

# HOUSE BILL REPORT

## E2SSB 5676

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### As Reported By House Committee On:

Law & Justice

**Title:** An act relating to restrictions on residential time and visitation for abusive parents.

**Brief Description:** Restricting residential time and visitation for abusive parents.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Fraser and Kohl).

### Brief History:

#### Committee Activity:

Law & Justice: 2/21/96, 2/23/96 [DPA].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended. Signed by 15 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Carrell; Chappell; Cody; Lambert; McMahan; Morris; Robertson; Smith; Sterk and Veloria.

**Staff:** Edie Adams (786-7180).

**Background:** When parents obtain a dissolution of marriage, the court must approve a residential schedule establishing the residential time the child spends with each parent. Current law places limitations on a parent's residential time with a child for a number of reasons.

The court must restrain a parent from contact with a child if the parent has been found to be a sexual predator or has been convicted as an adult of any of the following offenses: (1) rape (2) rape of a child (3) child molestation (4) sexual misconduct with a minor (5) indecent liberties (6) incest (7) sexual exploitation of a minor (7) communication with a minor for immoral purposes (8) patronizing a juvenile prostitute and (9) child pornography offenses.

If the parent lives with an adult found to be a sexual predator or convicted of any of the above sex offenses, or a juvenile found to be a sexual predator or adjudicated of any of the above offenses, the court must restrain the parent from contact with the

child, except contact that occurs outside the presence of the convicted adult or adjudicated juvenile.

A parent's residential time with the child must be limited, but not necessarily completely denied, if the court finds that the parent or a person who resides with the parent has engaged in any of the following conduct: (1) willful abandonment that continues for an extended period of time, or substantial refusal to perform the parenting function; (2) physical, sexual, or a pattern of emotional abuse of a child; or (3) a history of acts of domestic violence, a serious assault, or sexual assault.

The limitations imposed on a parent's residential time with the child must be reasonably calculated to protect the child from physical, sexual, or emotional abuse or harm. If the court finds that limitations on residential time will not adequately protect the child, the court must restrain the parent from all contact with the child. On the other hand, if the court finds that contact between the parent and child will not cause physical, sexual, or emotional abuse or harm to the child and that imposing limitations is not in the child's best interest, the court does not have to impose any limitations.

A recent superior court decision ruled that these statutory provisions restricting a parent's residential time with a child for sexual offenses violate both the state and federal constitutions' due process and equal protection provisions. The court noted that, although the state has a compelling interest in protecting children from physical, emotional, and sexual abuse, the court found that the statute was not narrowly tailored to serve that interest.

**Summary of Amended Bill:** Statutory provisions regarding limitations imposed on the residential time a parent may spend with a child are amended. A presumption is created that a parent should be restrained from contact with a child if the parent committed specified sexual offenses, or resides with a person found to have committed specified sexual offenses. Where no presumption arises, limitations on a parent's residential time with the child may be imposed if the parent committed specified sexual offenses or resides with a person who has committed specified sexual offenses. Provisions for when a parent may be automatically restrained from contact with the child that would otherwise be allowed are provided.

**Rebuttable Presumption:** A rebuttable presumption is created that (a) a parent convicted as an adult of any of the following offenses poses a present danger to a child, and (b) a parent who resides with a person who has been convicted as an adult or adjudicated as a juvenile of any of the following offenses places the child at risk of abuse or harm when that parent exercises residential time in the presence of the persons convicted or adjudicated:

- (1) incest in the first or second degree if the parent was five or more years older than the victim;
- (2) rape of a child in the first degree;
- (3) rape of a child in the second or third degree if the parent was eight or more years older than the victim;
- (4) child molestation in the first degree;
- (5) child molestation in the second degree if the parent was eight or more years older than the victim;
- (6) indecent liberties;
- (7) any of the above offenses specified in predecessor or antecedent statutes; and
- (8) offenses from another jurisdiction analogous to the above offenses.

If the parent rebuts the presumption that the parent poses a present danger to the child, the court may allow the parent to have residential time with the child supervised by a neutral and independent adult pursuant to an adequate plan for supervision. If the parent rebuts the presumption that the child is at risk of abuse or harm because the parent resides with a person convicted or adjudicated of any of the above sex offenses, the court may allow the parent to have residential time with the child in the presence of the person convicted or adjudicated of the offense, if supervised by a neutral and independent adult pursuant to an adequate plan for supervision.

The court must approve as a supervisor for contact between the child and the parent only a person who the court finds is willing and capable of protecting the child from harm. The court must revoke approval for any supervisor upon finding that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

**Rebutting the Presumption:** The presumption that a parent poses a present danger to the child because of the parent's conviction for a specified sex offense may be rebutted only after a written finding that

- (1) if the child was not the victim of the sex offense committed by the parent, that (a) contact between the child and the parent is appropriate and poses minimal risk to the child, and (b) the parent has successfully engaged in sex offender treatment or is engaged in and making progress in such treatment, if ordered

by the court, and the treatment provider believes contact is appropriate and poses minimal risks to the child; or

- (2) if the child was the victim of the sex offense committed by the parent, that (a) if the child is or was in sexual abuse therapy, the counselor believes that contact is in the child's best interest, and (b) the parent has successfully engaged in sex offender treatment or is engaged in and making progress in such treatment, if ordered by the court, and the treatment provider believes contact is appropriate and poses minimal risks to the child.

