
Public Safety Committee

ESB 5054

Brief Description: Concerning impaired driving.

Sponsors: Senators Padden, Frockt, Conway, McCune and Short.

Brief Summary of Engrossed Bill

- Increases the classification for an impaired driving offense from a gross misdemeanor to a felony when the person has three or more prior impaired driving offenses within 15 years, rather than within 10 years.
- Creates a new Drug Offender Sentencing Alternative for persons convicted of felony impaired driving offenses.

Hearing Date: 2/17/22

Staff: Omeara Harrington (786-7136).

Background:

A person may be convicted of impaired driving under either the Driving Under the Influence (DUI) statute or the Actual Physical Control of a Vehicle While Under the Influence (PC) statute. A person is guilty of DUI if he or she drives while under the influence of intoxicating liquor, marijuana, or any drug, and is guilty of PC if he or she has actual physical control of a vehicle while under the influence of intoxicating liquor, marijuana, or any drug.

A DUI or PC offense is punishable as a gross misdemeanor. However, a DUI or PC offense becomes a felony offense if the defendant has three or more prior impaired driving offenses within the previous 10 years, or has previously been convicted of felony DUI or PC, or of Vehicular Homicide or Vehicular Assault while under the influence of intoxicating liquor or any drug. Prior impaired driving offenses include convictions of DUI, PC, Vehicular Homicide, and

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Vehicular Assault, as well as other impaired driving-related offenses and offenses involving impaired operation of commercial vehicles, vessels, aircraft, snowmobiles, and nonhighway vehicles.

Felony DUI is classified as a class B felony. Felony PC is classified as a class C felony. The statutory maximum sentence for a class B felony is 10 years in prison, a fine of \$20,000, or both imprisonment and a fine; and for a class C felony is five years in prison, a fine of \$10,000, or both imprisonment and a fine. The standard range sentence for a DUI or PC offense for a person with three prior impaired driving offenses is 13 to 17 months of incarceration, followed by one year of community custody.

Sentencing Alternatives.

When a person is convicted of a felony offense, a sentencing court is generally required to impose a term of confinement based on a standard range provided in statute. In some circumstances, sentencing courts have discretion to order sentencing alternatives. Sentencing alternatives generally result in a person serving a shorter term of confinement, and sometimes serving no term of confinement. Instead, the person may be required to participate in certain programs or treatment, or to submit to a form of partial confinement.

Drug Offender Sentencing Alternative. The Drug Offender Sentencing Alternative, or "DOSA," either reduces or eliminates incarceration time in exchange for the convicted person participating in supervision and treatment. A person convicted of a felony is eligible for a DOSA if certain criteria are met, including that:

- the conviction is for an offense that is not a felony impaired driving offense, a violent offense, or a sex offense, and the violation does not involve a firearm or deadly weapon sentencing enhancement;
- the person has no current or prior convictions for a sex offense at any time, and no violent offense within the 10 years before conviction of the current offense;
- if the offense is a violation of the Uniform Controlled Substances Act (a drug violation), it involved only a small quantity of the particular controlled substance as determined by the judge;
- the person is not subject to a federal immigration deportation detainer or order;
- the end of the standard sentence range for the current offense is greater than one year; and
- the person has not received a DOSA more than once in the prior 10 years before the current offense.

In determining eligibility, the court may order the Department of Corrections (DOC) to complete either a risk assessment report or a substance abuse disorder screening report, or both. If the court determines that the person is eligible for the alternative, it must waive imposition of the standard-range sentence and impose a sentence consisting of either a prison-based alternative or a residential substance use disorder treatment-based alternative.

Under the prison-based alternative, the person is sentenced to a term of incarceration equal to one-half the midpoint of the standard range or 12 months, whichever is greater, and one-half the

midpoint of the standard range as a term of community custody. The incarceration and community custody terms must include substance abuse treatment.

Under the residential substance use disorder treatment-based alternative, the person is sentenced to 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 person entering and remaining in residential substance use disorder treatment for a period set by the court between three and six months. The term of community custody must also include a condition to participate in treatment.

The court may bring a person serving a DOSA back to court at any time to monitor progress or determine whether there have been violations of the conditions of sentence. If conditions have been violated or there is unsatisfactory progress in treatment, the court may modify the conditions of community custody or impose other sanctions, including ordering the person to serve a term of total confinement within the standard range for the offense.

Partial Confinement.

For certain incarcerated persons, a term of total confinement may be converted to partial confinement. Partial confinement is confinement for up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Home detention is a program of partial confinement in which the person is confined in a private residence 24 hours a day, unless otherwise authorized by the court or other supervising agency, and is subject to electronic monitoring. Work release is a program of partial confinement available to persons who are employed or engaged as a student in a regular course of study at school.

