

1 **HB 1563 - H AMD 0049 ADOPTED 3-6-03**

2 By Representative Carrell

3 On page 2, after line 36, insert the following:

4 "(4) If the parent or custodian fails to comply with a court order  
5 awarding contact between the nonparent and the child, the nonparent may  
6 file a motion to initiate a contempt action under RCW 26.09.160."

7 Renumber the remaining subsection consecutively.

8 On page 3, after line 22, insert the following:

9 "**Sec. 3.** RCW 26.09.160 and 1991 c 367 s 4 are each amended to  
10 read as follows:

11 (1) The performance of parental functions and the duty to provide  
12 child support are distinct responsibilities in the care of a child. If  
13 a party fails to comply with a provision of a decree or temporary order  
14 of injunction, the obligation of the other party to make payments for  
15 support or maintenance or to permit contact with children is not  
16 suspended. An attempt by a parent, in either the negotiation or the  
17 performance of a parenting plan, to condition one aspect of the  
18 parenting plan upon another, to condition payment of child support upon  
19 an aspect of the parenting plan, to refuse to pay ordered child  
20 support, to refuse to perform the duties provided in the parenting  
21 plan, or to hinder the performance by the other parent of duties  
22 provided in the parenting plan, shall be deemed bad faith and shall be  
23 punished by the court by holding the party in contempt of court and by  
24 awarding to the aggrieved party reasonable attorneys' fees and costs  
25 incidental in bringing a motion for contempt of court.

26 (2)(a) A motion may be filed to initiate a contempt action to  
27 coerce a parent to comply with an order establishing residential  
28 provisions for a child or awarding contact with a child to a nonparent  
29 under section 2 of this act. If the court finds there is reasonable  
30 cause to believe the parent has not complied with the order, the court  
31 may issue an order to show cause why the relief requested should not be  
32 granted.

1 (b) If, based on all the facts and circumstances, the court finds  
2 after hearing that the parent, in bad faith, has not complied with the  
3 order establishing residential provisions for the child or awarding  
4 contact with a nonparent, the court shall find the parent in contempt  
5 of court. Upon a finding of contempt, the court shall order:

6 (i) The noncomplying parent to provide the moving party additional  
7 time with the child. The additional time shall be equal to the time  
8 missed with the child, due to the parent's noncompliance;

9 (ii) The parent to pay, to the moving party, all court costs and  
10 reasonable attorneys' fees incurred as a result of the noncompliance,  
11 and any reasonable expenses incurred in locating or returning a child;  
12 and

13 (iii) The parent to pay, to the moving party, a civil penalty, not  
14 less than the sum of one hundred dollars.

15 The court may also order the parent to be imprisoned in the county  
16 jail, if the parent is presently able to comply with the provisions of  
17 the court-ordered parenting plan or court order awarding contact with  
18 a nonparent and is presently unwilling to comply. The parent may be  
19 imprisoned until he or she agrees to comply with the order, but in no  
20 event for more than one hundred eighty days.

21 (3) On a second failure within three years to comply with a  
22 residential provision of a court-ordered parenting plan or court order  
23 awarding contact with a nonparent, a motion may be filed to initiate  
24 contempt of court proceedings according to the procedure set forth in  
25 subsection (2)(a) and (b) of this section. On a finding of contempt  
26 under this subsection, the court shall order:

27 (a) The noncomplying parent to provide the other parent or party  
28 additional time with the child. The additional time shall be twice the  
29 amount of the time missed with the child, due to the parent's  
30 noncompliance;

31 (b) The noncomplying parent to pay, to the other parent or party,  
32 all court costs and reasonable attorneys' fees incurred as a result of  
33 the noncompliance, and any reasonable expenses incurred in locating or  
34 returning a child; and

35 (c) The noncomplying parent to pay, to the moving party, a civil  
36 penalty of not less than two hundred fifty dollars.

37 The court may also order the parent to be imprisoned in the county  
38 jail, if the parent is presently able to comply with the provisions of  
39 the court-ordered parenting plan or court order awarding contact with

1 a nonparent and is presently unwilling to comply. The parent may be  
2 imprisoned until he or she agrees to comply with the order but in no  
3 event for more than one hundred eighty days.

4 (4) For purposes of subsections (1), (2), and (3) of this section,  
5 the parent shall be deemed to have the present ability to comply with  
6 the order establishing residential provisions or awarding contact with  
7 a nonparent unless he or she establishes otherwise by a preponderance  
8 of the evidence. The parent shall establish a reasonable excuse for  
9 failure to comply with the court-ordered contact with a nonparent or  
10 the residential provision of a court-ordered parenting plan by a  
11 preponderance of the evidence.

12 (5) Any monetary award ordered under subsections (1), (2), and (3)  
13 of this section may be enforced, by the party to whom it is awarded, in  
14 the same manner as a civil judgment.

15 (6) Subsections (1), (2), and (3) of this section authorize the  
16 exercise of the court's power to impose remedial sanctions for contempt  
17 of court and is in addition to any other contempt power the court may  
18 possess.

19 (7) Upon motion for contempt of court under subsections (1)  
20 through (3) of this section, if the court finds the motion was brought  
21 without reasonable basis, the court shall order the moving party to pay  
22 to the nonmoving party, all costs, reasonable attorneys' fees, and a  
23 civil penalty of not less than one hundred dollars.

