

SENATE BILL REPORT

SB 5205

As Reported by Senate Committee On:
Law & Justice, January 19, 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, 1/19/23 [DPS, w/oRec].

Brief Summary of First Substitute Bill

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

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5205 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L.

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

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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 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 (First Substitute): 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. 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.

A court may protect the child or parent from sexual abuse or harm from the parent requesting residential time by imposing limits on the parent requesting residential time. A presumption is created that supervision—if required by the court—will be provided by a professional supervisor. A rebuttable presumption is created where there is a finding of domestic violence that there will be sole decision making.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes certain intent language related to the parent-child relationship being a fundamental right, and the exercise of that right.
- Allows a court to protect the child or parent from sexual abuse or harm from the parent requesting residential time by imposing limits on the parent requesting residential time.
- Creates a presumption that supervision—if required by the court—will be provided by a professional supervisor.
- Removes language from the section related to supervision that is added to the section for limits to residential time—as described in the 2nd bullet.
- Creates a rebuttable presumption—where there has been a finding of domestic violence—that there will be sole decision making.

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.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Parent child relationship is a fundamental right. Parents must have the ability to spend quality time with their children and make decisions that impact their health and education. There are responsibilities that come with that. When parents act in ways that are harmful to children, it is important that courts have the ability to impose limitations to protect the child. It is critical that laws are very clear in this regard. The intent of this legislation is to make the law about parenting plans easier for families and judicial officers to follow by clarifying language and making it easier to navigate. It makes two changes to the statute regarding what should happen when courts need to impose limitation on both parents because of their conduct and allowing judges some discretion about decision making and dispute resolution when that is needed to serve the best interest of children.

OTHER: 191 restrictions are critical and important under the baseline that procedural due process has occurred when issuing the parenting plan. The threshold for a domestic violence protection order is so low that hearsay is admissible and commissioners, not judges issue civil domestic violence protection orders (DVPOs). The work in front of the committee is to take a holistic approach. This bill is barking up the wrong tree. Judges on family court benches need to be obligated to follow the law and follow the constitution.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Judge Janet Helson, Superior Court Judges' Association.

OTHER: Angel Cruzado; Predrag Tomic.

Persons Signed In To Testify But Not Testifying:

OTHER: Stephen Hicks, National Parents Organization.