

# SENATE BILL REPORT

## ESHB 1514

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As Reported By Senate Committee On:  
Judiciary, April 2, 1999

**Title:** An act relating to modification of a parenting plan or custody decree.

**Brief Description:** Changing provisions relating to modification of a parenting plan or custody order.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Kastama and Wolfe).

**Brief History:**

**Committee Activity:** Judiciary: 3/31/99, 4/2/99 [DPA].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Haugen, Johnson, McCaslin, Roach and Zarelli.

**Staff:** Lidia Mori (786-7755)

**Background:** Under Washington's dissolution of marriage laws, divorcing couples with children must establish a parenting plan. The parenting plan must include a dispute resolution process for future disagreements, allocation of decision-making authority, and residential provisions for the child.

The statute governing modification of parenting plans addresses when a court can make both major modifications and minor modifications. Generally, a court may make major modifications to a parenting plan only if it finds, based on facts that were not in existence or were unknown when the original plan was entered, there has been a substantial change in circumstances of the child or the nonmoving parent and the modification is necessary to serve the child's best interest.

With regard to the residential schedule, the court may make major modifications only if: (a) both parents agree; (b) both parents have acquiesced in a deviation from the parenting plan that resulted in the child being integrated into the petitioner's family; (c) the present environment is detrimental to the child's physical, mental, or emotional health and the benefit of changing the child's residential schedule outweighs the harm likely to be caused by a change; or (d) the nonmoving parent has been in contempt of court at least twice within three years for failure to comply with the residential time provisions in the parenting plan, or the parent has been convicted of custodial interference.

A court may make minor adjustments to a parenting plan upon a showing of a substantial change in circumstances of either parent or the child if the proposed modification is only:

(a) a modification in the dispute resolution process; or (b) a change in the residential schedule that does not change the primary residential placement of the child in excess of 24 full days per year or five full days per month; or (c) is based on a change of residence or involuntary change in work schedule by a parent that makes the residential schedule in the parenting plan impractical.

In establishing a parenting plan, the court may limit decision-making authority and limit or preclude residential time based upon child abuse, neglect, abandonment, or a history of domestic violence. The court may also limit or preclude residential time if the parent's conduct may have an adverse effect on the child. Factors to be considered include: neglect or substantial nonperformance of parenting functions, the parent's long-term emotional or physical impairment, the parent's long-term substance abuse, the absence of emotional ties, an abusive use of conflict which creates a danger to the child's psychological development, a parent's withholding the child from the other parent without good cause, and any factor the court finds adverse to the child's best interest.

**Summary of Amended Bill:** A court may order a minor modification in the residential schedule upon a showing of a substantial change in circumstances to either parent or the child when the modification does not change the primary residence of the child and does not result in a schedule that exceeds 90 overnights per year in total. The court must find that the parenting plan does not provide reasonable time with the nonprimary residential parent and it would be in the best interest of the child to increase the residential time to over 24 full days per year. The criteria used for major modifications do not apply, unless the person seeking a minor modification under this new provision has already received a modification under the same provision within the past 24 months. Modification of any child support shall not be based solely on the modification of the residential schedule under this provision. A parent whose residential time with his or her child is limited due to a finding by the court may not seek additional residential time unless the parent has made significant changes related to that limitation. The provisions of subsection 5(c) of the bill may not be utilized by people who have significant problems affecting their parenting unless the parent can show he or she has taken steps to address those problems.

If the nonprimary residential parent voluntarily fails to exercise residential time for an extended period, the court may make adjustments to the parenting plan. The court may order adjustments to the nonresidential aspects of a parenting plan if it finds a substantial change in circumstances of either parent or the child and it is in the best interest of the child.

**Amended Bill Compared to Substitute Bill:** The substitute bill did not contain the limiting provisions with regard to parents whose residential time with their children are limited due to a finding by the court or parents who are required by the court to complete evaluations, treatment, or classes.

**Appropriation:** None.

**Fiscal Note:** Requested on March 30, 1999.

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

**Testimony For:** The nonprimary residential parent after a divorce has great difficulty being allowed to increase his or her residential time with the child beyond that in the parenting plan. This bill takes away the incentive to litigate and it will allow issues to get settled without the use of a great deal of court time. Often, parenting plans become outdated and are no longer appropriate due to the age of the children. This bill will not cause a rush to the courthouse.

**Testimony Against:** None.

**Testified:** Representative Kastama; Bill Harrington, American Fathers Alliance; Rick Bartholomew, WSBA Family Law Section; Joe Kearney; Joe Parr; Grace Huong, NW Women's Law Center (with concerns); Lisa Scott, private attorney; Lawrence Hutt.