

HOUSE BILL REPORT

SSB 5511

As Reported by House Committee On:
Judiciary

Title: An act relating to adding a factor a court is to consider in determining residential time between parents.

Brief Description: Adding a factor a court is to consider in determining residential time between parents.

Sponsors: By Senate Committee on Judiciary (originally sponsored by Senators Kastama and Franklin).

Brief History:

Committee Activity:

Judiciary: 3/23/01, 3/29/01 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Requires the court to consider, when determining the child's residential schedule under a parenting plan, which parent is more likely to allow and encourage frequent and continuing contact between the child and other parent.
- Changes how the court weighs the factors it must consider when determining the residential schedule under a parenting plan.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Boldt, Dickerson, Esser, Lovick and McDermott.

Minority Report: Do not pass. Signed by 2 members: Representatives Lambert, Republican Vice Chair; and Casada.

Staff: Trudes Hutcheson (786-7384).

Background:

When a court enters an order for dissolution, legal separation, or declaration concerning the invalidity of marriage, the court must also determine a permanent parenting plan if the parties have minor children.

The parenting plan must: (a) provide a dispute resolution process for future disputes; (b) allocate decision making between the parents; and (c) establish a residential schedule for each child. In all aspects of the parenting plan, the court must consider the best interests of the child.

Regarding the residential schedule, the court must make provisions that encourage each parent to maintain a loving, stable, and nurturing relationship with the child consistent with the developmental level of the child and the social and economic circumstances of the family.

The court is required to consider the following factors when determining a child's residential schedule:

- (a) the relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (b) the knowing and voluntary agreements of the parties;
- (c) each parent's past and potential future performance of parenting functions;
- (d) the emotional needs and developmental level of the child;
- (e) the child's relationship with siblings and other significant adults and involvement with his or her physical surroundings, school, or other significant activities;
- (f) the wishes of the parents and wishes of a child who is mature enough to express reasoned and independent preferences; and
- (g) each parent's employment schedule, and making accommodations consistent with those schedules.

The court is required to give the greatest weight to the first factor.

A parent's residential time will be limited if it is found that the parent has engaged in any of the following conduct:

- (a) willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;
- (b) physical, sexual, or a pattern of emotional abuse of the child;
- (c) a history of acts of domestic violence or certain types of assault; or
- (d) certain sex offenses for which the parent has been convicted of as an adult.

Summary of Amended Bill:

Another factor is added to the list of factors the court must consider when determining a

child's residential schedule. If none of the restrictions regarding abandonment or abuse apply, the court must consider which parent is more likely to allow and encourage the child frequent and continuing contact with the other parent.

In determining a child's residential schedule, the court must give the greatest weight only to the relative strength, nature, and stability of the child's relationship with each parent. Whether a parent has taken greater responsibility for the daily needs of the child is now listed as a separate factor and is no longer part of the factor given the greatest weight by the court.

Amended Bill Compared to Substitute Bill:

The amended bill adds language to clarify that the court must consider whether any of the restrictions regarding abandonment or abuse apply before considering the friendly parent– factor.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: The friendly parent– factor takes into consideration the cooperation of the parents and the best interest of the child. Oregon already has similar language. This bill has the endorsement of the Family Law Section of the Washington State Bar Association. Children need two actively involved parents. Studies show that child support compliance is higher when both parents are heavily involved in the child's life. The bill encourages parents to work together for the benefit of the child. Separating the factors that the court has to consider is a good idea because the second portion of the first factor tends to be the only thing courts will consider. Domestic violence concerns are already addressed in current law. The current law discourages parents from being flexible about their time with the child because the court will generally order custody and visitation based on the actual time a parent spends with the child.

Testimony Against: This bill makes punishment and blame key factors for figuring out who is the friendlier– parent. This bill will result in more game playing between parents. The "friendly parent" factor is too subjective. It will work against the custodial parent and penalize a parent who may have good reasons to protect the child from the other parent. A parent may not raise legitimate reasons for fighting for custody for fear of being labeled unfriendly– and losing custody. Encouraging frequent and continuing contact– when there is a domestic violence situation is not sound policy. The way the factor is written, the court must look at the behavior of the parents during litigation when

there is already tension, and not at the parent's history of cooperation.

Testified: (In support) Senator Kastama, prime sponsor; Diane O'Connell, author; Marvin Charles, Divine Alternatives for Dads Services; Rick Bartholomew, Washington State Bar Association, Family Law Section; Lisa Scott, Taking Action Against Bias in the System; Bill Harrington, American Fathers Alliance; and Lea Dudley, Nate's Promise.

(Opposed) Margaret Dore, attorney; Dr. Jack Straton, National Organization for Men Against Sexism; Daphne Tomchak; Mary Pontarolo, Washington State Coalition Against Domestic Violence; David Law, attorney; and Sara Ainsworth, attorney.