

Public Safety Committee

E2SSB 5291

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Darneille, Randall, Kuderer, Frockt, Hasegawa, Nguyen and Saldaña).

Brief Summary of Engrossed Second Substitute Bill

- Expands the eligibility criteria for the Parenting Sentencing Alternative (PSA) and Community Parenting Alternative (CPA) by modifying the restrictions on criminal history, immigration status, and types of qualifying familial relationships.
- Modifies requirements and procedures for applications to the PSA and CPA involving open and prior child welfare cases.
- Authorizes the court to impose up to an additional six months of community custody for a participant in the PSA when modifying conditions or imposing sanctions.

Hearing Date: 3/26/19

Staff: Kelly Leonard (786-7147).

Background:

Sentencing

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. Additional sentencing policies can increase or decrease a term of confinement. 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, he or she may be required to participate in certain programs or treatment, or to submit to forms of partial confinement.

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.

Persons sentenced to a term longer than one year are committed to the Department of Corrections (DOC), while those sentenced to shorter terms are committed to local jails.

Statute designates certain crimes as nonviolent offenses, violent offenses, serious violent offenses, and/or sex offenses. These designations can affect sentencing, programming and services, and collateral consequences.

Alternatives for Parents of Minors.

In 2010 the state enacted two alternatives to prison sentences for nonviolent offenders with minor children: the court-based Parenting Sentencing Alternative (PSA) and the DOC-based Community Parenting Alternative (CPA).

Parenting Sentencing Alternative. The PSA is a judicial sentencing alternative, allowing a court to waive a person's entire prison sentence and instead impose 12 months of community custody under the supervision of the DOC, with additional conditions. A person must meet all of the following criteria to qualify:

- have physical custody of his or her biological or adopted 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 Department of Children, Youth, and Families (DCYF) or a tribal child welfare agency to determine whether the person is involved in any open or prior cases of substantiated referrals of abuse or neglect. The DCYF must provide certain information to the court, including the status of any present case or findings from past cases and other specified items. If a person with an open child welfare case is approved for the PSA, the DOC must coordinate services with the DCYF.

The court may impose conditions for a PSA participant, including: parenting classes, chemical dependency treatment, mental health treatment, vocational training, offender change programs, and life skills classes. At any time during the 12-month term of community custody, a judge may order a participant back to court to evaluate his or her progress or determine whether he or she has violated conditions. The court may modify conditions or impose sanctions. If the participant violates conditions or fails to make satisfactory progress, the court may order the offender to serve his or her full prison sentence.

Community Parenting Alternative. The CPA is a DOC partial confinement program, allowing the DOC to transfer a person 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. A person must meet all of the following criteria to qualify:

- have physical or legal custody of a minor child; have a proven, established, ongoing, and substantial relationship with his or her biological or adopted 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 the PSA, the DOC must contact the DCYF or a tribal child welfare agency to determine if the person is involved in any open or prior cases of substantiated referrals of abuse or neglect. The DCYF must provide certain information to the DOC, including the status of any present case or findings from past cases and other specified items. Similar to the PSA, the DOC must coordinate services with the DCYF when a participant has an open child welfare case.

If the participant does not comply with any conditions, the DOC may return him or her to prison to complete the remaining portion of his or her sentence.

Summary of Bill:

The PSA and CPA are modified.

Parenting Sentencing Alternative. The eligibility criteria for the PSA relating to prior and current offenses are expanded. An offender with a current or prior violent offense may be eligible, so long as the offense is not a serious violent offense or sex offense and he or she is determined to be at a low risk to reoffend. When evaluating eligibility, prior juvenile adjudications are not considered offenses.

The eligibility restrictions pertaining to immigration status are removed.

The types of familial relationships qualifying for the PSA are modified and expanded. An offender must be:

- a parent with physical custody of a minor child;
- a legal guardian of a minor child;
- a biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense; or
- an expectant parent, which means a pregnant or other parent awaiting the birth of his or her child, or an adoptive parent or person in the process of a final adoption.

When considering whether to order the PSA, the court may order a family impact statement. The items regarding open child welfare cases that the DCYF must provide to the court are modified. The DCYF need only provide a copy of the most recent court order. Other specified items are reported only when there is no court involvement or court order.

The existence of a prior substantiated referral of child abuse or neglect or of an open child welfare case does not on its own disqualify a parent from applying for or participating in the PSA. The court must consider whether the child-parent relationship can be readily maintained during parental incarceration, and whether parental incarceration exacerbates the likelihood of termination of the child-parent relationship due to the existence of an open child welfare case.

When a participant appears before the court during his or her term of community custody, the court must advise him or her of the right to assistance of counsel and, if he or she is indigent, appoint counsel . When modifying conditions or imposing sanctions, the court may extend the length of participation in the PSA for up to an additional six months. If a participant is suspended from the PSA and sent to prison, he or she is subject to all rules relating to earned release time with respect to any time served in prison.

Community Parenting Alternative. The eligibility criteria for the CPA relating to prior offenses are expanded. An offender with a current violent offense may be eligible so long as the offense is not a serious violent offense or sex offense, and he or she is determined to be at a low risk to reoffend. When evaluating eligibility, prior juvenile adjudications are not considered offenses.

The eligibility restrictions pertaining to immigration status are removed.

The types of familial relationships qualifying for CPA are modified and expanded. An offender must be:

- a parent with physical or legal custody of a minor child;
- a biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense;
- a legal guardian of a minor child; or
- an expectant parent, which means a pregnant or other parent awaiting the birth of his or her child, or an adoptive parent or person in the process of a final adoption.

The fact that the child-parent relationship has been terminated by a court does not preclude an application for the CPA in certain circumstances.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 20, 2019.

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