

SENATE BILL REPORT

2SSB 5470

As Amended by House, April 18, 2007

Title: An act relating to dissolution proceedings.

Brief Description: Revising provisions concerning dissolution proceedings.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Stevens, McAuliffe, Brown and Regala).

Brief History:

Committee Activity: Human Services & Corrections: 1/26/07, 2/21/07 [DPS-WM].

Ways & Means: 2/27/07, 3/05/07 [DP2S].

Passed Senate: 3/08/07, 47-0.

Brief Summary of Bill

- Includes provisions to support the courts' ability to screen for complex cases, assist pro-se litigants, reduce conflict, and provide safe visitation and exchange alternatives for children.
- Creates a task force convened by the Supreme Court to: 1) review and adopt best practices regarding a clear and concise dispute resolution process; 2) develop standardized and consistent sexual assault and domestic violence training curriculums; and 3) assess the need for additional changes in family law matters, such as specialized evaluators, modification of forms, and assessment of fees.
- Provides for mediation at no or reduced expense to the parties in cases involving the allocation of residential time or other matters related to parenting plans.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5470 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Staff: Indu Thomas (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: That Second Substitute Senate Bill No. 5470 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Staff: Paula Moore (786-7449)

Background: In 1987, the Legislature enacted Substitute House Bill 48, the Dissolution of Marriage and Legal Separation Act. The act includes a legislative finding that the "best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm."

In an action for dissolution of marriage (divorce) when minor children are involved, a permanent parenting plan must be incorporated into the final decree. The permanent parenting plan addresses parenting functions such as maintaining a nurturing relationship with the child, attending to the child's daily needs, education, and financial support. The court uses the best interests of the child as the policy standard by which parental responsibilities are allocated. In establishing the child's residential schedule, the court is to consider the following seven factors [(factor 1) must be given the greatest weight]:

- 1) the relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken the greater responsibility for performing parenting functions relating to the daily needs of the child;
- 2) the agreements of the parties, provided they were entered into knowingly and voluntarily;
- 3) each parent's past and potential for future performance of parenting functions;
- 4) the emotional needs and developmental level of the child;
- 5) the child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- 6) the wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- 7) each parent's employment schedule, and must make accommodations consistent with those schedules.

The Dissolution of Marriage chapter defines "Parenting functions" as those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

- 1) maintaining a loving, stable, consistent, and nurturing relationship with the child;
- 2) attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
- 3) attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

- 4) assisting the child in developing and maintaining appropriate interpersonal relationships;
- 5) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and
- 6) providing for the financial support of the child.

In establishing a parenting plan, the court may limit decision-making authority and limit or preclude residential time if the court finds that there has been physical, sexual or a pattern of emotional abuse of the child, neglect, abandonment, or a history of domestic violence. The court may also limit or preclude residential time if the parent's conduct may have an adverse effect on the child. Factors to be considered include: neglect or substantial nonperformance of parenting functions; the parent's long-term emotional or physical impairment; the parent's long-term substance abuse; the absence of emotional ties; an abusive use of conflict which creates a danger to the child's psychological development; a parent's withholding the child from the other parent without good cause; and any other factor the court finds adverse to the child's best interest.

The parties involved in a dissolution with children may use mediation to resolve contested issues. The superior court may make a mediator available. The mediator may be a staff member of the court or may be a person or agency designated by the court.

A city, county, or nonprofit may create a dispute resolution center to provide mediation and dispute settlement services. Services are to be provided without charge or based upon the participant's ability to pay. To fund the center, a county may impose a surcharge of up to \$10 on each civil filing fee in district court. The county may also impose a surcharge of up to \$15 for the filing of a small claims action.

Counties may create a courthouse facilitator program to provide basic services to self-represented litigants in family law cases. The Counties may fund these facilitator programs through user fees, a surcharge of up to \$20 on family law cases filed in superior court, or both. Thirty-five of the state's 39 counties have created a facilitator program.

The Administrative Office of the Courts (AOC) produces a family law handbook to explain the state's laws regarding the rights and responsibilities of marital partners to each other and to any children during a marriage and a dissolution of marriage. County auditors provide a copy to any individuals applying for a marriage license.

In Washington State, interpreter services for legal proceedings may be paid by the government or the individual, depending on the party initiating the proceedings and the person requiring the services. For non-English speaking persons, the government pays for interpreter services when it initiated the legal proceeding. For any other legal proceeding, the non-English speaking person pays for the interpreter services unless found to be indigent. For hearing or speech impaired persons, the state pays for interpreter services when the person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state.