24 **Sec. 4.** RCW 26.09.260 and 2000 c 21 s 19 are each amended to read  
25 as follows:

26 (1) Except as otherwise provided in subsections (4), (5), (6),  
27 (8), and (10) of this section, the court shall not modify a prior  
28 custody decree or a parenting plan unless it finds, upon the basis of  
29 facts that have arisen since the prior decree or plan or that were  
30 unknown to the court at the time of the prior decree or plan, that a  
31 substantial change has occurred in the circumstances of the child or  
32 the nonmoving party and that the modification is in the best interest  
33 of the child and is necessary to serve the best interests of the child.

34 (2) In applying these standards, the court shall retain the  
35 residential schedule established by the decree or parenting plan  
36 unless:

37 (a) The parents agree to the modification;

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

4 (c) The child's present environment is detrimental to the child's  
5 physical, mental, or emotional health and the harm likely to be caused  
6 by a change of environment is outweighed by the advantage of a change  
7 to the child; or

8 (d) The court has found the nonmoving parent in contempt of court  
9 at least twice within three years because the parent failed to comply  
10 with a court order awarding contact with a nonparent or the parent  
11 failed to comply with the residential time provisions in the court-  
12 ordered parenting plan, or the parent has been convicted of custodial  
13 interference in the first or second degree under RCW 9A.40.060 or  
14 9A.40.070.

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

18 (4) The court may reduce or restrict contact between the child and  
19 the parent with whom the child does not reside a majority of the time  
20 if it finds that the reduction or restriction would serve and protect  
21 the best interests of the child using the criteria in RCW 26.09.191.

22 (5) The court may order adjustments to the residential aspects of  
23 a parenting plan upon a showing of a substantial change in  
24 circumstances of either parent or of the child, and without  
25 consideration of the factors set forth in subsection (2) of this  
26 section, if the proposed modification is only a minor modification in  
27 the residential schedule that does not change the residence the child  
28 is scheduled to reside in the majority of the time and:

29 (a) Does not exceed twenty-four full days in a calendar year; or

30 (b) Is based on a change of residence of the parent with whom the  
31 child does not reside the majority of the time or an involuntary change  
32 in work schedule by a parent which makes the residential schedule in  
33 the parenting plan impractical to follow; or

34 (c) Does not result in a schedule that exceeds ninety overnights  
35 per year in total, if the court finds that, at the time the petition  
36 for modification is filed, the decree of dissolution or parenting plan  
37 does not provide reasonable time with the parent with whom the child  
38 does not reside a majority of the time, and further, the court finds  
39 that it is in the best interests of the child to increase residential

1 time with the parent in excess of the residential time period in (a) of  
2 this subsection. However, any motion under this subsection (5)(c) is  
3 subject to the factors established in subsection (2) of this section if  
4 the party bringing the petition has previously been granted a  
5 modification under this same subsection within twenty-four months of  
6 the current motion. Relief granted under this section shall not be the  
7 sole basis for adjusting or modifying child support.

8 (6) The court may order adjustments to the residential aspects of  
9 a parenting plan pursuant to a proceeding to permit or restrain a  
10 relocation of the child. The person objecting to the relocation of the  
11 child or the relocating person's proposed revised residential schedule  
12 may file a petition to modify the parenting plan, including a change of  
13 the residence in which the child resides the majority of the time,  
14 without a showing of adequate cause other than the proposed relocation  
15 itself. A hearing to determine adequate cause for modification shall  
16 not be required so long as the request for relocation of the child is  
17 being pursued. In making a determination of a modification pursuant to  
18 relocation of the child, the court shall first determine whether to  
19 permit or restrain the relocation of the child using the procedures and  
20 standards provided in RCW 26.09.405 through 26.09.560. Following that  
21 determination, the court shall determine what modification pursuant to  
22 relocation should be made, if any, to the parenting plan or custody  
23 order or visitation order.

24 (7) A parent with whom the child does not reside a majority of the  
25 time and whose residential time with the child is subject to  
26 limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion  
27 of residential time under subsection (5)(c) of this section unless that  
28 parent demonstrates a substantial change in circumstances specifically  
29 related to the basis for the limitation.

30 (8) If a parent with whom the child does not reside a majority of  
31 the time voluntarily fails to exercise residential time for an extended  
32 period, that is, one year or longer, the court upon proper motion may  
33 make adjustments to the parenting plan in keeping with the best  
34 interests of the minor child.

35 (9) A parent with whom the child does not reside a majority of the  
36 time who is required by the existing parenting plan to complete  
37 evaluations, treatment, parenting, or other classes may not seek  
38 expansion of residential time under subsection (5)(c) of this section  
39 unless that parent has fully complied with such requirements.

1           (10) The court may order adjustments to any of the nonresidential  
2 aspects of a parenting plan upon a showing of a substantial change of  
3 circumstances of either parent or of a child, and the adjustment is in  
4 the best interest of the child. Adjustments ordered under this section  
5 may be made without consideration of the factors set forth in  
6 subsection (2) of this section.

7           (11) If the court finds that a motion to modify a prior decree or  
8 parenting plan has been brought in bad faith, the court shall assess  
9 the attorney's fees and court costs of the nonmoving parent against the  
10 moving party."

11 Renumber the remaining sections consecutively and correct the title.

**EFFECT:** Allows a nonparent to use the existing contempt statute to enforce a third party visitation court order. Allows a party to seek modification of a parenting plan if the parent is found in contempt for noncompliance with a third party visitation order at least twice within three years.