
SENATE BILL 5847

State of Washington 52nd Legislature 1991 Regular Session

By Senators Rasmussen, Owen, Stratton and L. Smith.

Read first time February 26, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to parenting; amending RCW 26.09.002, 26.09.004,
2 26.09.184, 26.09.187, 26.09.194, 26.09.197, 26.09.255, 26.09.285, and
3 26.26.160; reenacting and amending RCW 26.09.191, 26.09.260, and
4 26.26.130; adding new sections to chapter 26.09 RCW; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 26.09.002 and 1987 c 460 s 2 are each amended to read
8 as follows:

9 Parents have the responsibility to make decisions and perform other
10 parental functions necessary for the care and growth of their minor
11 children. In any proceeding between parents under this chapter, the
12 best interests of the child, the rights of the children, and the rights
13 of the parents shall be the standards by which the court determines and
14 allocates the parties' parental responsibilities. The state recognizes
15 the fundamental importance of the parent-child relationships to the

1 welfare of the child, and that the relationship between the child and
2 each parent should be fostered unless inconsistent with the child's
3 best interests and proven harmful to the child. The best interests of
4 the child are served by a parenting arrangement that best ~~((maintains))~~
5 provides for a child's emotional ~~((growth))~~, mental, and physical
6 health, growth, and stability~~((, and physical care))~~. Further, the
7 best interest of the child is ordinarily served when ~~((the existing~~
8 ~~pattern of interaction between a))~~ the continued and frequent contact
9 between each parent and child is divided equally or nearly equally
10 between the parents and is altered only to the extent necessitated by
11 the changed relationship of the parents or as required to protect the
12 child from physical, mental, or emotional harm.

13 The policy of the state is that each minor child has the right to
14 emotionally bond with, and have natural affection and respect for, both
15 parents; each minor child has the right to frequent and continuing
16 contact with both parents and that equal or nearly equal contact
17 between both parents is fundamental to the child's natural and maximal
18 stability, emotional security, growth, and adjustment. Each minor
19 child has the right to perceive both parents as a parent of natural
20 authority and influence and that each parent has the right to care,
21 custody, and control of their child. To fulfill these rights and keep
22 these aspects of a natural parent-child relationship intact is most
23 commonly in the child's best interest.

24 The policy of the state shall be to encourage cooperation between
25 the parents in raising their child. In effectuating this policy the
26 courts shall discourage and deter either parent's unjustified attempts
27 to interfere with the child's natural relationship with the other
28 parent, or with the fundamental and legal rights of the child or other
29 parent, by considering that the more cooperative and sharing parent is
30 commonly the most fit parent for being awarded greater parenting

1 rights, privileges, and responsibilities when necessary, and that this
2 would normally be in the best interest of the child. The court shall
3 extend the virtues of fairness, acceptance, cooperation, and
4 reasonableness, and the understanding that these characteristics are
5 paramount to the welfare of the child by means of a presumption in
6 favor of joint parenting.

7 The policy of the state shall be that neither parent shall be
8 preferred over the other in determining residential provisions, daily
9 control, custody of the child, financial support of the child,
10 decision-making authority, or parental rights on the basis of gender or
11 the past performance of a predetermined particular parenting role or
12 function.

13 **Sec. 2.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read
14 as follows:

15 The definitions in this section apply throughout this chapter.

16 (1) "Joint parenting" means both parents having: Equal custodial
17 rights, mutual decision-making authority or equal distribution of the
18 areas of decision-making authority, equal or nearly equal sharing of
19 parenting responsibilities, and equal residential parenting time or as
20 equal as possible as determined by the practicabilities of each case.

21 (2) "Temporary parenting plan" means a plan for parenting of the
22 child pending final resolution of any action for dissolution of
23 marriage, declaration of invalidity, or legal separation which is
24 incorporated in a temporary order.

25 ~~((2))~~ (3) "Permanent parenting plan" means a plan for parenting
26 the child, including allocation of parenting functions, which plan is
27 incorporated in any final decree or decree of modification in an action
28 for dissolution of marriage, declaration of invalidity, or legal
29 separation.

