

# SENATE BILL REPORT

## SB 5205

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As of January 16, 2023

**Title:** An act relating to limitations in parenting plans related to parental conduct.

**Brief Description:** Concerning limitations in parenting plans related to parental conduct.

**Sponsors:** Senators Dhingra, Kuderer and Wilson, C..

**Brief History:**

**Committee Activity:** Law & Justice: 1/17/23.

**Brief Summary of Bill**

- Clarifies limitations on parenting plans to protect children when one or both parents are engaging in certain conduct.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Tim Ford (786-7423)

**Background:** Parenting Plans. In dissolution or legal separation cases in which there are minor children, the court must establish a parenting plan that provides for the care of the minor children. The parenting plan must include an allocation of decision-making authority to one or both parents and establish a residential schedule for the child. The residential schedule designates in which parent's home the child resides on given days of the year. A court must consider specific factors when determining the child's residential schedule.

Limitations of Parenting Plans. A parenting plan shall not require mutual decision making if the court finds a parent has engaged in any of the following conduct:

- willful abandonment for an extended period of time or substantial refusal to perform parenting functions;
- physical, sexual, or a pattern of emotional abuse of a child; or
- a history of acts of domestic violence, or an assault or sexual assault that causes

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grievous bodily harm or the fear of such harm, or that results in a pregnancy.

A parent's residential time with the child shall be limited if the court finds the parent or another person who resides with the parent has engaged in any of the following conduct:

- willful abandonment for an extended period of time or substantial refusal to perform parenting functions;
- physical, sexual, or a pattern of emotional abuse of a child;
- a history of acts of domestic violence, or an assault or sexual assault that causes grievous bodily harm or the fear of such harm, or that results in a pregnancy; or
- the parent has been convicted as an adult of a sex offense.

The court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

- a parent's neglect or substantial nonperformance of parenting functions;
- a long-term emotional or physical impairment which interferes with the parent's performance of parenting functions;
- a long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- the absence or substantial impairment of emotional ties between the parent and the child;
- the abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
- a parent has withheld from the other parent access to the child for a protracted period without good cause; or
- such other factors or conduct as the court expressly finds adverse to the best interests of the child.

Modification of Parenting Plans. A court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances with respect to either parents or the child, if the proposed modification is only a minor modification, the modification does not change the residence the child is scheduled to reside in the majority of the time, and, among other considerations, the court finds it is in the best interest of the child to increase residential time with the parent with whom the child does not reside a majority of the time.

**Summary of Bill:** The bill redrafts and reorganizes much of the law which the court uses to impose limitations on the parenting plan. An intent is added to the law.

Intent. The parent-child relationship is a fundamental right. Spending time with a child and making significant decisions that affect a child's health and education are essential to the exercise of that fundamental right. Parents are responsible for protecting and preserving the health and well-being of their minor child. When a parent acts contrary to the health and well-being of their child, the court may, and in some situations must, impose limitations intended to protect a child from harm.

Substantive Changes. Most of the law is retained without substantive change. The bill streamlines or clarifies existing law. The language for the intent section is found in existing case law.

There is a substantive change in the bill related to decision-making and dispute resolution. The current law has the following language: “The permanent parenting plan shall not require mutual decision-making.” The bill has the following language: “a court shall limit joint decision-making and dispute resolution.” The bill increases judicial discretion for allowing decision-making and dispute resolution so long as it is limited.

**Appropriation:** None.

**Fiscal Note:** Requested on January 16, 2023.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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