

HOUSE BILL REPORT

ESHB 2884

As Passed House:
February 14, 2000

Title: An act relating to relocation of children.

Brief Description: Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers and Stensen).

Brief History:

Committee Activity:

Judiciary: 2/1/00, 2/3/00 [DPS].

Floor Activity:

Passed House: 2/14/00, 91-4.

Brief Summary of Substitute Bill

- Requires that the person with whom the child resides the majority of the time notify anybody with residential time or visitation with the child when the person plans to relocate.
- Creates a presumption that relocation will be permitted unless an objecting party meets a certain standard.
- Establishes factors the court must consider when determining whether to permit or prohibit relocation of the child.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Dickerson; Esser; Kastama; Lantz; Lovick and McDonald.

Minority Report: Do not pass. Signed by 3 members: Representatives Lambert, Republican Vice Chair; Cox and Schindler.

Staff: Trudes Hutcheson (786-7384).

Background:

Whether a parent may relocate a child away from the other parent who is entitled to residential or visitation time is an issue that has been heavily litigated in recent years. Washington's laws do not explicitly address when a parent may or may not relocate a child and whether the parent must notify the other parent before relocation occurs.

In the 1997 case, In re the Marriage of Littlefield, the state supreme court held that Washington's statutes do not give courts the authority to impose geographical restrictions on a parent when entering an initial parenting plan unless relocation would harm the child. The court explained that the harm to the child must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships normally associated with dissolution.

In December 1999, the state supreme court issued its opinion in In re the Marriage of Pape, in which it held that a parent may modify the residential schedule of a parenting plan under the "minor modification" statute.

The minor modification statute allows for "adjustments" to the parenting plan if: (a) there has been a substantial change in circumstances of either parent or the child; (b) the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time; and (c) the proposed modification is based on a change of residence or an involuntary change in work schedule by a parent that makes the residential schedule impractical to follow.

The court reasoned that the child's best interests were considered when the court made the initial residential placement of the child. Therefore, in a subsequent modification action there is a presumption that the best interests of the child require the primary placement of the child to remain intact.

Under Pape, the relocating parent must demonstrate a bona fide reason for the relocation. The other parent may object to the move by showing that either no bona fide reasons exist that the move will be detrimental to the child using the Littlefield standard of detriment.

Summary of Bill:

The Legislature intends to supersede the state supreme court's decisions of In re the Marriage of Littlefield and In re the Marriage of Pape.

Notice:

The person with whom the child resides a majority of the time must notify every other person entitled to residential time or visitation with the child when the person intends to relocate.

Notice must be given by personal service or any form of mailing requiring a return receipt no less than 60 days before the intended relocation. Notice must contain certain information, including an address where service of process may be accomplished, the reasons for the intended relocation, and a notice to the non-relocating party that an objection to the intended relocation of the child must be filed with the court within 30 days or the relocation will be permitted.

When available, the notice should also contain information such as the new mailing address and phone number, the address of the child's new school or day care, and a proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation.

If the intended relocation will be within the same school district in which the child currently resides the majority of the time, the person intending to relocate need only provide actual notice by any reasonable means.

Limitation of Notices:

The time frames for notice and the requirements in the notice may vary under limited circumstances. If a person is entering a domestic violence shelter or is relocating to avoid a clear, immediate, and unreasonable risk to his or her health or safety, or the child's health or safety, then notice may be delayed for 21 days.

If the person believes that his or her health or safety would be at risk by disclosure of some information in the notice, the person may obtain an ex parte court order to have some or all of the notice requirements waived.

Failure to give notice could result in sanctions and a finding of contempt, if applicable.

Objection:

A party objecting to the intended relocation of the child or to the proposed revised residential schedule must file an objection with the court and serve the objection on the relocating party and all other persons entitled to notice.

The objection must be filed and served within 30 days of receipt of the notice of intended relocation. The objection must be in the form of a petition for modification of the parenting plan or other court proceeding adequate to provide grounds for relief.

