
HOUSE BILL 2407

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By Representatives Kastama, Talcott, Gombosky, Lantz, Radcliff, Regala, Anderson, Wolfe, Morris, Kessler and O'Brien

Read first time 01/13/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to shared parental responsibility; amending RCW
2 26.09.004 and 26.09.187; adding a new section to chapter 26.09 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** This act shall be known as the shared
6 parental responsibility act.

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

9 The definitions in this section apply throughout this chapter.

10 (1) "Temporary parenting plan" means a plan for parenting of the
11 child pending final resolution of any action for dissolution of
12 marriage, declaration of invalidity, or legal separation which is
13 incorporated in a temporary order.

14 (2) "Permanent parenting plan" means a plan for parenting the
15 child, including allocation of parenting functions, which plan is
16 incorporated in any final decree or decree of modification in an action
17 for dissolution of marriage, declaration of invalidity, or legal
18 separation.

1 (3) "Parenting functions" means those aspects of the parent-child
2 relationship in which the parent makes decisions and performs functions
3 necessary for the care and growth of the child. Parenting functions
4 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, health care, and day
9 care, and engaging in other activities which are appropriate to the
10 developmental level of the child and that are within the social and
11 economic circumstances of the particular family;

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

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

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

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

21 (4) "Shared parental responsibility" means shared residential
22 placement and mutual decision-making authority.

23 (5) "Shared residential placement" means an order awarding each of
24 the parents periods of time, amounting to at least one-third of a year,
25 in which a child resides with or is under the actual, direct, day-to-
26 day care and supervision of each of the parents.

27 NEW SECTION. Sec. 3. A new section is added to chapter 26.09 RCW
28 to read as follows:

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

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

33 (b) The court finds that shared parental responsibility would be
34 detrimental to the child or children.

35 (2) A parent alleging that shared parental responsibility would be
36 detrimental to the child or children shall have the burden of
37 establishing the allegation.

1 (3) If a parent alleges that shared parental responsibility would
2 be detrimental to a particular child, the court, in making a
3 determination whether a shared parental responsibility order is
4 appropriate, may direct that an investigation be conducted in
5 accordance with the provisions of RCW 26.09.220. If the court declines
6 to enter a shared parental responsibility order, the court shall enter
7 findings of fact and conclusions of law stating the reasons that shared
8 parental responsibility is detrimental to the child or children.

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

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

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

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

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

26 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

27 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve
28 agreements of the parties allocating decision-making authority, or
29 specifying rules in the areas listed in RCW 26.09.184(4)(a), when it
30 finds that:

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

33 (ii) The agreement is knowing and voluntary.

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

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

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

1 (iii) One parent is opposed to mutual decision making, and such
2 opposition is reasonable based on the criteria in (c) of this
3 subsection;

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

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

8 (ii) The history of participation of each parent in decision making
9 in each of the areas in RCW 26.09.184(4)(a);

10 (iii) Whether the parents have a demonstrated ability and desire to
11 cooperate with one another in decision making in each of the areas in
12 RCW 26.09.184(4)(a); and

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

15 (3) RESIDENTIAL PROVISIONS.

16 (a) The court shall make residential provisions for each child
17 which encourage each parent to maintain a loving, stable, and nurturing
18 relationship with the child, consistent with the child's developmental
19 level and the family's social and economic circumstances. The child's
20 residential schedule shall be consistent with RCW 26.09.191. There is
21 a presumption that the child's residential schedule shall provide
22 shared parental responsibility in accordance with section 3 of this
23 act. Where the limitations of RCW 26.09.191 (~~are not dispositive of~~
24 ~~the child's residential schedule~~) do not apply, the court shall
25 consider the following factors:

26 (i) The relative strength, nature, and stability of the child's
27 relationship with each parent, including whether a parent has taken
28 greater responsibility for performing parenting functions relating to
29 the daily needs of the child;

30 (ii) The agreements of the parties, provided they were entered into
31 knowingly and voluntarily;

32 (iii) Each parent's past and potential for future performance of
33 parenting functions;

34 (iv) The emotional needs and developmental level of the child;

35 (v) The child's relationship with siblings and with other
36 significant adults, as well as the child's involvement with his or her
37 physical surroundings, school, or other significant activities;

1 (vi) The wishes of the parents and the wishes of a child who is
2 sufficiently mature to express reasoned and independent preferences as
3 to his or her residential schedule; and

4 (vii) Each parent's employment schedule, and shall make
5 accommodations consistent with those schedules.

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

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

11 (i) No limitation exists under RCW 26.09.191;

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

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

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

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