

# SENATE BILL REPORT

## SSB 6639

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As Amended by House, March 9, 2010

**Title:** An act relating to creating alternatives to total confinement for nonviolent offenders with minor children.

**Brief Description:** Creating alternatives to total confinement for nonviolent offenders with minor children.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Brown, Stevens, Gordon and Shin; by request of Department of Corrections).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/04/10 [DPS].

Passed Senate: 2/15/10, 46-2; 3/09/10, 45-1.

Passed House: 3/03/10, 79-19; 3/03/10, 77-21.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6639 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

**Staff:** Shani Bauer (786-7468)

**Background:** Under certain circumstances, a court may waive imposition of an offender's sentence within the standard sentencing range and instead order an alternative sentence. Current law provides for a first time offender waiver, a drug offender sentencing alternative, and a special sex offender sentencing alternative.

An offender who is given a sentencing alternative will have a term of community custody under the supervision of the Department of Corrections (DOC). In the event the person violates the provisions of the sentencing alternative, the court may impose further conditions of community custody, impose sanctions, or order the offender to serve a term of confinement within the standard sentence range for the offense.

For offenders who have been sentenced to confinement time, the statute authorizes the final six months of the person's term of confinement to be served in partial confinement. Partial

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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.*

confinement includes work release, home detention, work crew, or a combination of work crew and home detention.

**Summary of Substitute Bill:** Sentencing Alternative. A parenting sentencing alternative is created. An offender is eligible for the alternative if:

- the high end of the standard sentence range for the current offense is greater than one year;
- the offender has no current convictions for a sex offense or violent offense;
- the offender is not subject to a deportation detainer;
- the offender signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with DOC and the court; and
- the offender has physical custody of his or her minor child or is a legal guardian of a child at the time of the offense.

The court may request DOC to complete a risk assessment report or a chemical dependency screening report prior to sentencing. DOC must contact the Department of Social and Health Services (DSHS) to determine if the agency has any open or prior cases of substantiated referrals of abuse or neglect involving the offender or if the agency is aware of any tribal child welfare case. If the offender has an open child welfare case or a prior substantiated case of abuse or neglect, DOC will request a report from DSHS to be provided to the court.

If the court determines the offender is eligible for the sentencing alternative and the sentencing alternative is appropriate, the court must waive imposition of the sentence within the standard sentence range and impose a sentence of 12 months of community custody.

DOC may impose conditions of community custody including parenting classes, chemical dependency treatment, and vocational training. DOC must provide the court with a quarterly report of the offender's progress and report to the court if the offender commits any violations of his or her sentence conditions. The court may bring the offender back into court at any time and may modify the conditions of community custody, impose sanctions, or order the offender to serve a term of total confinement within the standard sentence range.

Partial Confinement. If an offender was not sentenced to a parenting sentencing alternative, an offender may still be eligible for release to partial confinement in the parenting program. No more than the final 12 months of an offender's term of confinement may be served in home detention under the parenting program. The offender must meet the same criteria as required for the sentencing alternative, except that in lieu of physical or legal custody of the child, the offender must show (1) an ongoing and substantial relationship with his or her minor child that existed prior to the commission of the current offense; or (2) if the parent was the legal guardian of the child at the time of the offense, it is determined that such a placement would be in the best interests of the child.

DOC must inquire with DSHS as to any open child welfare case or prior substantiated referrals of child abuse or neglect involving the offender. DOC is not liable for the acts of an offender participating in the parenting program unless DOC or its employees acted with willful and wanton disregard.

All offenders placed in home detention as part of the parenting program must have an approved residence and living arrangement. The offender must be on electronic home monitoring and is required to participate in programming and treatment as required by the offender's community custody officer. A community custody officer must be assigned to monitor the offender. If the offender has an open child welfare case with DSHS, DOC will collaborate with the assigned social worker.

DOC may return any offender serving partial confinement in the parenting program to total confinement if the offender is not complying with the sentence requirements.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: This idea came out of the Children of Incarcerated Parents workgroup and DOC looking at cost reductions. A mom in prison has an average of two children. Incarceration of a parent has a significant impact on a child and can destroy a parent's tie with their child. The foster care rate is between 10 and 20 percent and these children have an increased incidence of substance abuse problems, mental illness, and incarceration. Visitation with a parent can have a significant positive impact on both the parent and the child. The location where a parent is incarcerated can make this difficult. Chemical dependency treatment is also more difficult to obtain while incarcerated than in the community. This bill meets the goals of protecting public safety while giving both the incarcerated parent and child an opportunity for better outcomes. DSHS and DOC collaborated a good deal on this bill and are committed to making this program work.

CON: We reluctantly oppose this bill as we have some concerns about prospective conflicts if there is an ongoing dependency proceeding. Dependency records are sealed for good reason and it is unclear whether they will become part of the criminal record. It is unclear who will be paying for services in these instances and no clear direction for what happens when DOC and DSHS don't agree as to the directives for treatment or programming. The judge doesn't want to be in the position of acting as a mediator in these circumstances.

**Persons Testifying:** PRO: Senator Lisa Brown, prime sponsor; Anna Aylward, Department of Corrections; Denise Revels-Robinson, Children's Administration, DSHS; Julia Aten, Thea Oliphant-Wells, Christina Ross, Winona Stevens, Tricia Brown, Charles Quinn, Social Welfare Students, University of Washington.

CON: Judge Warning, Superior Court Judges Association.

**House Amendment(s):** An offender is eligible for the Parenting Sentencing Alternative if the offender does not have any current or prior sex or violent offenses.

A technical amendment is made to clean up inconsistent amendments to the earned release provisions of the Sentencing Reform Act from last session by placing new language adopted in HB 1789 (2009 Session) into RCW 9.94A.729.