

HOUSE BILL REPORT

ESSB 5307

As Reported by House Committee On:

Public Safety
Appropriations

Title: An act relating to creating alternatives to total confinement for certain qualifying offenders with minor children.

Brief Description: Creating alternatives to total confinement for certain qualifying offenders with minor children.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Darneille, Hasegawa, Kuderer and Chase).

Brief History:

Committee Activity:

Public Safety: 2/15/18, 2/22/18 [DPA];
Appropriations: 2/24/18, 2/26/18 [DPA(PS)].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Expands eligibility for the Parenting Sentencing Alternative (PSA) to include low risk offenders with current violent offense convictions that are not class A felonies, and offenders with prior convictions of violent offenses.
- Expands eligibility for the Community Parenting Alternative partial confinement program (CPA) to include low risk offenders with current violent offense convictions that are not class A felonies.
- Expands the types of familial relationships qualifying for PSA and CPA.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 6 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Appleton, Chapman, Orwall and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Griffey, Holy and Van Werven.

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.

Staff: Kelly Leonard (786-7147).

Background:

Sentencing.

The Sentencing Reform Act of 1981 (SRA) is the legal framework for the sentencing of felony offenders. When a person is convicted of a felony offense, the sentencing judge selects an offender's term of confinement from within a standard range provided in statute. The standard range is determined by reference to a statutory grid, which is based on the defendant's criminal history and the severity of the offense. The grid provides the base sentence, but additional sentencing policies can increase or decrease the base sentence. This includes, for example, exceptional sentences, enhancements, persistent offender laws, and alternative sentences.

For some types of offenses and offenders, sentencing courts have discretion to order a sentencing alternative. Sentencing alternatives generally result in an offender serving a shorter term of confinement, and sometimes serving no term of confinement. Instead, an offender may be required to participate in certain programs, treatment, or submit to forms of partial confinement.

Persons sentenced to a term longer than one year are committed to the Department of Corrections (DOC). An offender sentenced to DOC custody is not authorized to leave a correctional facility or be released prior to the expiration date of his or her sentence, unless a specific statutory exception applies. Exceptions include, for example, partial confinement programs for work release and home detention.

Alternatives for Parents of Minors.

In 2010 the Legislature created two alternatives to prison confinement for nonviolent offenders with minor children, the court-based parenting sentencing alternative (PSA) and the DOC-based Community Parenting Alternative partial confinement program (CPA).

Parenting Sentencing Alternative. The PSA is a judicial sentencing alternative, allowing a court to waive an eligible offender's entire prison sentence and instead impose 12 months of community supervision. The court may impose conditions, including: parenting classes, chemical dependency treatment, mental health treatment, vocational training, offender change programs, and life skills classes. The DOC must provide quarterly progress reports to the court and seek to coordinate services with the Department of Children, Youth, and Families (DCYF) when an offender has an open child welfare case. If the offender violates any conditions, the court may order him or her to serve his or her prison sentence.

An offender must meet all of the following criteria to qualify for the PSA:

- have physical custody of his or her minor child or be a legal guardian or custodian with physical custody of a minor child at the time of the current offense;
- have no current or prior conviction of a sex offense or violent offense;
- be subject to a standard sentence range with a high end of greater than one year;
- not be subject to a deportation detainer or order and not become subject to a deportation order during the period of the sentence; and

- sign necessary release waivers to allow information regarding current or prior child welfare cases to be shared with the DOC and the court.

Prior to imposing or authorizing the PSA, the DOC must contact the DCYF or a tribal child welfare agency to determine if there are any open or prior cases of substantiated referrals of abuse or neglect involving the offender. The DCYF must provide certain information to the court, including the status of any present case or findings from past cases, the offender's involvement, the child's special needs, and other specified items. In addition, the court must consider the offender's criminal history, and it may order a risk assessment report and a chemical dependency screening report prior to sentencing.

Community Parenting Alternative. The CPA is a DOC partial confinement program, allowing the DOC to transfer an eligible offender to reside in the community under supervision and electronic monitoring for up to the last 12 months of his or her prison sentence. The DOC may not authorize participation in CPA unless the program is also in the best interests of the minor child. If the offender does not comply with any conditions, the DOC may return him or her to prison.

An offender must meet all of the following criteria to qualify for the CPA:

- have physical or legal custody of a minor child; have a proven, established, ongoing, and substantial relationship with his or her minor child that existed prior to the commission of the current offense; or be a legal guardian of a minor child at the time of the current offense;
- have no current conviction of a sex offense or violent offense;
- be serving a sentence of longer than one year;
- not be subject to a deportation detainer or order and not become subject to a deportation order during the period of the sentence; and
- sign necessary release waivers to allow information regarding current or prior child welfare cases to be shared with the DOC and the court.

Similar to PSA, the DOC must contact the DCYF or a tribal child welfare agency to determine if there are any open or prior cases of substantiated referrals of abuse and/or neglect involving the offender. The DCYF must provide certain information to the DOC, including the status of any present case and/or findings from past cases, the offender's involvement, the child's special needs, and other specified items. Similar to the PSA, the DOC must coordinate services with the DCYF when an offender has an open child welfare case.

Summary of Amended Bill:

Parenting Sentencing Alternative. The eligibility criteria for the PSA are expanded to include:

- any offender with a prior violent offense, so long as he or she meets other current criteria; and

- any low-risk offender with a current violent offense that is not a class A felony, so long as he or she meets other current criteria. The DOC must assist the court with assessing the risk of an offender seeking to participate in the program.

The restrictions pertaining to immigration status are modified by removing the requirement that the offender does not become subject to a deportation order during the period of the sentence. Instead, the offender is required to be a lawful resident of the United States (U.S.) and not have been found by the U.S. Attorney General to be subject to a deportation detainer or order.

