Vote No to SB 5205!

The bill has the following harmful consequences which we have summarized here and have gone into detail below:

1) One of the most harmful changes: Lumps severe factors (such as domestic violence) and their corresponding restrictions that are mandatory into the same group as discretionary factors (such as mental health) thereby allowing the court to give equal weight to these factors that vary widely in severity and impact to children. This enables abusers to turn around and accuse their victim of requiring the same restrictions for as little as experiencing depression, PTSD or anxiety, often caused by the abusers themself.

2) Allows the court to give abusers **more** control in decision making,

3) Weakens the victims ability to use the Protection Orders in Sexual Abuse Cases,

4) Removes the requirement of the Family Court Services Evaluation, which is the only neutral professional reporting to the court,

5) Lightens burden of proof required of sexual predators that they have successfully completed treatment in order to gain contact with the child,

6) Creates a pathway for physical, sexual and emotional abusers to get visitation without real supervision,

7) There are weaker supervision requirements for sex offenders than the supervision requirements for other 191 limiting factors.

8) The court may may require treatment be completed before visitation for all other issues except for sexual abuse.

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Details about significant changes to Law:

1. Lumps severe factors (such as domestic violence) and their corresponding restrictions that are mandatory into the same group as discretionary factors (such as mental health) thereby allowing the court to give equal weight to these factors that vary widely in severity and impact to children. This enables abusers to turn around and accuse their victim of requiring the same restrictions for as little as experiencing depression, PTSD or anxiety, often caused by the abusers themself

**What the language does:** In effect, this language elevates discretionary findings like mental health and makes them equal to mandatory ones like domestic violence. It only requires a judge to consider whether one parent caused or contributed to the conduct of the other, but does not require a judge to consider findings of emotional or domestic abuse more seriously than a finding of the other party's mental health.

**Why it is harmful:** A parent who has mental health or substance abuse issues but who is not an abuser can be treated as a greater risk of harm to a child than a parent with a history of domestic violence or a pattern of emotional abuse. This new section allows a judge to place children in the primary care of abusive parents, even if the parent with findings of mental health issues or substance abuse is capable of parenting, has been the child's primary parent, and has never committed an act of abuse against their child.

2. **Allows court's discretion to give abusers more control in decision making:**

**Why this is harmful:** Changing words from "not require" to only "limit" opens the doorway for abusers to litigate, and thus control his victim. Decision making and residential time/visitation are the two ways abusers exert control over their victim in family court. Why are we trying to give abusers more control in decision making when they can't even control their own behavior? The suggestion that a survivor who was able to prove the other parent has a 191 limiting factor while protecting and providing for their children still needs the input for decisions regarding that child is patriarchal. The stress from ongoing communication with an abuser is unimaginable and many survivors who have yet to prove 191 factors live with it every day for years, please do not take this away from those who can prove 191 factors.

**What the language does**: First this bill gives discretion to the court to give decision making, possibly joint decision making to the abuser, whereas the current RCW the court "shall not" give decision making to the abuser. Second, this bill's language is far more complicated than the current RCW. The current law refers to decision making only one time in 1 simple paragraph, whereas the bill would create a RCW that refers to decision making 6 times in 4 different paragraphs.

**What the changes are:**

The current law says:

> "The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 7.105.010 or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy."

The bill says:

> *"A court shall limit joint decision making and dispute resolution if it is found that a parent has engaged in any of the following conduct… If the court makes express written findings that it would be contrary to the child's best interest to limit decision making or dispute resolution … the court need not apply those limitations. Where there has been a finding of domestic violence, there is a rebuttable presumption that there will be sole decision making."*

3. **Weakens the victims ability to use the Protection Order in Sexual Abuse Cases**

**What language does**: The current law does not allow the court to have discretion with the weight of a protection order when subsections (c) - (m)(ii) apply which are the subsections that refer to acts of sexual abuse.

