

SENATE BILL REPORT

SB 5847

As Reported By Senate Committee On:
Human Services & Corrections, March 2, 1999

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

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

Sponsors: Senators Costa, Long, Hargrove, Haugen, McCaslin and Heavey.

Brief History:

Committee Activity: Human Services & Corrections: 2/26/99, 3/2/99 [DPS-WM].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5847 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Franklin, Kohl-Welles, Long, Patterson, Sheahan, Stevens and Zarelli.

Staff: Fara Daun (786-7459)

Background: Under current law, the drug offender sentencing alternative (DOSA) is available only to those persons convicted of violating the Uniformed Controlled Substances Act, or of a solicitation to violate the act. Offenders who have committed felonies related to their chemical dependency but which are not drug offenses are not eligible for DOSA. Concerns exist that this restriction has resulted in less utilization of DOSA than anticipated.

The Work Ethic Camp (WEC) is a sentencing alternative for offenders convicted of felonies other than sex offenses or violent offenses. Current law permits drug offenders to participate in WEC. WEC does not provide drug treatment.

Several counties have established drug courts to address nonviolent offenses where the offender is chemically dependent or the offense is related to the offender's substance abuse. Drug courts are presently located in King, Pierce, Spokane, Skagit, Clallam and Thurston counties and several other counties are in the process of implementing drug court. Most drug courts are initially funded with a combination of local and federal monies, but federal funding is time limited and several counties are near the end of this funding resource. Drug courts are distinct from DOSA.

Summary of Substitute Bill: DOSA is expanded to include offenders convicted of any felony that is not a violent or sex offense, where the offender has no current or prior violent or sex offenses and is not subject to deportation. If the felony is a drug offense, to be eligible, the offense must have involved only a small quantity of the controlled substance.

Where chemical dependency contributed to an offense, the court may order rehabilitative treatment or other affirmative conduct reasonably related to the circumstances of the crime and reasonably necessary or beneficial to the offender or community in rehabilitating the offender. This provision applies to any sentence that includes a term other than, or in addition to, total confinement including a suspended sentence.

Unless specifically waived by the court, prior to sentencing, the court must require a chemical dependency screening and a presentence report for all offenders convicted of violations of the Uniform Controlled Substances Act, or where the court has reason to believe that the offender is chemically dependent and that contributed to his or her offense.

An offender is eligible to be sentenced to the Work Ethic Camp if he or she was sentenced to between one and three years, has no current or prior violent or sex offenses, and has no current violations of the Uniform Controlled Substances Act, is not subject to a federal deportation detainer or order, and has not previously participated in the Work Ethic Camp. The legislation strikes the prohibition on accruing good time at WEC and the three-to-one time conversion formula for WEC participants.

When sentencing an offender under DOSA, in addition to current law, the court must impose the remainder of the midpoint of the sentencing range for approved substance abuse treatment. The court may prohibit the offender from using alcohol or controlled substances and impose other conditions including affirmative conditions. If an offender fails to complete DOSA, is administratively terminated from DOSA, or otherwise violates release conditions, the department must hold a hearing, unless waived by the offender, and the offender may be reclassified to serve the remainder of his or her sentence as ordered by the sentencing court. If reclassified, the offender is subject to all early release provisions.

Counties may convert jail confinement to an available county supervised option for offenders convicted of crimes other than violent and sex offenses and require affirmative conduct including treatment.

Prior to seeking state funding for drug courts, counties must exhaust federal funding sources and must match state monies on a dollar-for-dollar basis. If state funding is granted, 80 percent of the funds must be used for direct treatment and less than 10 percent used for local administration. The legislation appropriates \$2,000,000 for drug courts. An outcome evaluation including measures of recidivism and reoffense rates is required.

DSHS must contract with counties operating or implementing drug courts, as defined, for provision of treatment services.

DOC must develop meaningful criteria for successful DOSA completion by December 31, 1999.

Substitute Bill Compared to Original Bill: The original bill permitted drug offenders to participate in WEC so long as it did not interfere with treatment requirements. The original bill did not include solicitations to commit a violation of the Uniform Controlled Substances Act as a drug offense.

The substitute bill adds the requirement that drug courts exhaust federal funds and match state funds. It also cut the appropriation from \$4,000,000 to \$2,000,000.

Appropriation: \$2,000,000 for section 10.

Fiscal Note: Available.

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

Testimony For: Drugs are the single largest factor in criminal activity and drug crimes are the single largest use of criminal justice dollars. Traditional sentencing does not work and does not hold an offender accountable for his or her drug use. Drug courts are the first significant program that shows positive outcomes. A recent study by the Washington State Institute for Public Policy showed \$2.45 in benefit for every \$1 spent on drug court programs. Drug courts generate between 38 and 60 percent reductions in recidivism for offenders who participate and graduates become productive citizens. Drug courts are not lenient and some offenders choose to serve a sentence in confinement rather than submit to the strict program of treatment, conditions and judicial oversight.

The changes to DOSA and WEC are important because DOSA is being underutilized and WEC is being over-utilized. When drug offenders are sent to WEC, they become better drug dealers. This bill is the result of long negotiations with the stakeholders. Coerced drug treatment works.

There is no need to add the mitigating circumstance in the exceptional sentence provision because the existing language will cover in truly exceptional circumstances. When an offender participates in DOSA, the offender was sentenced to a term, half of which is for outpatient treatment, but because the offender is already subject to the entire sentence, there is no need for a court hearing if the offender violates, fails to complete, or is terminated from DOSA.

Testimony Against: The mitigating circumstance exception to the standard sentencing range that the House passed out of committee needs to be added to this bill. The issue of whether to revoke an offender from DOSA to the standard sentence should be handled by the court, not DOC.

Testified: Terree Schmidt-Whelan, Assn. of Drug Court Professionals (pro); Hon. Tari Eitzen, Spokane Co. Superior Court (pro); Hon. Bruce Cohoe, Pierce Co. Superior Court (pro); Roger Lake, Narcotics Investigators Assn. (pro); Bill Hanson, Washington State Patrol Troopers' Assn. (pro); Roger Goodman, Sentencing Guidelines Commission (pro); Tom McBride, Washington Assn. of Prosecuting Attorneys (pro); Bill Jacquette, Washington Defenders' Assn. (pro).