

HOUSE BILL REPORT

ESSB 5061

As Passed House - Amended
March 3, 1994

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

Brief Description: Limiting residential time in parenting plans and visitation orders for abusive parents.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Fraser, Winsley and A. Smith).

Brief History:

Reported by House Committee on:
Judiciary, February 25, 1994, DPA;
Passed House - Amended, March 3, 1994, 96-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 17 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; Forner; J. Kohl; Long; Morris; H. Myers; Riley; Schmidt; Scott; Tate and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: When parties who have children get divorced, the court establishes a residential schedule. The "residential schedule" designates in which home the child will reside on given days of the year.

The court must limit a parent's residential time with the child if the parent has engaged in physical, sexual, or a pattern of emotional abuse of a child. The standard of proof for entering a finding of abuse is by a preponderance of the evidence.

The limitations imposed must be reasonably calculated to protect the child from abuse. If the court finds limiting the residential time will not adequately protect the child from parental abuse, the court must restrain the parent from all contact with the child.

If the court expressly finds that contact between the parent and child will not cause physical, sexual, or emotional abuse to the child and that the probability that the parent's abusive conduct will recur is so remote that imposing limitations would not be in the child's best interest, or, if the court expressly finds that the parent's conduct did not impact the child, the court does not have to impose limitations.

The type of limitations imposed, if any, are within the court's discretion. No mandatory provisions exist requiring the judge to impose limitations when the parent has sexually abused the child.

Similar provisions exist in the chapter governing nonparental actions for custody which may involve setting a visitation schedule for a parent when a third party is awarded custody, such as a grandparent.

Summary of Bill: Restrictions on parent contact with a child are as follows:

- (1) A parent who has been convicted of incest or other sex offenses, or is a "sexual predator," may not have contact with the parent's child.
- (2) If the parent lives with a person who fits those categories, any contact the parent has with the child must be outside that person's presence.
- (3) In other cases in which it is found that the parent or a person living with the parent has engaged in physical, sexual, or emotional abuse of the child or has engaged in domestic violence, the court may allow contact with the child with limitations imposed which are designed to protect the child. The court may not order contact with a child if the parent has been found in a civil or dependency action to have sexually abused the child unless the child's therapist recommends that the contact occur. If the court imposes a limitation that a supervisor supervise the contact, the supervisor must accept that the harmful conduct occurred and must be willing to and capable of protecting the child. If the court finds that a person with whom the parent resides has engaged in sexual abuse of a child, the court may not allow the parent to contact the child unless the parent accepts that the person engaged in the harmful conduct and the parent is capable and willing to protect the child from the other person.
- (4) If the court expressly finds that contact between the parent and child will not harm the child, then the

court does not have to impose limitations on contact. This provision does not apply if the parent has been convicted of a sex offense or is a sexual predator, lives with a person who has been convicted of a sex offense or is a sexual predator, or if the child's therapist has not recommended contact between the parent and child.

The same rules apply to nonparental actions for child custody.

Fiscal Note: Not requested.

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

Testimony For: Current law does not provide sufficient protection for children of divorced parents who have been abused by one of the parents or who are exposed to other abuser's in the parent's household. Judges do not exercise their discretion wisely in these cases, consequently current law needs to be changed to restrict the judge's discretion.

Testimony Against: Current law is adequate and provides greater protection for children than the proposed bill. Judges do exercise discretion wisely in most cases. The bill is overbroad and is poorly drafted, and will have disastrous consequences for both parents and children.

Witnesses: Senator Fraser, prime sponsor (pro); Judge Richard Hicks, Superior Court Judges Association (con); Amy Crewdson, Evergreen Legal Services (pro); Donna Deleno, Washington Coalition of Sexual Assault Programs (pro); Robert Taub and Doug Becker, Family Law Section, Washington State Bar Association (con); Thelma Simon, citizen (pro); and Lonnie Johns-Brown, National Organization for Women, Washington Chapter (pro).