

SENATE BILL REPORT

2SSB 6211

As Amended by House, March 5, 2020

Title: An act relating to drug offender sentencing.

Brief Description: Concerning drug offender sentencing.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Padden, Nguyen, Das and Hasegawa).

Brief History:

Committee Activity: Law & Justice: 1/30/20, 2/06/20 [DPS-WM].

Ways & Means: 2/10/20, 2/11/20 [DP2S].

Floor Activity:

Passed Senate: 2/18/20, 47-0.

Passed House: 3/05/20, 97-0.

Brief Summary of Second Substitute Bill

- Expands eligibility for the Drug Offender Sentencing Alternative (DOSA).
- Authorizes the court to sentence a residential DOSA offender to an indeterminate jail sentence up to thirty days to facilitate direct transfer to inpatient treatment.
- Requires the Department of Corrections to report every five years on the effectiveness of DOSA.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6211 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: That Second Substitute Senate Bill No. 6211 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Muzzall, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner, Warnick and Wilson, L..

Staff: Kayla Hammer (786-7305)

Background: 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. Offenders are eligible for DOSA if:

- they are convicted of a felony that is not a sex or violent offense, and the violation does not involve a sentence enhancement;
- they are convicted of a felony that is not a felony driving under the influence of liquor or a drug;
- they have no current or prior convictions for a sex offense at any time or a violent offense within ten years before conviction of the current offense;
- the end of the standard sentence range for the current offense is greater than one year;
- they are not subject to a deportation detainer or order;
- they have committed a violation of the Uniform Controlled Substance Act where the offense only involves a small quantity of drugs; and
- they have not received a DOSA sentence in the prior ten years.

If an offender is eligible for a DOSA sentence, the court may order an examination by the Department of Corrections (DOC). Contents of the examination report are specified, including an evaluation of the offender, a proposed treatment plan, a proposed monitoring plan, and recommended conditions of sentence.

If a court determines that a DOSA sentence is appropriate for an offender, the court may order the offender to a prison-based DOSA sentence or a residential chemical dependency treatment-based alternative DOSA sentence. The residential alternative is only available if the midpoint of the standard range is 24 months or less. If the offender is sentenced to the residential alternative, the recommendations in the examination report are incorporated into the offender's sentence. If the offender is sentenced to a prison-based alternative, the offender is reevaluated by DOC once in the facility.

When sentencing an offender to a residential-based DOSA, the court must sentence an offender to inpatient treatment between three and six months, followed by a term of community custody of two years. When sentencing an offender to a prison-based DOSA, the court must sentence an offender to confinement for one-half the midpoint of the standard sentence range or 12 months, whichever is greater, and a community custody term for one-half the midpoint of the standard sentence range.

Sex Offender Relief From Registration. A person who is required to register as a sex offender may petition the court to be relieved of the duty if the person has spent ten consecutive years in the community without being convicted of a disqualifying offense and

was not convicted of a sex offense that was a class A felony. The petitioner must prove by clear and convincing evidence that they are sufficiently rehabilitated to warrant removal from the registry. A person who is required to register for a sex offense committed when the person was a juvenile, may petition the court much sooner and must show by a preponderance of the evidence that they are sufficiently rehabilitated to warrant removal from the registry.

Robbery in the Second Degree. A person commits robbery in the second degree when the person unlawfully takes personal property from another by the use, or threatened use, of force in circumstances not amounting to robbery in the first degree. A person is guilty of robbery in the first degree when the person is armed with a deadly weapon or what appears to be a deadly weapon, the person inflicts bodily injury, or when the person commits robbery against a financial institution. Robbery in the second degree is a class B felony.

Summary of Second Substitute Bill: All DOSA Offenders. In addition to existing categories of offenders, an offender is eligible for DOSA if they:

- have been convicted of a sex offense, so long as the offender is no longer required to register; and
- have been convicted of robbery in the 2nd degree, if the conviction did not involve the use of a firearm and the charge was not reduced from robbery in the first degree within seven years before conviction of the current offense.

Residential DOSA. The sentence ranges are broadened to allow more offenders to qualify for a residential DOSA. The end of the standard sentence range need not be greater than one year and the mid-point of the eligible standard sentence range is increased from 24 months to 26.

If the court is considering a DOSA sentence, the court may order DOC to obtain an examination of the offender from an agency certified by the Department of Health (DOH) to provide substance use disorder services.

An offender ordered to serve a term of total confinement for violation of conditions during an ordered term of community custody shall receive credit for time previously served in confinement and inpatient treatment, and shall receive 50 percent credit for time served in community custody.

Department of Corrections Reporting. DOC must submit a report to the Governor and the appropriate committees of the Legislature every five years analyzing the effectiveness of DOSA in reducing recidivism among various offender populations. DOC must coordinate with the Washington State Institute of Public Policy and Caseload Forecast Council to guide its tracking efforts and prepare the report. The first report is due November 1, 2022.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2021.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: This bill takes a look at some of the barriers to drug offender treatment and attempts to provide that treatment earlier in the process. A broad stakeholder group worked on this bill and it is supported by prosecutors, the defense bar, and the Superior Court Judges Association. Many crimes are committed resulting from substance abuse issues. These crimes are avoidable. The last thing we want to see is a person who completes their sentence, comes out of jail, and commits another crime because they continue to have a substance abuse problem. This program will reduce crime and costs to the taxpayers of this state. While current statute authorizes residential treatment for many, the statute closes the door on a number of offenders who could be helped through residential DOSA. The current statute excludes many nonviolent offenders who are amendable to treatment because they do not have enough criminal history to qualify for a sentence over one year. Anecdotally, recidivism rates are much lower for offenders who go through treatment.

This bill Includes many important improvements, specifically, it allows a person to be held for a limited time in order to ensure the person is transferred directly to treatment facility and requires DOC to conduct a recidivism study every five years.

OTHER: DOC has concerns with expanding residential DOSA to the jail population. DOC has a current backlog of offenders waiting for treatment which is addressed by additional treatment dollars in the Governor's budget. Adding to current eligibility will create further capacity issues.

Persons Testifying (Law & Justice): PRO: Senator Manka Dhingra, Prime Sponsor; Joel Merkel, King County Prosecutor's Office; Intisar Surur, Superior Court Judges' Association.

OTHER: Melena Thompson, Department of Corrections.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: A broad stakeholder group worked on this bill, and it is supported by prosecutors, the defense bar, and the Superior Court Judges Association. It was a group effort to develop this plan to allow increased access to this program.

Persons Testifying (Ways & Means): PRO: Senator Manka Dhingra, Prime Sponsor.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Substance impaired driving-related felony sentence enhancements are removed as prohibitors to eligibility for a DOSA sentence.

- Treatment completion and continued care for residential DOSA must be delivered in accordance with rules established by the Health Care Authority (HCA). The HCA is required to adopt rules in accordance with criteria established by the American Society of Addiction Medicine.
- DOSA eligibility provisions are revised for clarity.
- Primary responsibility for reporting on the effectiveness of DOSA is transferred to the Washington State Institute for Public Policy, rather than the Department of Corrections, and due dates are adjusted.
- Language is removed stating that the costs of DOSA examinations and preparing recommended service delivery plans may be paid, at the option of the county, from funds provided through the Criminal Justice Treatment Account.
- The definition of DOSA in the Sentencing Reform Act is updated to align with other provisions of the bill.