

To: Sentencing Guidelines Commission
From: DOSA Workgroup
Date: November 20, 2015
RE: Suggestions after reviewing HB 1569

Members

Jon Tunheim, Kathleen Kyle, Judge Shaffer, Clela Steelhammer and Ramona Brandes.

Purpose

Discuss barriers and possible solutions to the passage of HB 1569 in the 2015 Legislative Session.

SHB 1569 proposed the following:

- Expanding the eligibility of Residential DOSA to increase the midpoint of the standard range of an offender's sentence from 24 months to 34 months; and
- Modifying the amount of credit for time served for an offender who is ordered to serve a term of total confinement due to a DOSA revocation from any time previously served to only time previously served in partial or total confinement.

Issue

The biggest barrier to the passage of the bill was the fiscal impact related to the change in the amount of credit for time served allowed. Jon noted that WAPA has been firm on not allowing credit for time served while on community custody.

In the calculation of the fiscal note, DOC did not know what the revocation rate would actually be and, therefore, listed the fiscal note as indeterminate. Other unknown aspects include:

- How many Prison DOSA sentences might become Residential DOSA sentences if prosecutors have more confidence in Residential DOSA terms?
- How many of the courts would assign a Prison DOSA sentence if the offender was not eligible for the Residential DOSA?
- How many prosecutors might start using Residential DOSA if the credit for time served amount applied only to time previously served in partial or total confinement?

The workgroup agreed that if there was a structured message around some of the unknowns, it might help legislators understand that this is a policy shift that may move people out of Prison DOSA and into Residential DOSA.

Suggestions

- ***Include language in the bill that gives discretion to the judge to determine how much credit for time served from community custody shall be allowed.***

There was overall support of both of the 2014 Residential DOSA companion bills HB 2484 and SSB 6282. While a formal position has not been taken, Jon reported that WAPA members are open to the idea of making credit for time served discretionary with the court.

- ***Ask WAPA to complete a short survey of its members to get a clearer picture of how likely prosecutors' recommendations for Residential DOSA would increase if credit for time served was not automatically granted upon revocation and include in DOC's narrative of the fiscal note.***

Including this information in the fiscal note narrative would give legislators insight to the potential shift from Prison DOSA sentences to Residential DOSA sentences if the bill passed. A general consensus of the workgroup is that if prosecutors' support a Residential DOSA sentence, the courts will likely support it, too.

Jon offered to send an email to the WAPA listserve to gain a better understanding of the possible increase in the use of Residential DOSA with the change in credit for time served.