

2 **SHB 2884 - H AMD 503 ADOPTED 2-14-00**
3 By Representative

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** By this act, the legislature intends to
8 supersede the state supreme court's decisions *In Re the Marriage of*
9 *Littlefield*, 133 Wn.2d 39 (1997), and *In Re the Marriage of Pape*,
10 Docket No. 67527-9, December 23, 1999.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
12 section apply throughout sections 2 through 18 of this act and RCW
13 26.09.260 unless the context clearly requires otherwise.

14 (1) "Court order" means a temporary or permanent parenting plan,
15 custody order, visitation order, or other order governing the residence
16 of a child under this title.

17 (2) "Relocate" means a change in principal residence either
18 permanently or for a protracted period of time.

19 NEW SECTION. **Sec. 3.** APPLICABILITY. (1) The provisions of this
20 act apply to a court order regarding residential time or visitation
21 with a child issued:

22 (a) After the effective date of this act; and

23 (b) Before the effective date of this act, if the existing court
24 order does not expressly govern relocation of the child.

25 (2) To the extent that a provision of this act conflicts with the
26 express terms of a court order existing prior to the effective date of
27 this act, then this act does not apply to those terms of that order
28 governing relocation of the child.

29 NEW SECTION. **Sec. 4.** GRANT OF AUTHORITY. When entering or
30 modifying a court order, the court has the authority to allow or not
31 allow a person to relocate the child.

1 NEW SECTION. **Sec. 5.** NOTICE REQUIREMENT. Except as provided in
2 section 8 of this act, a person with whom the child resides a majority
3 of the time shall notify every other person entitled to residential
4 time or visitation with the child under a court order if the person
5 intends to relocate. Notice shall be given as prescribed in sections
6 6 and 7 of this act.

7 NEW SECTION. **Sec. 6.** NOTICE--CONTENTS AND DELIVERY. (1) Except
8 as provided in sections 7 and 8 of this act, the notice of an intended
9 relocation of the child must be given by:

10 (a) Personal service or any form of mail requiring a return
11 receipt; and

12 (b) No less than:

13 (i) Sixty days before the date of the intended relocation of the
14 child; or

15 (ii) No more than five days after the date that the person knows
16 the information required to be furnished under subsection (2) of this
17 section, if the person did not know and could not reasonably have known
18 the information in sufficient time to provide the sixty-days' notice,
19 and it is not reasonable to delay the relocation.

20 (2)(a) The notice of intended relocation of the child must include:

21 (i) An address at which service of process may be accomplished during
22 the period for objection; (ii) a brief statement of the specific
23 reasons for the intended relocation of the child; and (iii) a notice to
24 the nonrelocating person that an objection to the intended relocation
25 of the child or to the relocating person's proposed revised residential
26 schedule must be filed with the court and served on the opposing person
27 within thirty days or the relocation of the child will be permitted and
28 the residential schedule may be modified pursuant to section 12 of this
29 act. The notice shall not be deemed to be in substantial compliance
30 for purposes of section 9 of this act unless the notice contains the
31 following statement: "THE RELOCATION OF THE CHILD WILL BE PERMITTED AND
32 THE PROPOSED REVISED RESIDENTIAL SCHEDULE MAY BE CONFIRMED UNLESS,
33 WITHIN THIRTY DAYS, YOU FILE A PETITION AND MOTION WITH THE COURT TO
34 BLOCK THE RELOCATION OR OBJECT TO THE PROPOSED REVISED RESIDENTIAL
35 SCHEDULE AND SERVE THE PETITION AND MOTION ON THE PERSON PROPOSING
36 RELOCATION AND ALL OTHER PERSONS ENTITLED BY COURT ORDER TO RESIDENTIAL
37 TIME OR VISITATION WITH THE CHILD."

1 (b) Except as provided in sections 7 and 8 of this act, the
2 following information shall also be included in every notice of
3 intended relocation of the child, if available:

4 (i) The specific street address of the intended new residence, if
5 known, or as much of the intended address as is known, such as city and
6 state;

7 (ii) The new mailing address, if different from the intended new
8 residence address;

9 (iii) The new home telephone number;

10 (iv) The name and address of the child's new school and day care
11 facility, if applicable;

12 (v) The date of the intended relocation of the child; and

13 (vi) A proposal in the form of a proposed parenting plan for a
14 revised schedule of residential time or visitation with the child, if
15 any.

