
HOUSE BILL 1515

State of Washington 56th Legislature 1999 Regular Session

By Representatives Carlson, Sheahan, Wolfe and Dickerson

Read first time 01/27/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to relocation under parenting plans; amending RCW
2 26.09.260; adding new sections to chapter 26.09 RCW; and creating new
3 sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** APPLICATION. (1) This act applies to all
6 proceedings in which a person who has the right to establish the
7 principal residence of a child is attempting to relocate the principal
8 residence of the child and in which a person entitled to residential
9 time with a child is relocating his or her residence, whether the
10 proceeding is commenced during, as part of, or after a proceeding to
11 establish a parenting plan, custody order, visitation order, or other
12 order governing the residence of a child.

13 (2) To the extent that sections 3 through 5 of this act conflict
14 with specific provisions of an order existing on the effective date of
15 this section, sections 3 through 5 of this act do not apply to the
16 specific terms of the order.

17 NEW SECTION. **Sec. 2.** RELOCATION--AUTHORITY. In entering or
18 modifying a temporary or permanent parenting plan or a custody or

1 visitation order, in accordance with this chapter, the court may order
2 that a child relocate to or remain in a particular location,
3 notwithstanding that a party with residential time may have elected to
4 change his or her residence.

5 NEW SECTION. **Sec. 3.** RELOCATION--NOTICE OF INTENT. Except as
6 provided in section 6 of this act, a party entitled to residential time
7 with a child under a temporary or permanent parenting plan or other
8 order of the court shall notify every other person entitled to
9 residential time with the child of an intended change of residence.

10 NEW SECTION. **Sec. 4.** RELOCATION--NOTICE OF PROPOSED RELOCATION OR
11 INTENDED CHANGE OF RESIDENCE ADDRESS--SERVICE. (1) Except as provided
12 in section 6 of this act, notice of a proposed relocation of the
13 principal residence of a child or notice of an intended change of the
14 primary residence address of an adult, as provided in this section and
15 section 3 of this act, must be given by:

16 (a) Personal service or any form of mail requiring a return
17 receipt, except in circumstances where the relocation is within the
18 same school district, in which case the notice may be given by any
19 reasonable means;

20 (b) No later than:

21 (i) Sixty days before the date of the intended move or proposed
22 relocation; or

23 (ii) Five days after the date that the person knows the information
24 required to be furnished under subsection (2) of this section, if the
25 person did not know and could not reasonably have known the information
26 in sufficient time to comply with the sixty-day notice, and it is not
27 reasonably possible to extend the time of relocation of the child. The
28 intent of this section is to require as much notice as possible when
29 there is a significant likelihood of a change.

30 (2) Except as provided in section 6 of this act, the following
31 information, if available, shall be included with the notice of
32 intended relocation of the child or change of primary residence of an
33 adult affected by the order:

34 (a) The intended new residence street address, if known;

35 (b) The new mailing address, if different from the intended new
36 residence address;

37 (c) The new home telephone number, if known;

- 1 (d) The date of the intended move or proposed relocation;
- 2 (e) A brief statement of the specific reasons for the proposed
3 relocation;
- 4 (f) A proposal for a revised schedule of residential time with the
5 child, if any; and
- 6 (g) A warning to the nonrelocating parent that a proceeding
7 objecting to the proposed relocation must be filed with the court
8 within thirty days or the relocation will be permitted.

9 (3) A person required to give notice of a proposed relocation or
10 change of residence address under this section has a continuing duty to
11 provide a change in or addition to the information required by this
12 section as that information becomes known.

13 (4) If the nonrelocating parent does not file a proceeding seeking
14 a temporary or permanent order to prevent the relocation within thirty
15 days after receipt of notice of the intent of the other party to
16 relocate the residence of the child, except for good cause shown, the
17 relocation is authorized. In determining good cause for failure to
18 object within thirty days, the court shall apply the standards set
19 forth in civil rule 60(b).

20 NEW SECTION. **Sec. 5.** RELOCATION ORDERS--NOTICE. After the
21 effective date of this section, any order governing the residence of a
22 child must include the following provision:

23 "Each party shall provide advance written notice to every person
24 entitled to residential time with a child covered by this order of (1)
25 a proposed relocation of the child or (2) a proposed change of the
26 party's primary residence address, together with the following
27 information:

- 28 (a) The intended new residence street address, if known;
- 29 (b) The new mailing address, if different from the intended new
30 residence address;
- 31 (c) The new home telephone number, if known;
- 32 (d) The date of the intended move or proposed relocation;
- 33 (e) A brief statement of the specific reasons for the proposed
34 relocation of a child, if applicable;
- 35 (f) A proposal for a revised schedule of residential time with the
36 child, if any; and

1 (g) A warning prominently displayed that states: THE RELOCATION
2 WILL BE PERMITTED UNLESS YOU FILE A PROCEEDING WITH THE COURT WITHIN
3 THIRTY DAYS.

