

SENATE BILL REPORT

ESHB 2884

As Reported By Senate Committee On:
Judiciary, February 25, 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: 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: 2/23/2000, 2/25/2000 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

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

Staff: Lidia Mori (786-7755)

Background: In a recent case, *In re the Marriage of Pape*, the Supreme Court held a parent may modify the residential schedule of a parenting plan under the "minor modification" statute. 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 for the relocation exist or that the move will be detrimental to the child. The degree of detriment 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 which predictably result from a relocation following dissolution.

Summary of Bill: Notice: When the person with whom a child resides a majority of the time intends to change the principal residence of the child, notice must be given to those entitled to visitation or residential time within 60 days before the date of the intended relocation. However, if the person who desires to relocate does not know the information required to be contained in the notice and it is not reasonable to delay the relocation, he or she must provide the notice within five days after the date the person knows the information.

The notice must state the reasons for the relocation of the child and a statement that any objection to the relocation and proposed new residential schedule must be filed and served within 30 days or the relocation will be permitted. The new address, telephone number, name and address of the child's new school, and a proposed revised schedule of visitation or residential time should also be included, if available.

If the person desiring to relocate the child is entering a domestic violence shelter, notice may be delayed for 21 days. The person intending to relocate may seek an ex parte order waiving all or part of the notice requirements if the person believes his or her health or safety or that of the child would be unreasonably put at risk by giving notice. Without a court order, the person desiring to relocate may not change the principal residence of the child during the period in which a party may object, unless the relocation is due to danger posed by another person. The court order to allow relocation during the time allotted for a party to object may be obtained ex parte.

Determining Whether to Allow Relocation: There is a rebuttable presumption that the intended relocation of the child will be permitted. A person who objects to the relocation of the child may rebut this presumption by showing that the detrimental effect of relocation outweighs the benefit of the relocation to the child and the relocating person.

The following factors are delineated for the court to consider and no factor is given greater weight than another:

- (1) The strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons;
- (2) Prior agreements of the parties;
- (3) Whether disrupting the contact between the child and the person whom the child resides with a majority of the time would be more detrimental than disrupting contact between the child and the person objecting to the move;
- (4) Whether a person entitled to residential time is subject to limitations based on the person's conduct;
- (5) The reasons and good faith of each person for seeking or opposing the relocation;
- (6) The age, developmental stage, and needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to continue the child's relationship with and access to the other parent;
- (9) Alternatives to relocation and whether it is feasible and desirable for the other party to also relocate;
- (10) The financial impact and logistics of the relocation or its prevention.

The court may not consider as a factor whether the person intending to relocate will forego the relocation if the child's relocation is prohibited, or whether the opposing party will relocate if the child's relocation is permitted.

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.

Appropriation: None.

Fiscal Note: Requested on February 21, 2000.

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

Testimony For: There have been two Supreme Court cases recently which dealt with the issue of the primary residential parent wishing to relocate with the child. There have also been two bills that have tackled this issue from opposite points of view. This bill represents a compromise and each side will get a fair hearing. The facts will decide the case, not the law. It is not a perfect bill but we probably won't ever get a perfect bill due to so many competing views. This bill provides sufficient protections for domestic violence victims.

Testimony Against: None.

Testified: PRO: Representative Constantine, prime sponsor; Douglas Becker, Family Law Section, King County Bar Assn.; Rick Bartholomew, Family Law Section, WSBA; Bill Harrington, American Fathers Alliance; Lisa Scott, Taking Action Against Bias in the System; Majken Ryherd, Northwest Women's Law Center; Lonnie Johns-Brown, National Organization for Women.