Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Civil Rights & Judiciary Committee

HB 2237

Brief Description: Concerning limitations in parenting plans.

Sponsors: Representatives Taylor and Walen.

Brief Summary of Bill

- Amends provisions governing limitations that may be imposed in a parenting plan on residential time with a child, decision-making authority, and dispute resolution by reorganizing language and making revisions and additions to substantive provisions.

Hearing Date: 1/17/24

Staff: Edie Adams (786-7180).

Background:

Parenting Plans.
In dissolution or legal separation cases, the court must establish a parenting plan that provides for the care of any minor children. The parenting plan must include an allocation of decision-making authority to one or both parents, establish a residential schedule for the child, and provide for the resolution of future disputes between the parents. In establishing a parenting plan, the court is either required or allowed to impose limitations on residential time, decision-making, and dispute resolution based on specified conduct of the parent or a person with whom the parent resides.

Mandatory Limitations on Decision-Making and Dispute Resolution.
The parenting plan must not establish mutual decision-making or a dispute resolution process other than court action if a parent has engaged in: willful abandonment that continues for an

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extended period or substantial refusal to perform parenting functions; physical, sexual, or a pattern of emotional abuse of a child; or a history of acts of domestic violence or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy.

Mandatory Limitations on Residential Time.
A parent's residential time with a child must be limited if the parent has engaged in the following conduct: willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; physical, sexual, or a pattern of emotional abuse of a child; a history of acts of domestic violence or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy; or a conviction as an adult of specified sex offenses.

A parent's residential time with a child must be limited if the parent resides with a person who has engaged in the following conduct: physical, sexual, or a pattern of emotional abuse of a child; a history of acts of domestic violence or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy; or conviction or adjudication of specified sex offenses.

The court must not enter an order allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence to have committed sexual assault against the child's parent, and that the child was born within 320 days of the sexual assault.

Limitations Based on Sex Offenses or Sexual Abuse of a Child.
Sexual Predator. If a parent has been found to be a sexual predator, the court must restrain the parent from contact with a child, and if the parent resides with a person who has been found to be a sexual predator, the court must restrain the parent from contact with the child except contact that occurs outside that person's presence.

Rebuttable Presumption Based on Sex Offenses. There is a rebuttable presumption that: (a) a parent who has been convicted as an adult of the following sex 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 the following sex offenses, places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. These offenses include:

- Incest 1 or 2, if the person was five or more years older than the victim;
- Rape of a Child 1;
- Rape of a Child 2 or 3, if the person was eight or more years older than the victim;
- Child Molestation 1;
- Child Molestation 2, if the person was eight or more years older than the victim;
- Indecent Liberties; or
- any of the above offenses specified in predecessor or antecedent statutes, or analogous offenses from another jurisdiction.

Unless the parent rebuts the presumption, the court must restrain the parent from contact with a child. If the parent rebuts the presumption, the court may allow the parent to have residential time with the child, or to have residential time with the child in the presence of the person convicted or adjudicated of the offense, supervised by a neutral and independent adult pursuant to an adequate plan for supervision. The court must not approve a supervisor unless the court finds the supervisor is willing and capable of protecting the child from harm.

Rebutting the Presumption. The presumption arising from commission of a sex offense by a parent or by a person who resides with the parent may be rebutted only after a written finding that the child was not conceived and born as a result of a sexual assault committed by the parent, that contact is appropriate and poses minimal risk to the child, the parent or person has successfully engaged in sex offender treatment or is making progress in treatment, and the treatment provider believes contact is appropriate and poses minimal risk to the child. If the child was the victim of the sex offense and the child is in or has been in therapy for victims of sexual abuse, the child's counselor must believe contact is in the child's best interest.

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 must nonetheless be limited if the parent has been convicted as an adult, 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:

- Rape of a Child 2 or 3, if the person was less than eight years older than the victim;
- Child Molestation 2, if the person was less than eight years older than the victim;
- Child Molestation 3;
- Sexual Misconduct with a Minor 1 or 2;
- Incest 1 or 2, if the person was less than five years older than the victim;
- any offense under the chapter governing sexual exploitation of children; or
- any of the above offenses specified in predecessor or antecedent statutes, or analogous offenses from another jurisdiction.

