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SENATE BILL 5317

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State of Washington

62nd Legislature

2011 Regular Session

By Senator Kastama

Read first time 01/20/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to shared parenting and its impact on youth school  
2 dropout and crime prevention; amending RCW 26.09.002 and 26.09.187;  
3 reenacting and amending RCW 26.09.004; adding a new section to chapter  
4 26.09 RCW; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature continues to find that our  
7 family law system is the primary reason for the disengagement of  
8 fathers from the lives of their children following divorce. This was  
9 the conclusion of the largest federally funded study on the effects of  
10 fathers and the children of divorce, conducted by Dr. Sanford Braver,  
11 and reported in his book, *Divorced Dads: Shattering the Myth*.

12 The legislature finds that research from the national center for  
13 fathering, in a report entitled *Father's Involvement in Children's*  
14 *Learning*, is very positive to show the value of increased father  
15 involvement concerning outcomes for the respective children. The data  
16 was collected in two periods about ten years apart, from October 1-3,  
17 1999 and then again May 16-18, 2008. In almost all categories,  
18 increased father participation had better results for the children.

1 This is the cheapest investment that taxpayers and the legislature can  
2 make to help our children in that the cost of this legislation is about  
3 as close to zero that any legislature can claim.

4 NEW SECTION. **Sec. 2.** This act may be known and cited as the youth  
5 school dropout reduction and crime prevention act of 2011.

6 **Sec. 3.** RCW 26.09.002 and 2007 c 496 s 101 are each amended to  
7 read as follows:

8 Parents have the responsibility to make decisions and perform other  
9 parental functions necessary for the care and growth of their minor  
10 children. In any proceeding between parents under this chapter, the  
11 best interests of the child shall be the standard by which the court  
12 determines and allocates the parties' parental responsibilities. The  
13 state recognizes the fundamental importance of the parent-child  
14 relationship to the welfare of the child, and that the relationship  
15 between the child and each parent should be fostered unless  
16 inconsistent with the child's best interests. Residential time and  
17 financial support are equally important components of parenting  
18 arrangements. The best interests of the child are served by a  
19 parenting arrangement that best maintains a child's emotional growth,  
20 health and stability, and physical care, therefore there shall be a  
21 presumption in favor of shared parental responsibility unless it is not  
22 in the child's best interests. Further, the best interests of the  
23 child (~~is~~) are ordinarily served when the existing pattern of  
24 interaction between a parent and child is altered only to the extent  
25 necessitated by the changed relationship of the parents or as required  
26 to protect the child from physical, mental, or emotional harm.

27 The legislature finds that family fragmentation creates a high  
28 social and financial cost to the involved parents and children as well  
29 as to the taxpayers and citizens of this state. The financial costs  
30 for children of divorced parents and children born to unwed or never  
31 married parents is estimated at over seven hundred million dollars per  
32 year and the social costs are even higher.

33 The legislature further finds that between seven and eight of every  
34 ten high school dropouts comes from fatherless homes and boys make up  
35 a majority of these dropout casualties, costing the state over two  
36 hundred twenty thousand dollars over the lifetime for each person.

1 This cost estimate does not include the potential federal costs to  
2 individuals in terms of food stamps, health care, public assistance,  
3 and incarceration. Almost nine out of every ten juveniles in our  
4 juvenile justice system, at a cost of seventy-five thousand dollars per  
5 year, come from fatherless homes. These juveniles impact not only  
6 their personal lives but also the lives of their victims. The same is  
7 true for eight out of every ten adult men in the state's county jails  
8 and state prisons where the cost to incarcerate is over thirty thousand  
9 dollars annually.

10 The legislature finds that one way to lower dropout rates and  
11 increase high school graduation rates and also reduce instances of  
12 crime involving children, both as victims and perpetrators, is to  
13 increase the involvement of the second parent, mostly fathers, in the  
14 daily lives of their children, especially in the educational arena. A  
15 study conducted by the national education association concluded that  
16 such interaction dramatically reduced dropout rates.

17 As a result, the legislature concludes that a rebuttable  
18 presumption in favor of a shared parenting arrangement following a  
19 dissolution or legal separation is in the best interests of the child  
20 or children involved and society.