16 (3) A person required to give notice of an intended relocation of
17 the child has a continuing duty to promptly update the information
18 required with the notice as that new information becomes known.

19 NEW SECTION. **Sec. 7.** NOTICE--RELOCATION WITHIN THE SAME SCHOOL
20 DISTRICT. (1) When the intended relocation of the child is within the
21 school district in which the child currently resides the majority of
22 the time, the person intending to relocate the child, in lieu of notice
23 prescribed in section 6 of this act, may provide actual notice by any
24 reasonable means to every other person entitled to residential time or
25 visitation with the child under a court order.

26 (2) A person who is entitled to residential time or visitation with
27 the child under a court order may not object to the intended relocation
28 of the child within the school district in which the child currently
29 resides the majority of the time, but he or she retains the right to
30 move for modification under RCW 26.09.260.

31 NEW SECTION. **Sec. 8.** LIMITATION OF NOTICES. (1) If a person
32 intending to relocate the child is entering a domestic violence shelter
33 due to the danger imposed by another person, notice may be delayed for
34 twenty-one days. This section shall not be construed to compel the
35 disclosure by any domestic violence shelter of information protected by
36 confidentiality except as provided by RCW 70.123.075 or equivalent laws
37 of the state in which the shelter is located.

1 (2) If a person intending to relocate the child is a participant in
2 the address confidentiality program pursuant to chapter 40.24 RCW or
3 has a court order which permits the party to withhold some or all of
4 the information required by section 6(2)(b) of this act, the
5 confidential or protected information is not required to be given with
6 the notice.

7 (3) If a person intending to relocate the child is relocating to
8 avoid a clear, immediate, and unreasonable risk to the health or safety
9 of a person or the child, notice may be delayed for twenty-one days.

10 (4) A person intending to relocate the child who believes that his
11 or her health or safety or the health or safety of the child would be
12 unreasonably put at risk by notice or disclosure of certain information
13 in the notice may request an ex parte hearing with the court to have
14 all or part of the notice requirements waived. If the court finds that
15 the health or safety of a person or a child would be unreasonably put
16 at risk by notice or the disclosure of certain information in the
17 notice, the court may:

18 (a) Order that the notice requirements be less than complete or
19 waived to the extent necessary to protect confidentiality or the health
20 or safety of a person or child; or

21 (b) Provide such other relief as the court finds necessary to
22 facilitate the legitimate needs of the parties and the best interests
23 of the child under the circumstances.

24 (5) This section does not deprive a person entitled to residential
25 time or visitation with a child under a court order the opportunity to
26 object to the intended relocation of the child or the proposed revised
27 residential schedule before the relocation occurs.

28 NEW SECTION. **Sec. 9.** FAILURE TO GIVE NOTICE. (1) The failure to
29 provide the required notice is grounds for sanctions, including
30 contempt if applicable.

31 (2) In determining whether a person has failed to comply with the
32 notice requirements for the purposes of this section, the court may
33 consider whether:

34 (a) The person has substantially complied with the notice
35 requirements;

36 (b) The court order in effect at the time of the relocation was
37 issued prior to the effective date of this act and the person

1 substantially complied with the notice requirements, if any, in the
2 existing order;

3 (c) A waiver of notice was granted;

4 (d) A person entitled to receive notice was substantially harmed;
5 and

6 (e) Any other factor the court deems relevant.

7 (3) A person entitled to file an objection to the intended
8 relocation of the child may file such objection whether or not the
9 person has received proper notice.

