

SENATE BILL REPORT

SB 5291

As of February 25, 2019

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: Senators Darneille, Randall, Kuderer, Frockt, Hasegawa, Nguyen and Saldaña.

Brief History:

Committee Activity: Human Services, Reentry & Rehabilitation: 2/07/19 [DPS-WM, w/oRec].

Ways & Means: 2/19/19.

Brief Summary of First Substitute Bill

- Expands eligibility for participation in a family sentencing alternative program by including the ability for offenders to apply for the program if the prior violent felony offense occurred more than five years ago; and excluding prior juvenile adjudications when considering eligibility for the parenting sentencing alternative.
- Expands the types of parental relationships that qualify for participation in a family sentencing alternative program to include informal parenting relationships.
- Defines the term expectant parent and amends the term minor child in statute.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Substitute Senate Bill No. 5291 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Darneille, Chair; Nguyen, Vice Chair; Walsh, Ranking Member; Cleveland, Wilson, C. and Zeiger.

Minority Report: That it be referred without recommendation.

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.

Signed by Senator O'Ban.

Staff: Keri Waterland (786-7490)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Travis Sugarman (786-7446)

Background: Under certain circumstances, parents with minor children who have been convicted of a 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 Parenting Sentencing Alternative (PSA), 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 (CPA), allowing the Department of Corrections (DOC) to transfer an offender to electronic home monitoring for up to the last 12 months of the parent's sentence.

These alternatives are sometimes referred to collectively as a Family Offender Sentencing Alternative (FOSA).

Parenting Sentencing Alternative. For an offender to be eligible under the PSA, the person must:

- not have a current or prior conviction for a felony, sex, or violent offense;
- not be subject to a deportation order;
- have physical custody of their minors or be a legal guardian or custodian with physical custody at the time of the offense;
- be subject to a sentence for which the maximum of the sentence range is more than one year; and
- sign a release of information waiver regarding current or prior or both child welfare involvement.

The court must seek input from the Department of Children, Youth, and Families (DCYF) 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 DCYF recommendation of placement and services needed. The court may also order DOC to complete a risk assessment report or chemical dependency screening report, to assist in making its determination. The court may bring an offender back into court at any time to evaluate the person'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. To be eligible for CPA, the offender must:

- not have a current conviction for a felony sex or violent offense;
- not be subject to a deportation order;
- have physical or legal custody of a minor child;

- have a proven, established, ongoing, and substantial relationship with the child that existed prior to the commission of the current offense; and
- sign a release of information waiver regarding current or prior or both child welfare involvement.

DOC must seek input from DCYF 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 sentence in partial confinement on electronic home monitoring. DOC has authority to return any person serving partial confinement in the parenting program to total confinement if the person is not within compliance.

Summary of Bill (First Substitute): Certain criteria for participating in the PSA are changed to provide that an offender may participate if the person:

- has no prior or current conviction for a felony sex offense;
- has no current conviction for a violent felony offense;
- has no violent felony offense within the last five years;

and the offender is:

- a parent with physical custody of a minor;
- an expectant parent;
- a legal guardian or custodian of a minor; or
- a biological or adoptive parent, or stepparent with a proven, established, ongoing, and substantial relationship with a minor that existed at the time of the offense.

Prior juvenile adjudications are not considered offenses when considering eligibility for the PSA.

A court may order preparation of a family impact statement when evaluating an application for a PSA. The existence of a prior substantiated referral of child abuse or neglect or of an open child welfare case disqualifies the parent from applying or participating in the PSA. The court shall consider whether the child-parent relationship can be readily maintained during parental incarceration, and whether due to the existence of an open child welfare case, parental incarceration exacerbates the likelihood of termination of the child-parent relationship. The court shall advise the offender with the PSA of their right to the assistance of counsel during progress or violation hearings. The court shall have the ability to extend the length of the participation in the PSA, and shall consider modifying the support and rehabilitation plan, if necessary.

DCYF must provide a copy of the most recent court order, and report the legal status of child welfare, abuse, or neglect investigations, as well as the length of time each have been open.

DOC must provide any programming required as a condition of the PSA at no cost to the offender.

