

HOUSE BILL ANALYSIS

HB 1878

Title: An act relating to relocation under parenting plans.

Brief Description: Requiring a parenting plan to include a notice ordering that notice must be given of any intended change of residence.

Sponsors: Representatives Lantz, Edmonds, Lambert and Mitchell.

Brief Summary of Bill

- Requires that a person with residential time with a child notify every other person with residential time of an intended change of residence.
- Requires the court to permit relocation if the relocating parent has sole decision-making authority or primary residential time with the child, unless the nonrelocating parent shows detriment to the child or improper purpose.
- Requires the court to consider certain factors in determining whether to permit relocation when the parents have joint decision-making authority and substantially equal residential time.

HOUSE COMMITTEE ON JUDICIARY

Staff: Trudes Hutcheson (786-7384).

Background:

Under Washington's dissolution of marriage laws, divorcing couples with children must establish a parenting plan. The parenting plan must include: (a) a dispute resolution process for future disagreements; (b) an allocation of decision-making authority; and (c) a residential schedule. In determining the provisions of the parenting plan, the court must consider the child's best interest.

The statutes do not explicitly address when a parent may or may not relocate the child or whether the parent must notify the other parent before changing residences.

In 1997, the state supreme court held that under the current statutes, a court does not have the authority to restrict a parent and child from moving away from the other parent, unless relocation would harm the child. Under the court's decision, the harm the child would suffer from relocation must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships

resulting from divorce. The court's opinion, by inference, places the burden of proof upon the parent seeking to restrict the relocation.

Summary of Bill:

A person entitled to residential time with the child under a parenting plan must notify every other person entitled to residential time of an intended change of residence. When determining whether or not to permit or restrict relocation of the child, the standards the court must apply depends upon whether the relocating parent has sole decision-making authority, primary residential time, or substantially equal residential time.

A. Application

The provisions of the bill apply to orders issued after the effective date of the act and orders issued before the effective date if the order has been modified to require the relocation notice requirements. A parent may move to modify a parenting plan issued before the effective date of the act to require notification without showing a substantial change of circumstances.

B. Notice

1. Service

Notice must be given by personal service or any form of mail requiring a return receipt. If the relocation does not change the existing residential schedule, notice may be given by any reasonable means.

Notice must be given no later than 60 days before the relocation. If the person could not have known of the change in time to comply with the 60-day requirement, the person must provide notice within 10 days of the person knowing of the relocation or knowing the information required to be provided in the relocation notice.

2. Contents

The person relocating must provide the following information, if known, in the notice:

- the intended new residence address;
- the new mailing address;
- the new home telephone number;
- the date of the intended move;
- a proposal for a revised residential schedule; and

- a warning to the nonrelocating parent that he or she must file an objection to the relocation within 30 days or the relocation will be permitted.

C. Limitations on Notice

Notice is not required if notice would place the person's or child's safety at risk or if the person is entering a domestic violence shelter because the other party poses a danger.

If the person required to give notice has a court-authorized confidential address or other order permitting the withholding of certain information, the protected information is not required in the notice.

D. Standard to be Applied by the Court

When determining whether to permit or restrict relocation, the standard applied by the court is based upon the structure of the underlying parenting plan.

1. Relocating parent with sole decision-making authority or having primary residential time

If the parent seeking relocation has sole decision-making authority or shares joint decision-making and has primary residential time, the court generally cannot restrict the relocation. The court may restrict relocation only if the opposing parent demonstrates that: (a) it would be more detrimental to the child to disrupt contact with the nonrelocating parent than it would be to disrupt contact with the relocating parent; and (b) the relocating parent's purpose is to thwart the relationship between the nonrelocating parent and the child, or the detriment to the child caused by relocation would be beyond the normal distress that would be suffered because of travel, infrequent contact with a parent, or other hardships resulting from a divorce or relocation.

2. Relocating parent with joint decision-making and substantially equal residential time

If the parent seeking relocation has joint decision-making authority and has substantially equal residential time, the court must consider the following:

- (a) the factors the court already must consider when establishing residential provisions in a parenting plan;
- (b) whether either parent's residential time or decision-making authority is already limited due to the parent's conduct;
- (c) the relative detriment the child will suffer if separated from either parent;

- (d) whether the purpose of the relocation is to thwart the child's relationship with the nonrelocating parent;
- (e) the nature and extent of the child's relationship with each parent, and the disruption that the relocation or the prevention of the relocation will have on that relationship;
- (f) the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent; and
- (g) the resources and opportunities available to the parents and the child in each geographical location.

E. Temporary Orders Permitting or Restraining Relocation

A parent with sole decision-making authority or joint decision-making authority and primary residential time may temporarily relocate with the child, unless the court issues an order preventing the temporary relocation based on the standard the court must apply for permanent relocation.

A parent with joint decision-making authority and substantially equal residential time may temporarily relocate with the child only if the parents have entered into a written agreement regarding temporary relocation, or the court allows temporary relocation.

F. Third-party Objections

A court may not restrict relocation based on a third party's objection. A third party entitled to visitation with a child under a court order may file a petition in court to modify visitation based on the relocation. In modifying the visitation schedule, the court must consider the best interests of the child, the reasonableness of the proposed revised visitation schedule on both parties, and the amount of contact and nature of the relationship between the child and third party. The court should not interfere with the autonomy of the parent and the child except to the limited extent necessary to preserve the relationship between the third party and the child.

G. Remedies for Failing to Give Notice

Failure to give the required notice may result in a finding of contempt of court.

If no objection is filed within the 30 days and no subsequent order is entered modifying the residential schedule, the relocating parent's compliance with the proposed revised schedule will be a defense to any claim of contempt or custodial interference.

H. Miscellaneous

Hearings involving relocations must be given priority by the court, and trial dates must be expedited.

Fiscal Note: Not requested.

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

Office of Program Research