The person intending to relocate the child shall not, without a court order, change the child's principal residence during the 30-day objection period. If the objecting party notes a hearing to prevent relocation for a date not more than 15 days following timely service of the objection, the party intending to relocate may not change the child's principal residence pending the hearing unless special circumstances apply.

Failure to Object:

If a person does not object within 30 days, the relocation will be permitted and the non-objecting person is entitled to the residential time or visitation specified in the proposed revised residential schedule that was included in the notice of intended relocation.

Any party entitled to court-ordered residential time or visitation with the child may, after the 30-day objection period has passed, obtain ex parte an order modifying the residential schedule in conformity with the proposed revised residential schedule specified. A party may obtain such an order before the 30-day objection period elapses if the party presents proof that no objection will be filed.

Temporary Orders:

A court may grant a temporary order restraining relocation of a child, or ordering the return of a child who has already been relocated, if the court finds:

- (a) that the required notice was not provided and the non-relocating party was substantially prejudiced;
- (b) the relocation has occurred without agreement of the parties, court order, or notice; or
- (c) after examining evidence presented at a hearing, the court finds that there is a likelihood that on final hearing the court will not approve the intended relocation, or no circumstances exist to warrant a relocation prior to final determination at trial.

The court may grant a temporary order permitting the relocation of a child if the relocating party complied or substantially complied with the notice requirements, and the court determines that there is a likelihood on final hearing that it will approve the relocation.

Presumption and Standard:

The person intending to relocate with the child must give his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation will be permitted. The objecting party may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person. Whether the detrimental effect outweighs the benefit must be based on the following factors:

- (1) the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with the person proposing to relocate and with the non-relocating person, siblings, and other significant persons in the child's life;
- (2) prior agreements between the parties;
- (3) whether disrupting the contact between the child and the person with whom the child primarily resides would be more detrimental to the child than disrupting contact between the child and the person objecting;
- (4) whether either parent or a person entitled to residential time with the child is subject to limitations based on the person's conduct;
- (5) the reasons of each person for seeking or opposing relocation and the good faith of each party;
- (6) the age, developmental state, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development;
- (7) the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographical locations;
- (8) the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) the alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) the financial impact and logistics of the relocation or its prevention; and
- (11) or a temporary order, the amount of time before a final decision can be made at trial.

The factors are not weighted, and no inference should be drawn from the order in which the factors are listed. The court may not consider as a factor whether the person intending to relocate will forego his or her relocation if the child's relocation is prohibited, or whether the opposing party will relocate if the child's relocation is permitted.

Once the court determines whether to permit or restrain the relocation of the child, the court shall determine what modification should be made, if any, to the parenting plan.

Objections By Third Parties:

A court may not restrict the child's relocation when the sole objection to the relocation is from a third party, unless the third party is entitled to court-ordered residential time or visitation time and has served as the primary residential care provider to the child for a substantial period of time during the 36 consecutive months preceding the intended relocation.

Sanctions:

The court may sanction a party if his or her proposal to relocate or objection to relocation was made to harass a person, delay or increase the cost of litigation, or to interfere in bad faith with the other person's relationship with the child.

Minor Modification:

The existing minor modification statute applies when a parent with whom the child does not reside the majority of the time has a change in residence that makes the residential schedule impractical to follow.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill represents numerous compromises from many different interest groups.

Testimony Against: The presumption in favor of moving is antagonistic to the parenting act. The burden should be on the person intending to move. The bill does not take into consideration any existing agreement between the parties. The Legislature should revisit what it intended when it first passed the parenting act.

Testified: (In support) Representative Constantine, prime sponsor; and Rick Bartholomew, Washington State Bar Association.

(Opposed) Karl Bower and Lisa Scott, Taking Action Against Bias in the System (TABS); Joe Parr, President, Shared Parenting; and Bill Harrington, American Fathers Alliance.