21 **Sec. 4.** RCW 26.09.004 and 2009 c 502 s 1 are each reenacted and  
22 amended to read as follows:

23 The definitions in this section apply throughout this chapter.

24 (1) "Military duties potentially impacting parenting functions"  
25 means those obligations imposed, voluntarily or involuntarily, on a  
26 parent serving in the armed forces that may interfere with that  
27 parent's abilities to perform his or her parenting functions under a  
28 temporary or permanent parenting plan. Military duties potentially  
29 impacting parenting functions include, but are not limited to:

30 (a) "Deployment," which means the temporary transfer of a service  
31 member serving in an active-duty status to another location in support  
32 of a military operation, to include any tour of duty classified by the  
33 member's branch of the armed forces as "remote" or "unaccompanied";

34 (b) "Activation" or "mobilization," which means the call-up of a  
35 national guard or reserve service member to extended active-duty  
36 status. For purposes of this definition, "mobilization" does not

1 include national guard or reserve annual training, inactive duty days,  
2 or drill weekends; or

3 (c) "Temporary duty," which means the transfer of a service member  
4 from one military base or the service member's home to a different  
5 location, usually another base, for a limited period of time to  
6 accomplish training or to assist in the performance of a noncombat  
7 mission.

8 (2) "Parenting functions" means those aspects of the parent-child  
9 relationship in which the parent makes decisions and performs functions  
10 necessary for the care and growth of the child. Parenting functions  
11 include:

12 (a) Maintaining a loving, stable, consistent, and nurturing  
13 relationship with the child;

14 (b) Attending to the daily needs of the child, such as feeding,  
15 clothing, physical care and grooming, supervision, health care, and day  
16 care, and engaging in other activities which are appropriate to the  
17 developmental level of the child and that are within the social and  
18 economic circumstances of the particular family;

19 (c) Attending to adequate education for the child, including  
20 remedial or other education essential to the best interests of the  
21 child;

22 (d) Assisting the child in developing and maintaining appropriate  
23 interpersonal relationships;

24 (e) Exercising appropriate judgment regarding the child's welfare,  
25 consistent with the child's developmental level and the family's social  
26 and economic circumstances; and

27 (f) Providing for the financial support of the child.

28 (3) "Permanent parenting plan" means a plan for parenting the  
29 child, including allocation of parenting functions, which plan is  
30 incorporated in any final decree or decree of modification in an action  
31 for dissolution of marriage or domestic partnership, declaration of  
32 invalidity, or legal separation.

33 (4) "Temporary parenting plan" means a plan for parenting of the  
34 child pending final resolution of any action for dissolution of  
35 marriage or domestic partnership, declaration of invalidity, or legal  
36 separation which is incorporated in a temporary order.

37 (5) "Shared parental responsibility" means shared residential  
38 placement and mutual decision-making authority.

1       (6) "Shared residential placement" means an order awarding each of  
2 the parents periods of time, amounting to at least one-third of a year,  
3 in which a child resides with or is under the actual, direct,  
4 day-to-day care and supervision of each of the parents. "Shared  
5 residential placement" does not necessarily mean the child must  
6 alternate his or her residence between the households of the parents  
7 for brief periods of time.

8       **NEW SECTION. Sec. 5.** A new section is added to chapter 26.09 RCW  
9 to read as follows:

10       (1) There shall be a presumption that shared parental  
11 responsibility is in the best interests of children unless:

12       (a) The parents have agreed to an alternate award of residential  
13 placement or decision-making authority to only one parent;

14       (b) The limitations of RCW 26.09.191 are dispositive of the child's  
15 residential schedule; or

16       (c) The court finds that shared parental responsibility would be  
17 detrimental due to the age or needs of the child or children.

18       (2) A parent alleging that shared parental responsibility would be  
19 detrimental to the child or children shall have the burden of  
20 establishing the allegation by a preponderance of the evidence.

21       (3) If a parent alleges that shared parental responsibility would  
22 be detrimental to a particular child, the court, in making a  
23 determination whether a shared parental responsibility order is  
24 appropriate, may direct that an investigation be conducted in  
25 accordance with the provisions of RCW 26.09.220. If the court declines  
26 to enter a shared parental responsibility order under this section, the  
27 court shall enter findings of fact and conclusions of law stating the  
28 reasons that shared parental responsibility is not in the best  
29 interests of the child.

30       **Sec. 6.** RCW 26.09.187 and 2007 c 496 s 603 are each amended to  
31 read as follows:

32       (1) DISPUTE RESOLUTION PROCESS. The court shall not order a  
33 dispute resolution process, except court action, when it finds that any  
34 limiting factor under RCW 26.09.191 applies, or when it finds that  
35 either parent is unable to afford the cost of the proposed dispute

1 resolution process. If a dispute resolution process is not precluded  
2 or limited, then in designating such a process the court shall consider  
3 all relevant factors, including:

4 (a) Differences between the parents that would substantially  
5 inhibit their effective participation in any designated process;

6 (b) The parents' wishes or agreements and, if the parents have  
7 entered into agreements, whether the agreements were made knowingly and  
8 voluntarily; and

9 (c) Differences in the parents' financial circumstances that may  
10 affect their ability to participate fully in a given dispute resolution  
11 process.