The types of familial relationships qualifying for PSA are expanded to include:

- a biological, adoptive, or step parent, who has a proven, established, ongoing, and substantial relationship with the minor child at the time of the offense; and
- an expectant parent, including any pregnant person or other biological parent awaiting the birth of his or her child or an adoptive parent in the process of a final adoption.

The existence of depending dependency proceedings or other evidence of involvement with a child welfare agency does not, in and of itself, disqualify the offender from applying or participating in the PSA. The court may order a family impact statement when considering whether to order the PSA.

Community Parenting Alternative. The eligibility criteria for the CPA are expanded to include any low risk offender with a current violent offense that is not a class A felony, so long as he or she meets other current criteria.

The restrictions pertaining to immigration status are modified by removing the requirement that the offender does not become subject to a deportation order during the period of the sentence. Instead, the offender is required to be a lawful resident of the U.S. and not have been found by the U.S. Attorney General to be subject to a deportation detainer or order.

The types of familial relationships qualifying for CPA are modified to include:

- a stepparent who has a proven, established, ongoing, and substantial relationship with the minor child at the time of the offense; and
- an expectant parent, including any pregnant person or other biological parent awaiting the birth of his or her child or an adoptive parent in the process of a final adoption.

Amended Bill Compared to Engrossed Substitute Bill:

The eligibility criteria for PSA are modified by: restoring the current prohibition against allowing any offender with a current or prior sex offense conviction to participate in the program; and narrowing the expanded eligibility of violent offenders in the underlying bill by excluding any offender with a present conviction of a class A felony that is a violent offense.

The eligibility criteria for CPA are modified by: restoring the current prohibition against allowing any offender with a current sex offense conviction to participate in the program; and narrowing the expanded eligibility of violent offenders in the underlying bill by excluding any offender with a present conviction of a class A felony that is a violent offense.

The qualifying relationships for the PSA and CPA are modified by:

- removing nonparental custodian and a person acknowledged as a parent figure as qualifying relationships from the underlying bill;
- removing changes to certain eligibility criteria for biological and adoptive parents requiring legal or physical custody of the minor child to be had at the time of the offense;
- limiting eligibility of a stepparent for either program to only when he or she had a proven, established, and ongoing and substantial relationship with the minor at the time of the offense, unless he or she qualifies based on other status; and
- modifying the eligibility of an expectant parent by allowing participation in either program so long as he or she is a pregnant person, biological parent awaiting the birth of his or her child, or an adoptive parent in the process of a final adoption.

The eligibility criteria for the PSA and CPA with respect to immigration status are modified by requiring an offender to be a lawful resident of the U.S. and not be subject to a deportation detainer or order (rather than requiring an offender to not be subject to a deportation detainer or order and not become subject to a deportation order during the period of his or her sentence as provided in current law).

The existence of pending dependency proceedings does not, in and of itself, disqualify an offender from applying to or participating in the PSA (rather than specifying that the existence of an open child welfare case does not disqualify an offender). Language is removed from the underlying bill specifying that an open child welfare case or prior involvement with a child welfare agency may be supportive of an offender's application for the PSA. Language is removed from the underlying bill specifying that legal termination of a child-parent relationship does not preclude an application for the CPA.

The definition of "minor child" is moved to the sections pertaining to the PSA and CPA, and other nonsubstantive changes to sentences structure are made.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 12, 2018.

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

Staff Summary of Public Testimony:

(In support) This bill is about children and families with incarcerated family members. The incarceration of a parent is traumatic for children, and it can have serious effects on their development. This bill should be viewed as a way to permanently and positively influence family structures. The Legislature should expand programs that interrupt generational cycles of untreated substance abuse, poverty, and incarceration.

The CPA has been very successful. Over 600 people have participated in the program so far. The recidivism rate is 8 percent, far lower than the recidivism rate for the rest of the prison population. More than 85 percent of offenders who start the program, finish it.

The graduation rate is very high. The DOC and the Department of Social and Health Services collaborate in teaching participating offenders parenting skills and providing other programs, and offenders are closely monitored. The focus of the program is on the best interests of the child, including his or her physical and emotional wellbeing. If a participating family is facing dependency proceedings, there could be a possibility to improve parenting skills and reunite and reintegrate the family. The vast majority of incarcerated offenders will return to the community, but this program gives people a better start. For those who have participated in the program, it has been transformative for their families.

Since persons with prior violent and sex offenses can and do participate in the CPA, they can be successful in an expansion of the PSA. The Legislature should expand both programs and provide the courts and the DOC with greater discretion to include offenders with certain offenses in their present case or their history. There are multiple examples of persons who could benefit from the PSA, but who are excluded based on criminal history.

The current restrictions on the types of family relationships for both programs are overly restrictive, especially for fathers, expecting parents, and other nontraditional custodians. The bill aims to expand the programs to include these persons. The bill should be amended to ensure it includes expecting parents, and to also address any possible additional restrictions incidentally added with prior amendments.

The bill should also be amended to address immigration status. Currently, those who are lawfully present and have valid status in the U.S. are precluded because it is possible there could be a detainer later on. The bill should preclude only those persons who are actually going to be deported.

(Opposed) None.

Persons Testifying: Senator Darneille, prime sponsor; Susie Leavell, Department of Corrections; D'Adre Cunningham, Washington Defender Association and Incarcerated Parents Project Attorney; Billie Moffatte; and Christopher Poulos, Statewide Reentry Council.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Public Safety. Signed by 19 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Caldier, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 11 members: Representatives Chandler, Ranking Minority Member; Buys, Condotta, Graves, Haler, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Minority Report: Without recommendation. Signed by 3 members: Representatives MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Harris.

Staff: Rachele Harris (786-7137).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Public Safety:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 23, 2018.

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

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.