
Public Safety Committee

ESSB 5307

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 Summary of Engrossed Substitute Bill

- Expands eligibility for the Parenting Sentencing Alternative (PSA) to include low risk offenders with current violent or sex offense convictions and offenders with prior convictions of violent or sex offenses.
- Expands eligibility for the Community Parenting Alternative partial confinement program (CPA) to include low risk offenders with current violent or sex offense convictions.
- Modifies the types of familial relationships qualifying for PSA and CPA.
- Specifies additional criteria pertaining to open child welfare cases and cases involving termination of parental rights.

Hearing Date: 2/15/18

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

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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 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 Bill:

Parenting Sentencing Alternative. The eligibility criteria for the PSA are expanded to include an offender with a current violent or sex offense, so long as he or she is assessed at low risk to reoffend, as well as an offender with a prior conviction of a violent offense or sex offense. The DOC must assist the court with assessing the risk of an offender seeking to participation in the program.

The types of familial relationships qualifying for PSA are modified. Qualifying relationships include an offender who is a biological or adoptive parent, an expectant parent, legal guardian, custodian, non-parental custodian, stepparent, or who is acknowledged as a parent figure of a minor child, so long as he or she had physical custody of the minor or a proven, established, ongoing, and substantial relationship with the minor at the time of the current offense.

The existence of an open child welfare case or other evidence of involvement with a child welfare agency does not, in and of itself, disqualify the offender from applying or participating, and instead may further support for a parent's participation in order to reduce the likelihood of termination of parental rights due to parental incarceration.

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 an offender with a current violent or sex offense, so long as he or she is assessed at low risk to reoffend.

The types of familial relationships qualifying for CPA are modified. Qualifying relationships include an offender who is a biological or adoptive parent, an expectant parent, legal guardian, custodian, non-parental custodian, stepparent, or who is acknowledged as a parent figure of a minor child, so long as he or she had physical custody of the minor or a proven, established, ongoing, and substantial relationship with the minor at the time of the current offense.

The fact that the child-parent relationship has been terminated by a court does not preclude an application for the CPA where:

- the child and parent have been permitted ongoing contact;
- the child is legally free and the child's permanent plan has not been achieved; and
- the parent's participation in the CPA may assist the child in achieving reinstatement of parental rights or achieving long-term permanency.

Appropriation: None.

Fiscal Note: Requested on February 12, 2018.

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