10 NEW SECTION. Sec. 10. OBJECTION TO RELOCATION OR PROPOSED REVISED
11 RESIDENTIAL SCHEDULE. (1) A party objecting to the intended relocation
12 of the child or the relocating parent's proposed revised residential
13 schedule shall do so by filing the objection with the court and serving
14 the objection on the relocating party and all other persons entitled by
15 court order to residential time or visitation with the child by means
16 of personal service or mailing by any form of mail requiring a return
17 receipt to the relocating party at the address designated for service
18 on the notice of intended relocation and to other parties requiring
19 notice at their mailing address. The objection must be filed and
20 served, including a three-day waiting period if the objection is served
21 by mail, within thirty days of receipt of the notice of intended
22 relocation of the child. The objection shall be in the form of: (a)
23 A petition for modification of the parenting plan pursuant to
24 relocation; or (b) other court proceeding adequate to provide grounds
25 for relief.

26 (2) Unless the special circumstances described in section 8 of this
27 act apply, the person intending to relocate the child shall not,
28 without a court order, change the principal residence of the child
29 during the period in which a party may object. The order required
30 under this subsection may be obtained ex parte. If the objecting party
31 notes a court hearing to prevent the relocation of the child for a date
32 not more than fifteen days following timely service of an objection to
33 relocation, the party intending to relocate the child shall not change
34 the principal residence of the child pending the hearing unless the
35 special circumstances described in section 8(3) of this act apply.

36 (3) The administrator for the courts shall develop a standard form,
37 separate from existing dissolution or modification forms, for use in

1 filing an objection to relocation of the child or objection of the
2 relocating person's proposed revised residential schedule.

3 NEW SECTION. **Sec. 11.** REQUIRED PROVISION IN RESIDENTIAL ORDERS.
4 Unless waived by court order, after the effective date of this act,
5 every court order shall include a clear restatement of the provisions
6 in sections 5 through 10 of this act.

7 NEW SECTION. **Sec. 12.** FAILURE TO OBJECT. (1) Except for good
8 cause shown, if a person entitled to object to the relocation of the
9 child does not file an objection with the court within thirty days
10 after receipt of the relocation notice, then the relocation of the
11 child shall be permitted.

12 (2) A nonobjecting person shall be entitled to the residential time
13 or visitation with the child specified in the proposed residential
14 schedule included with the relocation notice.

15 (3) Any person entitled to residential time or visitation with a
16 child under a court order retains his or her right to move for
17 modification under RCW 26.09.260.

18 (4) If a person entitled to object to the relocation of the child
19 does not file an objection with the court within thirty days after
20 receipt of the relocation notice, a person entitled to residential time
21 with the child may not be held in contempt of court for any act or
22 omission that is in compliance with the proposed revised residential
23 schedule set forth in the notice given.

24 (5) Any party entitled to residential time or visitation with the
25 child under a court order may, after thirty days have elapsed since the
26 receipt of the notice, obtain ex parte and file with the court an order
27 modifying the residential schedule in conformity with the relocating
28 party's proposed residential schedule specified in the notice upon
29 filing a copy of the notice and proof of service of such notice. A
30 party may obtain ex parte and file with the court an order modifying
31 the residential schedule in conformity with the proposed residential
32 schedule specified in the notice before the thirty days have elapsed if
33 the party files a copy of the notice, proof of service of such notice,
34 and proof that no objection will be filed.

35 NEW SECTION. **Sec. 13.** TEMPORARY ORDERS. (1) The court may grant
36 a temporary order restraining relocation of the child, or ordering

1 return of the child if the child's relocation has occurred, if the
2 court finds:

3 (a) The required notice of an intended relocation of the child was
4 not provided in a timely manner and the nonrelocating party was
5 substantially prejudiced;

6 (b) The relocation of the child has occurred without agreement of
7 the parties, court order, or the notice required by this act; or

8 (c) After examining evidence presented at a hearing for temporary
9 orders in which the parties had adequate opportunity to prepare and be
10 heard, there is a likelihood that on final hearing the court will not
11 approve the intended relocation of the child or no circumstances exist
12 sufficient to warrant a relocation of the child prior to a final
13 determination at trial.

14 (2) The court may grant a temporary order authorizing the intended
15 relocation of the child pending final hearing if the court finds:

16 (a) The required notice of an intended relocation of the child was
17 provided in a timely manner or that the circumstances otherwise warrant
18 issuance of a temporary order in the absence of compliance with the
19 notice requirements and issues an order for a revised schedule for
20 residential time with the child; and

21 (b) After examining the evidence presented at a hearing for
22 temporary orders in which the parties had adequate opportunity to
23 prepare and be heard, there is a likelihood that on final hearing the
24 court will approve the intended relocation of the child.