The presumption that a parent who resides with a person convicted as an adult or adjudicated as a juvenile of specified sex offenses places the child at risk by exercising visitation with the child in the presence of the person convicted or adjudicated may be rebutted only after a written finding that

- (1) if the child was not the victim of the sex offense committed by the person residing with the parent, that (a) contact between the child and the parent is appropriate and the parent is capable of protecting the child in the presence of the other person, and (b) the person convicted or adjudicated of the offense has successfully engaged in sex offender treatment or is engaged in and making progress in such treatment, if ordered by the court, and the treatment provider believes that such contact is appropriate and poses minimal risks to the child; or
- (2) if the child was the victim of the sex offense committed by the person residing with the parent, that (a) if the child is or was in sexual abuse therapy, the counselor believes that contact between the child and the parent in the presence of the convicted or adjudicated person is in the child's best interest, and (b) the person convicted or adjudicated of the offense has successfully engaged in sex offender treatment or is engaged in and making progress in such treatment, if ordered by the court, and the treatment provider believes contact between the child and the parent in the presence of the convicted, or adjudicated person is appropriate and poses minimal risks to the child.

No Presumption: If no presumption of danger is created by a parent's prior offenses, or the prior offenses of a person residing with the parent, the parent's residential time with the child may nonetheless be limited if the parent has been convicted, or the person who resides with the parent has been convicted, as an adult or adjudicated as a juvenile, of any of the following offenses:

- (1) rape of a child in the second or third degree if the parent was less than eight years older than the victim;

- (2) child molestation in the second degree if the parent was less than eight years older than the victim;
- (3) child molestation in the third degree;
- (4) sexual misconduct with a minor in the first or second degree;
- (5) incest in the first or second degree if the parent was less than five years older than the victim;
- (6) child pornography offenses, communication with a minor for immoral purposes, or patronizing a juvenile prostitute;
- (7) any of the above offenses specified in predecessor or antecedent statutes; and
- (8) offenses analogous to the above offenses from another jurisdiction.

**Sexual Predator:** A parent who has been found to be a sexual predator shall be restrained from contact with the child that would otherwise be allowed. If the parent resides with a person who has been found to be a sexual predator, the parent shall be restrained from contact with the child, except contact that occurs outside of the presence of the person who has been found to be a sexual predator.

**Unsupervised Contact:** If a parent has been required to have contact with a child only under the supervision of a neutral and independent adult, the court may order that the parent and child may have unsupervised contact if supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children, and the following requirements are met:

- (1) the parent's offense was not against the child of the parent;
- (2) the court finds that unsupervised contact is appropriate and poses minimal risk to the child after considering testimony of a state-certified therapist, mental health counselor, or social worker who has supervised at least one period of residential time between the parent and the child and evidence of the parent's compliance with any community supervision requirements; and
- (3) if an offending parent was not ordered to attend sex offender treatment, the parent must obtain a psychological evaluation conducted by a state-certified treatment provider indicating the offender has the lowest likelihood of risk to re-offend.

Unsupervised contact between a parent and a child in the presence of an offending juvenile who resides with the parent may be ordered if supervised residential time has

occurred for at least two years during which time the juvenile has had no further arrests or convictions of sex offenses involving children, and the court finds that unsupervised contact that may occur in the presence of the juvenile is appropriate and poses minimal risks to the child. The court must consider testimony of a state-certified therapist, mental health counselor, or social worker who has supervised at least one period of residential time between the parent and the child in the presence of the juvenile and evidence of the adjudicated juvenile's compliance with any community supervision or parole requirements.

**Amended Bill Compared to Engrossed Second Substitute Bill:** The engrossed second substitute bill provided two different criteria for rebutting a presumption created under the act, depending on whether the child was or was not sexually abused by the parent or the person residing with the parent. The amended bill changes this to whether or not the child was the victim of the sex offense committed by the parent or the person who resides with the parent.

The engrossed second substitute bill provided that, if a parent rebutted a presumption that contact between the child and the parent posed a danger to the child, unsupervised contact between a parent and a child could be granted only if supervised contact had occurred for at least one year. The amended bill increases this period to two years.

The amended bill provides that a parent's child means that parent's natural child, adopted child, or stepchild.

The amended bill makes technical and clarifying amendments.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** Existing law is unconstitutional. We need to get a law on the books to protect children from people who have been convicted of very serious sex offenses and who pose a danger to children. This bill does not deal with allegations or accusations of sexual abuse. It applies only to persons who are convicted of very serious sex offenses.

**Testimony Against:** None.

**Testified:** Senator Karen Fraser, prime sponsor; Nancy Hawkins, Northwest Women's Law Center and self (pro); Janice Skinner, Active Disabilities of Grays

Harbor (pro); and Deborah Ruggles, Washington Coalition of Sexual Assault Programs (pro).