

# 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], 2/25/20, 2/27/20 [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 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, 2nd Vice Chair; Lovick, Orwall, Pellicciotti and Pettigrew.

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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:** Do not pass. Signed by 3 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham.

**Minority Report:** Without recommendation. Signed by 1 member: Representative 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 and Guardians of Minor Children.

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, substance use disorder 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 the 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:**

*Parenting Sentencing Alternative.* The eligibility criteria for the PSA are expanded. An offender with a prior violent offense may be eligible for the PSA. Except for sex offenses and serious violent offenses, prior juvenile adjudications are not considered offenses when determining eligibility for the PSA. 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 also give great weight to the minor child's best interest. The items regarding open child welfare cases that the DCYF must provide to the court are modified. If the person has been involved in dependency or guardianship proceedings, the DCYF need only provide a copy of the most recent court order and a report on whether the person has been cooperative with any services ordered by the court. 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. In such circumstances, the court must consider certain factors.

If an indigent person participating in the PSA appears before the court during his or her term of community custody, the court must 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.

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 has not been determined to be high risk to reoffend. Except for sex offenses and serious violent offenses, prior juvenile adjudications are not considered offenses when determining eligibility for the CPA. The eligibility restrictions pertaining to immigration status are removed.

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

- a parent with guardianship 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.

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 PSA is modified by restoring current law restricting a person with a current violent offense from being eligible, and removing the requirement that a person with a prior violent offense must have a certain risk classification to be eligible. A person with a prior juvenile adjudication of a sex offense or serious violent offense is prohibited from participating in the PSA (rather than prohibiting the court from considering those prior offenses when determining eligibility), but the provision providing that other juvenile adjudications are not considered prior offenses for determining eligibility is otherwise retained.

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. Further, the requirement that DCYF report to the court regarding whether an offender has cooperated with services is restored.

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 has not been determined to be high risk to reoffend (rather than determined to be at low risk to reoffend). The types of qualifying familial relationships are modified by removing language specifying that a parent with physical custody of a minor child is eligible and adding language specifying that a parent with guardianship of a minor child is eligible.

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.

Amendatory provisions are modified to account for changes to the underlying statutes in the 2019 regular legislative session. 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) Participants in these parenting alternatives have demonstrated a remarkably low recidivism rate. There are also significant benefits for children and families because participants improve their parenting skills and their family relationships. Graduates have been very successful in developing healthy parental relationships, reconnecting with their families, and staying out of the criminal justice system. This is particularly the case for persons with substance use disorders or other conditions that benefit from intensive supervision and coaching. For these reasons, these alternatives should be expanded as broadly as possible.

These are not entitlements. Eligibility only allows a person to apply to either the court or DOC, and then the person goes through an intensive review process. This is the only existing alternative where a judge can take family considerations into account when imposing a sentence. Judges should have more discretion and flexibility to impose the PSA. This does not necessarily mean a person does not go to prison. If a person fails the program, he or she must serve their prison sentence.

The bill should be amended to remove any requirements for a specific risk classification, especially for the PSA.

(Opposed) One of the reasons these alternatives are so successful is the restrictive eligibility criteria. Allowing persons with prior and current convictions of violent offenses (and prior juvenile adjudications of sex offenses and serious violent offenses) raises a lot of red flags. This is particularly the case for gun offenses or other offenses involving harm to children. The court-based PSA should continue to have restrictive criteria. The DOC-based CPA program is less concerning, as those persons have a reviewable record with DOC and a risk assessment.

**Persons Testifying:** (In support) Lisa Johnson; and D'Adre Cunningham, Washington Defenders Association.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

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