1 (~~(3)~~) (4) "Parenting functions" means those aspects of the
2 parent-child relationship in which the parent makes decisions and
3 performs functions necessary for the care and growth of the child.
4 Parenting functions include:

5 (a) Maintaining a loving, stable, consistent, and nurturing
6 relationship with the child;

7 (b) Attending to the daily needs of the child, such as (~~(feeding,~~
8 ~~clothing,~~) physical care (~~(and grooming)~~), supervision, emotional
9 nurturing, health care, (~~(and day care)~~) and engaging in other
10 activities which are appropriate to the developmental level of the
11 child and that are within the social and economic circumstances of the
12 particular family;

13 (c) Attending to adequate education for the child, including
14 remedial or other education essential to the best interests of the
15 child;

16 (d) Assisting the child in developing and maintaining appropriate
17 interpersonal relationships;

18 (e) Exercising appropriate judgment regarding the child's welfare,
19 consistent with the child's developmental level and the family's social
20 and economic circumstances; and

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

22 **Sec. 3.** RCW 26.09.184 and 1989 c 375 s 9 are each amended to read
23 as follows:

24 (1) OBJECTIVES. The objectives of the permanent parenting plan are
25 to:

26 (a) Provide for the child's (~~(physical care)~~) mental, emotional,
27 and physical health;

28 (b) (~~(Maintain the child's emotional stability)~~) Provide for the
29 child's continuing and frequent contact with both parents;

1 (c) Provide for the child's changing needs as the child grows and
2 matures, in a way that minimizes the need for future modifications to
3 the permanent parenting plan;

4 (d) Set forth the authority and responsibilities of each parent
5 with respect to the child, consistent with RCW 26.09.002 and the
6 criteria in RCW 26.09.187 and 26.09.191;

7 (e) Minimize the child's exposure to harmful parental conflict by
8 considering that the more reasonable, cooperative, and sharing parent
9 is normally the more fit parent;

10 (f) Encourage the parents, where appropriate under RCW 26.09.187
11 and 26.09.191, to meet their responsibilities to their minor children
12 through agreements in the permanent parenting plan, rather than by
13 relying on judicial intervention; and

14 (g) To otherwise protect the best interests and rights of the child
15 and the rights of the parents consistent with RCW 26.09.002.

16 (2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent
17 parenting plan shall contain provisions for resolution of future
18 disputes between the parents, allocation of decision-making authority,
19 a statement regarding relocation with the children, the tax exemption
20 for the child, and residential provisions for the child.

21 (3) DISPUTE RESOLUTION. A process for resolving disputes, other
22 than court action, shall be provided unless precluded or limited by RCW
23 26.09.187 or 26.09.191. A dispute resolution process may include
24 counseling, mediation, or arbitration by a specified individual or
25 agency, or court action. In the dispute resolution process:

26 (a) Preference shall be given to carrying out the parenting plan;

27 (b) The parents shall use the designated process to resolve
28 disputes relating to implementation of the plan, except those related
29 to financial support, unless an emergency exists;

1 (c) A written record shall be prepared of any agreement reached in
2 counseling or mediation and of each arbitration award and shall be
3 provided to each party;

4 (d) If the court finds that a parent has used or frustrated the
5 dispute resolution process without good reason, the court shall award
6 attorneys' fees and financial sanctions to the prevailing parent;

7 (e) The parties have the right of review from the dispute
8 resolution process to the superior court; and

9 (f) The provisions of (a) through (e) of this subsection shall be
10 set forth in the decree.

11 (4) ALLOCATION OF DECISION-MAKING AUTHORITY.

12 (a) The plan shall allocate decision-making authority to one or
13 both parties regarding the children's education, health care, organized
14 extracurricular activities, and religious upbringing. The parties may
15 incorporate an agreement related to the care and growth of the child in
16 these specified areas, or in other areas, into their plan, consistent
17 with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the
18 allocation of decision-making in the parenting plan, either parent may
19 make emergency decisions affecting the health or safety of the child.