**Why this is harmful:** This language weakens the weight of a protection order in sexual abuse cases. The court already has wide discretion in deciding if there is a factor of sexual abuse in protection orders. This just opens up the path for the exact same set of facts and circumstances to be litigated all over again, first when the victim secures their DVPO, and again in the parenting plan. Furthermore this gives abusers a second chance to dispute the impact of

their sexual abuse. Courts rely on previous protection orders so they do not have to relitigate the merits of domestic violence within custody disputes.

**The current law says:**

> "...The weight given to the existence of a protection order issued under chapter 7.105 RCW or former chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply…." (the underlined language is removed and not replaced in the language of the bill, the underlined language refers to sexual abuse.)

**The bill says:**

> "*The weight given to the existence of a protection order issued under chapter 7.105 RCW or former chapter 26.50 RCW as to domestic violence is within the discretion of the court."*

4. **Removes the requirement of the Family Court Services Evaluation, which is the only neutral professional reporting to the court**

**What this language does:** Removes the investigation by family court services when there is abuse of the child or a history of domestic violence.

**Why it is harmful:** The Family Court Services Evaluation is the only report to the judge that is done by a professional NOT chosen by any of the parties! Furthermore, a lot of the Expert Witnesses, councilors and GALs are disproportionately paid for heavily by one party for a better recommendation or report. This is the only method the court has to find out what is really going on that is not being admitted to by the parties. All the other professionals are paid for by the parties, without this neutral person, we are left with whoever has the most money will get what they want, and more times than not that is the abuser.

**What the current law says:**

> "In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties."

**The bill says:** *nothing, there is no requirement for screening, this entire language is removed and not replaced.*

5. **Lightens burden of proof required of sexual predators that they have successfully completed treatment in order to gain contact with the child.**

**What this language does:** The bill specifies that a parent has met the requirements to complete sexual abuse treatment simply by providing documentation.

**Why it is harmful:** This takes away the other party's ability to negate that treatment has been completed successfully if all they have to do is provide documentation. There may be other documents or witness testimony that show that the offending parent has not improved and this closes the door on this avenue for the other party.

**The current law says:**

"the offending parent has successfully engaged in treatment for sex offenders"

**The bill says:**

The above language is replaced with: "*The offending parent has provided documentation that they have successfully completed treatment for sex offenders" (page 16, line 18 and 28)*

6. **Creates a pathway for physical, sexual and emotional abusers to get visitation without real supervision.**

**What this language does:** This creates an avenue for abusers who have already been found to physically, sexually or emotionally abuse their children to have a lay person, like a friend, supervise them with their children instead of a professional supervisor. The language of the current RCW gives the judge discretion in this area to LIMIT supervision to a professional–whereas the bill removes the judges discretion to require supervised visitation by allowing the abuser to bypass this restriction of a professional supervisor entirely by having his family/friend by simply declare an "oath."

**Why it is harmful:** This means instead of a neutral party that is professional supervising an abusive parent, the abusive parent can now pick any friend or family member to supervise his time, simply by having them take an oath, and the court can no longer prevent this within the intention of the statute.

**The current law says:** The current RCW does not distinguish between nonprofessional supervisors and professional supervisors. Right now the judge may order professional or non-professional supervisors, and has discretion to deny the use of non-professional supervisors in place of professional supervisors.

**The bill says:**

> *The court shall not approve of a nonprofessional supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of a child unless the court finds, based upon the evidence, that the supervisor acknowledges that the harmful conduct occurred and is willing and capable of protecting a child from harm. This may be accomplished by requiring an oath of supervisor attesting to the supervisor's acknowledgment of the harmful conduct, willingness to protect a child, and willingness to enforce any limitations contained in the parenting plan*

7. **There are weaker supervision requirements for sex offenders than the supervision requirements for other 191 limiting factors.**

**What this language does:** The language in the new sex offender section only requires that visitation be supervised by a "neutral and independent" adult. This is a weaker requirement than the presumption for a professional supervisor for all other factors and findings. It also makes it so that if a court *does* order a lay supervisor for a sex offender, it can only revoke that approval **after the child is harmed** or the supervisor is no longer willing or capable of protecting the child.

**Why it is harmful:** This provision puts the child directly at risk and puts the burden on the protective parent to show that supervision is inadequate to protect the child.

