

SENATE BILL REPORT

E2SSB 5676

As Passed Senate, February 12, 1996

Title: An act relating to restrictions on residential time and visitation for abusive parents.

Brief Description: Restricting residential time and visitation for abusive parents.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Fraser and Kohl).

Brief History:

Committee Activity: Law & Justice: 2/20/95, 2/27/95 [DPS]; 1/11/96, 1/31/96 [DP2S]. Passed Senate, 3/14/95, 43-0; 2/12/96, 49-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Second Substitute Senate Bill No. 5676 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Smith, Chair; Fairley, Vice Chair; Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Quigley, Roach and Schow.

Staff: Lidia Mori (786-7755)

Background: If a parent has been convicted as an adult of a sexual offense or has been found to be a sexual predator, a court is required to restrain the parent from residential time or visitation with a child that would otherwise be allowed. If a parent resides with an adult who has been convicted, or a juvenile who was adjudicated, of a sexual offense or found to be a sexual predator, a court will require contact between the parent and the child to occur outside the presence of the convicted or adjudicated person.

Summary of Bill: A parent's residential time with a child is limited by the court if the parent is convicted of rape of a child in the second or third degree, child molestation in the second or third degree, sexual misconduct with a minor in the first or second degree, incest in the first or second degree, or any crime dealing with sexual exploitation of children. If a parent lives with a person who is convicted or adjudicated of any of the above mentioned crimes, residential time or visitation is limited by the court. A parent who is found to be a sexual predator is restrained from otherwise allowable residential time or visitation with a child. A parent who resides with an adult or a juvenile who is found to be a sexual predator is restrained from contact with the parent's child except for contact that occurs outside that person's presence.

A parent who commits incest in the first or second degree must have been at least five years older than the victim in order for the court to limit the residential time. A parent who commits rape of a child in the second or third degree or child molestation second degree must have been at least eight years older than the victim in order for the court to order limited residential time.

If the parent does not meet this age difference criteria, then a rebuttable presumption arises that the parent poses a present danger to the child. The court must therefore restrain the parent from residential time or visitation. This presumption also applies when a parent has been convicted of rape of a child in the first degree, child molestation in the first degree or indecent liberties.

If the child with whom the parent is seeking residential time or visitation is not sexually abused by the parent, the presumption may be rebutted by the court finding that contact between the child and the offending parent is appropriate and poses minimal risk to the child. In addition, the parent must successfully engage in or be making progress in treatment for sex offenders if it is ordered by a court. If the child with whom the parent is seeking residential time or visitation is sexually abused by the parent, the presumption may be rebutted by the opinion of the child's counselor, if the child is or has been in therapy for victims of sexual abuse, that contact between the child and the offending parent is in the child's best interest. In addition, the parent must successfully engage in or be making progress in treatment for sex offenders if it is ordered by a court.

A parent who resides with an adult who is convicted, or a juvenile who is adjudicated, of a sex offense that gives rise to the rebuttable presumption may obtain supervised residential time or visitation after a court makes a written finding that contact between the child and the parent is appropriate and the parent is able to protect the child in the presence of the convicted or adjudicated person. In addition, the convicted or adjudicated person must successfully engage in treatment for sex offenders and the treatment provider must believe that contact is appropriate.

A parent who resides with a juvenile who is adjudicated of a sex offense may obtain unsupervised residential time or visitation with a child in the presence of the adjudicated juvenile after the presumption is rebutted and supervised residential time or visitation occurred for at least one year, during which time the juvenile has had no further arrests or convictions of sex offenses involving children. The court must make extensive written findings to allow such unsupervised contact.

If the court finds that the presumption is rebutted, the court may order supervised residential time or supervised visitation. The supervisor must be a neutral and independent adult and there must be an adequate plan for supervision. In order for the court to approve the supervisor, it must find that he or she is willing and capable of protecting the child from harm.

A court may order unsupervised residential time or visitation if supervised residential time or visitation occurs for at least one year and the parent has no further arrests or convictions of sex offenses against children. Unsupervised residential time or visitation may only take place if the offense of the parent is not committed against a child, step-child or adopted child of the parent. The court must make a finding that such unsupervised time is appropriate and poses minimal risk to the child, after consideration of testimony from a state-certified therapist, mental health counselor or social worker who supervised at least one period of residential time or visitation between the parent and the child. The court also is directed to consider whether the parent complied with probation requirements, if any. If the parent is not ordered by a court to attend treatment for sex offenders, then the evidence must include the results of a psycho-sexual evaluation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: This bill will correct the overly broad bill that passed during the 1994 session. It represents a consensus between interested parties.

Testimony Against: None.

Testified: Senator Fraser, original prime sponsor; David Law, King Co. Family Law Section; Mary Hammerly, WA State Bar Assoc. Family Law Section; Debra Ruggles, WA Coalition of Sexual Assault Programs.

House Amendment(s): A court may order unsupervised residential time or visitation if supervised residential time or visitation has occurred for at least two years and the parent has no further arrests or convictions of sex offenses against children.

Unsupervised contact between a parent and a child in the presence of a juvenile who has been adjudicated of a sex offense who resides with the parent may be ordered if supervised residential time has occurred for at least two years during which time the juvenile has had no further arrests or convictions of sex offenses involving children. The court must find that the unsupervised residential time is appropriate and poses minimal risk to the child.