20 (b) Each parent may make decisions regarding the day-to-day care
21 and control of the child while the child is residing with that parent.

22 (c) When mutual decision making is designated but cannot be
23 achieved, the parties shall make a good-faith effort to resolve the
24 issue through the dispute resolution process.

25 (5) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall include
26 a residential schedule which designates in which parent's home each
27 minor child shall reside on given days of the year, including provision
28 for holidays, birthdays of family members, vacations, and other special
29 occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

1 (6) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply
2 with a provision of a parenting plan, the other parent's obligations
3 under the parenting plan are not affected.

4 (7) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The
5 permanent parenting plan shall set forth the provisions of subsections
6 (3)(a) through (c), (4)(b) and (c), and (6) of this section.

7 **Sec. 4.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read
8 as follows:

9 (1) DISPUTE RESOLUTION PROCESS. The court shall not order a
10 dispute resolution process, except court action, when it finds that any
11 limiting factor under RCW 26.09.191 applies, or when it finds that
12 either parent is unable to afford the cost of the proposed dispute
13 resolution process. If a dispute resolution process is not precluded
14 or limited, then in designating such a process the court shall consider
15 all relevant factors, including:

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

18 (b) The parents' wishes or agreements and, if the parents have
19 entered into agreements, whether the agreements were made knowingly and
20 voluntarily; and

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

24 (2) (~~ALLOCATION OF DECISION-MAKING AUTHORITY.~~

25 ~~(a))~~ AGREEMENTS BETWEEN THE PARTIES. The court shall approve
26 agreements of the parties allocating decision-making authority, (~~or~~
27 ~~specifying rules in the areas listed in RCW 26.09.184(4)(a))~~ regarding
28 residential provisions, and selecting a dispute resolution process,
29 when it finds that:

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

3 ~~((ii))~~ (b) The agreement is knowing and voluntary.

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

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

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

9 ~~(iii) One parent is opposed to mutual decision making, and such~~
10 ~~opposition is reasonable based on the criteria in (c) of this~~
11 ~~subsection;~~

12 ~~(c))~~ (3) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in
13 ~~((a) and (b) of))~~ this ~~((subsection))~~ section, the court shall
14 ~~((consider))~~ issue an order that will enable each parent to participate
15 in decision-making in a manner consistent with subsection (5) of this
16 section and after considering the following criteria in allocating
17 decision-making authority:

18 ~~((i))~~ (a) The existence of a limitation under RCW 26.09.191; and

19 ~~((ii) The history of participation of each parent in decision~~
20 ~~making in each of the areas in RCW 26.09.184(4)(a);~~

21 ~~(iii) Whether the parents have a demonstrated ability and desire to~~
22 ~~cooperate with one another in decision making in each of the areas in~~
23 ~~RCW 26.09.184(4)(a); and~~

24 ~~(iv))~~ (b) The parents' geographic proximity to one another, to the
25 extent that ~~((it affects their ability to make timely mutual~~
26 ~~decisions))~~ the distance between the parents would make mutual or equal
27 distribution of decision-making unworkable.

28 ~~((3))~~ (4) RESIDENTIAL PROVISIONS.

29 ~~((a))~~ The court shall make residential provisions for each child
30 which encourage each parent to maintain a loving, stable, and nurturing

1 relationship with the child, consistent with the child's developmental
2 level and the family's social and economic circumstances. ((The
3 child's residential schedule shall be consistent with)) Except as
4 provided in subsection (2) of this section, the court shall issue an
5 order that provides frequent and continuing contact between the child
6 and both parents consistent with subsection (5) of this section and
7 after considering the criteria in RCW 26.09.191. Where the limitations
8 of RCW 26.09.191 are not dispositive of the child's residential
9 schedule, the court shall consider the following factors:

10 ((~~(i)~~) ~~The relative strength, nature, and stability of the child's~~
11 ~~relationship with each parent, including whether a parent has taken~~
12 ~~greater responsibility for performing parenting functions relating to~~
13 ~~the daily needs of the child~~))