**The current law**: does not specify when professional or nonprofessional supervisors are necessary.

**The bill says**: "Contact if Presumption Rebutted. … the court may allow a parent who has been convicted as an adult of a sex offense against a child to have residential time with the child supervised by a neutral and independent adult…"

8. **Court may require treatment be completed before visitation for all other issues except for sexual abuse.**

**What the language does:** In effect in different places the judge has discretion to preclude all visitation with a parent that has substance abuse, mental health, anger management or domestic violence until treatment is done. But only for sexual abuse, may the offending parent have visitation *before treatment is completed.

**Why it is harmful:** First, mental health and substance abuse that are put on a lower scale in the current law are now put on the same field as domestic violence and anger management. A good parent possibly could have mental health and substance abuse problems. Second, domestic violence and sexual violence predators should either have to complete treatment or not have contact even after treatment. Most importantly, because a parent who sexual abuses can see his child during treatment, but a parent with a mental health issue or substance abuse problem could be required treatment, it creates a scenario where a sexual predator can get more residential time by simply accusing the other parent of these other 191 limiting factors.

**What the current law says:** The current law does not allow a judge to require for contact with a child treatment for all other 191 factors that are not sexual abuse.

**What the bill says:** Sexual abuse perpetrator language: “contact between the child and the offending parent [of a sex offense] is appropriate and poses minimal risk to the child, and the … or <u>are engaged in making progress</u> in such treatment,”... All other limitation factor language: “A parent’s residential time and decision-making authority may be <u>conditioned on the parents completion</u> of an evaluation or treatment ordered by the court [substance abuse, mental health, anger management, or domestic violence perpetration] if the need for treatment is supported by the evidence and the evidence supports.

9. **Overall effect of this bill:**

Overall, these changes have the effect of elevating discretionary findings to the level of mandatory ones. Meaning, the bill suggests to the judge that they can now treat “discretionary” findings like mental health as seriously as they can treat findings of sexual abuse and domestic. It does this by lumping mandatory and discretionary factors into one section and then providing the judge with the same set of limitations it can apply to either or both. In contrast, the existing statute separates mandatory factors from discretionary ones by an entire section. For discretionary factors, the existing statute does not suggest limitations a court may impose, while the bill expressly allows a judge to consider no contact and completion of evaluation or treatment as limitations for findings like mental health and abusive use of conflict.

This effect is exacerbated by the changes you noted above, and a near guaranteed outcome of equal treatment of all factors and findings by the introduction of Section (6) - weighing limitations. This section DOES NOT require a judge to consider mandatory findings like domestic violence MORE SERIOUSLY than findings the judge makes him or herself (like mental health). It only requires that a judge *shall* consider in weighing limitations whether one parent caused or contributed to the factors requiring limitations. This language is additionally problematic because it invites the abuser to argue that they is the victim!

**10. Other changes to the bill:**

1. Restates abusive use of conflict language to omit the word “conduct” thereby suggesting that a parent *has* abusive use of conflict as an immutable characteristic, rather than the existing language which states “a parent has engaged in the abusive use of conflict…”
2. As noted above, the presumption for professional supervised visitation applies to findings for mental health. If a parent with mental health wants to use a lay person for reasons relating to cost or unavailability of resources, that lay supervisor has to acknowledge the harmful conduct that the abuser alleges the mental health issue causes - these invites more room for survivor mental health diagnosis like PTSD and depression to be speculatively and unprofessionally concluded to be risk factors for children.
3. The bill removes nearly all references to other protective RCWs. I was informed that Judge Helson found these references redundant and unnecessary - but for whom? For example, the bill removes the reference to the RCW definition of “Parenting Functions” in Section 3(b) of the existing statute. It also removes the presumption in subsection (f) of the existing statute that the presumption in subsection (d) for sex offenders can be rebutted ONLY AFTER a written finding that the child was not the product of a rape committed by the abuser parent. While the RCWs referenced in the existing statute still stand, the removal of these references does not serve pro se survivor litigants for whom these references provide valuable guidance and information.