

# SENATE BILL REPORT

## SB 5955

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As Reported By Senate Committee On:  
Law & Justice, January 31, 1996

**Title:** An act relating to joint residential placement.

**Brief Description:** Providing for joint residential placement.

**Sponsors:** Senators Owen, Schow, Hargrove, Hochstatter, Haugen, Oke, Roach, Morton, Sellar and Smith.

**Brief History:**

**Committee Activity:** Law & Justice: 5/10/95, 1/25/96, 1/31/96 [DP, DNP].

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Schow.

**Minority Report:** Do not pass.

Signed by Senators Smith, Chair; and Fairley, Vice Chair.

**Staff:** Susan Carlson (786-7418)

**Background:** Joint custody of children is a concept that was developed as an alternative custodial arrangement for divorcing parents. Joint custody means that the parents have equal rights to make major decisions affecting the child, and physical custody of the child is shared so that each parent has frequent and continuing contact with the child. Of the 43 states that have enacted joint custody laws, the majority provide that joint custody is an option without any presumptions for or against it. However, 11 states have a presumption in favor of joint custody, and seven have a presumption only if both parties agree to joint custody.

Washington is counted as a joint custody state because the Parenting Act adopted in 1987 allows the court discretion to provide that the parents have mutual decision-making authority over the child and that the child frequently alternate between the households of the parents for substantially equal intervals. It has been suggested that these provisions should be amended to establish a presumption in favor of joint custody.

**Summary of Bill:** The Legislature recognizes that minor children should be assured frequent and continuing contact with both parents regardless of the marital status of the child's parents. The Legislature further finds that both parents should exercise the responsibility to make decisions and perform other parental functions necessary for the care of their children.

Joint residential placement is presumed to be in the best interests of minor children unless the parents agree otherwise or the court finds that it is going to be detrimental to the child. A parent alleging that joint residential placement would be detrimental has the burden of proving the allegation by clear, cogent and convincing evidence. Hearings on this issue may be closed to the public.

Joint residential placement is defined to include joint physical custody and joint legal custody. Joint physical custody means each parent has substantially equal periods of time in which the child resides with or is under the supervision of each parent. Joint legal custody means decision-making authority relating to the health, education, safety, and welfare of a child.

Unless the parents agree otherwise or the court finds it would be detrimental to the child, the court is required to effectuate the following order of preference when addressing the residential placement of a minor child: (a) to both parents jointly; (b) to either parent solely with visitation rights to the other parent; or (c) if to neither parent, to a person found by the court to be able to provide a wholesome and stable environment to the child.

If the court awards residential placement to one parent solely, the court shall consider, among other factors, which parent is more likely to allow the child frequent contact with the other parent.

An award of joint residential placement obligates the parents to exchange information about the health, education, safety, and welfare of the child, and confer with one another in the exercise of decision-making about the child. Absent an agreement between the parties allocating decision-making authority, the court is to allocate decision-making authority in accordance with the act and existing law limiting parenting plan provisions where there has been abuse or neglect of the child. Residential provisions for the child must maintain each parent's relationship with the child, and be consistent with the child's developmental level and the family's social and economic circumstances.

An order of joint residential placement may be modified or terminated upon clear, cogent, and convincing evidence that continuation is detrimental to the child.

Any order for residential placement of a minor child may be modified, in accord with the provisions of the act, to an order of joint residential placement.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** A presumption favoring joint custody will keep both parents involved with their child, and there will be less conflict over child support and visitation issues.

**Testimony Against:** Current law allows the court to consider the individual circumstances of each case and joint custody type provisions can be entered if the court finds it appropriate. Imposing joint custody on parents who cannot get along will increase conflict, not reduce it.

**Testified:** PRO: Doug Martin; Jim Kastama, Joint Custody Assn. and WA Families for Non-Custodial Rights; Michele Delo, Genie Saline, Jamaica Filgo, WA Families for Non-Custodial Rights; Aldoren Kauzlarich; Jerry Lukin; Julie Drennan; Paul and Justina Patricio; Linda Reeves; Stephen Cramer; Steven Peck; Terry Gibson; CON: Judge Faith Ireland, King County Superior Court; Patricia Morgan, WSBA Family Law Section; Carolyn Davis, NW Women's Law Center.