14 (a) Which parent is more likely to allow the child frequent and
15 continuing contact with, and encourage affection and respect for, the
16 other parent, or act with appropriate discretion in allowing contact
17 with, and natural affection and respect between, the child and other
18 parent while protecting the child from harm;

19 ((~~(ii)~~) (b) The agreements of the parties, provided they were
20 entered into knowingly and voluntarily;

21 ((~~(iii)~~) (c) Each parent's past and potential for future
22 performance of parenting functions;

23 ((~~(iv)~~) (d) The emotional needs and developmental level of the
24 child;

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

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

1 ~~((vii))~~ (g) Each parent's employment schedule, and shall make
2 accommodations consistent with those schedules.

3 ~~((Factor (i) shall be given the greatest weight.~~

4 ~~(b) The court may order that a child frequently alternate his or
5 her residence between the households of the parents for brief and
6 substantially equal intervals of time only if the court finds the
7 following:~~

8 ~~(i) No limitation exists under RCW 26.09.191;~~

9 ~~(ii) (A) The parties have agreed to such provisions and the
10 agreement was knowingly and voluntarily entered into; or~~

11 ~~(B) The parties have a satisfactory history of cooperation and
12 shared performance of parenting functions; the parties are available to
13 each other, especially in geographic proximity, to the extent necessary
14 to ensure their ability to share performance of the parenting
15 functions; and~~

16 ~~(iii) The provisions are in the best interests of the child.))~~

17 (5) DEVIATION FROM JOINT PARENTING.

18 (a) The court shall issue an order of joint parenting consistent
19 with the definition in RCW 26.09.004(1) and the provisions of this
20 section, unless:

21 (i) A parent waives his or her right to provisions of joint
22 parenting; or

23 (ii) The child who is sufficiently mature to express reasoned and
24 independent preferences is opposed to joint parenting; or

25 (iii) The parent opposing joint parenting produces clear and
26 convincing evidence that limitations or restrictions to equal parenting
27 are required to protect the child from physical, mental, or emotional
28 harm consistent with RCW 26.09.191.

29 (b) If the court finds that such limitations or restrictions are
30 necessary, the court shall do so in a manner least restrictive to the

1 best interest of the child and the rights of the child and the parents,
2 as set forth in RCW 26.09.002. If the court finds it is necessary to
3 limit or restrict joint parenting it shall issue written findings of
4 fact and conclusions of law specifying the reasons.

5 **Sec. 5.** RCW 26.09.191 and 1989 c 375 s 11 and 1989 c 326 s 1 are
6 each reenacted and amended to read as follows:

7 (1) The court shall appropriately consider equal distribution of
8 the areas of decision-making authority as set forth in RCW
9 26.09.184(4)(a), however, the permanent parenting plan shall not
10 require mutual decision-making or designation of a dispute resolution
11 process other than court action if it is found that a parent has
12 engaged in any of the following conduct: (a) Willful abandonment that
13 continues for an extended period of time or substantial refusal to
14 perform parenting functions; (b) physical, sexual, or a pattern of
15 emotional abuse of a child; or (c) a history of acts of domestic
16 violence as defined in RCW 26.50.010(1) or an assault or sexual assault
17 which causes grievous bodily harm or the fear of such harm.

18 (2)(a) The parent's residential time with the child (~~shall~~) may
19 be limited in a manner consistent with RCW 26.09.187(5) if it is found
20 that the parent has engaged in any of the following conduct: (i)
21 Willful abandonment that continues for an extended period of time or
22 substantial refusal to perform parenting functions; (ii) physical,
23 sexual, or a pattern of emotional abuse of a child; or (iii) a history
24 of acts of domestic violence as defined in RCW 26.50.010(1) or an
25 assault or sexual assault which causes grievous bodily harm or the fear
26 of such harm.

27 (b) The limitations imposed by the court shall be reasonably
28 calculated to protect the child from physical, sexual, or emotional
29 abuse or harm that could result if the child has contact with the

1 parent requesting residential time. If the court expressly finds
2 limitation on the residential time with the child will not adequately
3 protect the child from the harm or abuse that could result if the child
4 has contact with the parent requesting residential time, the court
5 shall restrain the parent requesting residential time from all contact
6 with the child.