Limitations imposed by the court must be reasonably calculated to protect the child from physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent, and to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the other parent. Limitations the court may impose include, but are not limited to, supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds that limitations on residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent, the court must restrain the parent from all contact with the child.

Sexual Abuse. The court must not allow a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or a preponderance of the evidence in a dependency action to have sexually abused that child, except upon recommendation by an evaluator or therapist that the child is ready for contact with the parent and will not be harmed by

the contact. The court must not allow a parent to have contact with the child in the presence of a person who resides with the parent and who has been found by clear and convincing evidence in a civil action or a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds the parent accepts that the person engaged in the harmful conduct and the parent is willing and capable of protecting the child from harm.

Discretionary Limitations. The court may limit or preclude residential time if the parent's involvement or conduct may have an adverse effect on the child's best interests. Factors to be considered include: neglect or substantial nonperformance of parenting functions; a long-term emotional or physical impairment that interferes with the performance of parenting functions; a long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions; the absence or substantial impairment of emotional ties; the abusive use of conflict that creates a danger of serious damage 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.

Unsupervised Contact.
A court must not order unsupervised contact between a parent and a child who was sexually abused by that parent.

If a parent has been required to have supervised residential time based on a sex offense committed by the parent or by a juvenile who resides with the parent, unsupervised contact may be ordered if supervised residential time has occurred for at least two years and the parent, or the person who resides with the parent, has no further arrests or convictions of sex offenses involving children and: in the case of a parent convicted of a sex offense, the offense was not against the parent's child; the court finds that unsupervised contact is appropriate and poses minimal risks to the child, considering specified evidence; and, if the parent or juvenile was not ordered to attend sex offender treatment, the parent or juvenile must obtain a psychological evaluation indicating the person has the lowest likelihood of risk to re-offend.

Determination Not to Impose Limitations.
A court may elect not to impose required limitations under some cases, excluding those where a rebuttable presumption applies, the parent or person who resides with a parent has been found to be a sexual predator, or the child was sexually abused by the parent. The court need not apply limitations if it expressly finds that contact will not cause abuse or harm to the child and the probability that the abusive conduct will recur is so remote that limitations would not be in the child's best interests, or that the parent's conduct did not have an impact on the child.

Summary of Bill:

Provisions of law governing when a court either must or may impose limitations in parenting plans are reorganized and updated. Provisions governing limitations that arise as a result of sexual abuse of a child or sex offenses committed against a child are separated into a separate section of law. Many provisions remain substantially the same or similar to requirements under

current law but are restructured and given subject headings for readability. New definitions are added for "abusive use of conflict," "protective actions," and "willful abandonment," and a number of other substantive changes or additions are made.

Limitations on Residential Time Based on Sex Offenses or Sexual Abuse.
The rebuttable presumption that a parent must be restrained from contact with a child if the parent or a person the parent resides with has been convicted of certain sex offenses applies for any sex offense committed against a child by the parent or person who resides with the parent. With respect to a parent who resides with a juvenile adjudicated of a sex offense, the presumption applies only if the juvenile was at least 8 years older than the victim of the offense. Standards for rebutting the presumption are revised by removing the requirements that: there must be a written finding that the child was not conceived and subsequently born as a result of a sexual assault committed by the parent, and the person's treatment provider believes contact between the parent and child is appropriate and poses minimal risk.

Contact if Presumption is Rebutted. If a court orders supervised residential time because the parent resides with a person who has been convicted as an adult or adjudicated as a juvenile of a sex offense against a child, the supervisor may be the parent if the court finds the parent is willing and capable of protecting the child from harm. Provisions governing when a court may allow unsupervised contact between a parent and child in the presence of a juvenile adjudicated of a sex offense who resides with the parent are removed.

