

FINAL BILL REPORT

E2SSB 5291

C 137 L 20
Synopsis as Enacted

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).

Senate Committee on Human Services, Reentry & Rehabilitation
Senate Committee on Ways & Means
House Committee on Public Safety
House Committee on Appropriations

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 the following 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 incarcerated individual 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.

According to DOC, research shows children of incarcerated parents are significantly more likely to end up in the criminal justice system themselves. The goal of these programs is to stop the cycle of criminal activity by maintaining family bonds. As of October 2019, 59 percent of the participants were women and 41 percent were men. The percentage of successful completion was 71 percent for PSA (268 out of 376) and 85 percent for CPA (394 out of 465). Twenty-nine percent of PSA participants were revoked and 15 percent of CPA participants were terminated from the program.

Certain crimes are designated nonviolent offenses, violent offenses, serious violent offenses, and sex offenses, or both. Serious violent offenses are a subcategory of violent offenses, and

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include first and second degree murder, homicide by abuse, first degree manslaughter, first degree assault, first degree kidnapping, first degree rape, and first degree assault of a child.

Parenting Sentencing Alternative. For an individual to be eligible under the court-based PSA, the person must:

- not have a prior or current conviction for a felony sex offense 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 range with a high end of greater than one year; and
- sign a release of information waiver regarding current or prior child welfare involvement.

Before imposing the PSA, DOC must contact the Department of Children, Youth, and Families (DCYF) as to whether the person is involved in any open case or prior substantiated referrals of abuse or neglect with DCYF or a tribal child welfare agency. DCYF must provide a report to the court, including the status of the child welfare case and length of time DCYF has been involved with the individual. The court may also order DOC to complete a risk assessment report or chemical dependency screening report to assist in making its determination.

If an individual is granted the PSA, DOC may impose conditions such as parenting classes, chemical dependency treatment, mental health treatment, vocational training, offense change programs, and life skills classes. DOC must also coordinate services with DCYF if the person has an open child welfare case. DOC must provide the court with quarterly progress reports and must report if the individual commits a violation. The court may bring the individual back into court at any time to evaluate the person's progress or address violations. The court may modify the conditions of community custody or impose sanctions. If the individual violates the conditions of the sentence or fails to make satisfactory progress in treatment, the court may revoke the alternate sentence and order the person to serve a term of total confinement.

Community Parenting Alternative. Unlike the PSA, the CPA is a partial confinement program that allows an individual to reside in the community on home detention. To be eligible for the DOC-based CPA, DOC must determine that the program is in the best interests of the child, and the person must:

- not have a current conviction for a felony sex offense 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; or be a legal guardian of a child that was under the age of 18 at the time of the current offense;
- be subject to a sentence range with a high end of greater than one year; and
- sign a release of information waiver regarding current or prior child welfare involvement.

Similar to the PSA, DOC must contact DCYF as to whether the person is involved in any open child welfare case or prior substantiated referrals of abuse or neglect with DCYF or a

tribal jurisdiction. If DCYF or a tribal jurisdiction has an open child welfare case, DOC must seek input from the respective agency on the status of the child welfare case and recommendations on placement and services required by DOC and the court.

An individual must provide an approved residence and living arrangement prior to transfer to home detention. While on home detention, the individual must be on electronic home monitoring and participate in required programming and treatment. DOC must assign a community corrections officer to monitor the person and collaborate and communicate with a social worker if the person has an open child welfare case with DCYF. If the person does not comply with any sentence requirements, DOC may terminate participation and return the person to total confinement to serve the remaining portion of the sentence.

Summary: Parenting Sentencing Alternative. The eligibility criteria for the court-ordered sentencing alternative are modified. To be eligible, the person must:

- not have a prior or current conviction for a felony sex offense, serious violent offense, or a felony offense where the person was armed with a firearm or deadly weapon in the commission of the offense;
- not have a current conviction for a violent offense;
- be a parent with physical custody of a minor child; an expectant parent; a legal guardian of a minor child; or 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;
- be subject to a sentence range with a high end of greater than one year; and
- sign a release of information waiver regarding current or prior child welfare involvement.

Prior juvenile adjudications are not considered offenses when considering eligibility for the PSA, except for sex offenses, serious violent offenses, or felony offenses where the person was armed with a firearm or deadly weapon in the commission of the offense. When evaluating an application for the PSA, the court may order a family impact statement. If the individual has an open child welfare case, or child abuse or neglect investigation, DCYF must provide to the court a copy of the most recent court order entered in dependency or guardianship proceedings pertaining to the individual and a report on whether the individual has been cooperative with services ordered in those proceedings. If there is no court order or court involvement, DCYF must report on the legal status of the child welfare case or child protective services response, the length of time DCYF has had an open child welfare case or child protective services response involving the offender, and any special needs of the child. DOC must report to the court if the person has been convicted of a crime against a child.

The existence of a prior substantiated referral of child abuse or neglect or of an open child welfare case does not alone disqualify the parent from applying or participating in the PSA. The court must 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.

In determining whether the sentencing alternative is appropriate and should be imposed, the court must consider the individual's criminal history. The court must also give great weight to the minor child's best interest.

At the start of a court hearing to evaluate a participant's treatment progress or address violations, the court must advise the person of their right to the assistance of counsel and appoint counsel if the person is indigent. When modifying conditions or imposing sanctions, the court may extend the length of participation in the PSA for up to six months. The participant is subject to all rules relating to earned release time with respect to any period served in total confinement. The state and its agencies, officers, agents, or employees are not liable for the acts of PSA participants unless the state or its agencies, officers, agents, or employees acted with willful disregard of a known risk of immediate harm.

Community Parenting Alternative. The eligibility criteria for the DOC-based parenting program are modified. To be eligible, the person must:

- not have a current conviction for a felony that is classified as a sex offense or serious violent offense;
- not have a current conviction for a violent offense, or where the person has a current conviction for a violent offense, not have been determined to be a high risk to reoffend;
- be a parent with guardianship or legal custody of a minor child; an expectant parent; or 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;
- be subject to a sentence range with a high end of greater than one year;
- sign a release of information waiver regarding current or prior child welfare involvement; and
- be determined by DOC that the person's participation in the parenting program is in the best interests of the child.

Language is clarified that DOC does not have authority to determine placement of a minor child. Prior juvenile adjudications are not considered offenses when considering eligibility for the CPA, except for sex offenses and serious violent offenses. If DCYF or a tribal jurisdiction has an open child welfare case, DOC must seek input from DCYF or the involved tribal jurisdiction on the status of the child welfare case and recommendations on placement and services agreed to voluntarily by the individual, or ordered by the court in the child welfare case.

While an individual is on home detention, DOC must require the individual to participate in programming and treatment that DOC determines is needed after consideration of the person's stated needs.

Changes Applicable to Both. "Expectant parent" is defined as a pregnant or other parent awaiting the birth of their child, or an adoptive parent or person in the process of a final adoption. The term "minor child" is amended in statute to mean a child under the age of 18.

Votes on Final Passage:

2019 Regular Session

Senate 39 8

2020 Regular Session

Senate 32 15

House 61 35 (House amended)

Senate 34 15 (Senate concurred)

Effective: June 11, 2020