

SENATE BILL REPORT

E2SSB 5291

As Amended by House, March 3, 2020

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: Human Services, Reentry & Rehabilitation: 2/07/19 [DPS-WM, w/oRec]; 1/16/20, 1/30/20 [DP3S-WM, w/oRec].

Floor Activity:

Passed Senate: 3/12/19, 39-8; 2/17/20, 32-15.

Passed House: 3/03/20, 61-35.

Brief Summary of Engrossed Second Substitute Bill

- Expands eligibility for participation in a family sentencing alternative program and excludes prior juvenile adjudications when considering eligibility.
- Expands the types of parental relationships that qualify for participation.
- Defines the term expectant parent and amends the term minor child in statute.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Majority Report: That Third Substitute Senate Bill No. 5291 be substituted therefor, and the third 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.

Signed by Senator O'Ban.

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.

Staff: Kelsey-anne Fung (786-7479)

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 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 (FOSA).

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 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 of Engrossed Second Substitute Bill: 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 or serious violent offense;
- have a prior or current conviction for a nonviolent offense, or have a prior or current conviction for a violent offense and has been determined to be a low risk to reoffend;
- have physical custody of a minor child; be an expectant parent; be a legal guardian or legal custodian of a minor child; or be 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;
- 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.

When evaluating an application for the PSA, the court may order a family impact statement. If the individual has an open child welfare case, DCYF must provide a copy of the most recent court order. If there is no court order or court involvement, DCYF must report on the legal status of the case or investigation, length of time DCYF has had an open case or investigation, any special needs of the child. DOC must report 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.

At the start of a court hearing to evaluate an individual'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, and shall consider modifying the support and rehabilitation plan if necessary. If an individual is revoked from the program and ordered to serve a prison sentence, the person is subject to all rules relating to earned release time with respect to any period served in total confinement.

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;
- have a current conviction for a nonviolent offense, or have a current conviction for a violent offense and been determined to be a low risk to reoffend;
- be a parent with physical or legal custody of a minor child; an expectant parent; legal guardian; 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.

A court's termination of the child-parent relationship does not preclude an application for participation 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.

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 agreed to voluntarily by the individual or ordered by the court.

While 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. Prior juvenile adjudications are not considered offenses when considering eligibility. "Expectant parent" is defined 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 18 at the time of the offense.

Appropriation: None.

Fiscal Note: Available.

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) (Regular Session 2019): *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.

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: 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: No one.

Staff Summary of Public Testimony on Proposed Third Substitute (Regular Session 2020): PRO: This is a very intensive, supportive program that has proven to be successful over the past ten years. Supportive of the effort to expand the program because it has been shown that people on the program do better on this alternative than just being released on community custody. Participants on CPA on home monitoring get more intensive treatment and programming services than persons on regular community custody such as parenting classes, peer counseling, weekly DOC visits, daily DOC telephone check-ins, and monthly counseling appointments. Even if just expand the program by altering parental relationships that quality, and do not address criminal history, would be opening up the program and helping people who currently do not qualify, such as individuals with atypical familial relationships or who were pregnant at the time of the crime before the child was born. Supportive of inclusion of individuals with prior juvenile offenses due to the education about adolescent brain development. Currently, DOC internal policy excludes individuals with crimes against children from consideration for the alternative and requires review of the individual's domestic violence history and nature of the harm. As of November 2019, the recidivism rate is 11 percent for participants. DOC is working with DCYF to get data on how the program impacts children of incarcerated parents.

CON: Opposed to expanding the eligibility criteria to include individuals with current violent convictions, prior substantiated referrals of abuse or neglect or open child welfare cases, and those with prior juvenile adjudications. Would like to see specific violent crimes referenced. The organization objects to any expansion that allows individuals with additional types of criminal conduct to be considered for the alternative.

Persons Testifying: PRO: Senator Jeannie Darneille, Prime Sponsor; D'Adre Cunningham, Washington Defender Association, Incarcerated Parents Project; Susie Leavell, DOC Senior Administrator for Reentry Division; Lisa Johnson, citizen.

CON: Russell Brown, Executive Director, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- For the court-based PSA:
 - restores current law restricting eligibility for persons with current violent offenses;
 - excludes persons with prior or current convictions for a felony sex offense, a serious violent offense, or a felony offense where the offender was armed with a firearm or deadly weapon in the commission of the offense;

- excludes persons with prior juvenile adjudications for sex offenses, serious violent offenses, or felony offenses where the offender was armed with a firearm or deadly weapon the commission of the offense;
 - requires the court to give great weight to the minor child's best interest when determining whether to impose the PSA;
 - modifies requirements for DCYF related to dependency and guardianship proceedings; and
 - specifies the circumstances for the state or its agencies, officers, agents, or employees to be liable for the actions of offenders participating in PSA.
- For the DOC-based CPA:
 - allows offenders with current violent convictions to be eligible if they are determined to not be a high risk to reoffend;
 - excludes persons with prior juvenile adjudications for sex offenses and serious violent offenses;
 - specifies that an offender may only participate if DOC determines that the offender's participation in CPA is in the best interests of the child;
 - modifies the types of qualifying familial relationships; and
 - removes a provision specifying that prior termination of a child-parent relationship does not preclude an application for the CPA.