

HOUSE BILL REPORT

HB 2015

As Reported by House Committee On:
Criminal Justice & Corrections
Appropriations

Title: An act relating to judicially supervised substance abuse treatment.

Brief Description: Changing provisions relating to judicially supervised substance abuse treatment.

Sponsors: Representatives Kagi, O'Brien, Hinkle, Fromhold, Darneille, Upthegrove, Tom, Kenney and Dickerson.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/22/05, 3/1/05 [DPS];

Appropriations: 3/5/05 [DP2S(w/o sub CJC)].

Brief Summary of Second Substitute Bill

- Prohibits any offender convicted of a violent offense in the last 10 years from participating in any Drug Offender Sentencing Alternative (DOSA) program.
- Requires the court to order an examination report along with a treatment plan if it is determined that an offender is eligible for a DOSA sentence.
- Authorizes the court to bring a DOSA offender back into court at any time to evaluate the offender's progress in treatment or to determine whether any of the conditions of the sentence have been violated.
- Creates a community-based DOSA where a nonviolent offender with a substance abuse addiction can be sentenced to community custody along with supervised inpatient and outpatient treatment.
- Requires the court to schedule a termination hearing for three months prior to the expiration of the offender's community-based DOSA sentence.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Kagi and Kirby.

Minority Report: Do not pass. Signed by 3 members: Representatives Pearson, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Strow.

Staff: Yvonne Walker (786-7841).

Background:

The Drug Offender Sentencing Alternative (DOSA) is an alternative sentencing program that allows a court to waive imposition of an offender's sentence within the standard sentencing range.

If the court determines that a DOSA sentence is appropriate for an offender then it may impose an alternative sentence that includes confinement in a state facility for one-half of the midpoint of the standard sentencing range. While in confinement, the offender must complete a substance abuse assessment and receive, within available resources, substance abuse treatment and counseling.

The offender must spend the remainder of the midpoint of the standard sentencing range in community custody following incarceration. The community custody portion of the sentence must include alcohol and substance abuse treatment which has been approved by the Division of Alcohol and Substance Abuse (DASA) of the Department of Social and Health Services. Offenders may also be required to adhere to crime related prohibitions and affirmative conditions as part of their sentence, as well as pay a \$30 per month fee while on community custody to offset the cost of monitoring.

DOSA Eligibility. An offender is eligible for the prison-based DOSA program if he or she:

- is convicted of a felony that is not a sex or violent offense and the violation does not involve a sentence enhancement;
- has no current or prior convictions for a sex offense;
- has no current or prior convictions for a violent offense;
- would receive a standard sentence range for the current offense which is greater than one year;
- is not subject to a deportation detainer or order; and
- has committed a Violation of the Uniform Controlled Substance Act (VUSCA) where the offense only involves a small quantity of drugs as determined by the court.

If an offender violates or fails to complete the DOSA sentencing conditions, a violation hearing must be held by the Department of Corrections (DOC). If the DOC finds that conditions have been willfully violated, the offender may be reclassified 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.

Summary of Substitute Bill:

In addition to the original prison-based DOSA, where incarceration in prison is a portion of a DOSA sentence, a community-based DOSA is also created. Courts have the option to sentence a nonviolent offender with a substance abuse addiction to either the current prison-based DOSA or the new community-based DOSA.

DOSA Eligibility. An offender that has not been convicted of a violent offense in the last 10 years is eligible for either DOSA program.

A motion for a DOSA sentence may be made by the court, the offender, or the state. If the court determines that the offender is eligible for a DOSA sentence, the court may order an examination of the offender. The examination report must contain information on the offender's addiction issues to be addressed and a proposed treatment plan. The treatment plan must contain: (1) a proposed DASA licensed or certified treatment provider; (2) the recommended frequency and length of treatment, including both residential chemical dependency treatment and community-based treatment; (3) a proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and (4) recommended crime-related prohibitions and affirmative conditions. After receipt of the examination report, the court may impose a DOSA sentence if it is determined to be appropriate.

Costs of the examinations, preparing treatment plans, and all community-based treatment may be paid from funds provided to a county from the criminal justice treatment account, if the county chooses to provide the services directly or by contract.

The court may bring an offender participating in a DOSA program back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred. If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions. The sanctions may include ordering the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions of the sentence or if the court finds that the offender is failing to make satisfactory progress in treatment. If an offender is ordered to serve a term of total confinement then he or she will receive credit for any time previously served.

Community-Based DOSA Sentence, Treatment, & Sanctions. If a court determines a DOSA sentence is appropriate for an offender, the court may order the offender to a prison-based DOSA sentence or a community-based DOSA sentence. If a community-based DOSA sentence is ordered then the court must impose a term of community custody equal to one-half of the midpoint of the standard sentence or two years, whichever is greater. In addition, the court must impose, as conditions of community custody, treatment and any other conditions as stated in the offender's treatment and monitoring plans. An offender may also be required to adhere to crime related prohibitions and affirmative conditions as part of his or her sentence.

The court must schedule a treatment termination hearing three months prior to the anticipated completion date of community custody. Prior to the treatment termination hearing, the treatment provider and the DOC must submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding the offender's termination from treatment.

At the treatment termination hearing, the court may: (1) authorize termination of the offender's community custody on the expiration date corresponding to one-half of the midpoint of the standard sentence range; (2) modify the conditions of the community custody and may continue the hearing to a date before the expiration date of the offender's community custody; or (3) impose a term of incarceration equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody. If the court imposes a term of incarceration, the DOC must, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

Substitute Bill Compared to Original Bill:

The substitute bill eliminates the provisions in the original bill that: (1) expanded eligibility for participation in the DOSA program; (2) changed how the original prison-based DOSA operated; and (3) required an offender's record of conviction to be vacated upon completion of a DOSA program. The substitute bill gives the courts the option to impose a sentence based upon the current prison-based DOSA program or a new community-based DOSA program. The community-based DOSA is created and it includes a community custody sentence that is conditioned on supervised inpatient and outpatient treatment, with a court termination hearing to be ordered three months before the community custody ends.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect on October 1, 2005.

