

HOUSE BILL REPORT

2SSB 5470

As Reported by House Committee On:
Judiciary

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:

Judiciary: 3/21/07, 3/30/07 [DPA].

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

- Amends the factors the court must consider when determining a child's residential schedule in temporary and permanent parenting plans.
- Establishes procedures, such as safe exchange places and supervised visitation, for courts to address domestic violence and child abuse issues.
- Contains mediation provisions, creates a dissolution task force, requires tracking of dissolution information, and contains other provisions related to dissolution issues.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Trudes Tango (786-7384).

Background:

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.

When a court enters a decree of dissolution, the court must make provisions for a parenting plan for any minor children of the marriage. The parenting plan must establish the residential time schedule for the child and each parent based on the best interest of the child.

Residential time: For permanent parenting plans, the court must consider the following factors:

- (1) 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. This first factor is given the greatest weight;
- (2) the agreements of the parties;
- (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 wishes of a child who is sufficiently mature to express reasoned and independent preferences; and
- (7) each parent's employment schedule.

When entering a temporary parenting plan, the court must consider the above factors, but must give particular consideration to:

- (1) which parent has taken greater responsibility during the last twelve months for performing parenting functions relating to the daily needs of the child; and
- (2) which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

There is a presumption against residential provisions that require the child to frequently alternate his or her residence between the parents for brief and substantially equal intervals of time (sometimes referred to as "shared parenting"). The court may order shared parenting only if it finds that: (a) there has been no parental misconduct that requires the court to limit residential time; (b) either the parties have knowingly and voluntarily agreed to such provisions or the parties have a satisfactory history of cooperation and shared performance of parenting functions and are available to each other; and (c) the provisions are in the child's best interest.

Limitations on residential time: The court must limit residential time between a parent and child if the parent has engaged in certain specified misconduct, including if there has been physical, sexual, or a pattern of emotional abuse of the child; a history of acts of domestic violence or an assault that causes grievous bodily harm or the fear of such harm; or the parent has been convicted as an adult of certain sex offenses. For a parent who has been convicted of a sex offense, there is a rebuttable presumption that the parent poses a present danger to the child, and the court must restrain the parent from contact with the child unless the parent meets certain conditions to rebut that presumption.

For other misconduct, the court must impose limitations that are reasonably calculated to protect the child. Limitations may include requiring supervised contact with a court-approved supervisor. If the court finds that limitations on residential time will not protect the child from harm or abuse, the court must restrain the parent from all contact with the child.

Mediation: The court may set any contested matter pertaining to the dissolution for mediation before or concurrent with the setting of the matter for hearing. Courts may make available a mediator, who can be a member of the professional staff of the court or mental health services agency or any other person designated by the court.

Other: Courts may appoint a guardian ad litem (GAL) or an investigator to assist the court in determining the best interest of the child. The GALs and investigators report factual information to the court regarding parenting arrangements. The court may order either or both parents to pay for the costs of the GAL, according to their ability to pay. Some courts have volunteer GAL services through Court-Appointed Special Advocate (CASA) programs. GALs and investigators must complete the statewide training developed by the Administrative Office of the Courts (AOC). CASA volunteers receive training equivalent to the statewide training curriculum.

When a person applies for a marriage license, the county auditor must give the person a family law handbook created by the AOC. The handbook must contain information about marriage, dissolution, child support, and other family law information.

Summary of Amended Bill:

Residential Time: The factors the court must consider when determining residential provisions under a parenting plan is amended. Whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child is removed from the first factor and must still be considered, but not given the greatest weight. When entering a temporary parenting plan, the court must give particular consideration to the relative strength, nature, and stability of the child's relationship with each parent, rather than which parent has provided for the daily needs of the child within the last 12 months.

The presumption against "shared parenting" is removed. The court may order that the child frequently alternate his or her residence between the parents for brief and substantially equal intervals of time if it is in the child's best interest.

Limitations on residential time: Before entering a permanent parenting plan, the court must determine the existence of any relevant information and proceedings in the judicial information system and other databases..