4 Each party is ordered to give notice of the proposed relocation or
5 change of residence address no less than sixty days before the date of
6 the proposed change. If you do not know and could not have reasonably
7 known of the change in sufficient time to provide sixty days' notice,
8 you are ordered to give notice of the change not less than five days
9 after the date that you first learn of or make the decision for the
10 change. The intent of this provision is to require as much notice as
11 possible when there is a significant likelihood of a change.

12 If you have or obtain a court order that permits you to keep any of
13 this information confidential from the other party, you need not give
14 the confidential information, but you are still required to give the
15 other information.

16 If you believe you have reason to keep information confidential or
17 not provide notice, you may ask the court for an order keeping part or
18 all of the information confidential or relieving you of the obligation
19 to provide notice.

20 If you are entering a domestic violence shelter due to the danger
21 imposed by another person, or if you are temporarily relocating to
22 avoid a clear, immediate, and unreasonable risk to the health or safety
23 of a person, including a child, notice may be delayed for fifteen days.

24 The notice shall be by personal service or any form of mail
25 requiring a return receipt, except in circumstances where the
26 relocation is within the same school district, in which case the notice
27 may be given by any reasonable means.

28 The obligation to furnish the information in this section to every
29 other party continues as long as a party is entitled to parenting time
30 with a child covered by this order.

31 Failure to provide notice may result in further litigation to
32 enforce the order, including contempt of court. A finding of contempt
33 may be punished by state law regarding penalties for contempt.

34 Failure to notify of a relocation of the child may be taken into
35 account in a modification of parenting provisions. Reasonable costs
36 and attorneys' fees also may be assessed if there is failure to give
37 the required notice.

38 If the nonrelocating parent does not file a proceeding seeking a
39 temporary or permanent order to prevent the relocation within thirty

1 days after receipt of notice of the intent of the other party to
2 relocate the residence of the child, except for good cause shown, the
3 relocation is authorized."

4 NEW SECTION. **Sec. 6.** RELOCATION--LIMITATION OF NOTICES. (1) Upon
5 entry of a finding of fact by the court, including by means of an ex
6 parte hearing when appropriate, that the health or safety of a person
7 or a child would be unreasonably put at risk by notice or the
8 disclosure of certain information in the notice, the court may:

9 (a) Order that notice be given without some or all of the
10 information required by section 4 of this act, pleadings, other
11 documents filed in the proceeding, or the final order, except for an
12 in-camera disclosure;

13 (b) Order that the notice requirements be waived to the extent
14 necessary to protect confidentiality and the health or safety of a
15 person or child; or

16 (c) Provide such other relief as the court considers necessary to
17 facilitate the legitimate needs of the parties and the best interests
18 of the child under the circumstances.

19 (2) If a party has a court-authorized confidential address or other
20 court order that permits the party to withhold some or all of the
21 information required by section 4 of this act, the protected
22 information is not required to be given with the notice.

23 (3) If a party is entering a domestic violence shelter due to the
24 danger imposed by another person, notice may be delayed for fifteen
25 days. This section shall not be construed to compel the disclosure by
26 any domestic violence shelter of information protected by
27 confidentiality except as provided by RCW 70.123.075 or equivalent laws
28 of the state in which the shelter is located.

29 (4) If a party is temporarily relocating to avoid a clear,
30 immediate, and unreasonable risk to the health or safety of a person,
31 including a child, notice may be delayed for fifteen days.

32 (5) If the parties have not yet separated, no notice is required.

33 (6) This section shall not be construed to deprive the
34 nonrelocating party of the opportunity to object in advance of the
35 relocation.