Certain criteria for participating in the CPA are changed to provide that an offender may participate if the person:

- has physical or legal custody of his or her biological or adoptive minor;

- is a biological or adoptive parent, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense;
- is the legal guardian or custodian of a minor; or
- is an expectant parent.

If a child-parent relationship has been terminated by a court, it does not preclude participation in a CPA if:

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

DOC must seek input from DCYF or tribal jurisdictions regarding services agreed to voluntarily or ordered by the court. DOC must collectively determine, with the offender, the programming needed.

For the purposes of PSA and CPA, "expectant parent" is defined in statute as a pregnant or other parent awaiting the birth of their child, or an adoptive parent or person in process of a final adoption. The term "minor child" is defined in statute as a child under the age of eighteen at the time of the current offense.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, REENTRY & REHABILITATION COMMITTEE (First Substitute): "Minor child" is defined to mean a child under age the eighteen at the time of the current offense as it applies to RCW 9.94A.655 and RCW 9.94A.6551.

Updates the eligibility of both the PSA and the parenting program developed by the department as follows:

- the offender has no prior or current conviction for a felony sex offense or a serious violent offense;
- the offender has a current or prior conviction for a nonviolent felony offense and/or a current or prior conviction for a violent felony offense and has been determined to be low risk to reoffend;
- the offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court; and
- the offender is:
 1. a parent with physical custody of a minor child;
 2. an expectant parent;
 3. a legal guardian or legal custodian of a minor child; or
 4. a biological parent, adoptive parent, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense.

Appropriation: None.

Fiscal Note: Requested on January 14, 2019.

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 on Draft Bill (Human Services, Reentry & Rehabilitation): *The committee recommended a different version of the bill than what was heard.* PRO: We ask that violent offenders can apply for the CPA program and this has a positive impact on the relationship between parent and child. My violent crime had nothing to do with my kids. Parenting while incarcerated is not easy. With all others reentry obstacles, reestablishing the parental relationship is paramount. This program should not exclude children whose parents have committed a violent crime and the ideal transition should have CPS support. My dad is in prison and it is hard for me to see him in prison. He is far away, and it is hard because he can not be with me, but you are not alone, there are other people going through this. I hope other kids parents can come home faster, please support this bill. I was just released on the CPA and got to be home with my daughter. Grateful for this program and the support and help and it should be available for more people, there is no life so shattered that it cannot be restored. My mom was incarcerated and I faced traumatic issues without her, which was difficult, but this program is needed. WDA and WACDL supports this expansion, but want the prison based option to be open to people serving time for violent offenses so those individuals can get all of the healthy support for parenting and transitioning back to full time parenting. There needs to be more parents on this alternative. Priors should not mean you cannot apply. Expand further.

OTHER: Fact sheets left on all alternatives and where DOC is at with those. Supports expansion for more to participate in these programs. Eligibility changes we are in support of, but we are not sure of paying for the services. Medicaid may pay for some of these services, so DOC may not need to pay for those services as described in the bill. Discussed success of the parenting alternatives programs and impact to recidivism rates.

Persons Testifying (Human Services, Reentry & Rehabilitation): PRO: Tanya, Quinata, citizen.

OTHER: Susan Leavell, DOC; Darina Glassburn, citizen; Adriana Van Natta, citizen; Emmalee Thomas, citizen; D'Adre Cunningham, WDA's Incarcerated Parents Project.

Persons Signed In To Testify But Not Testifying (Human Services, Reentry & Rehabilitation): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: We strongly urge passing this bill out of committee to expand this program. This program has been very effective at keeping parents in the community parenting their children successfully and also in returning people with supportive stable program through the community parenting alternative through DOC to home detention prior to complete release. DOC has reported substantially lower numbers of people returning to prison that participated in this program.

OTHER: There are lot of beneficial outcomes that would result from the expansion of these programs, including lower recidivism rates, ability to return to work and the benefits of

reuniting with ones family. There are some concerns about the risk assessment language around pre sentencing assessments. We are happy to work with the sponsor and chair on these issues.

Persons Testifying (Ways & Means): PRO: D'Adre Cunningham, Washington Defender Association Incarcerated Parents Project Resource Attorney.

OTHER: Alex MacBain, Department of Corrections.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.