

SENATE BILL REPORT

SB 5234

As of February 5, 2007

Title: An act relating to shared parental responsibility.

Brief Description: Encouraging shared parental responsibility in child custody arrangements.

Sponsors: Senators Kastama, Shin, Swecker, Berkey, Haugen, Sheldon, Pridemore, Franklin, Keiser and Carrell.

Brief History:

Committee Activity: Human Services & Corrections: 1/26/07.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Indu Thomas (786-7536)

Background: Under Washington's dissolution of marriage and legal separation law, divorcing couples with children must establish a parenting plan. This statute includes provisions permitting the court to order shared residential schedules under specific conditions. For example, there is a presumption against frequently alternating schedules. The objectives of parenting plans include the best interests of the child; however, there is no specific reference to consideration of best interests in establishing residential provisions.

Summary of Bill: Changes are made to the dissolution of marriage and legal separation act to define shared parental responsibility and shared residential placement. A shared parenting presumption in favor of a minimum of one third time with each parent is added to the statute. The factors which are currently to be considered in making residential schedule decisions are only to be considered when the shared parenting presumption is not in the best interests of the child. These factors are expanded to include consideration of the child's special physical needs and whether the child is nursing. Consideration of whether a parent has taken greater responsibility for performing the parenting functions relating to the daily needs of the child is eliminated from consideration.

The court is permitted to adopt safeguards to facilitate consistent visitation and reduce conflict in cases where there is a history of poor cooperation between the parents. Finally, the Administrative Office of the Courts is required to survey parenting plans in Washington to determine the allocation of residential time between parents and to report its findings back to the Legislature, the Governor, and the public in two years.

Appropriation: None.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Although there is clear research-based support for the benefits of shared residential parenting, courts in Washington continue to impose an every-other-weekend visitation schedule. There is a need to establish a presumption in favor of shared parenting in order to shift the practice of Family Court Judges.

Children who have active and engaged fathers are more likely to succeed as adults. Fathers who are able to have an active role in the upbringing of their children are more likely to meet other obligations that are placed upon them. Most parents are good parents.

The way the current laws are interpreted by the courts codifies the maternal doctrine by making courts look at who provides more of the daily needs of the child. This system encourages divorce and disenfranchises fathers. Something must be done to change this system that makes children grow up without their fathers.

A presumption (in favor of fathers having at least 30 percent time with their children) does not change any of the protections for women and children who are in domestic violence relationships. The protections of the statute remain intact and the presumption would not be applied until after cases are filtered through the same protections that are in place currently. Both parents should get a reasonable amount of time with their children. There should not be preferential treatment of mothers. Courts must consider which parent is more likely to cooperate in facilitating visitation.

CON: Requiring a default period of time puts women and children in domestic violence situations at risk. This shift would put the burden of proving that the situation is unhealthy on the mother who is already overburdened. There are systemic problems in raising allegations of domestic violence even when there are long histories of documented domestic violence. Review of the domestic violence homicides revealed that even in those cases where domestic violence was documented limitations were not placed on the visitation of the abusers.

Before individuals get married they can enter into pre-nuptial agreements regarding how finances will be handled in the event of divorce. There should be pre-nuptial agreements regarding how residency and visitation will be handled. There is no disparity in the way fathers and mothers are treated in the courts.

OTHER: Requiring that Administrative Office of the Courts survey a sampling of parenting plans is a more practical and realistic way in which to gather the information regarding judicial practices than adding very specific and difficult data tracking requirements.

Persons Testifying: PRO: Senator Kastama, prime sponsor; Walter Fields, Michael Flanagan, Stanley Green, Darlene Jensen, Roger Harnack, Jamie Powell, Mark Shattuck, and David Spring, citizens; Lisa Scott, James White, Taking Action against Bias in the System; Bernie Dorsey, The Conscious Fathering Program; Elisa Cooper, Carmen Deleon, Pat Lessard, Mark Mahnkey, Washington Civil Rights Council; Andy Maris, The Other Parent.

CON: Leslie Owen, Northwest Justice Project; Sheranmarie Boling, Sandi Winters, citizens; Rick Bartholomew, Washington State Bar Association, Family Law Section, Grace Huang, Washington State Coalition against Domestic Violence; Lisa Aguilar, Snohomish County Center for Battered Women; Kevin Rundle, YWCA Pierce County.

OTHER: Betty Gould, Washington Association of County Clerks.