Summary of Second Substitute Bill: Dissolution/Parenting Plans:

All presumptions regarding the residential provisions of the Dissolution of Marriage and Legal Separation Act are eliminated. Court commissioners are to advise individuals that intentionally making false statements to the court in bad faith could be perjury. The daily

needs factor may be considered but not as a weighted factor. The ability of the court to order that a child frequently alternate between residences if in the best interest of a child is emphasized. Limitations placed on visitation should be reasonably calculated to protect the child and the parents. If limiting factors exist, a safety plan must be completed and filed with the court. Prior to entering a permanent parenting plan, the court must determine the existence of any information and proceedings available in the judicial information system relevant to the child's placement. A safety plan may be filed with the court. If ordered by the court, supervised visitation and safe exchange centers or alternative safe neutral locations must be used for visitation for cases with a history of high conflict or for parties without a satisfactory history of cooperation. Both parties are to be screened if there are allegations of limiting factors.

Family Court Liaison Program:

Counties may create the liaison program. If state funding is provided, counties must create the liaison program. Services provided by the liaisons are for parties involved in dissolution related matters. If the county has a liaison, then a person filing for dissolution, separation, or annulment is required to meet with the liaison 15 days prior to filing. AOC is to train liaisons to conduct initial screening for domestic violence, child abuse and neglect, substance abuse, and mental health issues. To fund the liaison program, a county may impose user fees, impose a surcharge of up to \$20 on the superior court family law cases, or both. The liaison fees remain with the county and are not subject to division between the state and county. The effective date for the provisions related to the liaisons is January 1, 2008.

Mediation:

Pre-decree and post-decree mediation may be provided to parties for issues involving the residential time or other matters related to the parenting plan. It is limited to within one year of filing the dissolution petition. Pre-decree and post-decree mediation may be provided by the county at a reduced or waived fee. If state funding is provided, then the mediation must be provided by the county at a reduced or waived fee. Each superior court must make a mediator available and must use the most cost-effective mediation service available. The effective date for the mediation section is January 1, 2009.

Family Law Handbook:

The family law handbook must be made available to both parties when a dissolution is filed. AOC must annually reimburse the counties for the cost of the family law handbook distributed to parties involved in dissolution cases.

Guardian Ad Litem:

AOC is required to include domestic violence training in the curriculum for Guardian Ad Litem training. AOC must annually reimburse the counties for the cost of the family law handbook distributed to parties involved in dissolution cases. Guardian Ad Litem for the indigent may be provided by the county at a reduced or waived fee. If state funding is provided, then the services must be provided by the county at a reduced or waived fee.

Dissolution Proceedings:

Qualified interpreters must be made available to parties and witnesses who require assistance. Within available resources, interpreters must be made available in dissolution-related

proceedings. Those needing literacy assistance are referred to multipurpose service centers. Parties may participate via video-conference as well as telephonically where available.

Task Force:

A task force on dissolution, dispute resolution, and domestic violence is to be convened and supported by the Supreme Court. If the Supreme Court does not convene the task force within 90 days of the effective date, the Office of Civil Legal aid will convene and support the task force. The task force expires June 30, 2009. The section creating the task force is null and void if specific funding is not provided in the operating budget by June 30, 2007.

Data Tracking:

AOC will consult with the Department of Health and Human Services Division of Child Support (DCS) and develop a residential time summary report. The parties involved in the dissolution must complete the form. DCS must compile and electronically transmit the information to AOC. AOC must report the information annually. The data tracking sections are null and void if specific funding is not provided in the operating budget by June 30, 2007.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: Although there is agreement that the current system disenfranchises fathers, and something must be done to change this system that makes children grow up without their fathers, there is disagreement regarding how to make that change. The practice of Family Court Judges can be changed without establishing a presumption in favor of shared parenting. An effective way to address the disenfranchisement of fathers is to increase the discretion of judicial officers while at the same time monitoring the performance of judicial officers in implementing the intent of the statute.

It is in the best interests of children to reduce conflict and increase communication between their parents. The solutions in this bill address the systemic issues that lead to conflicts and poor communication in several ways. Increasing the availability of courthouse facilitators is a necessary and appropriate solution. Screening for domestic violence is a great improvement, as victims of domestic violence often do not speak up regarding their situations. Professionals who are trained to identify the warning signs of domestic violence will also address the safety needs of children who are trapped in such circumstances. Additional resources for the victims of domestic violence are positive steps which will help stop the systems tendency to ridicule victims for the emotional state that they are in.

CON: The current statute allows implementation of the legislative intent of the statute. Rather than eliminating the daily needs factor, insert it into factor 3) as an un-weighted factor. The language regarding frequently alternating residences should not be eliminated as that may send a message to the courts that there should be no shared parenting at all.

