

SENATE BILL REPORT

ESSB 5061

AS PASSED SENATE, FEBRUARY 14, 1994

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)

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Niemi, Quigley, Roach, Schow and Spanel.

Staff: Lidia Mori (786-7755)

Hearing Dates: January 22, 1993; March 3, 1993; February 1, 1994; February 3, 1994

HOUSE COMMITTEE ON JUDICIARY

BACKGROUND:

A parent who has sexually, physically, or emotionally abused a child may obtain unsupervised residential time with that child if the court finds such contact would not harm the child and the chance of the abusive behavior reoccurring is so remote that limitations on residential time are not in the child's best interests. However, absent the court making that finding, a court is directed to limit the parent's residential time with the child.

SUMMARY:

There is a rebuttable presumption that a court will deny residential time or visitation and enter a permanent restraining order if there has been a conviction in a criminal court or a court finds by clear and convincing evidence that the parent requesting residential time or visitation has sexually abused a child living in the parent's household at any time during the parent's life or any other child within the previous ten years. The presumption may be rebutted if the court finds that (1) the offending parent is engaged in and making progress in treatment for sexual offenders and the treatment provider believes such contact is appropriate and poses minimal risk to the child; (2) if the child was sexually abused by the parent and is in or has been in therapy, the child's counselor believes contact between the child and the parent is in the child's best interest; and (3) there is an adequate plan for supervision of the residential time or visitation which the court has approved. If the presumption

is rebutted, the court may order supervised residential time or supervised visitation. If the nonoffending parent does not approve of the supervisor, the court must make a finding that such person is neutral and capable of intervening if necessary. The court shall notify the supervisor of the requirements regarding supervision. The court is authorized to remove the supervisor immediately if the supervision is not adequately performed.

If a parent who is requesting residential time or visitation with a child is living with a person who has physically or sexually abused a child in the past, the court is instructed to require all residential time or visitation take place outside the presence of that person.

Appropriation: none

Revenue: none

Fiscal Note: available

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

TESTIMONY FOR:

There is a continuing need for this bill. There are many examples of cases where a court is forcing a child to have visitation of a parent that abused the child. Supervision is often provided by a relative that does not believe the abuse occurred and therefore does not provide adequate protection for the child.

TESTIMONY AGAINST:

Opposed to the fact that only supervised visitation is allowed when the presumption is rebutted. Small counties do not have agencies that can provide supervision.

TESTIFIED: Senator Karen Fraser, prime sponsor; Donna Delano, WA Coalition of Sexual Assault Programs (pro); Cathy Carruthers (pro); Robert Taub (con); Thelma Simon (pro); Amy Crewsden, Evergreen Legal Services (pro)

HOUSE AMENDMENT(S):

A court will restrain a parent from contact with a child when that parent has been convicted of a sexual offense or has been found to be a sexual predator.

If a parent lives with an adult or juvenile that has been convicted or adjudicated of a sexual offense or found to be a sexual predator, the court will restrain the parent from contact with the child except for contact that occurs outside the presence of that person.

A parent who has been found in a civil or dependency action to have sexually abused the child shall not be allowed to have

contact with the child unless the child's therapist or evaluator recommends the child is ready for contact with the parent and will not be harmed by such contact.

A parent will not be allowed to have contact with the child when that parent resides with a person who is found in a civil or dependency action to have sexually abused a child unless the court finds that the parent accepts that the person performed the harmful conduct and the parent is capable of protecting the child from harm from that person.

A parent's residential time with the child will be limited when the court finds that the parent resides with a person who has engaged in physical, sexual or emotional abuse of a child, domestic violence, or assault or sexual assault that causes grievous bodily harm or fear of such harm.

When a court requires supervised contact between the child and the parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child, the court may not approve a supervisor unless it finds that the supervisor accepts the occurrence of the harmful conduct and is willing and capable of protecting the child from harm.

The same rules apply to nonparental actions for child custody.