36 NEW SECTION. **Sec. 7.** RELOCATION--FAILURE TO GIVE NOTICE. The
37 court may consider a failure to provide any or all elements of the

1 notice of a proposed relocation as provided in section 4 of this act
2 as:

3 (1) A factor in determining whether the relocation will be
4 permitted or restrained;

5 (2) A factor in determining whether residential time should be
6 modified;

7 (3) A basis for ordering the return of the child; and

8 (4) Sufficient cause to order the person seeking to relocate the
9 child to pay the costs and reasonable attorneys' fees incurred by the
10 person objecting to the relocation unless (a) the party required to
11 provide notice has substantially complied with the requirements; (b)
12 the order providing residential time with a child in effect at the time
13 of the relocation was issued before the effective date of this section
14 and the order contains no provisions that would require notice or a
15 party shows substantial compliance with the notice requirements
16 contained in the order; or (c) a waiver of notice under section 6 of
17 this act applies.

18 NEW SECTION. **Sec. 8.** RELOCATION--FAILURE TO OBEY ORDER. Failure
19 to provide notice shall not be a basis for finding a person in contempt
20 of court if (1) the party required to provide notice has shown
21 substantial compliance with the notice requirements in section 4 or (2)
22 the order providing residential time with a child in effect at the time
23 of the relocation was issued before the effective date of this section
24 and the order contains no provisions that would require notice or a
25 party shows substantial compliance with the notice requirements
26 contained in the order; or (3) a waiver of notice under section 6 of
27 this act applies.

28 NEW SECTION. **Sec. 9.** RELOCATION--FAILURE TO OBJECT TO NOTICE.
29 The person giving notice may relocate the residence of a child after
30 providing notice as provided in sections 3 through 6 of this act unless
31 a parent entitled to notice files a proceeding seeking a temporary or
32 permanent order to prevent the relocation within thirty days of receipt
33 of the notice. Notice is not in substantial compliance for purposes of
34 this section unless the notice of the thirty-day time limit to object
35 is included.

1 NEW SECTION. **Sec. 10.** RELOCATION--TEMPORARY ORDERS. (1) The
2 court may grant a temporary order restraining the relocation of a child
3 or ordering return of the child if a relocation has previously taken
4 place if the court finds:

5 (a) The required notice of a proposed relocation of a child as
6 provided in sections 3 and 4 of this act was not provided in a timely
7 manner;

8 (b) The child already has been relocated without agreement of the
9 parties, court order, or the required notice of a proposed relocation
10 of a child as provided in sections 3 and 4 of this act; or

11 (c) From an examination of the evidence presented at the hearing
12 for temporary orders, that there is a likelihood that on final hearing
13 the court will not approve the relocation of the primary residence of
14 the child.

15 (2) The court may grant a temporary order permitting the relocation
16 of the child pending final hearing if the court:

17 (a) Finds that the required notice of a proposed relocation of a
18 child as provided in sections 3 and 4 of this act was provided in a
19 timely manner or that the circumstances otherwise warrant issuance of
20 a temporary order in the absence of complete compliance with sections
21 3 and 4 of this act and issues an order for a revised schedule for
22 residential time with the child; and

23 (b) Finds from an examination of the evidence presented at a
24 hearing for temporary orders that there is a likelihood that on final
25 hearing the court will approve the relocation of the primary residence
26 of the child.

27 NEW SECTION. **Sec. 11.** RELOCATION--HEARING--PRIORITY. A hearing
28 on a pleading filed under this chapter must be accorded priority on the
29 court's motion calendar and trial docket.

30 NEW SECTION. **Sec. 12.** RELOCATION--DETERMINATION. In reaching a
31 decision whether to permit or restrain a relocation, the court shall
32 consider the following factors:

33 (1) The relative strength, nature, quality, extent of involvement,
34 and stability of the child's relationship with the person proposing to
35 relocate and with the nonrelocating person, siblings, and other
36 significant persons in the child's life;

1 (2) The impact on the child if the court orders a change of the
2 parent with whom the child primarily resides;

3 (3) Whether either parent is subject to limitations under RCW
4 26.09.191;

5 (4) The reasons of each person for seeking or opposing the
6 relocation;

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

11 (6) The quality of life, resources, and opportunities available to
12 the relocating party, the objecting party, and the child, in the
13 current and proposed geographic locations;

14 (7) The effect of the relocation or its prevention on the physical,
15 mental, and emotional health of the parties and the child;

16 (8) The alternatives to relocation and whether it is feasible and
17 desirable for the other party to relocate also;

18 (9) The logistics resulting from and financial impact of the
19 relocation or its prevention;

20 (10) The good faith of each of the parties in requesting or
21 opposing the relocation; and

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

24 NEW SECTION. **Sec. 13.** RELOCATION--FACTOR NOT CONSIDERED. In
25 determining whether to permit or restrain relocation, the court may not
26 hear or consider evidence on the issue of whether the person seeking
27 relocation of the child will forego his or her own relocation if
28 relocation of the child is prohibited. Such evidence shall be taken and
29 considered if relocation is restrained and parenting, custody, or
30 visitation issues remain before the court.

