Substitute House Bill 2237 (parenting plan limitations)

Safeguarding Children and Families in Complex Situations

SHB 2237 proposes limited but essential updates to the statute governing court-ordered limitations on residential time, decision-making, and visitation in parenting plans and makes the statute significantly more readable. This bill will make it easier for litigants to follow the law and for judges to apply it—while continuing to protect children.

Why are changes to RCW 26.09.191 necessary?

Access to Justice

The majority of people involved in family law cases cannot afford attorneys and are acting as their own lawyers. Many judges who hear family law cases do not come with a family law background. Self-represented parents and judges who are new to the area of family law have to navigate RCW 26.09.191 and the restrictions available in family law cases to protect children. The current law is dense and virtually impossible to read. This not only impacts parents' ability to navigate their case, but also impacts their ability to understand the reasons behind parenting plan restrictions, leaving them at times frustrated with the system, and less likely to comply with safety provisions.

In Some Cases, Courts Cannot Issue Parenting Plans in the Best Interest of the Child

RCW 26.09.191, as currently written, does not provide the courts with any guidance on shared decision-making when both parents are subject to mandatory or discretionary conditions. More flexibility helps judicial officers when rigid restrictions do not reflect the real-life situations of parents and kids.

What changes are we proposing?

- Improving readability of the statute by breaking it into two sections - one that focuses solely on parents with sex offense issues and the other that addresses all other parenting concerns.
- Clarifying requirements around supervised visitation and evaluation and treatment for parents who are subject to .191 restrictions.
- Incorporating language from the *Revised Chapter Four of the Model Code on Domestic and Family Violence* to guide when the court does not impose

SHB 2237 enjoys wide support from domestic violence (DV) and sexual violence (SV) prevention organizations, including:

- Sexual Violence Law Center
- Northwest Justice Project
- Washington State Coalition Against Domestic Violence
- Washington State Women's Commission
- Domestic Violence Legal Advocacy Project - DV LEAD
- Coalition Ending Gender-Based Violence
- We Build Back Black Alliance
- Rural Resources Victim Services
- Legal Voice
- Crisis Support Network
- King County Sexual Assault Resource Center
- Children's Advocacy Centers of Washington
- YWCA Pierce County
- YWCA of Spokane
- YWCA Clark County
- Hope Alliance
- Support, Advocacy, and Resource Center
- Rebuilding Hope

limitations on parents who are subject to .191 restrictions, and requiring the court to make detailed written findings on those exceptions. Current law allows the court to decide *not* to impose limitations but does not provide guidance or require written findings.

- Providing guidance to the court when both parents are subject to .191 restrictions, and requiring the court to make detailed written findings regarding the comparative risk of harm posed by each parent.

How does 26.09.191 harm families now?

Scenario 1: When courts conduct trials, judicial officers often gain a better insight into family dynamics than a criminal court may have. At time it becomes apparent that the parent with DV convictions is actually the victim of DV (e.g. where the other parent has used the system as a tool to control). As a result, the lack of judicial discretion in .191 requires a judicial officer to place .191 restrictions on a parent who is actually the victim – again limiting a domestic violence victim from participating in decision making about their child.

Scenario 2: When both parents have DV history, the statute provides no guidance to the court about how to handle this scenario. This leaves the court with no methodology of determining which parent ought to have decision making or whether both ought to be able to participate.

Scenario 3: When the parent with whom the child has lived with the majority of the time becomes unable to care for the child and the child is then placed with the other parent, who may have prior domestic violence (DV) history.

- This scenario commonly occurs when a child has been removed from the home due to an active Child Protective Services (CPS) investigation and/or a dependency case is filed. In such a case, the court may need to place the child with a parent who has prior DV history but is the parent the dependency court has determined is currently able to safely parent the child. The dependency court is required by law to place a child with a parent if one is available to safely care for the child. When this happens, the parent with whom the child has been placed will typically seek a parenting plan under Chapter 26.09 RCW to close out the dependency matter.

- This scenario might also occur outside of the dependency process. Courts frequently must address parenting plans where one or both parents are struggling with mental illness or other limiting factors that impair their ability to safely care for their child. In this scenario, the child may be placed in the primary care of a parent with a DV history when it is the only viable option.

- In both of these situations, RCW 26.09.191 requires the court to order no mutual decision making between parents. That means, the court has no other option but to exclude the parent from any role in decision-making who, in these scenarios, is a domestic violence survivor and who previously was the majority-time parent.

The Superior Court Judges' Association urges the Legislature to adopt these much-needed changes to RCW 26.09.191.