During the period of partial confinement, the person may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the DOC. If the person violates the rules of the partial confinement program, he or she may be required to serve the remainder of the term in total confinement.

Community Custody.

Community custody is a portion of a criminal sentence served in the community, subject to conditions imposed by the court and the DOC. Courts must order community custody for persons convicted of certain crimes or in accordance with a sentencing alternative. If the person violates the conditions of community custody, he or she may be subject to confinement or nonconfinement-based sanctions.

Summary of Bill:

Classification of Impaired Driving Offenses.

Three or more prior impaired driving offenses within 15 years, rather than 10 years, elevates the classification of a DUI or PC offense from a gross misdemeanor to a felony.

Impaired Driving DOSA.

The “Drug Offender Sentencing Alternative for Driving Under the Influence” (impaired driving DOSA) is created.

Eligibility. A person is eligible for the impaired driving DOSA if he or she is convicted of felony DUI or felony PC and does not have a prior conviction for Vehicular Homicide, Vehicular Assault, felony DUI, or felony PC. A motion for an impaired driving DOSA may be made by the court, the convicted person, or the state if the midpoint of the standard sentence range is 26 months or less. If the person's standard sentence has a higher midpoint, a joint agreement of the state and person is required.

If the sentencing court determines that the person is eligible for an impaired driving DOSA and that the alternative sentence is appropriate, the court must waive imposition of the standard sentence and:

- if the low end of the standard range sentence is greater than 24 months, impose a prison-based DOSA; or
- if the low end of the standard range sentence is 24 months or less, impose a residential treatment-based alternative specific to impaired driving offenders.

To assist the court in making its determination as to eligibility, the court may order the DOC to complete a risk assessment report, a substance use disorder screening report, or both. If the court is considering imposing a sentence under the residential treatment-based alternative, the court may also order the DOC to examine the person and assess: whether the person suffers from a substance use disorder; whether effective treatment for the person's substance use disorder is available from a licensed or certified provider; and whether the person and the community will benefit from the use of the alternative sentence.

Requirements. When the court imposes a prison-based impaired driving DOSA, the court must impose a sentence equivalent to, and subject to the same requirements and restrictions as, the traditional prison-based DOSA program already established in statute.

A person who is eligible for a residential treatment-based alternative is sentenced to all of the following:

- if necessary, an indeterminate term of confinement of no more than 30 days in a county facility in order to facilitate direct transfer to a residential substance use disorder treatment facility;
- treatment in a certified residential substance use disorder treatment program for a period set by the court up to six months, with treatment completion and continued care delivered in accordance with rules established by the Department of Health;
- 24 months of partial confinement to consist of 12 months of work release followed by 12 months of home detention with electronic monitoring; and
- 12 months of community custody.

The court must impose treatment and other appropriate conditions during the periods of partial confinement and community custody. In addition, the person may be required to pay \$30 per

month while on community custody to offset the cost of monitoring for alcohol or controlled substances. Within available resources, the DOC must make substance use disorder assessment and treatment services available to the person.

Monitoring and Enforcement. When a person is sentenced to the residential treatment-based alternative DOSA, the treatment provider must send the treatment plan to the court within 30 days of the person's arrival to the residential program. The court must schedule a progress hearing during the period of treatment and a treatment termination hearing for three months before the expiration of the term of community custody. Before these hearings, the treatment provider and the DOC must submit written reports to the court and parties regarding compliance with treatment and monitoring requirements and recommendations regarding termination from treatment.

At a progress hearing or treatment termination hearing, the court may: authorize termination of community custody on the predetermined expiration date; continue the hearing, with or without modifying the conditions of partial confinement or community custody; or impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody.

Under either the prison-based or residential-based program, the court may bring the person into court at any time to evaluate progress in treatment or determine whether there have been any violations of the conditions of sentence. If the person violates conditions or is failing to make satisfactory progress in treatment, the court may modify the conditions of partial confinement or community custody or order the person to serve a term of total confinement within the standard range for the current offense.

A person sentenced to total confinement after termination from an impaired driving DOSA is entitled to full credit for any time previously served under the impaired driving DOSA in total confinement or residential treatment, and 50 percent credit for any time previously served in partial confinement or community custody. However, a person serving a term of community custody following termination from the impaired driving DOSA is granted no credit for time served in community custody prior to the termination.

Appropriation: None.

Fiscal Note: Requested on February 11, 2022.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1 through 11, relating to the impaired driving DOSA and the prior offense lookback period for establishing felony DUI offenses, which take effect July 1, 2022.