7 (c) If the court expressly finds that contact between the parent
8 and the child will not cause physical, sexual, or emotional abuse or
9 harm to the child and that the probability that the parent's harmful or
10 abusive conduct will recur is so remote that it would not be in the
11 child's best interests to apply the limitations of (a) and (b) of this
12 subsection, or if the court expressly finds the parent's conduct did
13 not have an impact on the child, then the court need not apply the
14 limitations of (a) and (b) of this subsection. The weight given to the
15 existence of a protection order issued under chapter 26.50 RCW as to
16 domestic violence is within the discretion of the court.

17 (3) A parent's involvement or conduct may have an adverse effect on
18 the child's best interests and bring harm to the child, and the court
19 may preclude or limit any provisions of the parenting plan in a manner
20 consistent with RCW 26.09.187(5), if any of the following factors
21 exist:

22 (a) A parent's neglect or substantial nonperformance of parenting
23 functions;

24 (b) A long-term emotional or physical impairment which interferes
25 with the parent's performance of parenting functions as defined in RCW
26 26.09.004;

27 (c) A long-term impairment resulting from drug, alcohol, or other
28 substance abuse that interferes with the performance of parenting
29 functions;

1 (d) The absence or substantial impairment of emotional ties between
2 the parent and the child;

3 (e) The abusive use of conflict by the parent which creates the
4 danger of serious damage to the child's psychological development;

5 (f) A parent has withheld from the other parent access to the child
6 for a protracted period without good cause; ((or))

7 (g) A parent without just cause attempts to interfere with the
8 natural affection, bonding, or respect of a child toward the other
9 parent;

10 (h) A parent without just cause attempts to debase or nullify the
11 natural parenting role of the other parent; or

12 (i) Such other factors or conduct as the court expressly finds
13 adverse to the best interests of the child.

14 (4) In entering a permanent parenting plan, the court shall not
15 draw any presumptions from the provisions of the temporary parenting
16 plan.

17 (5) In determining whether any of the conduct described in this
18 section has occurred, the court shall apply the civil rules of
19 evidence, proof, and procedure.

20 **Sec. 6.** RCW 26.09.194 and 1987 c 460 s 13 are each amended to read
21 as follows:

22 (1) A parent seeking a temporary order relating to parenting shall
23 file and serve a proposed temporary parenting plan by motion. The
24 other parent, if contesting the proposed temporary parenting plan,
25 shall file and serve a responsive proposed parenting plan. Either
26 parent may move to have a proposed temporary parenting plan entered as
27 part of a temporary order. The parents may enter an agreed temporary
28 parenting plan at any time as part of a temporary order. The proposed
29 temporary parenting plan may be supported by relevant evidence and

1 shall be accompanied by an affidavit or declaration which shall state
2 at a minimum the following:

3 ~~(a) The name(, address, and length of residence with the person or~~
4 ~~persons with whom the child has lived for the preceding twelve months))~~
5 and address of the affiant;

6 ~~(b) ((The performance by each parent during the last twelve months~~
7 ~~of the parenting functions relating to the daily needs of the child))~~
8 The amount of residential time the affiant is willing to grant the
9 other parent;

10 ~~(c) The degree to which the affiant is willing to cooperate with~~
11 ~~the other parent in mutual decision-making, or which areas of decision-~~
12 ~~making authority listed in RCW 26.09.184(4)(a) the affiant is willing~~
13 to grant the other parent;

14 ~~(d) The parents' work and child-care schedules for the preceding~~
15 ~~twelve months;~~

16 ~~((d))~~ (e) The parents' current work and child-care schedules; and

17 ~~((e))~~ (f) Any of the circumstances set forth in RCW 26.09.191
18 that are likely to pose a serious risk to the child and that warrant
19 limitation on the award to a parent of temporary residence or time with
20 the child pending entry of a permanent parenting plan, and the affiants
21 proposed restrictions or limitations protecting the child from harm yet
22 limiting the child's and parent's rights in the least restrictive
23 manner.

