

SENATE BILL REPORT

SB 5053

As Passed Senate, March 2, 2005

Title: An act relating to service by publication in actions to establish or modify parenting plans, for legal separation or invalidity of marriage, and for nonparental custody.

Brief Description: Authorizing service by publication in actions to establish or modify parenting plans, for legal separation or invalidity of marriage, and for nonparental custody.

Sponsors: Senators Kline and Johnson.

Brief History:

Committee Activity: Judiciary: 1/13/05, 2/3/05 [DP]

Passed Senate: 3/2/05, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: Generally, the rules of practice for civil court actions govern all proceedings for dissolution of marriage, legal separation, and non-parental custody actions. Proceedings are commenced by delivery of a copy of the summons and petition to the respondent. This is called service of process. Personal service, actual delivery of the documents, is the preferred method. Constructive service, however, may be effective when all attempts at personal service have failed in spite of due diligence. Constructive service may be by mail, if specifically authorized by the court, or by publication.

Service by publication is authorized by statute for divorce proceedings when the respondent cannot be located and personally served. It is also available if the respondent conceals himself, or herself, or has moved out of state to avoid service. The summons must be published in a newspaper of general circulation in the county where the action is brought, once a week for six consecutive weeks. These statutes are strictly construed by the court.

Summary of Bill: Service by publication is specifically authorized for appropriate cases in: actions for the establishment of a parenting plan or residential schedule, dissolution of marriage, legal separation, declaration of invalidity, or for nonparental custody when the child is in the physical custody of the petitioner.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For: This change is useful in cases when the address of one of the parties is unknown. The courts currently allow service by publication inconsistently and this bill would provide for more consistent application. The party serving notice will still have to prove to the court that personal service could not be accomplished after due diligence. If a party successfully asserts that due diligence was not used before service by publication, the service can later be found defective and the case can be reopened.

Testimony Against: None.

Who Testified: PRO: Rick Bartholomew, Washington State Bar Association, Family Law Section.