Testimony For: This is a further step in the way we address the issue of nonviolent drug offenders in this state. A couple of years ago the Legislature passed a bill to reform drug sentencing and expand drug courts. The problem is, since the passage of the drug reform bill, Washington has been experiencing a funding deficit. As a result, last year the Legislature passed SB 5990 which increased earned early release time for many offenders. What has happened is that now offenders would prefer to spend their time incarcerated with a very short prison term than participate in a drug court program which is a very demanding sentencing alternative.

This bill provides a well regulated punishment and treatment system while ensuring to make frugal use of the state's resources. It is crafted in a way to continue to encompass only nonviolent drug offenders for treatment consideration and gives judges the authority to

consider a variety of treatment options and punishments that have been authorized by the Legislature. The bill gives judges the authority to bring the offender back into court at any time to check on his or her progress and its passage will help to restore the judges' confidence in the DOSA program so that they will use it more in the future.

The bill will stop the revolving door of drug offenders and will give judges another tool to ensure that nonviolent drug offenders are addressing their addiction as well as their crime. Time has shown that the use of harsh incarceration penalties are ineffective. It is time to make the criminal justice system more therapeutic and more treatment oriented. Treatment works whether coerced or not.

There are some provisions of the bill which may need to be clarified, such as who will be required to do the evaluations for the court.

Testimony Against: The Washington Association of Prosecuting Attorneys has participated in drug treatment reform in the past and recognizes that volunteer and coerced treatment is effective. However, the problem that prosecutors are seeing is that they are re-prosecuting people over and over again. The problem with this bill is that people are forgetting that possession, distribution, and manufacture of controlled drugs is a crime. As a "crime" it deserves punishment.

This bill provides release to career criminals. It undercuts programs that are already working by shortening the time. It does not recognize the Washington Institute for Public Policy's study showing that the DOSA program has been ineffective for property offenders. Furthermore, this bill will not slow down the revolving door and is a first step to decriminalization. There is no "just desserts" component in this bill.

History has shown that we have opened up the DOSA program in the past for more offenders. The problem is that the Legislature also ended up passing the Offender Accountability Act and these same offenders ended up getting no supervision out in the community. Then HB 2338 passed which shorten sentences. A year later, SB 5990 passed and the sentences for these same offenders ended up getting cut in half and as a result there was no incentive for them to go to the DOSA program or even a drug court program. One fix to this problem may be to take SB 5990 off the books and go back to truth in sentencing.

What people have to realize is how much time a person actually receives currently under DOSA. Right now a person under a DOSA sentence will receive half off of the prison term, which is the midpoint of the standard range cut in half. Due to the passage of SB 5990, offenders get an additional half off of that sentence. That means a DOSA offender would only serve 25 percent of his or her sentence. The frustration is that the 25 percent is not much time for a person's behavior to be interrupted or for that person to get treatment before he or she is released back out into the community. Currently a career property offender with an offender score of nine would get an 80-month sentence and under this bill that same offender would only get 90 days. Ninety days is just not enough time for that person to go to prison and get treatment.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Judge Deborah Fleck, Superior Court Judges Association; and Roger Goodman, King County Bar Association.

(In support with concerns) Anne L. Fiala, Department of Corrections.

(Opposed) Russ Hauge, Kitsap County Prosecuting Attorney and Washington Association of Prosecuting Attorneys; Deb Kelly, Clallam County Prosecuting Attorney; and Tom McBride, Washington Association of Prosecuting Attorneys.

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 Criminal Justice & Corrections. Signed by 21 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Armstrong, Bailey, Buri, Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Schual-Berke and Walsh.

Minority Report: Do not pass. Signed by 7 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Clements, Pearson, Priest and Talcott.

Staff: Bernard Dean (786-7130).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Criminal Justice & Corrections:

The Appropriations Committee recommended a technical change to correct for a subsection reference in the bill.

Appropriation: None.

Fiscal Note: Available on original bill. Requested for substitute bill on March 3, 2005.

Effective Date of Second Substitute Bill: The bill takes effect on October 1, 2005.

Testimony For: The bill simply provides an additional option to our elected judges to use in sentencing offenders with a substance abuse problem. The most cost-effective tool that our criminal justice system has is the ability to enforce sobriety and treatment. It is treatment that will reduce recidivism and save prison costs.

Testimony Against: The Washington Association of Prosecuting Attorneys is opposed to the major provision of this legislation. There are some portions of this bill that prosecutors support. Allowing offenders to participate in the DOSA program if they do not have a violent offense within the past 10 years is okay. Prosecutors also agree with the provision that allows the court to order examinations and treatment reports if it is determined that an offender is eligible for DOSA. Additionally, prosecutors agree with the provision that authorizes judges

to bring DOSA offenders back to court to evaluate an offender's progress. While this may drive some additional local costs, our real concern is with the creation of the community-based alternative. The current DOSA program works. The DOSA is effective for drug offenders. The community-based alternative gets rid of time and treatment in prison. While this bill may expand DOSA to more offenders, it will not increase the program's success. It will increase costs to the locals. While there may be some short-term savings, over the long haul there will not be any savings. Also, the bill authorizes the use of Criminal Justice and Treatment Account funds. This funding is used for drug courts. So we are taking two programs that have been proven effective and gambling that the community-based alternative will be effective. The community-based program should be removed from the bill.

Persons Testifying: (In support) Pamela Crone, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.