24 (2) At the hearing, the court shall enter a temporary parenting
25 order consistent with RCW 26.09.187(5) incorporating a temporary
26 parenting plan which includes:

27 (a) A schedule for the child's time with each parent when
28 appropriate;

29 ~~(b) ((Designation of a temporary residence for the child;~~

1 ~~(e))~~ Allocation of decision-making authority, if any. Absent
2 allocation of decision-making authority consistent with RCW
3 ~~((26.09.187(2)))~~ 26.09.187(3), neither party shall make any decision
4 for the child other than those relating to day-to-day or emergency care
5 of the child, which shall be made by the party who is present with the
6 child;

7 ~~((d))~~ (c) Provisions for temporary financial support for the
8 child; and

9 ~~((e))~~ (d) Restraining orders, if applicable, under RCW 26.09.060.

10 (3) A parent may make a motion for an order to show cause and the
11 court may enter a temporary order, including a temporary parenting
12 plan, upon a showing of necessity.

13 (4) A parent may move for amendment of a temporary parenting plan,
14 and the court may order amendment to the temporary parenting plan, if
15 the amendment conforms to the limitations of RCW 26.09.191 and is in
16 the best interest of the child, and is consistent with RCW
17 26.09.187(5).

18 (5) If a proceeding for dissolution of marriage, legal separation,
19 or declaration of invalidity is dismissed, any temporary order or
20 temporary parenting plan is vacated.

21 **Sec. 7.** RCW 26.09.197 and 1987 c 460 s 14 are each amended to read
22 as follows:

23 After considering the affidavit required by RCW 26.09.194(1) and
24 other relevant evidence presented, the court shall make a temporary
25 parenting plan that is in the best interest of the child and considers
26 the rights of the child and the parents consistent with RCW
27 26.09.187(5). In making this determination, the court shall give
28 particular consideration to:

1 (1) Which parent (~~(has taken greater responsibility during the last~~
2 ~~twelve months for performing parenting functions relating to the daily~~
3 ~~needs of the child))~~ is more likely to allow the child frequent and
4 continuing contact between the child and the other parent and encourage
5 the child's natural affection and respect toward the other parent, or
6 act with appropriate discretion in allowing contact with and natural
7 affection and respect between the child and other parent while
8 protecting the child from harm; and

9 (2) Which parenting arrangements will cause the least disruption to
10 the child's emotional stability as described in RCW 26.09.002 while the
11 action is pending.

12 The court shall also consider the factors used to determine
13 residential provisions in the permanent parenting plan.

14 **Sec. 8.** RCW 26.09.255 and 1987 c 460 s 22 are each amended to read
15 as follows:

16 A relative, as defined in RCW 9A.40.010, may bring civil action
17 against any other relative if, with intent to deny access to a child by
18 that relative of the child who has a right to physical custody of or
19 visitation with the child or a parent (~~(with whom the child resides~~
20 ~~pursuant to a parenting plan order))~~ who has a right to time with the
21 child under the child's residential schedule, the relative takes,
22 entices, or conceals the child from that relative. The plaintiff may
23 be awarded, in addition to any damages awarded by the court, the
24 reasonable expenses incurred by the plaintiff in locating the child,
25 including, but not limited to, investigative services and reasonable
26 attorneys' fees.

27 **Sec. 9.** RCW 26.09.260 and 1989 c 375 s 14 and 1989 c 318 s 3 are
28 each reenacted and amended to read as follows:

1 (1) The court shall not modify a prior custody decree or a
2 parenting plan unless it finds, upon the basis of facts that have
3 arisen since the prior decree or plan or that were unknown to the court
4 at the time of the prior decree or plan, that a substantial change has
5 occurred in the circumstances of the child or the nonmoving party
6 (~~and~~) or that the modification is in the best interest of the child
7 and is necessary to serve the best interests of the child. In applying
8 these standards, the court shall retain the residential schedule
9 established by the decree or parenting plan unless:

10 (a) The parents agree to the modification;