25 NEW SECTION. **Sec. 14.** BASIS FOR DETERMINATION. The person
26 proposing to relocate with the child shall provide his or her reasons
27 for the intended relocation. There is a rebuttable presumption that
28 the intended relocation of the child will be permitted. A person
29 entitled to object to the intended relocation of the child may rebut
30 the presumption by demonstrating that the detrimental effect of the
31 relocation outweighs the benefit of the change to the child and the
32 relocating person, based upon the following factors. The factors
33 listed in this section are not weighted. No inference is to be drawn
34 from the order in which the following factors are listed:

35 (1) The relative strength, nature, quality, extent of involvement,
36 and stability of the child's relationship with each parent, siblings,
37 and other significant persons in the child's life;

38 (2) Prior agreements of the parties;

1 (3) Whether disrupting the contact between the child and the person
2 with whom the child resides a majority of the time would be more
3 detrimental to the child than disrupting contact between the child and
4 the person objecting to the relocation;

5 (4) Whether either parent or a person entitled to residential time
6 with the child is subject to limitations under RCW 26.09.191;

7 (5) The reasons of each person for seeking or opposing the
8 relocation and the good faith of each of the parties in requesting or
9 opposing the relocation;

10 (6) The age, developmental stage, and needs of the child, and the
11 likely impact the relocation or its prevention will have on the child's
12 physical, educational, and emotional development, taking into
13 consideration any special needs of the child;

14 (7) The quality of life, resources, and opportunities available to
15 the child and to the relocating party in the current and proposed
16 geographic locations;

17 (8) The availability of alternative arrangements to foster and
18 continue the child's relationship with and access to the other parent;

19 (9) The alternatives to relocation and whether it is feasible and
20 desirable for the other party to relocate also;

21 (10) The financial impact and logistics of the relocation or its
22 prevention; and

23 (11) For a temporary order, the amount of time before a final
24 decision can be made at trial.

25 NEW SECTION. **Sec. 15.** FACTOR NOT TO BE CONSIDERED. In
26 determining whether to permit or restrain the relocation of the child,
27 the court may not admit evidence on the issue of whether the person
28 seeking to relocate the child will forego his or her own relocation if
29 the child's relocation is not permitted or whether the person opposing
30 relocation will also relocate if the child's relocation is permitted.
31 The court may admit and consider such evidence after it makes the
32 decision to allow or restrain relocation of the child and other
33 parenting, custody, or visitation issues remain before the court, such
34 as what, if any, modifications to the parenting plan are appropriate
35 and who the child will reside with the majority of the time if the
36 court has denied relocation of the child and the person is relocating
37 without the child.

1 NEW SECTION. **Sec. 16.** OBJECTIONS BY NONPARENTS. A court may not
2 restrict the right of a parent to relocate the child when the sole
3 objection to the relocation is from a third party, unless that third
4 party is entitled to residential time or visitation under a court order
5 and has served as the primary residential care provider to the child
6 for a substantial period of time during the thirty-six consecutive
7 months preceding the intended relocation.

8 NEW SECTION. **Sec. 17.** SANCTIONS. The court may sanction a party
9 if it finds that a proposal to relocate the child or an objection to an
10 intended relocation or proposed revised residential schedule was made
11 to harass a person, to interfere in bad faith with the relationship
12 between the child and another person entitled to residential time or
13 visitation with the child, or to unnecessarily delay or needlessly
14 increase the cost of litigation.

15 NEW SECTION. **Sec. 18.** PRIORITY FOR HEARING. A hearing involving
16 relocations or intended relocations of children shall be accorded
17 priority on the court's motion calendar and trial docket.

