
SENATE BILL 5511

State of Washington

57th Legislature

2001 Regular Session

By Senators Kastama and Franklin

Read first time 01/25/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to changing how the court determines the allocation
2 of residential time between parents; amending RCW 26.09.004 and
3 26.09.187; and adding a new section to chapter 26.09 RCW.

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

5 **Sec. 1.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter.

8 (1) "Temporary parenting plan" means a plan for parenting of the
9 child pending final resolution of any action for dissolution of
10 marriage, declaration of invalidity, or legal separation which is
11 incorporated in a temporary order.

12 (2) "Permanent parenting plan" means a plan for parenting the
13 child, including allocation of parenting functions, which plan is
14 incorporated in any final decree or decree of modification in an action
15 for dissolution of marriage, declaration of invalidity, or legal
16 separation.

17 (3) "Parenting functions" means those aspects of the parent-child
18 relationship in which the parent makes decisions and performs functions

1 necessary for the care and growth of the child. Parenting functions
2 include:

3 (a) Maintaining a loving, stable, consistent, and nurturing
4 relationship with the child;

5 (b) Attending to the daily needs of the child, such as feeding,
6 clothing, physical care and grooming, supervision, health care, and day
7 care, and engaging in other activities which are appropriate to the
8 developmental level of the child and that are within the social and
9 economic circumstances of the particular family;

10 (c) Attending to adequate education for the child, including
11 remedial or other education essential to the best interests of the
12 child;

13 (d) Assisting the child in developing and maintaining appropriate
14 interpersonal relationships;

15 (e) Exercising appropriate judgment regarding the child's welfare,
16 consistent with the child's developmental level and the family's social
17 and economic circumstances; and

18 (f) Providing for the financial support of the child.

19 (4) "Shared parental responsibility" means shared residential
20 placement and mutual decision-making authority.

21 (5) "Shared residential placement" means an order awarding each of
22 the parents periods of time, amounting to at least one-third of a year,
23 in which a child resides with or is under the actual, direct, day-to-
24 day care and supervision of each of the parents.

25 NEW SECTION. Sec. 2. A new section is added to chapter 26.09 RCW
26 to read as follows:

27 (1) There shall be a presumption that shared parental
28 responsibility is in the best interests of minor children unless:

29 (a) The parents have agreed to an award of residential placement or
30 decision-making authority to only one parent; or

31 (b) The court finds that shared parental responsibility would be
32 detrimental to the child or children.

33 (2) A parent alleging that shared parental responsibility would be
34 detrimental to the child or children shall have the burden of
35 establishing the allegation.

36 (3) If a parent alleges that shared parental responsibility would
37 be detrimental to a particular child, the court, in making a
38 determination whether a shared parental responsibility order is

1 appropriate, may direct that an investigation be conducted in
2 accordance with the provisions of RCW 26.09.220. If the court declines
3 to enter a shared parental responsibility order, the court shall enter
4 findings of fact and conclusions of law stating the reasons that shared
5 parental responsibility is detrimental to the child or children.

6 **Sec. 3.** RCW 26.09.187 and 1989 c 375 s 10 are each amended to read
7 as follows:

8 (1) DISPUTE RESOLUTION PROCESS. The court shall not order a
9 dispute resolution process, except court action, when it finds that any
10 limiting factor under RCW 26.09.191 applies, or when it finds that
11 either parent is unable to afford the cost of the proposed dispute
12 resolution process. If a dispute resolution process is not precluded
13 or limited, then in designating such a process the court shall consider
14 all relevant factors, including:

15 (a) Differences between the parents that would substantially
16 inhibit their effective participation in any designated process;

17 (b) The parents' wishes or agreements and, if the parents have
18 entered into agreements, whether the agreements were made knowingly and
19 voluntarily; and

20 (c) Differences in the parents' financial circumstances that may
21 affect their ability to participate fully in a given dispute resolution
22 process.

23 (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

24 (a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve
25 agreements of the parties allocating decision-making authority, or
26 specifying rules in the areas listed in RCW 26.09.184(4)(a), when it
27 finds that:

28 (i) The agreement is consistent with any limitations on a parent's
29 decision-making authority mandated by RCW 26.09.191; and

30 (ii) The agreement is knowing and voluntary.

31 (b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole
32 decision-making to one parent when it finds that:

33 (i) A limitation on the other parent's decision-making authority is
34 mandated by RCW 26.09.191;

35 (ii) Both parents are opposed to mutual decision making;

36 (iii) One parent is opposed to mutual decision making, and such
37 opposition is reasonable based on the criteria in (c) of this
38 subsection((+)).

1 (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a)
2 and (b) of this subsection, the court shall consider the following
3 criteria in allocating decision-making authority:

4 (i) The existence of a limitation under RCW 26.09.191;

5 (ii) The history of participation of each parent in decision making
6 in each of the areas in RCW 26.09.184(4)(a);

7 (iii) Whether the parents have a demonstrated ability and desire to
8 cooperate with one another in decision making in each of the areas in
9 RCW 26.09.184(4)(a); and

10 (iv) The parents' geographic proximity to one another, to the
11 extent that it affects their ability to make timely mutual decisions.

12 (3) RESIDENTIAL PROVISIONS.

13 (~~((a))~~) The court shall make residential provisions for each child
14 which encourage each parent to maintain a loving, stable, and nurturing
15 relationship with the child, consistent with the child's developmental
16 level and the family's social and economic circumstances. The child's
17 residential schedule shall be consistent with RCW 26.09.191. There is
18 a presumption that the child's residential schedule shall provide
19 shared parental responsibility in accordance with section 2 of this
20 act. Where the limitations of RCW 26.09.191 (~~((are not dispositive of~~
21 ~~the child's residential schedule))~~) do not apply, the court shall
22 consider the following factors:

23 (~~((i))~~) (a) The relative strength, nature, and stability of the
24 child's relationship with each parent(~~(, including))~~);

25 (b) Whether a parent has taken greater responsibility for
26 performing parenting functions relating to the daily needs of the
27 child;

28 (~~((ii))~~) (c) The agreements of the parties, provided they were
29 entered into knowingly and voluntarily;

30 (~~((iii))~~) (d) Which parent is more likely to allow and encourage
31 the child frequent and continuing contact with the other parent;

32 (e) Each parent's past and potential for future performance of
33 parenting functions;

34 (~~((iv))~~) (f) The emotional needs and developmental level of the
35 child;

36 (~~((v))~~) (g) The child's relationship with siblings and with other
37 significant adults, as well as the child's involvement with his or her
38 physical surroundings, school, or other significant activities;

1 (~~(vi)~~) (h) The wishes of the parents and the wishes of a child
2 who is sufficiently mature to express reasoned and independent
3 preferences as to his or her residential schedule; and

4 (~~(vii)~~) (i) Each parent's employment schedule, and shall make
5 accommodations consistent with those schedules.

6 Factor ~~(i)~~ (a) shall be given the greatest weight.

7 ~~((b) The court may order that a child frequently alternate his or
8 her residence between the households of the parents for brief and
9 substantially equal intervals of time only if the court finds the
10 following:~~

11 ~~(i) No limitation exists under RCW 26.09.191;~~

12 ~~(ii)(A) The parties have agreed to such provisions and the
13 agreement was knowingly and voluntarily entered into; or~~

14 ~~(B) The parties have a satisfactory history of cooperation and
15 shared performance of parenting functions; the parties are available to
16 each other, especially in geographic proximity, to the extent necessary
17 to ensure their ability to share performance of the parenting
18 functions; and~~

19 ~~(iii) The provisions are in the best interests of the child.)~~

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