

# HOUSE BILL REPORT

## HB 2484

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to improving the drug offender sentencing alternatives.

**Brief Description:** Modifying drug offender sentencing alternatives.

**Sponsors:** Representatives Kagi, Hayes, Roberts, Appleton, Freeman, Hope, Tharinger and Goodman.

**Brief History:**

**Committee Activity:**

Public Safety: 1/28/14, 1/29/14 [DP].

**Brief Summary of Bill**

- Changes and expands the eligibility requirements for participation in a residential chemical dependency treatment alternative program (residential Drug Offender Sentencing Alternative).

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

**Staff:** Yvonne Walker (786-7841).

**Background:**

For some types of offenses and offenders, sentencing courts have discretion to order alternative sentences. These are statutory alternatives to the standard sentence range for certain offenders who meet the eligibility criteria. One of these alternatives is the Drug Offender Sentencing Alternative (DOSA).

Drug Offender Sentencing Alternative.

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*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.*

If a defendant is charged with an offense under the Violation of the Uniform Controlled Substances Act or any other felony and the court finds that the offender has a chemical dependency that contributed to the crime, the offender may be eligible for and move the court for a Drug Offender Sentencing Alternative (DOSA), if the following criteria are met:

- the standard sentence range for the offense is more than one year;
- the offender has not previously received a DOSA more than once in the last 10 years;
- the offender has no prior convictions for sex offenses and the current offense is not a sex offense;
- the current offense is nonviolent and the offender has no prior violent offenses in the past 10 years;
- the current offense is not a felony offense of driving under the influence or physical control;
- no deadly weapon or firearms enhancement applies to the current offense;
- the defendant is not subject to a federal immigration detainer or deportation order; and
- the offense involved a small amount of drugs as determined by the court.

The court must consider four factors in its determination of whether a DOSA is appropriate for the offender:

- whether the offender suffers from a drug addiction;
- whether that addiction makes it probable that criminal behavior will occur in the future;
- whether effective treatment for that addiction is available; and
- whether the offender and the community will benefit from the sentencing alternative.

If the court imposes a DOSA instead of the standard sentence range, the sentence consists of either a prison-based DOSA or a residential chemical dependency treatment-based DOSA.

The residential DOSA is only available if the midpoint of the standard range is 24 months or less. A sentence for residential DOSA includes 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 chemical dependency treatment for three to six months as determined by the court.

The court may bring an offender participating in any 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. Upon that evaluation the court may modify the terms of the community custody or impose sanctions for any violations. 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. An offender ordered to serve a term of total confinement must receive credit for any time previously served.

#### Criminal Justice Treatment Account.

In 2002 the Legislature created the Criminal Justice Treatment Account (Account) in the State Treasury. Moneys in the Account were to be expended solely for: (1) substance abuse

treatment and treatment support services for offenders with an addiction, against whom charges are filed by a prosecuting attorney in Washington; (2) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program; (3) the administrative and overhead costs associated with the operation of a drug court; and (4) offsetting reductions in the State General Fund for treatment services provided by counties during the 2011-2013 biennium.

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**Summary of Bill:**

The eligibility for the residential DOSA is expanded and made available to offenders whose standard sentencing range includes a midpoint of 36 months (instead of 24 months) or less.

The court will continue to have the authority to evaluate an offender's progress while participating in a DOSA program. If such offender is found in violation of his or her sentence conditions or failing to make satisfactory progress in treatment, the court may order the offender to serve a period of community custody following a term of total confinement (within the standard range of the offender's offense) for such violations.

An offender revoked from a DOSA program and ordered to serve a term of confinement must receive credit for any confinement term, including any in-patient treatment time, previously served. The Department of Corrections is prohibited from crediting time spent on community custody due to a DOSA sentence towards a term of total confinement ordered by the sentencing court following a revocation absent an order by the court that some or all of the community custody must be credited towards total confinement in the court's discretion. However, any time spent on community custody before the revocation that is not credited towards total confinement (as ordered by the court) must be credited towards any community custody following a term of total confinement ordered by a court upon revocation.

Costs of the examinations and preparing treatment plans under the DOSA program may continue to be paid from funds provided to a county from the Account.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Residential DOSA allows a judge to sentence a nonviolent person to a secure residential treatment facility. However, if at any point the offender violates the conditions of his or her sentence then the court can mandate that the person go to prison and serve incarceration time. This is a cost savings to the state.

This bill actually changes the eligibility and expands the pool of those offenders that would be eligible for the DOSA program. Residential DOSA is the best program that the Department of Corrections operates. However, there was a loophole in the current residential program that allowed offenders that were revoked from the residential DOSA program to get credit for that time spent in the community. Right now, in some jurisdictions residential DOSA is rarely recommended because prosecutors do not believe that the program achieves the results it was designed to achieve. In this bill, in addition to increasing the midpoint of the standard range from 24 to 36 months in order to bring in more offenders, that loophole has now been closed. Offenders have more of an incentive to comply. By fixing this loophole in the statute it provides an incentive for an offender to follow through with his or her treatment.

This bill creates more incentive for treatment and as a result treatment solves problems.

(Opposed) None.

(Information only) This bill would provide additional opportunities for offenders to receive needed treatment in the community. There have been significant efforts over the last two years with various stakeholders working together to continue to improve these residential treatment programs. In fiscal year 2013, there were over 800 offenders sentenced to residential DOSA and over 1,400 to the prison DOSA program. Approximately 46 percent of the total DOSA population is revoked per year.

**Persons Testifying:** (In support) Representative Kagi, prime sponsor; Ramona Brandes, Washington Association of Criminal Defense Lawyers and Washington Defenders Association; Russ Hauge and Jon Tunheim, Washington Association of Prosecuting Attorneys; and Bob Cooper, Washington State Association of Drug Court Professionals.

(Information only) Amy Seidlitz, Department of Corrections.

**Persons Signed In To Testify But Not Testifying:** None.