12 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

13 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve  
14 agreements of the parties allocating decision-making authority, or  
15 specifying rules in the areas listed in RCW 26.09.184(5)(a), when it  
16 finds that:

17 (i) The agreement is consistent with any limitations on a parent's  
18 decision-making authority mandated by RCW 26.09.191; and

19 (ii) The agreement is knowing and voluntary.

20 (b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole  
21 decision-making to one parent when it finds that:

22 (i) A limitation on the other parent's decision-making authority is  
23 mandated by RCW 26.09.191;

24 (ii) Both parents are opposed to mutual decision making;

25 (iii) One parent is opposed to mutual decision making, and such  
26 opposition is reasonable based on the criteria in (c) of this  
27 subsection.

28 (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)  
29 and (b) of this subsection, the court shall consider the following  
30 criteria in allocating decision-making authority:

31 (i) The existence of a limitation under RCW 26.09.191;

32 (ii) The history of participation of each parent in decision making  
33 in each of the areas in RCW 26.09.184(5)(a);

34 (iii) Whether the parents have a demonstrated ability and desire to  
35 cooperate with one another in decision making in each of the areas in  
36 RCW 26.09.184(5)(a); and

37 (iv) The parents' geographic proximity to one another, to the  
38 extent that it affects their ability to make timely mutual decisions.

1 (3) RESIDENTIAL PROVISIONS.

2 (a) The court shall make residential provisions for each child  
3 which encourage each parent to maintain a loving, stable, and nurturing  
4 relationship with the child, consistent with the best interests of the  
5 child, the child's developmental level, and the family's social and  
6 economic circumstances. There is a presumption that the child's  
7 residential schedule shall provide shared parental responsibility in  
8 accordance with section 5 of this act. The child's residential  
9 schedule shall be consistent with RCW 26.09.191. Where the limitations  
10 of RCW 26.09.191 are not dispositive of the child's residential  
11 schedule, the court shall consider the following factors:

12 (i) The relative strength, nature, and stability of the child's  
13 relationship with each parent;

14 (ii) Which parent is more likely to allow and encourage the child's  
15 frequent and continuing contact with the other parent;

16 (iii) The agreements of the parties, provided they were entered  
17 into knowingly and voluntarily;

18 ~~((+iii))~~ (iv) Each parent's past and potential for future  
19 performance of parenting functions as defined in RCW 26.09.004~~((+3))~~  
20 (2), including whether a parent has taken greater responsibility for  
21 performing parenting functions relating to the daily needs of the  
22 child;

23 ~~((+iv))~~ (v) The emotional needs and developmental level of the  
24 child and any special physical needs of the child;

25 ~~((+v))~~ (vi) Whether the child is a nursing child;

26 (vii) The child's relationship with siblings and with other  
27 significant adults, as well as the child's involvement with his or her  
28 physical surroundings, school, or other significant activities;

29 ~~((+vi))~~ (viii) The wishes of the parents and the wishes of a child  
30 who is sufficiently mature to express reasoned and independent  
31 preferences as to his or her residential schedule; and

32 ~~((+vii))~~ (ix) Each parent's employment schedule, and shall make  
33 accommodations consistent with those schedules.

34 Factor (i) shall be given the greatest weight.

35 (b) ~~((Where the limitations of RCW 26.09.191 are not dispositive,~~  
36 ~~the court may order that a child frequently alternate his or her~~  
37 ~~residence between the households of the parents for brief and~~  
38 ~~substantially equal intervals of time if such provision is in the best~~

1 interests of the child. In determining whether such an arrangement is  
2 in the best interests of the child, the court may consider the parties  
3 geographic proximity to the extent necessary to ensure the ability to  
4 share performance of the parenting functions.

5 ~~(c) For any child, residential provisions may contain any~~  
6 ~~reasonable terms or conditions that facilitate the orderly and~~  
7 ~~meaningful exercise of residential time by a parent, including but not~~  
8 ~~limited to requirements of reasonable notice when residential time will~~  
9 ~~not occur.)~~ For any child, residential provisions may contain any  
10 reasonable terms or conditions that facilitate the orderly and  
11 meaningful exercise of residential time by a parent, including one or  
12 more of the following:

13 (i) Requirements that residential times be specified;

14 (ii) Requirements of reasonable notice when residential time will  
15 not occur;

16 (iii) Any other reasonable condition determined to be appropriate  
17 in the particular case including but not limited to a domestic violence  
18 assessment.

19 (c) In any parenting plan in which the court finds that the parties  
20 do not have a satisfactory history of cooperation or the limitations of  
21 RCW 26.09.191 are dispositive; to the extent necessary, the parenting  
22 plan shall include a safe, neutral, and public location for the  
23 exchange of the child such as a school, day care, place of worship, or  
24 any other appropriate public facility.

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