18 **Sec. 19.** RCW 26.09.260 and 1999 c 174 s 1 are each amended to read
19 as follows:

20 (1) Except as otherwise provided in subsections (4), (5), (~~(7)~~)
21 ~~(6)~~, ~~(8)~~, and (~~(9)~~) (10) of this section, the court shall not modify
22 a prior custody decree or a parenting plan unless it finds, upon the
23 basis of facts that have arisen since the prior decree or plan or that
24 were unknown to the court at the time of the prior decree or plan, that
25 a substantial change has occurred in the circumstances of the child or
26 the nonmoving party and that the modification is in the best interest
27 of the child and is necessary to serve the best interests of the child.

28 (2) In applying these standards, the court shall retain the
29 residential schedule established by the decree or parenting plan
30 unless:

31 (a) The parents agree to the modification;

32 (b) The child has been integrated into the family of the petitioner
33 with the consent of the other parent in substantial deviation from the
34 parenting plan;

35 (c) The child's present environment is detrimental to the child's
36 physical, mental, or emotional health and the harm likely to be caused

1 by a change of environment is outweighed by the advantage of a change
2 to the child; or

3 (d) The court has found the nonmoving parent in contempt of court
4 at least twice within three years because the parent failed to comply
5 with the residential time provisions in the court-ordered parenting
6 plan, or the parent has been convicted of custodial interference in the
7 first or second degree under RCW 9A.40.060 or 9A.40.070.

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

11 (4) The court may reduce or restrict contact between the
12 ~~((nonprimary residential))~~ child and the parent ~~((and a child))~~ with
13 whom the child does not reside a majority of the time if it finds that
14 the reduction or restriction would serve and protect the best interests
15 of the child using the criteria in RCW 26.09.191.

16 (5) The court may order adjustments to the residential aspects of
17 a parenting plan upon a showing of a substantial change in
18 circumstances of either parent or of the child, and without
19 consideration of the factors set forth in subsection (2) of this
20 section, if the proposed modification is only a minor modification in
21 the residential schedule that does not change the residence the child
22 is scheduled to reside in the majority of the time and:

23 (a) Does not exceed twenty-four full days in a calendar year; or

24 (b) Is based on a change of residence of the parent with whom the
25 child does not reside the majority of the time or an involuntary change
26 in work schedule by a parent which makes the residential schedule in
27 the parenting plan impractical to follow; or

28 (c) Does not result in a schedule that exceeds ninety overnights
29 per year in total, if the court finds that, at the time the petition
30 for modification is filed, the decree of dissolution or parenting plan
31 does not provide reasonable time with the ~~((nonprimary residential))~~
32 parent ~~((at the time the petition for modification is filed))~~ with whom
33 the child does not reside a majority of the time, and further, the
34 court finds that it is in the best interests of the child to increase
35 residential time with the ~~((nonprimary residential))~~ parent in excess
36 of the residential time period in (a) of this subsection. However, any
37 motion under this subsection (5)(c) is subject to the factors
38 established in subsection (2) of this section if the party bringing the
39 ~~((motion))~~ petition has previously been granted a modification under

1 this same subsection within twenty-four months of the current motion.
2 Relief granted under this section shall not be the sole basis for
3 adjusting or modifying child support.

4 (6) The court may order adjustments to the residential aspects of
5 a parenting plan pursuant to a proceeding to permit or restrain a
6 relocation of the child. The person objecting to the relocation of the
7 child or the relocating person's proposed revised residential schedule
8 may file a petition to modify the parenting plan, including a change of
9 the residence in which the child resides the majority of the time,
10 without a showing of adequate cause other than the proposed relocation
11 itself. A hearing to determine adequate cause for modification shall
12 not be required so long as the request for relocation of the child is
13 being pursued. In making a determination of a modification pursuant to
14 relocation of the child, the court shall first determine whether to
15 permit or restrain the relocation of the child using the procedures and
16 standards provided in sections 2 through 18 of this act. Following
17 that determination, the court shall determine what modification
18 pursuant to relocation should be made, if any, to the parenting plan or
19 custody order or visitation order.

20 (7) A ~~((nonprimary residential))~~ parent with whom the child does
21 not reside a majority of the time and whose residential time with the
22 child is subject to limitations pursuant to RCW 26.09.191 (2) or (3)
23 may not seek expansion of residential time under subsection (5)(c) of
24 this section unless that parent demonstrates a substantial change in
25 circumstances specifically related to the basis for the limitation.

