

# SENATE BILL REPORT

## SB 5307

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As of February 6, 2017

**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:** Senators Darneille, Hasegawa, Kuderer and Chase.

**Brief History:**

**Committee Activity:** Law & Justice: 2/01/17.

**Brief Summary of Bill**

- Expands eligibility to participate in a parenting program as an alternative to incarceration to include sex offenders and violent offenders who are assessed at a low or moderate risk to reoffend and offenders who have a deportation detainer.
- Expands the types of parental relationships that qualify for participation in the parenting program to include a biological or adoptive parent, an expectant parent, legal guardian, custodian, nonparental custodian, stepparent, or a person who is acknowledged as a parent figure of the minor child.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Shani Bauer (786-7468)

**Background:** Under certain circumstances, parents with minor children who have been convicted of non-violent, non-sex offense can receive intensive supervision as alternatives to incarceration. In 2010, the Legislature created two ways a parent may obtain a parenting alternative: the Family and Offender Sentencing Alternative authorizing the court to waive a sentence within the standard sentence range and impose 12 months of community custody along with conditions for treatment and programming; and the Community Parenting Alternative allowing the Department of Correction (DOC) to transfer an offender to electronic home monitoring for up to the last 12 months of the parent's sentence.

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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.*

Family Offender Sentencing Alternative (FOSA). In order for an offender to be eligible under FOSA, the offender:

- must not have a current or prior conviction for a felony sex or violent offense;
- must not be subject to a deportation order;
- must have physical custody of their minor children or be a legal guardian or custodian with physical custody at the time of the offense;
- must be subject to a sentence for which the high end of the sentence range is more than one year; and
- must sign a release of information waive regarding current and/or prior child welfare involvement.

The court must seek input from the Children's Administration (CA) with the Department of Social and Health Services as to whether the person has an open or prior child welfare case. If a child welfare case is found, the court must consider the CA's recommendation as to placement and services needed. To assist in making its determination, the court may also order DOC to complete a risk assessment report or chemical dependency screening report. The court may bring an offender back into court at any time to evaluate the offender's progress or address violations. The court may modify the conditions of community custody, impose sanctions, or order the offender to serve a term of total confinement.

Community Parenting Alternative (CPA). To be eligible for CPA, the offender:

- must not have a current conviction for a felony sex or violent offense;
- must not be subject to a deportation order;
- must have physical or legal custody of a minor child;
- must have a proven, established, ongoing, and substantial relationship with the child that existed prior to the commission of the current offense; and
- must sign a release of information waive regarding current and/or prior child welfare involvement.

DOC must seek input from CA and make a determination that placement would be in the best interests of the child. An offender requesting placement in the CPA must provide an approved residence and living arrangement prior to transfer. The parent may serve no more than the final 12 months of the person's sentence in partial confinement on electronic home monitoring. DOC has the authority to return any person serving partial confinement in the parenting program to total confinement if the person is not complying with the terms of the parenting program.

**Summary of Bill:** Minor child is defined as a child under the age of 18.

The eligibility criteria to participate in FOSA and CPA is modified. A felony sex or violent offense will not preclude participation if the offender is assessed at a low or moderate risk to reoffend. An offender with a deportation detainer may participate in the program.

The offender must be a biological or adoptive parent, an expectant parent, legal guardian, custodian, nonparental custodian, stepparent, or a person who is acknowledged as a parent figure of the minor child; and must have had physical custody or a proven, established, ongoing, and substantial relationship with the minor child at the time of the current offense.

The court may order DOC to complete a family impact statement in addition to a risk assessment report and/or chemical dependency screening report. The existence of an open child welfare case or other evidence of involvement with a child welfare agency does not, in and of itself, prevent the offender from participating in the program.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** *Testimony from 2017 Regular Session.* PRO: This program has been in place since 2010 and has included participation of approximately 600 parents. This bill is a work in progress. There is interest from the Juvenile Rehabilitation Administration in creating a similar program for juveniles with children. The principal goal of this legislation is to shift the debate from what a person's crime is to looking at the family assessment and the low and moderate risk levels for an offense. Overcrowding issues can also be addressed through this program.

This bill expands alternatives to total confinement for parents with minor children. This doesn't mean the court will find the alternative to be appropriate in every circumstance. The court will still be able to assess a person's complete history and request a risk assessment report. Discretion will rest with the court to determine whether a prison sentence is appropriate. If a person is already sentenced and serving a sentence, DOC will retain discretion to determine whether the person is appropriate for the program. These alternatives provide a positive impact for children and reduce negative family impacts as a result of the incarceration. Parents who participate must work on improving and increasing their parenting skills.

CON: Expanding the parenting sentencing alternative to violent offenders and sex offenders is very concerning. It is not appropriate to rely on the risk assessment when you are talking about the safety of a child. When a person has committed a sex or violent offense, there is a moral accountability argument that the person should serve time in confinement. Expansion of the parenting relationship is also a concern. A significant relationship with the child could be open to broad interpretation. This suggests moving away from the custodial parent to a person who has been a parental figure. The prosecutors support the idea of reuniting parents and children and the idea of FOSA, but we are concerned about how broadly the alternative is imposed.

**Persons Testifying:** PRO: Dadre Cunningham, WA Defenders' Association.

CON: Jon Tunheim, WA Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** No one.