

# HOUSE BILL REPORT

## E2SSB 5291

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### As Reported by House Committee On: Public Safety

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

**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 History:**

##### **Committee Activity:**

Public Safety: 3/26/19, 4/1/19 [DPA].

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

- 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 the 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.

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#### **HOUSE COMMITTEE ON PUBLIC SAFETY**

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, Lovick, Orwall, Pellicciotti and Pettigrew.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member.

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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.*

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Graham and Griffey.

**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.

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.

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### **Summary of Amended 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 court must give great weight to the minor child's best interest when determining whether to impose the PSA, which must include, when applicable, a determination by the juvenile court presiding over the minor child's dependency proceedings.

The items regarding open child welfare cases that the DCYF must provide to the court are modified. If there are dependency or guardianship proceedings pertaining to the offender, the DCYF need only provide a copy of the most recent court order. Otherwise, if there is no court order or has been no court involvement, the DCYF must provide a list of specified information to the court.

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 community custody 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.

The state and its agencies, officers, agents, or employees are not liable for the acts of offenders participating in the PSA unless the state or its agencies, officers, agents, or employees act with willful disregard of a known risk of immediate harm.

*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 not to be at a high 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 requirement for the DOC to seek input from the DCYF regarding recommendations for services required by the DOC and the court is removed. Instead, the DOC must seek input from the DCYF as to recommendations regarding services agreed to by the offender working voluntarily with the DOC or other services ordered by the court.

Language is included providing that the DOC does not have the authority to determine placement of a minor child.

#### **Amended Bill Compared to Engrossed Second Substitute Bill:**

The eligibility criteria for the PSA are modified by specifying that the requirement to be at low risk to reoffend applies to offenders with a prior or current violent offense who are otherwise eligible. The court must give great weight to the minor child's best interest when determining whether to impose the PSA. The requirement for the DCYF to provide copies of recent court orders is clarified by specifying that those court orders are from dependency and guardianship proceedings.

Language is added providing that the state and its agencies, officers, agents, or employees are not liable for the acts of offenders participating in the PSA unless the state or its agencies, officers, agents, or employees act with willful disregard of a known risk of immediate harm.

The eligibility criteria for the CPA are modified by specifying that the requirement related to risk applies to offenders with a current violent offense who are otherwise eligible. An offender with a conviction for a current violent offense is eligible if he or she is determined to not be at high risk to reoffend (rather than determined to be at low risk to reoffend). The CPA is further modified by specifying that a person may participate only if the DOC determines that the offender's participation in the program is in the best interests of the child (rather than if the DOC determines that "the placement" is in the best interests of the child, as provided in current law). Language is added specifying that nothing in the underlying bill provides the DOC with authority to determine placement of a minor child. The provision in the underlying bill specifying that prior termination of parental rights does not preclude an application for the CPA is removed.

References to "child abuse or neglect investigations" are replaced with "child protective services response," and references to "individual" or "person" in amendatory provisions are

replaced with "offender" to provide consistency throughout the section. Definitions are moved to pertinent sections.

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**Appropriation:** None.

**Fiscal Note:** Available.

**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) Over the last 10 years, participants in these parenting alternatives have demonstrated a remarkably low recidivism rate. The current recidivism rate for participants is 8 percent, compared to more than 30 percent for the general DOC population. There are also significant benefits for children and families, because participants improve their parenting skills and their family relationships. Graduates of the program, especially the PSA, have been very successful in reconnecting with their families and staying out of the criminal justice system.

The DOC-based CPA is the primary focus of the legislation, as those who have been in prison have more challenges. The CPA helps ease their transition into the community while also focusing on their children. Participants are under intensive supervision and are required to show improvement in certain skills. If a participant fails or receives infractions, they are returned to prison.

It is time to expand eligibility for the program. Expanding eligibility does not guarantee entry into the program, as applicants go through a vetting process. In addition, the bill focuses on low-risk offenders with no serious violent offenses or sex offenses.

The state correctional facilities for women are extremely overcrowded, upwards of 109 percent. Women prisoners are being housed in local jails, and many are sleeping on the floor. If some of those women can be monitored in a community setting where they are working on improving their parent-child relationships, there is a shared benefit with the state and those families.

The intent of this bill is laudable, but there are some concerns with some of the Senate amendments. Language should be clarified to ensure that those who are currently eligible remain so, and that any new requirements pertaining to risk classifications do not apply to nonviolent offenders, regardless of their criminal history. In addition, the expansion for violent offenders combined with the low-risk requirement is unlikely to benefit anyone. Having a current violent offense is a static risk factor, and many of those offenders will never be deemed to be at low risk.

(Opposed) None.

(Other) The bill should be amended to clarify the role of the juvenile courts and the DCYF in determining the best interests of children affected by these programs. The interests of the child are paramount.

**Persons Testifying:** (In support) Senator Darneille, prime sponsor; D'Adre Cunningham, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Carolina Landa, Civil Survival; and Susan Leavell, Department of Corrections.

(Other) David Del Villar Fox, Department of Children, Youth, and Families.

**Persons Signed In To Testify But Not Testifying:** None.