26 ~~((+7))~~ (8) If a ~~((nonprimary residential))~~ parent with whom the
27 child does not reside a majority of the time voluntarily fails to
28 exercise residential time for an extended period, that is, one year or
29 longer, the court upon proper motion may make adjustments to the
30 parenting plan in keeping with the best interests of the minor child.

31 ~~((+8))~~ (9) A ~~((nonprimary))~~ parent with whom the child does not
32 reside a majority of the time who is required by the existing parenting
33 plan to complete evaluations, treatment, parenting, or other classes
34 may not seek expansion of residential time under subsection (5)(c) of
35 this section unless that parent has fully complied with such
36 requirements.

37 ~~((+9))~~ (10) The court may order adjustments to any of the
38 nonresidential aspects of a parenting plan upon a showing of a
39 substantial change of circumstances of either parent or of a child, and

1 the adjustment is in the best interest of the child. Adjustments
2 ordered under this section may be made without consideration of the
3 factors set forth in subsection (2) of this section.

4 ~~((+10+))~~ (11) If the court finds that a motion to modify a prior
5 decree or parenting plan has been brought in bad faith, the court shall
6 assess the attorney's fees and court costs of the nonmoving parent
7 against the moving party.

8 **Sec. 20.** RCW 26.26.160 and 1992 c 229 s 8 are each amended to read
9 as follows:

10 (1) Except as provided in subsection (2) of this section the court
11 has continuing jurisdiction to prospectively modify a judgment and
12 order for future education and future support, and with respect to
13 matters listed in RCW 26.26.130 (3) and ~~((+4+))~~ (5), and RCW
14 26.26.150(2) upon showing a substantial change of circumstances. The
15 procedures set forth in RCW 26.09.175 shall be used in modification
16 proceedings under this section.

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

21 (3) The court may modify a parenting plan or residential provisions
22 adopted pursuant to RCW 26.26.130~~((+6+))~~ (7) in accordance with the
23 provisions of chapter 26.09 RCW.

24 (4) The court shall hear and review petitions for modifications of
25 a parenting plan, custody order, visitation order, or other order
26 governing the residence of a child, and conduct any proceedings
27 concerning a relocation of the residence where the child resides a
28 majority of the time, pursuant to chapter 26.09 RCW.

29 **Sec. 21.** RCW 26.10.190 and 1989 c 375 s 24 are each amended to
30 read as follows:

31 ~~((The court shall not modify a prior custody decree unless it~~
32 ~~finds, upon the basis of facts that have arisen since the prior decree~~
33 ~~or that were unknown to the court at the time of the prior decree, that~~
34 ~~a change has occurred in the circumstances of the child or the~~
35 ~~custodian and that the modification is necessary to serve the best~~
36 ~~interests of the child. In applying these standards, the court shall~~
37 ~~retain the custodian established by the prior decree unless:~~

1 ~~(a) The custodian agrees to the modification;~~
2 ~~(b) The child has been integrated into the family of the petitioner~~
3 ~~with the consent of the custodian; or~~
4 ~~(c) The child's present environment is detrimental to his or her~~
5 ~~physical, mental, or emotional health and the harm likely to be caused~~
6 ~~by a change of environment is outweighed by the advantage of a change~~
7 ~~to the child.))~~ The court shall hear and review petitions for
8 modifications of a parenting plan, custody order, visitation order, or
9 other order governing the residence of a child, and conduct any
10 proceedings concerning a relocation of the residence where the child
11 resides a majority of the time, pursuant to chapter 26.09 RCW.

12 (2) If the court finds that a motion to modify a prior custody
13 decree has been brought in bad faith, the court shall assess the
14 attorney's fees and court costs of the custodian against the
15 petitioner.

16 NEW SECTION. Sec. 22. Captions used in this act are not any part
17 of the law.

18 NEW SECTION. Sec. 23. Sections 2 through 18 of this act are each
19 added to chapter 26.09 RCW and codified with the subchapter heading
20 "Notice requirements and standards for parental relocation."

21 Correct the title.

--- END ---