When there are allegations of child abuse or domestic violence, both parties must be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties. The GALs and investigators appointed to those cases must have additional training when it is available. The limitations that the court

imposes concerning residential time with the child must be reasonably calculated to provide for the safety of the parent who may be at risk of abuse or harm that could result from the parents having contact with each other. Limitations the court may impose include, but are not limited to, supervised contact and completion of relevant counseling or treatment.

Courts may order the exchange of the child to occur in protected settings and order supervised residential time in cases where there is domestic violence, child abuse, or when the parties do not have a satisfactory history of cooperation or there is a high level of parental conflict.

Mediation: If a victim requests mediation, the court may permit mediation if the court finds that mediation is appropriate and the victim is permitted to have a supporting person present during mediation. When appropriate, parties shall be provided access to trained domestic violence advocates.

Effective January 1, 2009, courts may provide pre-decree and post-decree mediation at reduced or waived fees to the parties within one year of filing the dissolution petition. Courts must provide such services if state funding is provided for that purpose. Courts must use the most cost-effective mediation services that are readily available unless there is good cause to use an alternative provider.

Other provisions: Effective January 1, 2008, the family law handbook must be provided to the petitioner when a dissolution petition is filed and the respondent, unless the respondent did not file a response or appear in court. The AOC must reimburse counties for each copy of the handbook that is distributed directly to parties.

Parties and witnesses who require court interpreters shall be provided access to qualified interpreters. Interpreters must also be made available at dissolution-related proceedings to the extent practicable and within available resources. Parties and witnesses who require literacy assistance shall be referred to service centers established under the Displaced Homemaker Act, which provides job counseling, training, and placement services, skills training, and other services.

Courts may allow parties and witnesses to participate in proceedings through telephone or interactive video conference.

Courts must provide indigent parties with GAL services at a reduced or waived fee if state funds are provided for that purpose.

Task Force: The Legislature requests the Washington Supreme Court to convene a task force to establish statewide protocols for dissolution cases.

The task force shall develop dispute resolution procedures; a sexual assault training curriculum; standards for parenting evaluators; and a domestic violence training curriculum for evaluators in dissolution cases. The task force must make recommendations regarding specialized evaluators for dissolution cases, dissolution forms and procedures, and fees. The task force must also study issues related to venue and to establishing a program that would be the initial point of contact for parties in dissolution cases where parties are provided

information on the dissolution process and alternatives to dissolution. The task force must address issues that include, but are not limited to: (a) whether the program should be required for all parties in dissolutions; (b) whether the program should be administered by the courts or county clerks; and (c) the type and extent of information provided to parties and how such information should be delivered.

A total of 19 persons representing various groups will be appointed to the task force by the Governor, the Speaker of the House, the President of the Senate, and the Supreme Court. Membership in the task force may also include members of the Civil Legal Aid Oversight Committee (Committee), including but not limited to the legislative members of the Committee. The task force must present preliminary findings by September 1, 2008 and a final report and recommendations by December 1, 2008.

Data Tracking: If state funds are appropriated for this purpose, the AOC and Department of Social and Health Services (DSHS) must begin compiling and tracking certain dissolution and residential time data. Parties to a dissolution must file a residential time summary report with the court that includes information on: (a) the actual time each parent is awarded residential time; (b) enforcement practices; (c) whether the parties were represented; (d) whether domestic violence, child abuse, chemical dependency, or mental health issues exist; and (e) whether the case was agreed or contested. The DSHS must compile the information and transmit the information electronically to the AOC for purposes of tracking. At least once a year, the AOC must report the information organized by individual counties and make the report available to the public. The report must not contain personal identifying information of the parties.