11 (b) The existing decree or parenting plan does not provide equal
12 parenting as defined in RCW 26.09.004(1);

13 (c) The child has been integrated into the family of the petitioner
14 with the consent of the other parent in substantial deviation from the
15 parenting plan;

16 (~~(e)~~) (d) The child's present environment is detrimental to the
17 child's physical, mental, or emotional health and the harm likely to be
18 caused by a change of environment is outweighed by the advantage of a
19 change to the child; or

20 (~~(d)~~) (e) The court has found the nonmoving parent in contempt of
21 court at least twice within three years because the parent failed to
22 comply with the residential time provisions in the court-ordered
23 parenting plan, or the parent has been convicted of custodial
24 interference in the first or second degree under RCW 9A.40.060 or
25 9A.40.070.

26 (2) A conviction of custodial interference in the first or second
27 degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial
28 change of circumstances for the purposes of this section.

29 (3) Motions for modification of a decree or parenting plan
30 regarding residential provisions or decision-making authority shall be

1 accompanied by an affidavit or declaration with the same minimum
2 requirements as directed in RCW 26.09.194(1)(a) through (f). If the
3 nonmoving party wishes to contest the motion a responding affidavit
4 with the same minimum requirements is also required prior to a hearing
5 or trial.

6 (4) In determining a modification required by the relocation or
7 proposed relocation of one parent the court shall give preference to
8 the wishes of the parent not relocating, the wishes of a child who is
9 sufficiently mature to express reasoned and independent preference as
10 to his or her residential schedule, and the best interests of the
11 child, over the wishes of the relocating parent.

12 (5) Modifications granted under this section shall be consistent
13 with RCW 26.09.187(5).

14 (6) If the court finds that a motion to modify a prior decree or
15 parenting plan has been brought in bad faith, the court shall assess
16 the attorney's fees and court costs of the nonmoving parent against the
17 moving party.

18 **Sec. 10.** RCW 26.09.285 and 1989 c 375 s 16 are each amended to
19 read as follows:

20 Solely for the purposes of all other state and federal statutes
21 which require a designation or determination of ~~((custody))~~ a sole
22 custodian, a parenting plan shall designate ~~((the parent with whom the~~
23 ~~child is scheduled to reside a majority of the time))~~ one parent as the
24 custodian of the child for the sole and stated purpose of accommodating
25 the specific state or federal statute. However, this designation shall
26 not affect either parent's rights and responsibilities under the
27 parenting plan. ~~((In the absence of such a designation, the parent~~
28 ~~with whom the child is scheduled to reside the majority of the time~~
29 ~~shall be deemed to be the custodian of the child))~~ The court shall

1 consider which parent is more likely to allow the child frequent and
2 continued contact with and encourage affection and respect for, the
3 other parent or act with appropriate discretion in allowing contact
4 with, and natural affection and respect between, the child and other
5 parent while protecting the child from harm and which parent is least
6 likely to abuse said authority for the purposes of such federal and
7 state statutes.

8 NEW SECTION. Sec. 11. A new section is added to chapter 26.09 RCW
9 to read as follows:

10 Both natural parents shall obtain or retain legal custody of their
11 minor child unless clear, convincing, and cogent evidence is presented
12 to the court which proves that severing of a parent's right to legal
13 custody is necessary to protect the child from harm.

14 NEW SECTION. Sec. 12. A new section is added to chapter 26.09 RCW
15 to read as follows:

16 A parent's right of mobility does not automatically include the
17 right to interfere with the best interest of the child, the child's
18 right to have contact with the other parent, or the rights of the other
19 parent, consistent with this chapter. Unless otherwise provided in the
20 decree or parenting plan neither parent may remove the child for
21 purposes of changing residence or relocating for a protracted period of
22 time to a geographic distance that would substantially affect
23 provisions of the decree or parenting plan, without first obtaining
24 notarized consent from the other parent or a court ordered
25 modification.

26 NEW SECTION. Sec. 13. A new section is added to chapter 26.09 RCW
27 to read as follows:

1 It shall be determined in the parenting plan which parent shall
2 claim the tax exemption for each child. The court may consider
3 alternating the tax exemption of the child on an annual basis.

