

HOUSE BILL REPORT

HB 1362

As Reported By House Committee On:
Judiciary

Title: An act relating to residential provisions of permanent parenting plans.

Brief Description: Creating the friendly parent presumption.

Sponsors: Representatives Kastama, Sheahan, Lantz, Dickerson, Hurst, Edmonds, Constantine, Stensen, Lambert, Carrell, Kessler, Thomas and McIntire.

Brief History:

Committee Activity:

Judiciary: 2/5/99, 2/22/99 [DPS].

Brief Summary of Substitute Bill

- Requires the court to consider, when determining a child's residential schedule under a parenting plan, which parent is more likely to allow and encourage frequent and continuing contact between the child and other parent.
- Changes how the court weighs the factors it must consider when determining a child's residential provisions under a parenting plan.
- Removes current law that limits when a court may enter a residential schedule requiring the child to frequently alternate between the parents' residences for brief and substantially equal intervals of time.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Minority Report: Without recommendation. Signed by 1 member: Representative Lambert, Republican Vice Chair.

Staff: Trudes Hutcheson (786-7384).

Background:

When a court enters an order for dissolution, legal separation, or declaration concerning the invalidity of marriage, the court must also determine a permanent parenting plan if the parties have children.

The parenting plan must: (a) provide for a method of resolving future disputes about the children; (b) allocate decision making between the parents; and (c) make residential provisions for each child. In all aspects of the parenting plan, the court must consider the best interests of the child.

Regarding the residential schedule, the court must make provisions that encourage each parent to maintain a loving, stable, and nurturing relationship with the child consistent with the developmental level of the child and the social and economic circumstances of the family.

Specifically, the court is required to consider the following factors when determining a child's residential schedule:

- (a) 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;
- (b) the knowing and voluntary agreements of the parties;
- (c) each parent's past and potential future performance of parenting functions;
- (d) the emotional needs and developmental level of the child;
- (e) the child's relationship with siblings and other significant adults and involvement with his or her physical surroundings, school, or other significant activities;
- (f) the wishes of the parents and wishes of a child who is mature enough to express reasoned and independent preferences; and
- (g) each parent's employment schedule, making accommodations consistent with those schedules.

The court is required to give the greatest weight to the first factor.

In a 1993 case, the state supreme court analyzed the first factor and, after researching the legislative history of the statute, concluded that the first factor did not create a presumption in favor of placement with the primary care giver. The court's decision indicated that the relative strength, nature, and stability of the child's relationship with each parent should be the more critical consideration than which parent had taken greater responsibility for performing parenting functions relating to the daily needs of the child.

The court may order that a child frequently alternate his or her residence between the parents for brief and substantially equal intervals of time under limited circumstances. The court must find that: (a) there are no limits placed on the parents' decision-making authority and residential time because of the parent's conduct; and (b) either, the parents have agreed to such provisions or the parties have a satisfactory history of cooperation and are within geographic proximity of each other; and (c) it is in the child's best interest.

Summary of Substitute Bill:

Another factor is added to the list of factors a court must consider when determining a child's residential placement under a parenting plan. The court must consider which parent is more likely to allow and encourage the child frequent and continuing contact with the other parent.

In determining a child's residential schedule, the court must give the greatest weight only to the relative strength, nature, and stability of the child's relationship with each parent. Whether a parent has taken greater responsibility for the daily needs of the child is now listed as a separate factor and is no longer part of the factor given the greatest weight by the court.

The provision limiting when a court may enter a residential schedule requiring the child to frequently alternate between the parents' residences for substantially equal intervals of time is removed.

The "best interest of the child" standard is explicitly stated as the standard used by the court when determining a child's residential provisions.

Substitute Bill Compared to Original Bill: The substitute bill removes the existing law that allows a court to order that the child reside with each parent for substantially equal intervals of time when certain limited circumstances are met. The substitute bill changes the name of the bill from the "friendly parent presumption" to the "friendly parent factor."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Original bill) Courts should be rewarding cooperative parents and encouraging minimal conflict. There is only a small number of parents who are

manipulating and uncooperative, and this bill will help most of the parents in the system who want to work together. There is nothing in the laws that truly encourages cooperation, and instead parents are afraid of giving away too much because they see it as "losing ground" in their bargaining position. Allowing courts to give the greatest weight to the strength of the relationship between the child and parent fulfills the Legislature's intent when the family law provisions were first passed. The "primary care giver" factor has overshadowed all the other factors.

Testimony Against: (Original bill) The new friendly parent factor would penalize a parent who has legitimate concerns about domestic violence or substance abuse and therefore doesn't want to allow frequent and continuing contact with the other parent. Existing law already allows a court to consider whether a parent is engaging in an "abusive use of conflict." The Legislature should wait before making any changes to the factors affecting residential time because there are still studies being done as to what is really in the child's best interest. The original parenting act intended to have the courts give weight to the "primary care giver."

Testified: (In support) Representative Kastama, prime sponsor; Rick Bartholomew, Washington State Bar Association, Family Law Executive Committee; Bill Harrington, American Fathers Alliance; Lisa Scott, Taking Action Against Bias in the System; Joe Kearney, citizen; and Lawrence Hutt, citizen.

(Opposed) Christine Allen, Family Law Roundtable; and Anita Neal, Northwest Women's Law Center.