Amended Bill Compared to Second Substitute Bill:

The striking amendment does the following:

- removes provisions regarding the family liaison program;
- removes venue provisions;
- removes the requirement for courts to advise the parties that if they make false statements under oath they may be found guilty of perjury;
- removes the requirement that both parents be screened when one has been convicted of a sex offense (both parties are still screened if there are allegations of abuse);
- removes the requirement that a safety plan be completed;
- removes the requirement that the Office of Civil Legal Aid convene the task force if the Supreme Court does not;
- requires the task force to study issues related to venue and establishing a program that would be the initial point of contact;
- requires the information compiled by AOC and DSHS to be organized by individual counties, rather than a judicial officer, and prohibits the parties' personal identifying information from being in the report;
- removes the provision requiring both parties to acknowledge the receipt of information before the court can enter a final dissolution decree; and
- makes other changes for clarity.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed, except section 201, relating to the creation of a family law handbook, which takes effect January 1, 2008, and section 501, relating to mediation, which takes effect January 1, 2009. However, sections 306, 701, and 702 are null and void if not funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill is a result of a workgroup that met during the interim. Everyone agrees that both parents should be involved in their child's life as much as possible. The bill seeks to recognize the original intent of the dissolution act which is to serve the best interest of the child and to protect the child from abuse and emotional harm. The pattern in the courts' awards of residential time has not reflected that intent. The goals are to reduce the number of divorces, reduce conflict in the divorce, and reduce the impact of conflict on children. The bill removes the presumptions in current law regarding residential time and does not create new presumptions. Instead, the bill gives the courts discretion to make more individualized decisions. This bill focuses on the kinds of things that could help families who really want to get along and who want to keep conflict to a minimum. Mediation, access to liaisons, and eliminating the presumption will help. Changes to the dissolution laws are long overdue. This bill pushes the court to consider domestic violence issues before awarding residential time.

(In support with concerns) Creating a presumption for shared parenting will be a barrier for domestic violence victims. It would require victims to once again prove domestic violence, and these victims are often unrepresented and already have to deal with controlling and abusive parties on the other side.

(With concerns) The 15 day provision should be removed. The liaisons should be informational only and not gatekeepers. Venue issues should be studied to define exactly what the problem is. Eliminating the presumptions is a good idea. Court clerks are the initial access to the system, and the liaison program is going to change that. Court clerks already refer parties to the information and services in the bill. There are logistical issues with the bill and clerks should be involved in implementing the bill. The counties cannot provide family law handbooks to parties if the parties cannot be found. The Administrative Office of the Courts should provide the necessary number of copies of the handbooks to the clerks. Information provided to the liaisons must be kept confidential. It is unclear who will be paying for the assessments that are required in this bill. Passing the cost to the parties creates access to justice issues. The requirement for data tracking by individual judicial officer will help determine how residential time is being awarded across the state.

(Opposed) This bill needs more work before it passes. It's unclear who these liaisons are and what their role is. The venue provision should be removed. People should have a choice to

file in a different county. There should not be a 15-day waiting period before a person can file for divorce. The bill focuses too much on the small percentage of cases with domestic violence or other issues and favors people who make money off of divorce. Most families are normal and the law should address the needs of those families. To achieve what is in the best interest of the child, the bill needs to have a shared parenting presumption. Shared parenting is not being awarded in this state. The court system still uses the "tender years" doctrine, and they award a majority of time to the child's mother. A shared parenting presumption would ensure that children are able to see both of their parents on a regular basis. Biases for gender and race are addressed by legislation, and there should be legislation addressing the bias in the divorce laws.

Persons Testifying: (In support) Senator Hargrove, prime sponsor; Lonnie Johns-Brown, Washington State National Organization for Women; and Tracy Parker.

(In support with concerns) Grace Huang, Washington State Coalition Against Domestic Violence.

(With concerns) Rick Bartholomew, Washington State Bar Association, Family Law Section; Siri Woods, Chelan County Clerks; and Ruth Gordon.

(Opposed) Senator Kastama; Lisa Scott, Taking Action Against Bias In the System; Patricia Lessard and Mark Mamnkey, Washington Civil Rights Council; and Greg Howe, The Other Parent.

Persons Signed In To Testify But Not Testifying: Pamela Crone, Northwest Women's Center; and Sandra Johnston.