4 **Sec. 14.** RCW 26.26.130 and 1989 c 375 s 23 and 1989 c 360 s 18 are
5 each reenacted and amended to read as follows:

6 (1) The judgment and order of the court determining the existence
7 or nonexistence of the parent and child relationship shall be
8 determinative for all purposes.

9 (2) If the judgment and order of the court is at variance with the
10 child's birth certificate, the court shall order that an amended birth
11 certificate be issued.

12 (3) The judgment (~~and~~), order, and parenting plan shall contain
13 other appropriate provisions directed to the appropriate parties to the
14 proceeding, concerning the duty of current and future support, the
15 extent of any liability for past support furnished to the child if that
16 issue is before the court, the custody and guardianship of the child,
17 visitation privileges with the child, if appropriate, residential time,
18 decision-making authority, parenting rights, the furnishing of bond or
19 other security for the payment of the judgment, or any other matter in
20 the best interest of the child consistent with chapter 26.09 RCW. The
21 judgment and order may direct the father to pay the reasonable expenses
22 of the mother's pregnancy and confinement.

23 (4) Support judgment and orders shall be for periodic payments
24 which may vary in amount. The court may limit the father's liability
25 for the past support to the child to the proportion of the expenses
26 already incurred as the court deems just. The court shall not limit or
27 affect in any manner the right of nonparties including the state of
28 Washington to seek reimbursement for support and other services
29 previously furnished to the child.

1 ~~(5) ((After considering all relevant factors, the court shall order~~
2 ~~either or both parents to pay an amount determined pursuant to the~~
3 ~~schedule and standards adopted under RCW 26.19.040.~~

4 ~~(6) On the same basis as provided in chapter 26.09 RCW, the court~~
5 ~~shall make residential provisions with regard to minor children of the~~
6 ~~parties, except that a parenting plan shall not be required unless~~
7 ~~requested by a party.~~

8 ~~(7))~~ Upon the court determining the existence of the father and
9 child relationship it shall be assumed that the rights and needs of the
10 child are the same as those of a child of a dissolved marriage and that
11 the parenting rights and responsibilities of the father are equal to
12 those of the mother in determining a judgment, order, and parenting
13 plan. A parenting plan shall be determined under chapter 26.09 RCW.
14 However, if it is found that there exists an absence or substantial
15 impairment of emotional ties between a parent and the child
16 consideration may be given to allow an appropriate period for
17 integration of the child into the family, in consideration of the
18 child's emotional welfare and best interests.

19 (6) In any dispute between the natural parents of a child and a
20 person or persons who have (a) commenced adoption proceedings or who
21 have been granted an order of adoption, and (b) pursuant to a court
22 order, or placement by the department of social and health services or
23 by a licensed agency, have had actual custody of the child for a period
24 of one year or more before court action is commenced by the natural
25 parent or parents, the court shall consider ((the best welfare and
26 interests of the child, including the child's need for situation
27 stability, in determining the matter of custody, and the parent or
28 person who is more fit shall have the superior right to custody)) the
29 action under chapter 26.10 RCW.

1 **Sec. 15.** RCW 26.26.160 and 1989 c 360 s 36 are each amended to
2 read as follows:

3 (1) Except as provided in subsection (2) of this section the court
4 has continuing jurisdiction to prospectively modify a judgment and
5 order for future education and future support, and with respect to
6 matters listed in RCW 26.26.130 (3) and (4), and RCW 26.26.150(2)
7 (~~upon showing a substantial change of circumstances~~) on the same
8 basis as provided in RCW 26.09.260. The procedures set forth in RCW
9 26.09.175 shall be used in modification proceedings under this section.

10 (2) A judgment or order entered under this chapter may be modified
11 without a showing of substantial change of circumstances upon the same
12 grounds as RCW 26.09.170 permits support orders to be modified without
13 a showing of a substantial change of circumstance.

14 NEW SECTION. **Sec. 16.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and shall take
21 effect immediately.