This bill creates another layer of bureaucracy to support the domestic violence industry. Legislators should beware of agencies that are asking for more money, additional funds are

unnecessary. False allegations of domestic violence are a problem. Assessments must have standards. It is important to separate mere allegations from convictions for domestic violence.

The residency requirement would limit the choices of individuals who are trying to protect their privacy interests.

There are situations where parents harm their children. Parental rights should be permanently severed when individuals rape or abuse their children.

OTHER: The provisions of this bill which apply to the courts have some merit, the following suggestions for improvement should be considered. The current responsibilities of clerks and facilitators should not be increased. However, if the state does increase the requirements on the county courts, there should be some assurance that the funding will be provided and reliable. The AOC has too many responsibilities in this bill. It would be better to require the Department of Child Support to collect the data rather than the AOC as they are currently collecting the data in order to fulfill their child support collection duties. In addition, it would be preferable for the clerks to be responsible for the creation of handbooks. The workgroup should be housed in the Supreme Court rather than the Office of Civil Legal Aid.

The increase in resources and services are positive, however the following suggestions should be considered: include an appropriation for Guardian ad Litem services; the cost for mediators should be made retro-active; and interpreters should be required at orientations and during mediation and not just at hearings. Safe plans should be required in all dissolutions. Training for mediation and judges should be evidence-based and include a balanced mix of ideologies.

Persons Testifying (Human Services & Corrections): PRO: Senator Hargrove, prime sponsor; Leslie Owen, Northwest Justice Project; Sheranmarie Boling, Sandi Winters, Carmen Deleon, citizens; Rick Bartholomew, Washington State Bar Association Family Law Section; Lisa Aguilar, Snohomish County Center for Battered Women; Kim Renette Turnbow, Washington State Council Against Domestic Violence.

CON: Lisa Scott, James White, Taking Action Against Bias in the System; Pat Lessard, Mark Mahnkey, Washington Civil Rights Council; Andy Maris, The Other Parent.

OTHER: Pam Daniels, Betty Gould, Washington State Association of County Clerks; Kevin Rundle, Young Men's Christian Association, Pierce County; Stanley Green, citizen; Elisa Cooper, Washington Civil Rights Council.

Staff Summary of Public Testimony on Substitute Bill (Ways & Means): PRO: This legislation was worked out with stakeholders over the interim. The legislative intent is to provide for the best interest of the child regarding the changed relationship of the parents. It addresses two main concerns: domestic violence and the presumption provision. The main purpose is to reduce conflict. We worked to remove the presumption provision of the code and replace it with case by case discernment. This is a comprehensive approach to fix the problem. It also contains a screen for domestic violence and to provide information to filers on counseling and mediation. For this bill to work, it needs the funding listed in the fiscal note.

OTHER: This bill creates a lot of impact on the court. The appropriation for mediation under-funds what the fiscal note estimated the impact to be. What happens once the county runs out of funds? The mediation should be subject to the appropriation provided for this service. The liaison position would need to be an attorney and a master's level social worker in order to be knowledgeable about the various state and federal laws the liaison should know.

This bill requires every county to establish a facilitator program. The expense to small rural counties is substantial and they are strapped already for the services they do provide. The \$20 refund for the liaison service is an administrative nightmare. Also, there's a glitch in the bill that does not allow the county to retain the filing fees charged for the liaison. As currently drafted, they are to be subject to division with the state.

Persons Testifying (Ways & Means): PRO: Senator Hargrove, prime sponsor; Lonnie Johns-Brown, National Organization of Women; Gail Stone, Washington State Bar Association, Family Law Sections; Carey Morris, Washington State Coalition Against Domestic Violence.

OTHER: Pam Daniels, Snohomish County Clerk; Debbie Wilke, Washington Association of County Officials; Martha Hardin Cesar, Superior Court Judges Association.

Signed in, Unable to Testify & Submitted Written Testimony: CON: Joan Best, attorney.

House Amendment(s): The amendment changes the name of family law liaison program to initial point of contact program, and changes the effective date to after July 1, 2009, but before November 1, 2009. Venue limitations are removed, and will be studied by a task force, along with the initial point of contact program. The amendment also removes the requirements relating to the screening of both parents when one has been convicted of a sex offense and the completion of a safety plan. The court is required to review other databases in addition to the Judicial Information System for information relevant to the child's placement. The court is further allowed to consider the cultural heritage and religious beliefs of the child when establishing a permanent parenting plan.

Data tracking provisions are modified to require that the information be organized by county and itemized by quarter, rather than organized by judicial officer. Acknowledgment of the receipt of information still required prior to entry of a final decree, but not 15 days before filing.