Sexual Abuse by Parent or Person Who Resides With the Parent.
Language regarding the burden of proof for a finding of sexual abuse of a child in a civil action or dependency case is revised. The finding must be based on a preponderance of the evidence in a family law or dependency case, rather than clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action.

Limitations That May Be Imposed.
More specific requirements are established governing supervised visitation and court orders for evaluation and treatment.

Supervised Visitation. If a court orders supervised visitation, there is a presumption of supervision by a professional supervisor. The court must include clear written guidelines and prohibitions to be followed by the supervised party. Supervised visits may not occur until the parties have signed an acknowledgment confirming that they have read and agree to follow the court orders and the guidelines and prohibitions regarding visitation. The court may only permit supervision by an individual or program that is committed to protecting the child from physical or emotional abuse or harm and is willing and capable of intervening in behaviors inconsistent with the court orders and guidelines.

A parent may seek an emergency ex parte order temporarily suspending residential time in certain circumstances. The court must set a review hearing to take place within 14 days of entering an ex parte order. The ex parte order may be requested if: the supervised parent

repeatedly violates the court order or guidelines; the supervised parent threatens the supervisor or child with physical harm, commits an act of domestic violence, or materially violates a treatment condition; or the supervisor is unable or unwilling to protect the child and/or the protected parent, or no longer willing to provide service to the supervised parent.

Evaluation or treatment. The court may order a parent to undergo evaluations for such issues as domestic violence, substance use disorder, mental health, or anger management, with collateral input provided from the other parent. Reasons for any lack of collateral input from the other parent must be documented in the evaluation report. The court may order a parent to complete treatment if the need for treatment is supported by the evidence and the evidence supports a finding that the issue interferes with parenting functions. A parent's residential time and decision-making authority may be conditioned upon completion of court-ordered evaluation or treatment.

Determination Not to Impose Limitations.
A court may decide not to impose limitations on residential time in cases where the limitations are not based on sexual abuse of a child or a sex offense against a child. The court's determination may be based on agreement of the parents or upon express written findings based on clear and convincing evidence that contact will not cause abuse or harm to the child and the probability that the abusive conduct will recur is so remote that limitations would not be in the child's best interests. Language is removed that allows a court to not impose limitations based on an express finding that the parent's conduct did not have an impact on the child.

The court is given discretion to decide not to impose limitations on decision-making or dispute resolution if the parents agree or the court makes express written findings based on clear and convincing evidence that it would be contrary to the child's best interests to order sole decision making or limit dispute resolution. If there has been a finding of domestic violence, the court must not require face-to-face mediation, arbitration, or interventions that require the parties to share the same physical or virtual space.

A number of factors are established for the court to consider in determining whether there is clear and convincing evidence supporting a determination not to impose limitations.

When Limitations Apply to Both Parents.
New provisions are established allowing a court to make exceptions in applying limitations where both parents are subject to limitations.

If mandatory residential time limitations apply to both parents, the court may make an exception in applying the limitations. The court must make detailed written findings regarding the comparative risk of harm posed by each parent and explain the limitations imposed on each parent, including any decision not to impose restrictions on a parent or to award decision making to a parent who is subject to limitations.

If mandatory residential time limitations apply to one parent and discretionary limitations on

decision-making and dispute resolution apply to the other parent, there is a presumption that mandatory limitations have priority in setting the limitations of the residential schedule, decision making, and dispute resolution. The court must make detailed written findings of reasons for any deviation from the presumption.

When discretionary limitations on decision-making and dispute resolution apply to both parents, the court must make detailed written findings regarding the comparative risk of harm to the child posed by each parent, and explain the limitations imposed on each parent, including any decision not to impose restrictions on a parent or to award decision making to a parent who is subject to limitations.

In making these determinations, the court must consider the best interests of the child and which parenting arrangement best maintains a child's emotional growth, health and stability, and physical care. Best interests of the child are 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.

Appropriation: None.

Fiscal Note: Requested on January 10, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.