receive a portion of the appropriation to use for offender chemical dependency treatment within the jail system.

(Appropriations) (Substitute bill) We have a patchwork of drug crime laws. Over 25 percent of offenders in our prisons are addicted. About 80 percent have some type of drug problem that contributed to their crime. Different sentencing alternatives support different groups of offenders. Currently, we do not do a good job of getting the right offenders into the right programs. This fixes that.

The drug offender sentencing alternative is being underutilized. This bill would open up that program, which will have beneficial outcomes.

Drug courts are very successful. They are showing good results now in many counties. Without state funding, many of the existing drug courts will have to greatly reduce their programs. Without successful interventions, offenders with addictions graduate to more serious crime and recycle through the system over and over again. Drug courts can help break that cycle.

Adding mitigated circumstances, as is done by section 7, gives judges much needed flexibility.

Testimony Against: (Criminal Justice & Corrections) (Original bill) The bill authorizes the Department of Corrections to hold violation hearings for offenders violating or failing to complete their Drug Offender Sentencing Alternative (DOSA) sentence. If the offender is found guilty then he may be returned to total incarceration for the balance of the offender's remaining time of confinement. Some are supportive of this portion of the bill because it usually takes an average of 30 days for a prosecutor to find out about an offender's violation and then it takes another 30 days before they can actually get to the case to resolve it. As a result, by this time, the offender may be completely released from the Department of Correction's custody. Others are not supportive of this portion of the bill and feel that when an offender violates a DOSA sentence that the Department of Corrections now has the final authority to sentence the offender without returning to court. This provision gives the Department of Corrections the authority to extend a sentence that has been given by a judge and they are now, in turn, doing a judge's job.

The section of the bill relating to mitigating circumstances is amended to include low-level drug offenders as an illustrative example of factors to consider when imposing an exceptional sentence upon an offender. This is a provision of the bill that should be deleted in its entirety, especially since judges can already consider this factor without this particular new provision being added to law. By adding this new provision as a mitigating factor in statute, we are, in essence, releasing (or at least shorting sentences of) offenders arrested for a substance abuse problem. These are the offenders that really need drug treatment and they should not be let loose back out on the streets but, in turn, coerced into rehabilitation treatment.

(Appropriations) (Substitute bill) Adding mitigated circumstances, as is done by section 7, will fill up the local jails rather than coercing individuals into treatment. Drug dealing is a crime against the neighborhood regardless of the volume of drugs the offenders are arrested with. (Note: section 7 was deleted in the bill as it passed the committee on appropriations).

Testified: (Criminal Justice & Corrections) (In support) Terree Schmidt, Pierce County Court; Judge James Murphy, courts; Judge Rick Strophy, Thurston County Superior

Court; Bernardean Broadous, former Thurston County Prosecuting Attorney; Roger Lake, Washington State Narcotics Association; Gary Edwards, Sheriff; Patty Terry, Department of Corrections; Judge Larry McKeeman, Superior Court Judge's Association; Alan Erickson, Skagit Recovery Center; Joe Hawe, Washington Association of Sheriffs and Police Chiefs; Karen Daniels, Thurston County Sheriff's Office; Joe Lehman, Department of Corrections; Tom McBride, Washington Association of Prosecuting Attorneys; and Jackie Campbell, Department of Corrections.

(Criminal Justice & Corrections) (In support with concerns) Bill Jaquette, Washington Defender Association; and Russ Hauge, Washington Association of Prosecuting Attorneys

(Criminal Justice & Corrections) (Opposed) Ken Stark, Department of Alcohol and Substance Abuse.

(Appropriations) (In support) Representative Ballisiotes, prime sponsor; Representative O'Brien, sponsor; Steven Freng, Washington Association of Drug Court Professionals; Roger Goodman, Executive Director, Sentencing Guidelines Commission; Roger Lake, Washington State Narcotics Association; Mary Taylor, King County Drug Court; Nicole MacGinnes, King County Superior Court Drug Court; Victor Maes, Seattle Police Department; and Ken Stark, Director, Division of Alcohol and Substance Abuse, Department of Social and Health Services.

(Appropriations) (In support with amendment) Russ Hauge and Dan Satterberg, Washington Association of Prosecuting Attorneys; and Martha Harden, Superior Court Judges Association.

(Appropriations) (Concerns) Bill Jacquette, Snohomish Public Defender, Washington Defender Association.