31 NEW SECTION. **Sec. 14.** RELOCATION--BURDEN OF PROOF. The party
32 proposing to relocate with the child has the burden of production to
33 demonstrate that the proposal would be a benefit to both the child and
34 that party. If the party proposing to relocate meets this burden, the
35 nonrelocating party or parties have the burden of proof to show that
36 the detrimental effect of the relocation outweighs the benefit of the
37 relocation to the child and the relocating party. In making these

1 determinations, the court shall consider the factors in section 12 of
2 this act.

3 NEW SECTION. **Sec. 15.** RELOCATION--OBJECTIONS BY NONPARENTS. The
4 court shall not restrain relocation if the sole objection is from a
5 nonparent who has not served as a primary caregiver for the child
6 within the preceding thirty-six months.

7 NEW SECTION. **Sec. 16.** RELOCATION--SANCTIONS. The court may
8 sanction a party if it determines that a relocation proposal was made
9 or the objection was filed to harass a person, to interfere in bad
10 faith with the relationship between the child and another party, or to
11 unnecessarily delay or needlessly increase the cost of litigation.

12 **Sec. 17.** RCW 26.09.260 and 1991 c 367 s 9 are each amended to read
13 as follows:

14 (1) Except as otherwise provided in subsection (4) of this section,
15 the court shall not modify a prior custody decree or a parenting plan
16 unless it finds, upon the basis of facts that have arisen since the
17 prior decree or plan or that were unknown to the court at the time of
18 the prior decree or plan, that a substantial change has occurred in the
19 circumstances of the child or the nonmoving party and that the
20 modification is in the best interest of the child and is necessary to
21 serve the best interests of the child.

22 (2) In applying these standards, the court shall retain the
23 residential schedule established by the decree or parenting plan
24 unless:

25 (a) The parents agree to the modification;

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

29 (c) The child's present environment is detrimental to the child's
30 physical, mental, or emotional health and the harm likely to be caused
31 by a change of environment is outweighed by the advantage of a change
32 to the child; or

33 (d) The court has found the nonmoving parent in contempt of court
34 at least twice within three years because the parent failed to comply
35 with the residential time provisions in the court-ordered parenting

1 plan, or the parent has been convicted of custodial interference in the
2 first or second degree under RCW 9A.40.060 or 9A.40.070.

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

6 (4) The court may order adjustments to a parenting plan upon a
7 showing of a substantial change in circumstances of either parent or of
8 the child, and without consideration of the factors set forth in
9 subsection (2) of this section, if the proposed modification is only a:

10 (a) Modification in the dispute resolution process; ~~((or))~~

11 (b) Minor modification in the residential schedule that:

12 (i) Does not change the residence the child is scheduled to reside
13 in the majority of the time; and

14 (ii) Does not exceed twenty-four full days in a calendar year or
15 five full days in a calendar month; or

16 (iii) Is based on a change of residence, except as provided in (c)
17 of this subsection, or an involuntary change in work schedule by a
18 parent which makes the residential schedule in the parenting plan
19 impractical to follow; or

20 (c) A proceeding to permit or restrain a relocation under this
21 chapter. In making such a determination, the court shall first
22 determine whether to permit or restrain the relocation of a child.
23 Following that determination, the court shall take evidence on what
24 modifications, if any, should be made to the parenting plan, custody
25 order, or visitation order. In determining whether or not to modify
26 the order, the court shall consider:

27 (i) The best interests of the child;

28 (ii) The factors in RCW 26.09.191 and 26.09.187; and

29 (iii) The circumstances of the relocation and the extent to which
30 changes to the plan are required by the relocation.

31 (5) If the court finds that a motion to modify a prior decree or
32 parenting plan has been brought in bad faith, the court shall assess
33 the attorney's fees and court costs of the nonmoving parent against the
34 moving party.

35 NEW SECTION. Sec. 18. Captions used in this act are not any part
36 of the law.

1 NEW SECTION. **Sec. 19.** Sections 2 through 16 of this act are each
2 added to chapter 26.09 RCW.

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